

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

302



FROM: Economic Development Agency

SUBMITTAL DATE:
 December 8, 2011

SUBJECT: Riverside County Regional Medical Center Operating Room Remodel 2nd Floor –
 J.D. Diffenbaugh Inc., Termination of Contract

RECOMMENDED MOTION: That the Board of Supervisors:

1. Receive and file the voluntary Notice of Default letter from J.D. Diffenbaugh, Inc.;
2. Approve and authorize the Termination of Contract; and
3. Approve the Three-Party Tender Agreement between the County of Riverside, SAFECO Insurance Company of America, and AUSTIN Commercial L.P., in the amount of \$749,977 to AUSTIN, for the Riverside County Regional Medical Center (RCRMC) Operating Room Remodel 2nd Floor, and authorize the Chairman of the Board to execute the agreement on behalf of the county.

BACKGROUND: (Commences on Page 2)

FISCAL PROCEDURES APPROVED
 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
 BY: Samuel Wong 12/6/11
 SAMUEL WONG

Robert Field
 Robert Field
 Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 749,977	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: RCRMC Operating Funds 4%; Post Occupancy Funds 96%	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
 BY: Jennifer L. Sargent
County Executive Office Signature

By: Douglas Bagley
 Douglas Bagley, Hospital Director
 Riverside County Regional Medical Center

Dept's Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

BACKGROUND:

On July 27, 2010, the Board of Supervisors approved the construction agreement between the J.D. Diffenbaugh Inc. and the County of Riverside for the construction of the RCRMC Operating Room Remodel 2nd Floor.

On July 28, 2010, the Economic Development Agency (EDA) issued the Notice to Proceed (NTP) to J.D. Diffenbaugh, Inc. and the contract work for the project commenced on August 30, 2010. On May 28, 2011, EDA received a voluntary letter of default (Exhibit A) from J.D. Diffenbaugh, Inc. stating they would not be able to carry out its contractual obligations. At the time the default letter was received, the project was approximately 25% complete (Phase I investigative work only had been performed).

The Surety for J.D. Diffenbaugh, Inc., SAFECO Insurance Company of America, engaged a consulting firm to manage the project; including dealing with stop notices filed against the project, negotiating with the subcontractors and potential liens, and to assist in finalizing all work. SAFECO Insurance Company of America through the consultant solicited bids from general contractors to complete the remaining portion of the work and has selected AUSTIN Commercial L.P. for the project. EDA has reviewed the credentials of AUSTIN Commercial L.P. and accepted them as qualified to perform the work. County Counsel, SAFECO and their agents, and EDA negotiated a Three-Party Tender Agreement for completion of the work, which includes a payment from the Surety to county, which together with the funds EDA has remaining in the project budget, is sufficient to pay AUSTIN Commercial L.P. to complete the original scope of work. The tender agreement is between the County of Riverside, SAFECO Insurance Company of America and AUSTIN Commercial L.P.

All costs associated with this agreement will be fully funded by 4% of RCRMC Operating Funds, and 96% of Post Occupancy Funds, thus no net county cost will be incurred.

Attachments:

Notice of Default (Exhibit A)
Three-Party Tender Agreement

Exhibit A



Ms. Nancy Cano
Riverside County Regional Medical Center
26520 Cactus Avenue
Moreno Valley, CA 92555

Re: Surety: Liberty Mutual Insurance Company
Principal: J. D. Diffenbaugh, Inc.
Bond No.: 6711628
Project: Riverside County Regional Medical Center
Second Floor Operating Room Build-out
Contract #: Unknown

Dear Ms. Cano:

J.D. Diffenbaugh, Inc., as contractor on the above-mentioned project, acknowledges its inability to pay for the completion of or perform the contract between the Riverside County Regional Medical Center, as owner, and J.D. Diffenbaugh, Inc., as contractor, dated May 28, 2010 because of financial difficulties.

Accordingly, J.D. Diffenbaugh, Inc. notifies you of its voluntary default on this construction contract. You are at liberty to call upon the surety to arrange for the completion of the performance of the construction project.

J.D. Diffenbaugh, Inc. hereby irrevocably directs that all contract funds be paid to Liberty Mutual Insurance Company at Liberty Mutual Insurance Company, P.O. Box 34670, Seattle, WA 98124-1670 telephone 206-473-3349 and that this direction to pay shall be irrevocable without the in-advance express written consent of the Surety.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Jeff Dale'.

Jeff Dale
President, J.D. Diffenbaugh, Inc.

ALV:

cc: Bruce Echigoshima
Liberty Mutual Insurance Company
P.O. Box 34670
Seattle, WA 98124-1670

THREE-PARTY TENDER AGREEMENT

This Three-Party Tender Agreement (“Agreement”) made and entered into this 31st Day of October, 2011, by and among the COUNTY OF RIVERSIDE (“County”), SAFECO INSURANCE COMPANY OF AMERICA (“Surety”), and AUSTIN COMMERCIAL L.P. (“Contractor”) shall become effective on the date the County formally approves the terms of this Agreement (“Effective Date”). The County, Surety and Contractor are sometimes collectively referred to herein as the “Parties.”

RECITALS

A. **WHEREAS**, on or about May 28, 2010, the County entered into a written Contract (“Original Contract”) with J.D DIFFENBAUGH, INC. (“Original Contractor”) to perform work, and supply labor and materials for the Riverside County Regional Medical Center Operating Room Remodel 2nd Floor, project no. FM08410003747 (“Project”). A true and correct copy of the Agreement Form that reflects the Original Contract for the Project is attached hereto as Exhibit “A” and incorporated herein by this reference, the Original Contract being comprised of the Contract Documents, including but not limited to the Notice Inviting Bids, Wage Schedule, bonds, Plans and Specifications, the General Conditions, Supplementary Conditions, addenda thereto, and the Agreement Form.

