

## **EXHIBIT “A”**

### **Addendum to AIA Document A201-2017 General Conditions of the Contract for Construction**

This is an addendum (the “Addendum”) to that certain A201-2017 General Conditions of the Contract for Construction (the “Agreement” or “Contract”) by and between Cross Development \_\_\_\_\_ (“Owner”) and \_\_\_\_\_ (“Contractor”), effective November 14, 2018. This Addendum is hereby expressly incorporated into the Agreement. To the extent that the terms of the Agreement and this Addendum conflict, the terms of this Addendum shall control. The provisions in this Addendum override and render stricken their corresponding provisions in the Agreement. Any provisions not modified by this Addendum shall remain in full force and effect. The following provisions are hereby added and incorporated into the above-referenced Agreement:

#### **1. ARTICLE 1 GENERAL PROVISIONS**

\_\_\_\_\_ Add a new subparagraph §1.2.4 as follows:

§ 1.2.4 If any item or material shown on the Drawings is omitted from the Specifications, or vice-versa (except when the Drawings and Specifications clearly exclude such omitted item), and when such item or material is required to complete the detail shown or specified, the Contractor shall furnish and install such item or material of the type and quality established by the balance of the detail shown and specified at no increase to the Guaranteed Maximum Price or Contract Time.

#### **2. ARTICLE 2 Owner**

##### **(1) §2.3 Information and Services Required of the Owner**

Add the following to the end of subparagraph §2.3.1:

If the Contractor becomes aware of any such approvals or permits that are the Owner’s responsibility, the Contractor shall promptly notify the Owner and the Architect of the requirement. If the Contractor determines that an easement is desirable for the prosecution of the Work, the Contractor shall so inform the Owner and Architect in writing; however, the Owner shall be under no obligation to obtain any easement, and the lack of an easement shall not be the basis for an increase in the Guaranteed Maximum Price or an extension of the Contract Time.

##### **(2) §2.4 Owner’s Right to Stop the Work**

Add the following to the end of this section:

The Contractor shall not be entitled to an increase in the Contract Sum or Contract Time as a consequence of the Owner’s stoppage of the Work pursuant to this Section.

3. **ARTICLE 3 CONTRACTOR**

(1) **§3.2 Review of Contract Documents and Field Conditions by Contractor**

Add the following to the end of §3.2.1:

The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.1.

(2) Add a new subparagraph §3.3.4 as follows:

§ 3.3.4 The Contractor shall coordinate all field work and shop drawings of the various trades prior to installation of the Work. The Contractor shall be solely responsible for coordinating the various trades and the installation of their work. The Contractor agrees that all such installations shall be clear of obstructions and shall be constructed in a manner presenting an orderly appearance. In spaces where the Contractor discovers that various installations cannot be accommodated, the Contractor shall promptly notify the Architect and the Owner and shall cooperate with the Architect and the Owner in developing a solution to the problem. The Contractor shall not be entitled to an increase in the Contract Sum or Contract Time as a consequence of the coordination required pursuant to this Section.

(3) Replace subparagraph §3.7.4 with the following:

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Contractor in writing. The Contractor shall be entitled to an extension of the Contract Time only to the extent the conditions could not have been reasonably anticipated and cause an adverse effect on the critical path of the Project Schedule.

(4) Replace subparagraph §3.10.1 with the following:

**§ 3.10.1** The construction schedule, attached to this to the Agreement (“Project Schedule”), shall be updated monthly with the Contractor’s Application for Payment and as a condition precedent to payment to reflect the actual progress of the Work. The Project Schedule shall: (i) be in a detailed critical path method ("CPM") format; (ii) provide a graphic representation of all activities and events that will occur during performance of the Work; (iii) identify each phase of construction; (iv) account for expected weather conditions that maybe encountered in the performance of the Work; and (v) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents. If any schedule update shows that the progress of the Work is delayed in comparison to the Project Schedule, the Contractor shall, if required by the Owner, provide a "recovery schedule" as a plan of action to promptly correct the delay, including without limitation overtime and additional labor, at no expense to the Owner. No schedule updates shall modify the Substantial Completion Date required by the Contract Documents and the Project Schedule unless the parties execute a Change Order which modifies the Contract Time

