

ACRELive!

THREE SCOFFLAWS ARE ON THE LOOSE, BUT THERE IS A NEW SHERIFF IN TOWN

(The Good, the Bad and the Ugly of CGL Endorsements - and the Solution)

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Mistakes by real estate lawyers in specifying insurance coverage in transactional documents can lead to catastrophic uninsured losses for their clients. Listen to the ACRELive presentation, read the materials and learn the key insurance specifications that should be part of transactional documents you prepare. The panelists will alert you to the following three traps for the unwary lawyer: the 2013 Amendments to ISO Additional Insured Endorsements – a Friend or a Foe?; Excess & Surplus Lines Insurance – the Root of Many Evils; and Invisible Exclusions and Limitations.

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THREE SCOFFLAWS ARE ON THE LOOSE, BUT THERE IS A NEW SHERIFF IN TOWN

(The Good, the Bad and the Ugly of CGL Endorsements - the¹ Solution)

A. WHAT YOU DID NOT KNOW, AND COULD HAVE KNOWN, CAN HURT YOU!

It is the authors' opinion and experience that lawyers drafting transactional documents are resistant to undertaking the effort required to understand the insurance provisions they include in their documents and to following up with their clients to assure that the drafted insurance provisions are fulfilled by the parties and their insurance brokers.² On occasion this resistance has risen to heated rhetoric to the effect "*I only draft the provisions. I am not an insurance person. It is up to the client to understand and implement the provisions.*"

Perhaps this choice arises out of concern that professing some knowledge as to one's craft exposes the practitioner to a greater likelihood of being held accountable in cases where "things go wrong" than being silent. The insurance industry's forms promote taking this position. The standard certificates of insurance are simple appearing one page documents.³ Industry forms are not readily accessible to the practitioner. Once obtained, they appear complicated.⁴ They are identified by a seemingly complicated numbering system.⁵

These circumstances led the authors to make this presentation to you and to draft and post on ACREL Shares *Insurance for Transactional Lawyers* expanding on this presentation. It is the authors' hope that exposure to these "traps for the unwary" will result in change in your approach to drafting insurance provisions and will lead to your more active involvement in implementing the insurance program contemplated thereby.⁶

B. THE GOOD, THE BAD AND THE UGLY OF CGL ENDORSEMENTS

1. The Good.

a. The Good ISO Endorsements

(1) CG 20 10 Additional Insured - Owners, Lessees or Contractors - Scheduled Person or Organization

¹ **The Solution.** Charles Comiskey and Bill Locke's solution. See the **Appendix of Forms** - Insurance Specifications.

² **Confession.** "I confess that I fell into the camp that it is better to be ignorant than take the responsibility of education," Bill Locke. However, he has changed this aspect of his practice due to his unwillingness to continue drafting and providing clients with documents containing provisions neither understood by the client nor himself.

³ **ACORD Certificates.** See the discussion of the disclaimers in ACORD certificate in the **Appendix of Forms**.

⁴ **Industry Forms.** The liability insurance forms published by the Insurance Services Office ("ISO") are recognized nationally as "the industry standard". However, they are not freely available to the public or the practitioner. These forms are prepared by an industry trade organization for use by its members. Copies may be purchased by contacting ISO. Some of the leading insurers craft their own liability and property insurance and these forms are not readily available to the public or practitioner in advance of their employment.

⁵ **ISO Form Numbering System.** For example, CG 20 10 04 13 (CG = Commercial General Liability Policy, 20 = Additional Insured Endorsement Form # 10, 04 13 - April 2013); **Appendix of Forms**.

⁶ **Pogo.** "We have met the enemy and he is us." Pogo by Walt Kelly (1913 - 1973).

The most common ISO additional insured endorsement used for the **construction** industry is the **ISO CG 20 10 04 13**.⁷ A copy of this additional insured endorsement is found in the **Appendix of Forms**. This additional insured endorsement provides the following coverage matrix:

Who? This endorsement "includes as an insured the person or organization shown in the Schedule." If you desire that a person or persons or classes of persons be covered as additional insureds, **you need to list them in the endorsement's Schedule** (e.g., name the primary additional insured; list as additional insureds, the named additional insured's "officers, directors, employees, and its successors and assigns"; list the project manager as an additional insured; list the primary additional insured's lender as an additional insured).

What? Coverage is afforded "but only with respect to liability for 'bodily injury', 'property damage' or 'personal and advertising injury' **caused in whole or in part by your** (the Named Insured's) **acts or omissions**; or the acts or omission of those acting on your (the Named Insured's) behalf" This endorsement does **not cover the sole negligence** of the additional insured.