B. **WHEREAS**, Surety issued Performance Bond (“Bond”) No. 6711628 on behalf of the Original Contractor in favor of the County, as Obligee, in the original penal sum of \$712,000.00. A true and correct copy of the Bond is attached hereto as Exhibit “B” and incorporated herein by this reference;

C. **WHEREAS**, the Original Contractor was unable to complete the Original Contract for the Project and voluntarily defaulted from the Project;

D. **WHEREAS**, County has called upon the Surety to remedy the default of the Original Contractor and to complete or to procure completion of the Original Contract pursuant to the terms of the Bond and in accordance with the Original Contract for the Project;

E. **WHEREAS**, the Surety has solicited bids to procure and has procured bids from qualified, licensed Contractors to complete the work required to be performed under the Original Contract and the June 9, 2011, Request for Proposal by Surety plus four addendum thereto for the Project (collectively the “Remaining Work”);

F. **WHEREAS**, the Parties now desire to effectuate the completion of the Remaining Work for the Project, pursuant to the terms of the Bond and this Agreement;

G. **WHEREAS**, the Surety has elected to tender a Contractor to the County to complete the Remaining Work for the Project in discharge of Surety’s obligations under the Bond provided Surety can be sure that in doing so, the Contract Balance will be used as hereinafter set forth and agreed among the Parties;

H. **WHEREAS**, the Contractor is willing to enter into this Agreement for the

Remaining Work for the sum of \$749,977.00. The Original Contract together with this Agreement may be referred to as the "Completion Contract;" and

I. **WHEREAS**, the County is willing to accept the Surety's tender of the Contractor for completion of the Remaining Work as set forth herein and agreed to by the Parties.

J. **WHEREAS**, the County represents to the Surety that the current Project accounting for the Contract is as follows:

Original Contract amount:	\$ 712,000.00
Change Orders to date:	\$ 0
Current adjusted Contract amount:	<u>\$ 712,000.00</u>
Amount paid to date:	(\$ 50,575.50)
Remaining Contract Balance held by County Including retention:	<u>\$ 661,424,50</u>

The County certifies to Surety that no other payments have been made under the Original Contract, and that the County currently holds the aforesaid Remaining Contract Balance.

K. **WHEREAS**, the Surety and County have relied upon the representations made herein in entering into this Agreement;

AGREEMENT

1. **Incorporation of Recitals.** The Recitals set forth above are hereby agreed to by each of the Parties and incorporated herein by this reference as though set forth in full.

2. **Tender and Acceptance.** Surety hereby tenders Contractor to the County to complete the Remaining Work to be performed under the Completion Contract for the Project. The Remaining Work shall be performed in accordance with the Completion Contract.

3. **Binding Effect.** The County and Contractor agree that each shall be bound to one another under the terms and conditions of the Contract for the Project, except as set forth herein.

4. **Completion Amount.** Contractor agrees to complete the Remaining Work for the price of \$749,977.00. The County shall make payments to Contractor pursuant to the terms of the Completion Contract.

5. **Time.** Contractor shall complete the Remaining Work within One Hundred Twenty (120) calendar days after receiving a written notice to proceed from the County's Project Manager, subject to any time extensions to which Contractor may be entitled under the Completion Contract.

6. **Payments by Surety.** Within twenty (20) working days of the Effective Date,

Surety shall pay to County the sum of \$88,552.50 (Contractor's Completion Amount of \$749,977.00, less the Remaining Contract Balance of \$661,424.50.)

7. **Bonds.** Contractor shall furnish performance and payment bonds to the County guaranteeing the performance of its work under the Completion Contract and payment for all labor and materials. The replacement performance and payment bonds shall each be in the penal amount of \$749,977.00, in a form acceptable to the County.

8. **Insurance.** Contractor agrees to provide insurance coverage for the benefit of the County in accordance with the terms and conditions of the Completion Contract.

9. **Exoneration of Bond.** Upon execution of this Agreement by all Parties; tender of payment by the Surety pursuant to paragraph 6, above; issuance by Contractor of performance and payment bonds and certificates of insurance in accordance with paragraphs 7 and 8, above, Bond No. 6711628 shall be and is hereby exonerated and of no further force and effect, except that such exoneration shall not affect the obligations of Surety pursuant to this Agreement, which in no event shall exceed the penalty of the Bond.

10. **Warranty and Defects.** The Contractor expressly understands and agrees that it hereby assumes any and all warranty obligations under the Completion Contract and shall be responsible for and shall remedy at its own cost any and all defective and/or non-conforming work thereunder, regardless of whether such defective and/or non-conforming work is latent or patent.

11. **Surety Not a contractor.** It is understood and agreed that Surety, by entering into this Agreement, is not acting as a contractor, but instead in its capacity as a performance bond surety.

12. **Agreement to Cooperate.** The Parties hereto agree to cooperate fully with each other to the end that the work set forth in the Completion Contract may be completed as efficiently and quickly as reasonably possible under the circumstances.

13. **Power to Execute.** The Parties and each of their signatories hereto warrant that each has the power and authority to execute this Agreement. The Parties agree that if Surety makes or pursues any claims arising out of or relating to the Original Contract, the work set forth in the Original Contract, or this Agreement, such will be deemed proper if made by an officer of Surety. The Parties have voluntarily executed this Agreement based on their respective independent investigations.

14. **Invalid Provisions.** The provisions of this Agreement shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the Parties, but, if for any reason any provision is unenforceable or invalid, such provision shall be deemed severed from this Agreement and the remaining provisions shall be carried out with the same force and effect as if the severed portion had not been a part of this Agreement.

15. **Entire Agreement.** This Agreement and the Completion Contract constitute the entire agreement among the Parties hereto and supersedes any and all prior agreements, arrangements, and/or understandings by and between the Parties, except as otherwise expressly set forth herein.

16. **Binding on Successors and Assigns.** This Agreement shall extend to and be binding upon the Parties hereto and their respective successors and assigns. No rights shall accrue hereunder to or for the use of any other person, firm, corporation, or governmental entity other than the Parties hereto and their respective successors, assigns, and reinsurers.

17. **Counterparts.** The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by all of the Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it.

18. **Fully Negotiated Agreement.** This Agreement has been fully negotiated by the Parties and their counsel and shall not be construed in favor of or against either Party, regardless of who may have drafted it or any of its terms.

19. **Choice of Law.** This Agreement is made, executed and performed in the County of Riverside, State of California, and shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have hereunder set their hand and seal on the day and year listed below subject to the Agreement becoming effective as of the Effective Date.

DATE: **AUSTIN COMMERCIAL L. P.**

By _____

Name _____

Its _____

DATE: **COUNTY OF RIVERSIDE**

By _____

Chairman, Board of Supervisors

Its _____

SAFECO INSURANCE COMPANY OF AMERICA

DATE: 11/16/11

By David S. Ely

Name D. E. Ch. Johnson

Its Century Client Corp

16. **Binding on Successors and Assigns.** This Agreement shall extend to and be binding upon the Parties hereto and their respective successors and assigns. No rights shall accrue hereunder to or for the use of any other person, firm, corporation, or governmental entity other than the Parties hereto and their respective successors, assigns, and reinsurers.