## 2. **ARTICLE 7 – CHANGES IN THE WORK**

### A. Paragraph §7.2 CHANGE ORDERS

- (I) Add a new sub-subparagraph §7.2.1.4 as follows:

§7.2.1.4 All change orders require Owner’s approval prior to work beginning. Any change order involving a dollar amount in excess of \$500.00 will require Owner's signature prior to work beginning. Any work performed without Owner's approval (signature) will be at the General Contractor's risk. The overhead and profit for all approved change orders will be no more than 10% of the actual cost of the work made the subject of the change order.

## 2. **ARTICLE 8 – TIME**

### A. Paragraph §8.3 DELAYS AND EXTENSIONS OF TIME

- (1) Subparagraph **§8.3.1**: Delete Subparagraph **§8.3.1** in its entirety and replace it with the following:

**§8.3.1** NO DAMAGES FOR DELAY. If the Contractor is materially delayed at any time in the commencement or progress of the work by (i) the act or neglect of the Owner, Architect, or any other person or entity for whom the Owner is responsible; (ii) changes in the Work; (iii) fire or similar natural disaster or casualty; (iv) abnormal or unusually severe weather; or (v) other unforeseeable causes beyond Contractor’s control, and not in any way attributable to the Contractor or its Subcontractors, then the Contract Time may be extended by Change Order for such reasonable time as the Owner may determine. The Contractor shall be entitled to an extension of the Contract Time only to the extent the delay could not have been reasonably anticipated and had an adverse effect on

the critical path of the Project Schedule. A time extension will be Contractor's sole remedy. No payment or compensation for damages of any kind shall be made to the Contractor because of a hindrance or delay in the progress of the work unless such delays are caused by actual intentional interference, fraud, bad faith or negligent misrepresentation of the Owner or its agents or such delays extend for an unreasonable length of time that would justify abandonment of the Contract or were not contemplated by the parties at the time of contracting.

- (2) Add a new sub-subparagraph **§8.3.1.1** as follows:

**§8.3.1.1** In the event the Owner reasonably determines that the performance of the Work has not progressed or reached the level of completion required by the Project Schedule or the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, material, equipment and facilities; and (ii) other similar measures (hereinafter referred to collectively as "Remedial Measures"). Such Remedial Measures shall continue until progress of Work complies with the stage of completion required by the approved Project Schedule.

- (3) Add a new sub-subparagraph **§8.3.1.2** as follows:

**§8.3.1.2** The Contractor shall not be entitled to an equitable adjustment of the Contract Sum or a time extension in connection with Remedial Measures required by Owner pursuant to Section 8.3.1.1.

- (4) Add a new subparagraph **§8.3.1.3** as follows:

**§8.3.1.3** Contractor's failure to provide notice of any delay to Owner as provided herein shall result in a waiver of all claims relating to such delay for the period before the Contractor gives the Owner such notice. If the Owner fails to take action to cure the cause of delay promptly after receipt of such notice, the Project Schedule and Contract Time shall be extended by Change Order to the extent such actual critical delay prevents Contractor from complying with the Work Schedule and if the performance of the Work is not, was not or would not have been delayed by any other cause for which the Contractor is responsible under the Contract Documents. Contractor shall provide in all subcontracts that a subcontractor shall not be entitled to any extension of the Contract Time or a price adjustment unless: (i) subcontractor gives the Contractor notice in writing of the causes of such delay, obstruction, hindrance or interference within five (5) business days of the commencement thereof; (ii) subcontractor demonstrates that it could not have anticipated or avoided such delay, obstruction, hindrance or interference and has used all available means to minimize the consequences thereof; (iii) that such delay, obstruction, hindrance, or interference is not caused by the subcontractor or its suppliers, and (iv) that it could not be avoided or limited by the Contractor's timely action to prevent or minimize such delay.