When? Coverage is afforded for "liability ... in the performance of your (the Named Insured's) **ongoing operations** for the additional insured(s)..." Coverage to the additional insured for exposures arising out of completed operations is lost. This endorsement provides additional insured status for ongoing operations only, **not for completed operations**.

Where? The additional endorsement limits coverage to "liability ... in the performance of your on-going operations for the additional insured(s) **at the location(s) designated above**" (the endorsement provides a blank for insertion of the "Location(s) of Covered Operations"). Better be careful about filling in the blank!

Exclusions? The additional insured endorsement expressly sets out the following two exclusions: "This insurance does not apply to 'bodily injury' or 'property damage' occurring after: (1) All work ... has been **completed**; or (2) That portion of 'your work' out of which the injury or damage arises has been **put to its intended use**...."

Limitations? Additionally, the **ISO CG 20 10 04 13** contains the 2013 Additional Limitations. These are the "whether" conditions that could affect your future professional liability exposure - whether or not you properly drafted the insurance conditions.

Recommended Specification: If it is intended that the sole negligence of the additional insured be covered, the following is sample wording **including the sole negligence** of the additional insured:

⁷ **Prior Editions of the 20 10.** ISO 20 10 11 85. The original CG 20 10 endorsement was CG 20 10 11 85, meaning that it was promulgated in November of 1985. Coverage Matrix: (1) **Who?** This endorsement "includes as an insured the person or organization shown in the Schedule." (2) **What?** Coverage is afforded "but only with respect to liability *arising out of* your [the named insured's] *work* for that insured by or for you." The "arising out of" language has been held to include the concurrent and sole negligence of the additional insured party, as that party ostensibly wouldn't be involved in the litigation but for its agreement with the named insured. (3) **When?** "*Work*" is defined including both ongoing and completed operations. (4) **Where?** The additional endorsement does not limit coverage to a specified location. (5) **Exclusions?** The additional endorsement does not contain exclusionary language. This endorsement is rarely possible to obtain as it offers quite broad coverage to the additional insured and it is quite old and a variety of more current endorsements are available.

ISO 20 10 10 01. (1) **Who?** This endorsement "includes as an insured the person or organization shown in the Schedule." (2) **What?** Coverage is afforded "but only with respect to liability *arising out of* your [the named insured's] *on-going* operations." (3) **When?** Coverage to the additional insured for exposures arising out of completed operations is lost. (4) **Where?** The additional endorsement does not limit coverage to a specified location. (5) **Exclusions?** The additional endorsement does not contain exclusionary language.

ISO 20 10 07 04. (1) **Who?** This endorsement "includes as an insured the person or organization shown in the Schedule." (2) **What?** Coverage is afforded "but only with respect to liability for 'bodily injury', 'property damage' or 'personal and advertising injury' *caused in whole or in part by your* [the Named Insured's] *acts or omissions*; or the acts or omission of those acting on your [the Named Insured's] behalf in the performance of *on-going operations*." Coverage to the additional insured for exposures arising out of completed operations is lost. (3) **When?** Not only is coverage to the additional insured for exposures arising out of completed operations lost, but so is coverage for the additional insured's sole negligence. (4) **Where?** The additional endorsement limits coverage to "ongoing operations *at the locations designated above*" (locations designated in the Schedule). (5) **Exclusions?** The additional endorsement does not contain exclusionary language.

Contractor shall obtain additional insured coverage in favor of Landlord Parties on commercial general liability and excess liability policies. Additional insured status shall be provided on a combination of unmodified ISO endorsements CG 20 10 [10.01](#) and CG 20 37 [10.01](#).

Alternative Specification: If it is intended that the sole negligence of the additional insured be excluded, sample wording **excluding the sole negligence** of the additional insured:

Contractor shall obtain additional insured coverage in favor of Landlord Parties on commercial general liability and excess liability policies. Additional insured status shall be provided on a combination of unmodified ISO endorsements CG 20 10 [04.13](#) and CG 20 37 [04.13](#).

(2) CG 20 38 04 13 Additional Insured - Owners, Lessees Or Contractors - Automatic Status For Other Parties When Required In Written Construction Contract

Many additional insured coverages are provided on a “blanket” or “automatic” basis. This is important for two reasons:

- It means that additional insured status is provided where required by written contract. If a written, executed contract does not exist, neither does additional insured status.
- It tells you nothing whatsoever about the coverage provided the additional insured. It may be an ISO endorsement or a manuscripted endorsement. It may offer broad coverage or essentially no coverage.