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IN WITNESS WHEREOF, the Parties hereto have hereunder set their hand and seal on the day and year listed below subject to the Agreement becoming effective as of the Effective Date.

DATE: 11.11.11

AUSTIN COMMERCIAL L. P.

By *[Signature]*
Name Peter B. Durbin
Its Director of Risk Mgmt

DATE:

COUNTY OF RIVERSIDE

By _____
Chairman, Board of Supervisors
Its _____

SAFECO INSURANCE COMPANY OF AMERICA

DATE: 11/8/11

By *[Signature]*
Name D. Echigo-Hira
Its Surety Claim Dept

PERFORMANCE BOND

The makers of this Bond, Austin Commercial, LP, as Principal, and Federal Insurance Company as Surety, are held and firmly bound unto County of Riverside, hereinafter called the Owner, in the sum of ~~Seven Hundred Forty Nine Thousand~~ Nine Hundred Seventy Seven Dollars (\$749,977.00) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the Principal entered into a certain contract, herelo attached, with the Owner, dated _____, 2009 for Riverside County Regional Medical Center Operating Room Remodel 2nd Floor - Project No. FM08410003747

Now therefore, if the Principal shall well and truly perform and fulfill all the undertakings covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extension thereof that may be granted by the Owner, with or without notice to the Surety, and during the file of any guarantee required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may thereafter be made, then this obligation to be void, otherwise to remain in full force and virtue. Without notice, Surety consents to extension of time for performance, change in requirements, change in compensation or prepayment under said Contract.

Signed and Sealed this 31st Day of October, 2011.

AUSTIN COMMERCIAL, LP
(Firm Name - Principal)
3535 TRAVIS ST., SUITE 300, DALLAS, TX 75204
(Business Address)

Affix Seal
if
Corporation

By: [Signature]
(Signature - Attach Notary's Acknowledgment)
Director of Risk Mgmt
(Title)

FEDERAL INSURANCE COMPANY
(Corporation Name - Surety)
3 MOUNTAIN VIEW ROAD - 1ST FLOOR
WARREN, NEW JERSEY 07059
(Business Address)

Affix
Corporate
Seal

By: [Signature]
(Signature - Attach Notary's Acknowledgment)
Jeff Abraham, Attorney-in-fact
ATTORNEY-IN-FACT
(Title-Attach Power of Attorney)

PAYMENT BOND

(Public Work - Civil Code Section 3247 et seq.)

The makers of this Bond are Austin Commercial, LP as Principal and Original Contractor and Federal Insurance Company a corporation, authorized to issue Surety Bonds in California, as Surety, and this Bond is issued in conjunction with that certain public works contract dated _____, 2009 between Principal and County of Riverside, a public entity, as owner, for Seven Hundred Forty Nine Thousand Nine Hundred seventy Seven dollars (\$749,977.00) the total amount payable. THE AMOUNT OF THIS BOND IS 100% OF SAID SUM. Said contract is for public work of: Riverside County Regional Medical Center Operating Room Remodel 2nd Floor Project No. FM08410003747

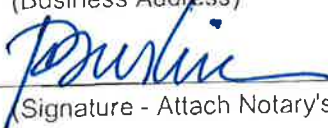
The beneficiaries of this Bond are as is stated in 3248 of the Civil Code and the requirements and conditions of this Bond are as is set forth in Sections 3248, 3249, 3250 and 3252 of said Code. Without notice, Surety consents to extension of time for performance, change in requirements, amount of compensation, or prepayment under said Contract.

Signed and Sealed this 31st Day of October 2008.

AUSTIN COMMERCIAL, LP
(Firm Name - Principal)

3535 TRAVIS ST., SUITE 300, DALLAS, TEXAS 75204
(Business Address)

Affix Seal
if
Corporation

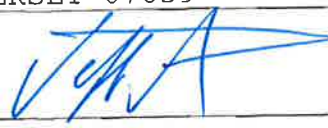
By: 
(Signature - Attach Notary's Acknowledgment)

(Title)

FEDERAL INSURANCE COMPANY
(Corporation Name - Surety)

3 MOUNTAIN VIEW ROAD - 1ST FLOOR
WARREN, NEW JERSEY 07059
(Business Address)

Affix
Corporate
Seal

By: 
(Signature - Attached Notary's Acknowledgment)
Jeff Abraham, Attorney-in-fact
ATTORNEY-IN-FACT
(Title-Attach Power of Attorney)

State of: Texas
County of: Dallas

On this the **31st** day of **October, 2011**, before me personally appeared **Peter B. Durbin**, who acknowledged himself to be the **Director of Risk Management** for **Austin Commercial, L.P.**, and that he, as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of the limited partnership by himself as the duly authorized Director of Risk Management.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 24th day of February, 2014.

Donna McBride

Notary Public of the State of Texas



State of: Texas
County of: Dallas

On this the 31th day of October, 2011, before me personally appeared Jeff Abraham, who acknowledged himself to be an Attorney-in-fact for Federal Insurance Company, and that he, as such, being authorized to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporation by himself as the duly authorized Attorney-in-fact.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 3rd day of December, 2014.



Rebecca S. Thacker
Notary Public of the State of Texas





**Chubb
Surety**

**POWER
OF
ATTORNEY**

**Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company**

**Attn: Surety Department
15 Mountain View Road
Warren, NJ 07059**

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint **Jeff Abraham, James R. Bennett, Jr., Jeffrey T. Fisher, and J.E. Schranz of Dallas, Texas** ----

each as their true and lawful Attorney- in- Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this **21st** day of **April, 2010**.

Kenneth C. Wendel, Assistant Secretary

David B. Norris, Jr., Vice President

STATE OF NEW JERSEY
County of Somerset ss.