- (5) Add a new subparagraph **§8.3.1.4** as follows:

**§8.3.1.4** Failure to Complete the Work on Time. It is mutually agreed by and between the parties hereto that time shall be an essential part of this Agreement and that if the Contractor fails to complete the Work within the Contract Time, the Owner will be damaged thereby; and because the amount of Owner's damages, is difficult if not impossible to definitely ascertain and prove, it is hereby agreed that the amount of such damages shall be the appropriate sum set forth below in Section 8.3.1.5 as "Liquidated Damages" for every calendar day delay in finishing the work in excess of the number of calendar days prescribed; and the Contractor hereby agrees that said sum shall be deducted from the Final Retainage Payment (or from any other monies due the Contractor under the Agreement) or, if no money is due the Contractor, the Contractor hereby agrees to pay to the Owner as Liquidated Damages, and not by way of penalty, such total sum as shall be due for such delay.

- (6) Add a new sub-subparagraph **§8.3.1.5** as follows:

**§8.3.1.5** Liquidated Damages. The parties agree that the injury that would result to Owner in the event that Contractor fails to substantially complete the Work by the Substantial Completion Date (as defined in the Contract Documents) would be difficult to quantify. The parties therefore agree that if Substantial Completion of the Work does not occur by the Substantial Completion Date as defined in Article 3, then liquidated damages shall accrue until the Work has been substantially completed as contemplated under the Contract Documents. If Substantial Completion occurs within thirty (30) calendar days of the Substantial Completion Date, liquidated damages shall be \$1,000.00 per day. If Substantial Completion does not occur within thirty (30) calendar days of the Substantial Completion Date, then liquidated damages in the amount of \$3,000.00 per day shall accrue for each day beyond the said thirty (30) days. (All such liquidated damages accruing pursuant to this subparagraph shall be referred to herein as the "Liquidated Damages"). Contractor acknowledges that delays caused by normal, foreseeable weather have been anticipated in the Substantial Completion Date.

- (7) Add a new sub-subparagraph **§8.3.1.6** as follows:

**§8.3.1.6** Punch List Completion. The Punch List is to be one hundred percent (100%) complete within fourteen (14) days of Substantial Completion.

- (8) Delete §8.3.3 in its entirety.

## 2. **ARTICLE 9 – PAYMENTS AND COMPLETION**

- A. Add the following to the end of §9.8.1:

“Intended use” means a Certificate of Occupancy has been granted by the Authority Having Jurisdiction allowing Owner’s tenant to occupy the structure and utilize the premise for its intended purpose.

### **3. ARTICLE 11 – INSURANCE AND BONDS**

- A. Delete Paragraph 11.1 and subparagraphs 11.1.1, 11.1.2, and 11.1.3 in their entirety and replace with the following:

#### **§11.1 CONTRACTOR’S LIABILITY INSURANCE**

**§11.1.1** The Contractor and/or any Subcontractor shall purchase from and maintain in a company or companies (in accordance with the terms of Section 11.1) authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor’s operations and completed operations under the Agreement and for which Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or y anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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

**§11.1.2** The insurance required by Section 11.1 shall be written for not less than limits of liability specified herein below or as required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor’s completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The Contractor and/ or Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

#### **.1 Commercial General Liability (CGL) on “Occurrence” form. CLAIMS MADE COVERAGE IS NOT ACCEPTABLE**

- i. CGL with limits of insurance of not less than \$1,000,000.00 Each Occurrence, \$2,000,000.00 Products/Completed Operations Aggregate,

\$1,000,000.00 Personal & Advertising Injury, \$50,000.00 Fire Damage Limit (any one fire), \$5,000.00 Medical Expense (any one person) and \$2,000,000.00 General Aggregate. The CGL General Aggregate shall apply separately to each project.