ISO has two forms of blanket additional insured endorsements for contractors and subcontractors: the ISO **CG 20 33 04 13** Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required in Construction Agreement With You and the ISO **CG 20 38 04 13** Additional Insured – Owners, Lessees or Contractors – Automatic Status for Other Parties When Required in Written Construction Agreement. See these endorsements in the **Appendix of Forms**. The ISO **CG 20 38** (unlike to the ISO CG 20 33) provides that the following persons are additional insureds protected by the endorsement:

Paragraph 1 provides that the following person is an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.

But Paragraph 2 extends coverage to the following additional insureds not in privity with the Named Insured:

2. **Any other person** or organization **you are required to add as an additional insured under the contract** or agreement described in Paragraph 1 above.

(3) CG 20 37 Additional Insured - Owners, Lessees Or Contractors - Completed Operations

Failure to require, and then follow up and assure maintenance by contractors and subcontractors of, products and completed operations coverage for up to the jurisdiction's statute of repose can lead to catastrophic uninsured losses and can leave an owner or developer with little financial recourse. "Products and completed operations" coverage is a major general liability sub-line which provides coverage for an insured, including an additional insured, if coverage is maintained, against claims arising out of products sold, manufactured, handled or distributed, or operations which are complete. This line of coverage applies to claims for bodily injury and/or property damage and not for the Insured's failure to complete a job or operation on time.

The following are examples of injuries or property damage occurring after work completion, which are covered by products and completed operations coverage: injuries occurring from an explosion of a gas pipe after it was negligently installed; building collapse after completion; window leaks after installation; popping out of windows from a high rise condominium hotel after construction completion; cupping or upward warping of wood flooring due to negligent installation over wet subflooring. The "injury" or "property damage" occurs (manifests itself) after cessation of the contractor's ongoing operations when the pipeline explodes, the building collapses, the windows pop or the flooring warps, or a person is injured or killed.

The following most commonly issued standard additional insured endorsements issued in connection with construction exclude coverage for bodily injury and property damage occurring after completion of construction operations: **ISO CG 20 10 04 13** Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization, **ISO CG 20 33 04 13** Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required in Construction Agreement with You and **ISO CG 20 38 04 13** Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required in Written Construction Agreement. These endorsements define coverage as arising out of "ongoing operations" of the contractor or subcontractor as follows:

Who is An Insured is amended to include as an additional insured the person(s) or organization(s) ... [shown in the Schedule], but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
 2. The acts or omissions of those acting on your behalf;
- in the performance of your **ongoing operations** for the additional insured(s)

They also contain the following exceptions to coverage:

This insurance does not apply to:

2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered **operations has been completed**; or
 - b. That portion of "your work" out of which the injury or damage arises has been **put to its intended use** by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.

Additional insured coverage is available through issuance of **ISO CG 20 37 04 13** Additional Insured – Owners, Lessees or Contractors – Completed Operations. This form is contained in the **Appendix of Forms**. Products and completed operations coverage only covers occurrences occurring during the CGL policy's term. For products and completed operations coverage to continue year-to-year after work completion, the Named Insured contractor must purchase from the insurer completed operations coverage either year-to-year after the original policy term or purchase such coverage for a specified term after work completion with the project scheduled as a covered project

and endorsed to include the owner as an additional insured under **ISO CG 20 37 04 13** or **20 37 10 01** Additional Insured – Owners, Lessees or Contractors – Completed Operations. Another approach is to purchase a project specific policy written for the term of construction plus the extended coverage period negotiated by the parties (*e.g.*, up to a jurisdiction’s statute of repose). An insurer may be unwilling to issue a completed operations extension endorsement on the original policy after its term without there being also issued a current term CGL policy for the periods covered by the completed operations sub-line.

Ideally, contractors (and subcontractors) should be required to maintain additional insured coverage of owners and tenants for bodily injury and property damage arising out of the work for up to the maximum time limit in which a cause of action can be maintained against the owners and tenant. The length of time a contractor should be required to maintain products and completed operations coverage can be, depending on the risk tolerance of an owner (or other party desiring such protection, *e.g.*, tenant or contractor), between two years (a typical state’s tort statute of limitations) and 10 years (a typical state’s statute of repose) after work completion.