On this **21st** day of **April, 2010** before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By- Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By- Laws and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 16, 2014

Notary Public

CERTIFICATION

Extract from the By- Laws of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys- in- Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, **Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**

(the "Companies") do hereby certify that

- (i) the foregoing extract of the By- Laws of the Companies is true and correct.
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this



Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656
e-mail: surety@chubb.com

IMPORTANT NOTICE

TO OBTAIN INFORMATION OR MAKE A COMPLAINT:
YOU MAY CONTACT THE TEXAS DEPARTMENT OF
INSURANCE TO OBTAIN INFORMATION ON COMPANIES,
COVERAGES RIGHTS OR COMPLAINTS AT:

1-800-252-3439

YOU MAY WRITE THE TEXAS DEPARTMENT OF INSURANCE:

P.O. BOX 149104
AUSTIN, TX 78714-9104
FAX# (512) 475-1771

You may also write to:

FEDERAL INSURANCE COMPANY

At:

Attn: Claims Department
15 Mountain View Road
Warren, NJ 07059

Fax No.: 908-903-3656 or 908-903-3485

ATTACH THIS NOTICE TO YOUR BOND. This notice is for information only and does not become a part or a condition of the attached document and is given to comply with Section 2253.048, Government Code, and Section 53.202, Property Code, effective September 1, 2001.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/14/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	WILLIS OF TEXAS, INC. (972) 385-9800 / (800) 445-0115 15305 NORTH DALLAS PARKWAY, SUITE 1100 ADDISON, TX 75001	CONTACT NAME			
		PHONE (A/C, No, Ext):	FAX (A/C, No):		
INSURED	AUSTIN COMMERCIAL, INC. AUSTIN COMMERCIAL, LP 3535 TRAVIS STREET, SUITE 300 DALLAS, TEXAS 75204	E-MAIL ADDRESS:			
		INSURER(S) AFFORDING COVERAGE		NAIC #	
		INSURER A: ACE AMERICAN INSURANCE COMPANY			
		INSURER B: ILLINOIS UNION INSURANCE COMPANY			
		INSURER C: AMERICAN GUARANTEE & LIABILITY INS. CO.			
		INSURER D: INDEMNITY INS. CO. OF NORTH AMERICA			
		INSURER E:			
		INSURER F:			

COVERAGES CERTIFICATE NUMBER: 1121 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC			G24548089	10/01/11	10/01/12	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			H08680553	10/01/11	10/01/12	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	C47004020	10/01/11	10/01/12	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more spaces required)

RE: Austin Commercial, LP - Riverside County Regional Medical Center Operating Room Project

The County of Riverside, its directors, officers, special districts, board of supervisors, employees, agents or representatives are additional insureds on the general liability and auto liability policies as required by written contract, and the same is granted a waiver of subrogation as required by written contract.

CERTIFICATE HOLDER	CANCELLATION
COUNTY OF RIVERSIDE C/O DEPARTMENT OF FACILITIES MANAGEMENT, DESIGN AND CONSTRUCTION 3133 MISSION INN AVE. RIVERSIDE, CA 92507	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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Workers' Compensation and Employers' Liability Policy

Named Insured AUSTIN INDUSTRIES, INC. 3535 TRAVIS STREET, SUITE 300 DALLAS TX 75224	Endorsement Number
	Policy Number Symbol: WLR Number: C47004020
Policy Period 10-01-2011 TO 10-01-2012	Effective Date of Endorsement 10-01-2011
Issued By (Name of Insurance Company) INDEMNITY INS. CO. OF NORTH AMERICA	
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.	

CALIFORNIA WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because California is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule, where you are required by a written contract to obtain this waiver from us.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

Schedule

1. () Specific Waiver
Name of person or organization:

(X) Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

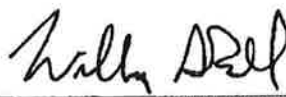
2. Operations:

ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER.

3. Premium:

The premium charge for this endorsement shall be 2.0 percent of the California premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Minimum Premium : \$0



Authorized Agent

Workers' Compensation and Employers' Liability Policy

Named Insured AUSTIN INDUSTRIES, INC. 3535 TRAVIS STREET, SUITE 300 DALLAS TX 75224	Endorsement Number
	Policy Number Symbol: WLR Number: C47004020
Policy Period 10-01-2011 TO 10-01-2012	Effective Date of Endorsement 10-01-2011
Issued By (Name of Insurance Company) INDEMNITY INS. CO. OF NORTH AMERICA	
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.	

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

Schedule

ANY PERSON OR ORGANIZATION AGAINST WHOM YOU HAVE AGREED TO WAIVE YOUR RIGHT OF RECOVERY IN A WRITTEN CONTRACT PROVIDED SUCH CONTRACT WAS EXECUTED PRIOR TO THE DATE OF LOSS.

For the states of CA, UT, TX, refer to state specific endorsements.
This endorsement is not applicable in KY, NH, and NJ.



Authorized Agent

Workers' Compensation and Employers' Liability Policy

Named Insured AUSTIN INDUSTRIES, INC. 3535 TRAVIS STREET, SUITE 300 DALLAS TX 75224	Endorsement Number
	Policy Number Symbol: WLR Number: C47004020
Policy Period 10-01-2011 TO 10-01-2012	Effective Date of Endorsement 10-01-2011
Issued By (Name of Insurance Company) INDEMNITY INS. CO. OF NORTH AMERICA	
Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.	

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule, where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

1. () Specific Waiver
Name of person or organization:

(X) Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER. THIS WAIVER DOES NOT EXTEND TO THE STATUTORY RIGHT OF REIMBURSEMENT UNDER SECTION 417.002 OF THE TEXAS LABOR CODE.

3. Premium:

The premium charge for this endorsement shall be 2.0 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: \$68,519



Authorized Agent

Workers' Compensation and Employers' Liability Policy

Named Insured AUSTIN INDUSTRIES, INC. 3535 TRAVIS STREET, SUITE 300 DALLAS TX 75224	Endorsement Number
	Policy Number Symbol: WLR Number: C47004020
Policy Period 10-01-2011 TO 10-01-2012	Effective Date of Endorsement 10-01-2011
Issued By (Name of Insurance Company) INDEMNITY INS. CO. OF NORTH AMERICA	
<small>Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.</small>	

UTAH WAIVER OF SUBROGATION ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Utah is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from u.s.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the schedule. Our waiver of rights does not release your employees' rights against third parties and does not release our authority as trustee of claims against third parties.

Schedule

ANY PERSON OR ORGANIZATION AGAINST WHOM YOU HAVE AGREED TO WAIVE YOUR RIGHT OF RECOVERY IN A WRITTEN CONTRACT PROVIDED SUCH CONTRACT WAS EXECUTED PRIOR TO THE DATE OF LOSS.