- ii. CGL coverage shall be written on ISO Occurrence Form CG 00 01 2004 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations and personal and advertising injury.
- iii. Owner and all other parties required of the Owner shall be included as insureds on the CGL for Operations and Completed Operations, using ISO Additional Insured CG 20 10 0704 or endorsements providing equivalent coverage to the additional insured, such as a combination of CG 2033 and CG 2037. The endorsement number needs to be listed on the certificate. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as primary and non-contributory insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to the additional insured.
- iv. Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the work.

## **.2 Automobile Liability**

- i. Business Auto Liability with limits of at least \$1,000,000.00 each accident.
- ii. Business Auto coverage must include coverage for the liability arising out of all owned, leased, hired and non-owned automobiles.
- iii. Owner and all other parties required of the Owner, shall be included as additional insureds on the auto policy.

## **.3 Workers Compensation and Employers Liability**

- i. Employers Liability Insurance limits of at least \$1,000,000.00 each accident for bodily injury by accident and \$1,000,000.00 each employee for injury by disease, and \$1,000,000.00 policy limit for Bodily Injury by Disease.
- ii. A waiver of subrogation endorsement in favor of the Owner, and all other parties required by the Owner, is also to be included.

## **.4 Umbrella Liability Insurance**

- i. Umbrella liability insurance limits of at least \$4,000,000.00 each on per occurrence basis.

### **§11.1.3 Certificates of Insurance**

Contractor and/or any Subcontractor shall provide Owner with valid Certificates of Insurance *prior* to commencement of work verifying said insurance requirements have been met. Attached to each certificate of insurance, shall be a copy of the Additional Insured Endorsement that is part of the Contractor/Subcontractor's Commercial General Liability Policy. Each Certificate of Insurance shall provide that the insurer must give the Owner at least 30 days' prior written notice of cancellation, expiration or termination of the Contractor's/Subcontractor's coverage thereunder. Not less than two weeks prior to the expiration, cancellation or termination of any such policy, the Contractor/Subcontractor shall supply the Owner with a new and replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal of said original policy. Said new and replacement endorsements shall be similarly endorsed in favor of Owner and Owner's parties as set forth above. Policies must be issued by companies with an A.M. Best rating of A-VII or better. All deductibles or Self-Insured Retentions for each policy shall not exceed \$10,000 without Owner's written approval. The Contractor shall ensure that each Subcontractor complies with the terms of this Section 11.1.

### **3. ARTICLE 15 – CLAIMS AND DISPUTES**

(1) Replace §15.1.6 with the following:

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost, as permitted, and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

(2) Replace §15.1.6.2 with the following:

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal or unusually severe for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of the construction schedule. The Contract Time contemplated by this Agreement anticipates a certain number of days lost each month due to weather conditions, for which Contractor shall not seek additional time or compensation. Only properly documented abnormal or severe weather conditions will be considered as a potential justification for a time extension. The term "abnormal or unusually severe weather" does not include any and all weather which prevents work under the contract. The phrase means only that weather surpassing in severity the weather usually encountered or reasonably to be expected at the Project during the time of year involved based on 10-year historical weather data.

(2) Add a new section §15.5 as follows:

**§15.5** In the event a Claim becomes the subject of binding arbitration or litigation, the losing party agrees to pay the reasonable legal fees of the prevailing party. For purposes of this Section, a party will be considered to be the "prevailing party" if (a) such party initiated the arbitration or

litigation and substantially obtained the relief which it sought (whether by judgment, voluntary agreement or action of the other party, trial, or arbitration), (b) such party did not initiate the litigation or arbitration and either (i) received a judgment or award in its favor, or (ii) did not receive judgment or award in its favor, but the party receiving the judgment or award did not substantially obtain the relief it sought, or (c) the other party to the litigation or arbitration withdrew its claim or action without having substantially received the relief which it was seeking.”

**IN WITNESS WHEREOF**, this Addendum has been entered into as of the day and year first above written.

OWNER:

CONTRACTOR:

\_\_\_\_\_  
a Texas limited liability company

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Agent for: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_