Authorized Agent

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

Named Insured Austin Industries, Inc.			Endorsement Number 24
Policy Symbol ISA	Policy Number H08680553	Policy Period 10/01/2011 to 10/01/2012	Effective Date of Endorsement 10/01/2011
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIERS COVERAGE FORM
TRUCKERS COVERAGE FORM
GARAGE COVERAGE FORM

We waive any right of recovery we may have against the person or organization shown in the Schedule below because of payments we make for injury or damage arising out of the use of a "covered auto". The waiver applies only to the person or organization shown in the Schedule.

Schedule

All states except Virginia

[Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.]

Authorized Agent

AUTOMATIC ADDITIONAL INSURED

Named Insured Austin Industries, Inc.			Endorsement Number 2
Policy Symbol ISA	Policy Number H08680553	Policy Period 10/01/2011 to 10/01/2012	Effective Date of Endorsement 10/01/2011
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following.

**BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM**

SECTION II – LIABILITY COVERAGE, WHO IS AN INSURED is amended to include as an "insured" any person or organization you are required in a written contract or agreement to name as an Additional Insured on your policy but only for "bodily injury" or "property damage" to which this insurance applies if the "accident" is caused by:

1. You, while using a covered "auto" or
2. Any other person, while using a covered "auto" with your permission.

The insurance provided by this endorsement shall be subject to the following additional conditions:

1. The Limit of Insurance provided for the Additional Insured shall not be greater than those required by contract and, in no event, shall the policy Limits of Insurance be increased by the contract.
2. All insuring agreements, exclusions, terms and conditions of the policy shall apply to the coverage (s) provided to the Additional Insured, and such coverage shall not be enlarged or expanded by reason of the contract.
3. Coverage provided by this endorsement shall be excess over any other valid and collectible insurance available to the Additional Insured (s) whether primary, excess, contingent or on any other basis unless the contract specifically requires that this insurance be primary or you request that it apply on a primary basis prior to loss.

Authorized Agent

POLICY NUMBER: HDO G24548089

ENDT. #27
COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

Any person or organization against whom you have agreed to waive your right of recovery in a written contract, provided such contract was executed prior to the date of loss.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

BLANKET CONTRACTUAL ADDITIONAL INSURED ENDORSEMENT

Named Insured Austin Industries, Inc.			Endorsement Number 4
Policy Symbol HDO	Policy Number G24548089	Policy Period 10/01/2011 to 10/01/2012	Effective Date of Endorsement 10/01/2011
Issued By (Name of Insurance Company) ACE American Insurance Company			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

This endorsement modifies insurance under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following clause is added to the Section II- Who is An Insured

The "Who is An Insured" Section is amended to include as an insured:

5. Any person or organization (hereinafter called "the additional insured") to whom the named insured (for purposes of this subsection 5., the "named insured" is the insured who is named in the declarations of this policy or added by Endorsement 1 to this policy) becomes obligated to include as an additional insured under this policy as a result of any contract or agreement the named insured enters into which requires the named insured to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out your work or operations performed by or on behalf of the named insured or premises owned by or rented to the named insured under such written contract or agreement. However, the insurance provided will not exceed the lesser of:

- a. The coverage and/or limits of this policy, regardless of the number of insureds;
- b. The coverage and/or minimum limits required by said contract or agreement.

This insurance shall apply as primary insurance only with regard to any additional insured for whom the named insured has agreed by written contract to provide insurance on a primary basis, and in such cases, any other insurance or self insurance available to the additional insured shall be excess to, and not contributory with, the insurance afforded by this policy to that additional insured. However, if the contract does not specifically require that this insurance shall be primary, then this insurance shall be excess over and not contributory with any other valid and collectible insurance or self insurance available to the additional insured whether such other insurance or self insurance is primary, excess, or contingent, or on any other basis.

All other terms and conditions remain unchanged.

Authorized Agent

**CONTRACTOR'S CERTIFICATE
REGARDING WORKERS' COMPENSATION**

Labor Code Section 3700

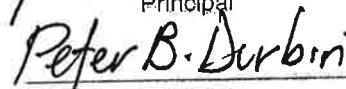
Every employer, except the State and all political subdivisions or institutions thereof, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a Certificate of Consent to Self-Insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees

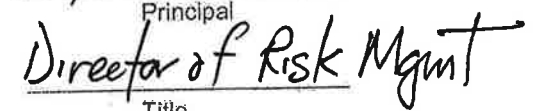
I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of this Contract.



Principal



Principal



Title

(In accordance with Article 5 [commencing at Section 1860], Chapter, Part 7, Division 2 of the Labor Code, the above Certificate must be signed and filed with the Owner prior to performing any work under this Contract.)

**CERTIFIED COPY OF RESOLUTIONS
AUSTIN COMMERCIAL, INC.**

I, Charles E. Hardy, Secretary of Austin Commercial, Inc., a Delaware corporation (the "Company"), hereby certify that the following is a true and correct copy of a resolution adopted by the Board of Directors of the Company on February 24, 2011. Such resolution has not been rescinded and is in full force and effect:

RESOLVED, that the following persons be and are hereby elected officers of the Company, effective this day, to serve until they leave the Company or until the next Annual Meeting of the Board of Directors, whichever occurs first:

Chairman, Chief Executive Officer, and Chairman of Executive Committee	Ronald J. Gafford
President, Chief Operating Officer, Assistant Secretary and Member of Executive Committee	David B. Walls William C. McAdoo James R. Cleveland Bernard E. Hewett Steven W. Warnick
Senior Vice President	
Senior Vice President	
Senior Vice President	
Vice President & Assistant Secretary	
Vice President, Finance & Assistant Secretary	Tony J. Jackson P. Joseph McLaughlin Charles E. Hardy Brenda W. Schertz Alan P. Stakem
Assistant Secretary	
Secretary	
Treasurer	
Assistant Secretary	

RESOLVED, that the following persons be and are hereby authorized to execute contracts and surety bonds and change orders on behalf of the Company from this date until the next Annual Meeting of the Board of Directors or until they leave the Company, whichever occurs first:

Peter Durbin	William C. McAdoo
Ronald J. Gafford	David B. Walls
Bernard E. Hewett	Steven W. Warnick
Tony J. Jackson	

RESOLVED, that the following persons be and are hereby authorized to submit proposals on behalf of the Company from this date until the next Annual Meeting of the Board of Directors or until they leave the Company, whichever occurs first:

Jack Archer	Ralph Ketchum
Brad Brown	Steve Kitching
James R. Cleveland	William C. McAdoo
Peter Durbin	Kent McNorton
Roger Files	Steve Penson
Ronald J. Gafford	Jack Roberts
David Graham	Richard Sasser
Jim Hall	David B. Walls
Bernard E. Hewett	Steven W. Warnick
Tony J. Jackson	

RESOLVED, that the following persons be and are hereby authorized to execute subcontracts and purchase orders on behalf of the Company from this date until the next Annual Meeting of the Board of Directors or until they leave the Company, whichever occurs first:

James R. Cleveland
Peter Durbin
Roger Files
Ronald J. Gafford
David Graham
Jim Hall
Bernard E. Hewett
Tony J. Jackson
Ralph Ketchum
Steve Kitching

Jim Lauer
William C. McAdoo
Kent McNorton
Steve Penson
Ed Robertson
Richard Sasser
David Smith
David B. Walls
Steven W. Warnick

RESOLVED, that in accordance with the Company's TQM2 Operating Policy, Chapter 4, Section 4.1, Note 3, all senior project managers and project administrators shall be authorized to execute subcontracts and purchase orders issued by the Company, as well as change orders and standard subcontract agreement variations (as defined in the TQM2 document), provided that all such persons shall be duly appointed to one of those positions, that their authority shall not extend beyond the period of their appointment (in no event longer than their employment by Company or one of its affiliated entities), and that such authority may be revoked immediately by any regional manager through oral or written notice.

RESOLVED, that, from this date until the next annual Meeting of the Board of Directors or until they leave the Company, whichever occurs sooner, the following persons be and are hereby authorized to execute prime contract change orders on behalf of the Company, provided that such change orders amend only the scope, cost or schedule:

Jack Archer
James R. Cleveland
Peter Durbin
Roger Files
David Graham
Jim Hall
Bernard E. Hewett

Ralph Ketchum
Steve Kitching
William McAdoo
Kent McNorton
Steve Penson
Richard Sasser
Fernando Urioste

RESOLVED, that the officers of the Company and the non-officers listed below be and are hereby authorized to act on behalf of the Company and execute such documents as may be required to obtain required Storm Water Permit Applications and Notices in accordance with applicable laws and regulations from this date until the next Annual Meeting of the Board of Directors or until they leave the Company, whichever occurs first:

Jessy G. Cole
Peter Durbin
Roger D. Files
Jim Hall
Bernard E. Hewett
Ralph Ketchum
Steve Kitching

William McAdoo
Kent E. McNorton
Steven B. Penson
Richard Sasser
David Smith
Fernando Urioste


CHARLES E. HARDY
Secretary
Austin Commercial, Inc.

THE STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day personally appeared Charles E. Hardy, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purpose and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 8th day of March, 2011.



Marilyn J. Anton
Marilyn J. Anton
Notary Public in and for the
State of Texas

**AGREEMENT OF LIMITED PARTNERSHIP
OF
AUSTIN COMMERCIAL, LP**

LIMITED PARTNERSHIP AGREEMENT

OF

AUSTIN COMMERCIAL, LP

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EXHIBIT

Exhibit A – Partners and Percentage Interests

AGREEMENT OF LIMITED PARTNERSHIP

OF

AUSTIN COMMERCIAL, LP

THIS AGREEMENT OF LIMITED PARTNERSHIP (the "Agreement") is entered into by and between Austin Commercial, Inc., a Delaware corporation (the "General Partner"), and Austin Silver, Inc., a Delaware corporation (the "Limited Partner" and, together with the General Partner, the "Partners").

ARTICLE I GENERAL

1.1 Formation Subject to the terms of this Agreement, the Partners hereby form the Partnership as a limited partnership pursuant to the Delaware Act. Except as expressly provided herein, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Delaware Act.

1.2 Purpose. The purpose and business of the Partnership is to engage in any lawful business activities permitted by the Delaware Act and all other actions reasonably necessary or advisable in connection therewith or incident thereto.

1.3 Term. The Partnership shall continue in existence until the termination of the Partnership in accordance with the provisions of Section 7.1. The General Partner shall not commence or engage in any business on behalf of the Partnership until after the Effective Date, other than matters necessary or incidental to the organization of the Partnership.

1.4 Offices and Addresses. The registered office of the Partnership shall be 2711 Centerville Road #400, Wilmington, DE 19808, and the registered agent for service of process on the Partnership shall be Corporation Service Company, or such other registered office or registered agent as the General Partner may from time to time designate. The Partnership's principal office shall be 3535 Travis Street #300, Dallas, TX 75204. The Partnership may maintain offices at such other place or places as the General Partner deems advisable. The address of each Partner is the address of such Partner appearing on the books of the Partnership from time to time.

1.5 State Law Partnership. The Partners intend that the Partnership be treated as a limited partnership in accordance with the Delaware Act for all purposes under state law. The Partnership is not a sole proprietorship, and this Agreement shall not be construed to provide otherwise.

ARTICLE II

DEFINITIONS

In addition to the other terms defined elsewhere in this Agreement, the following terms have the meanings indicated:

“Agreement” means this Limited Partnership Agreement of Austin Commercial, LP, as it may be amended, supplemented, or restated from time to time.

“Capital Account” means the capital account maintained for each Partner pursuant to Section 3.4.

“Capital Contribution” means any cash or other property contributed by either Partner to the Partnership pursuant to the provisions of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended and in effect from time to time.

“Delaware Act” means the Delaware Revised Limited Partnership Act, Title 6, Chapter 17 of the Delaware Code Annotated, as it may be amended from time to time, and any successor to such Delaware Act.

“Distributable Cash” means the amount by which the aggregate amount of all cash and cash equivalents from time to time held by the Partnership on hand or in bank accounts or other temporary investments pending distribution, exceeds the aggregate of all amounts to be paid or set aside by the Partnership for: (i) when due, all principal and interest payments on indebtedness of the Partnership and all other sums payable to lenders; (ii) all cash expenditures to be incurred in the normal operations of the business of the Partnership; and (iii) such cash reserves as the General Partner may mutually deem reasonably necessary for the proper operation of the business of the Partnership.

“Effective Date” means November 8, 2001.

“Fair Market Value” means the price in cash, or its equivalent, that an asset would bring considering its highest and most profitable use, if then offered for sale in the open market, in competition with other similar assets at or near the same location, with a reasonable time allowed to find a purchaser.

“Losses” mean, the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year.

“Partnership” means the limited partnership continued pursuant to this Agreement.

“Partnership Interest” means the interest of a Partner in the Partnership hereunder, including without limitation such Partner’s right (a) to an allocable share of the profits, losses,

deductions and credits of the Partnership, (b) to a distributive share of the assets of the Partnership and (c) to participate in the management of the Partnership, or to vote with respect to certain matters, on the terms set forth in this Agreement.

“Percentage Interest” means, for each Partner, the percentage set forth opposite such Partner’s name on Exhibit A hereto as the Percentage Interest of such Partner.

“Person” means any individual, corporation, partnership, trust or other entity.

“Regulations” means the Department of Treasury Regulations promulgated under the Code, as amended and in effect (including corresponding provisions of succeeding regulations).

ARTICLE III **FINANCIAL MATTERS**

3.1 Capital Contributions. On the Effective Date, the General Partner and the Limited Partner will contribute to the Partnership the real and/or personal property described on Exhibit A. No Partner will be required or allowed to make any additional Capital Contribution unless such additional Capital Contribution has been approved by all Partners. If the Partners approve any additional Capital Contribution, such contribution will be made by all of the Partners in the same proportion as their Percentage Interests.

3.2 Distributions. The General Partner will review the Partnership’s accounts at the end of each calendar quarter, and on such other occasions as it may select, to determine whether distributions are appropriate. The General Partner may, in its sole discretion, make such distributions as it determines to be appropriate, without being limited to current or accumulated income or gains, but no such distribution may be made out of funds required to make current payments on Partnership indebtedness. All distributions pursuant to this Section 3.2 will be made pro rata in proportion to the Partners’ Percentage Interests.

3.3 Allocations of Profits and Losses. Profits and losses of the Partnership for each fiscal year will be allocated to the Partners in proportion to their respective Percentage Interests. Notwithstanding any provision to the contrary in this Agreement, all allocations will comply with the Regulations promulgated under Code § 704.

3.4 Capital Accounts.

(a) In General. The Partnership will maintain a Capital Account for each partner that, among other things, will control the division of assets upon liquidation of the Partnership as provided in Section 6.3. Each Partner’s Capital Account will be maintained in accordance with the Regulations promulgated under Code §704.

(b) Interest; Loans. No interest will be paid by the Partnership on capital contributions or on balances in Capital Accounts. Loans by a Partner to the Partnership will not be considered capital contributions.

(c) No Withdrawal. No Partner will be entitled to withdraw any part of his capital contributions or Capital Account or to receive any distribution of Partnership assets from the Partnership, except as provided in Section 3.2 and Article VI of this Agreement.

3.5 Books, Records and Accounting. The General Partner will keep or cause to be kept appropriate books and records with respect to the Partnership's business. The funds of the Partnership will be deposited in separate accounts in the name of the Partnership. The fiscal year of the Partnership will be the calendar year.

ARTICLE IV

RIGHTS AND OBLIGATIONS OF PARTNERS

4.1 General Partner.

(a) Authority. The business and affairs of the Partnership will be managed by the General Partner, subject to the limitations and restrictions contained in applicable law. All determinations relating to the business and affairs of the Partnership will be made by the General Partner in its sole discretion. The General Partner will at all times act and exercise its discretion hereunder in a reasonable manner consistent with its fiduciary duty to the Limited Partner. The General Partner will have complete authority to take, in the name of the Partnership, any action that the General Partner determines to be appropriate under this Agreement or for the conduct of the business of the Partnership. All decisions and actions taken by the General Partner under the authority of this Section 4.1 will be binding upon all of the Partners and the Partnership. Each Partner will promptly execute instruments determined by the General Partner to be appropriate to evidence the authority of the General Partner to consummate any transaction permitted by this Agreement.

(b) Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no purchaser of property from the Partnership or other person dealing with the Partnership will be required to verify any representation by the General Partner as to its authority to encumber, sell or otherwise use any assets or properties of the Partnership, and any such purchaser or other person will be entitled to rely exclusively on such representation and to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially.

(c) Indemnification. The Partnership will indemnify and hold harmless the General Partner and any partner, member, employee, agent or representative of the General Partner against all liabilities, losses and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership's business, including attorneys' fees

and any amounts expended in the settlement of any claims or liabilities, losses or damages, to the fullest extent permitted by the Delaware Act; provided that no Partner will be subject to personal liability by reason of the indemnification provisions of this Section 4.1(c).

(d) Liability of General Partner. The General Partner will not be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct, including without limitation those acts or omissions that may constitute simple negligence.

(e) Reliance by General Partner. The General Partner may rely on and will be protected in acting or refraining from acting in reliance on any resolution, certificate, statement, instrument, opinion, report or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. The General Partner may consult with legal counsel, accountants and other consultants and advisers selected by him, and any opinion of any such consultant or adviser as to matters which the General Partner believes to be within such person's professional or expert competence will be full and complete authorization and protection in respect of any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance therewith.

4.2 Authority of Limited Partner. The Limited Partner may not take part in the control (as defined in the Act) of the Partnership, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership or any of the Partners, notwithstanding any other provision contained in this Agreement.

4.3 Reimbursement of Expenses. The Partnership will reimburse the Partners for any expenses reasonably incurred by them on the Partnership's behalf.

4.4 Outside Activities. Each Partner and any affiliate thereof may have business interests and engage in business activities in addition to those relating to the Partnership, and neither the Partnership nor any of the Partners will have any rights by virtue of this Agreement or the partnership relationship created hereby in any business ventures of any other Partner or any affiliate thereof.

ARTICLE V

RESTRICTIONS ON TRANSFER

5.1 Consent of Partners Required for All Transfers. Neither Partner may sell, assign, convey, transfer, pledge or hypothecate in any manner (together, "Transfer") all or any portion of its Partnership Interest without the prior written consent of the other Partner, and any attempted Transfer in contravention of this requirement shall be void and of no effect.

5.2 Substitute Partners. Notwithstanding the other provisions of this Article V, no third party that acquires a Partnership Interest will have the right to participate in the

management or control of the Partnership or to vote with respect to such Partnership Interest unless such transferee is admitted as a Partner with the written consent of each Partner. No transfer of a Partnership Interest (whether voluntary or involuntary) will be effective unless and until the transferee executes all documents and agreements deemed reasonably necessary or advisable by the General Partner to evidence such transfer and to insure that such transferee has assumed the duties and obligations of a Partner under this Agreement.

5.3 No Additional Partnership Interests. Except for transfers of Partnership Interests in accordance with this Article V, the Partnership will not issue additional Partnership Interests without the written consent of each Partner.

ARTICLE VI DISSOLUTION AND WINDING UP

6.1 Dissolution. The Partnership will be dissolved upon:

- (a) an election to dissolve the Partnership that is approved in writing by both Partners;
- (b) any other event that, under the Delaware Act, would cause the dissolution of the Partnership.

6.2 Reconstitution. Upon the occurrence of any event that would cause the dissolution of the Partnership pursuant to clause (b) of Section 6.1, the Partnership may be reconstituted and its business continued upon unanimous approval by the remaining Partners obtained within 60 days after the date of dissolution.

6.3 Liquidation. If the Partnership is dissolved and not reconstituted, the General Partner, or, if the General Partner is unable or unwilling to act in such capacity, a liquidator or liquidating committee selected by Partners holding a majority of the outstanding Partnership Percentages (the "Liquidator"), will proceed to wind up the affairs of the Partnership in an orderly manner. Except as expressly provided in this Article VI, the Liquidator will have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for such period of time as is reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided for herein. The Liquidator will apply and distribute the assets of the Partnership (and any proceeds from the liquidation thereof) in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

- (a) to the payment of the expenses of the terminating transactions, including without limitation brokerage commissions, legal fees, accounting fees and closing costs;

(b) to the creditors of the Partnership, including Partners, in the order of priority provided by law; and

(c) to the Partners in accordance with the positive balances in their respective Capital Accounts; provided however, that the Liquidator may place in escrow a reserve of cash or other assets of the Partnership for contingent liabilities in an amount reasonably determined by the Liquidator to be appropriate for such purposes.

6.4 Distribution in Kind. If the Partnership is dissolved and it is not necessary to liquidate all the assets of the Partnership to make the payments required by Section 6.3(a) or 6.3(b), then the Liquidator may make an in-kind distribution of any remaining Partnership property to the Partners in lieu of all or a portion of the cash distribution required by Section 6.3(c).

6.5 Termination of Partnership. Upon completion of the distribution of Partnership property as provided in Sections 6.3 and 6.4 of this Agreement, the Partnership will be terminated, and the Liquidator shall file any appropriate instruments in accordance with the Delaware Act to terminate the Partnership.

ARTICLE VII

GENERAL PROVISIONS

7.1 Addresses and Notices. Any notice, demand, request or report required or permitted to be given or made to a Partner under this Agreement must be in writing and will be deemed given or made (a) when delivered in person or sent by telecopy, (b) one day after being sent by overnight delivery service, or (c) three days after being sent by United States registered or certified mail, in each case to the Partner at its address as shown on the records of the Partnership, notwithstanding any claim of any person who may have an interest in any Partnership Interest by reason of an assignment or otherwise.

7.2 Titles and Captions. All article and section titles and captions in this Agreement are for convenience only and are not intended to be part of this Agreement or to define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles" and "Sections" are to Articles and Sections of this Agreement.

7.3 Pronouns and Plurals. Wherever the context may require, any pronoun used in this Agreement includes the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs includes the plural and vice versa.

7.4 Further Action. The parties agree to execute all documents, provide all information and take or refrain from taking all actions as may be reasonably necessary or appropriate to achieve the purposes of this Agreement.

7.5 Binding Effect. This Agreement will be binding on and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

7.6 Integration. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

7.7 Third Party Beneficiaries. None of the provisions of this Agreement are intended to confer any benefit on any creditor of the Partnership or any other third party.

7.8 Amendment and Waiver. This Agreement may be amended only in a writing executed and delivered by all of the Partners. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof will constitute waiver of any such breach or any other covenant, duty, agreement or condition.

7.9 Counterparts. This Agreement may be executed in counterparts, all of which together will constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

7.10 Applicable Law. This Agreement will be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

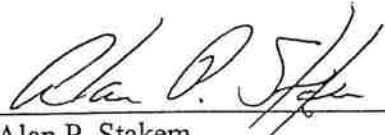
7.11 Invalidity of Provisions. If any provision of this Agreement is declared or found to be illegal, unenforceable or void, in whole or in part, then the parties will be relieved of all obligations arising under such provision, but only to the extent that it is illegal, unenforceable or void, it being the intent and agreement of the parties that this Agreement be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

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IN WITNESS WHEREOF, this Agreement is executed effective as of November 8, 2001.

GENERAL PARTNER:

AUSTIN COMMERCIAL, INC.,
a Delaware corporation

By: 
Name: Alan P. Stakem
Title: Secretary

LIMITED PARTNER:

AUSTIN SILVER, INC., a Delaware corporation

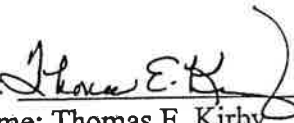
By: 
Name: Thomas E. Kirby
Title: President

EXHIBIT A

AUSTIN COMMERCIAL, LP

PARTNERS AND PERCENTAGE INTERESTS

<u>Partner</u>	<u>Percentage Interest</u>	<u>Capital Contribution</u>
<u>General Partner</u> Austin Commercial, Inc.	.1%	\$50.00
<u>Limited Partner</u> Austin Silver, Inc.	99.9%	\$49,950.00
Total	100.0%	\$50,000.00

**FIRST AMENDMENT TO THE
AGREEMENT OF LIMITED PARTNERSHIP
OF
AUSTIN COMMERCIAL, LP**

The Agreement of Limited Partnership is hereby amended to replace Austin Silver, Inc. as Limited Partner with Austin Industries, Inc., sole shareholder of Austin Silver, Inc., as Limited Partner

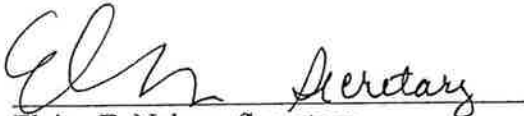
In all places that the name "Austin Silver, Inc." appears in the document, the name Austin Industries, Inc., shall be deemed to be substituted.



Alan P. Stakem, Assistant Secretary
Austin Industries, Inc., Limited Partner



Paul W. Hill, President
Austin Silver, Inc., former Limited Partner



Elaine E. Nelson, Secretary
Austin Commercial, Inc., General Partner

Dated as of the 1st day of January, 2009.