(4) CG 20 11 Additional Insured - Managers or Lessors of Premises

The **ISO CG 20 11 04 13** endorsement is used when a **landlord or the property manager**, or both, is to be listed as an additional insured on the tenant’s liability insurance policy. A common risk transfer strategy is for a landlord to provide in its lease that its tenant indemnify and make the landlord and its property manager an additional insured on the tenant’s CGL policy. These provisions recognize that the tenant’s occupancy creates an additional liability exposure to the landlord for injuries and property damage resulting from the tenant’s activities. A copy of this additional insured endorsement is found in the **Appendix of Forms**. This additional insured endorsement provides the following coverage:

Who? This endorsement “includes as an insured the person or organization **shown in the Schedule**.” As noted above, all intended additional insureds need to be scheduled in the endorsement’s Schedule.

What? Coverage is afforded “but only with respect to liability arising out of the **ownership, maintenance or use**” of that part of the premises leased to you (the named insured). . . .”

When? This endorsement expressly sets out as a time of coverage limitation “This insurance does not apply to ... (a)ny ‘occurrence’ which takes place after you cease to be a tenant in that premises.”

Where? The additional insured endorsement limits coverage to “that part of the premises leased to you **and shown in the Schedule**” (the endorsement provides a blank for “Designation of Premises (Part Leased to You)”).

Exclusions? In addition to the time coverage limitation, this endorsement expressly sets out the following exclusion: “This insurance does not apply to ... (s)tructural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the Schedule.”

Limitations? The **ISO CG 20 11 04 13** contains the 2013 Additional Limitations.

(5) CG 20 01 Primary and Noncontributory - Other Insurance Condition

Many agreements **call for the named insured’s (the down stream’s) insurance to be primary**. The problem with this is that all general liability policies state that they are primary, and that, if two or more policies cover a claim, they will share in payment of that loss. The insurance industry attempted a fix to this by including a provision that states that a named insured’s coverage is excess where that named insured is added to another party’s coverage as an additional insured. That works fine so long as the named insured hasn’t also modified its additional insured coverage to be provided on an excess liability or other modified basis. Parties strive to address these issues contractually by calling for the named insured (the downstream party) to provide “**primary and noncontributory**” liability coverage, but isn’t that title nonsensical? ISO has a new endorsement that will resolve some of these

problems. ISO's new Primary and Noncontributory Endorsement **CG 20 01 04 13** (see form in **Appendix of Forms**) reads:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that: The additional insured is a Named Insured under such other insurance; and You have agreed in writing in a contract or agreement that this insurance would be **primary** and would **not seek contribution** from any other insurance available to the additional insured.

This new endorsement will resolve some problems, if the requirement for it is carefully drafted.⁸

(6) CG 24 04 Waiver of Transfer of Rights of Recovery Against Others to Us

An insurance company has a right to recover from a responsible third party for any payment the insurer has made for a covered loss on the insured's behalf. **Condition 8**, Transfer of Rights of Recovery Against Others to Us, found in the standard commercial general liability policy, see in the **Appendix of Forms CG 00 01 04 13**, which states in part:

If the insured has right to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them.

The insurer's rights of recovery are waived so long as effected prior to a loss. If the insured waived its rights before the loss, then the insurer's right of subrogation has been waived as well. Why then does a general liability waiver of subrogation endorsement exist? The purpose of this endorsement is to assure both the insured and the third party shown in the schedule that no subrogation effort will be made but the third party (which is frequently "**any party where required by written contract**") must be one for which the insured has contracted to perform work. It does not apply to simply any indemnitee. See in the **Appendix of Forms ISO CG 24 04 05 09** Waiver of Transfer of Rights of Recovery Against Others To Us, a portion of which is set out as follows:

We waive any right recovery we may have against the person or organization shown in the Schedule above because of payment 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.

(7) CG 04 37 Electronic Data Liability

A relatively new exclusion in all general liability policies is for injury to or damage of electronic data, **Exclusion 2.p**. See Exclusion 2.p in the ISO CG 00 01 04 13 - Commercial General Liability Coverage Forms Appendix of Form in the Appendix of Forms (also see this exclusion set out below as Item **3.a(1)** of The Bad ISO Forms). coverage is readily available to cover this gap through an ISO **CG 04 37 04 13** Electronic Data Liability endorsement and should be required. See this endorsement in the **Appendix of Forms**. Be sure to specify the amount of coverage required, as this endorsement is frequently provided with only a minimal sublimit (e.g., \$25,000 coverage).

⁸ **Primary Liability vs. Horizontal Exhaustion.** Neither the recommended insurance spec nor the new ISO endorsement resolves the horizontal exhaustion issue which is beyond the scope of this paper.

b. The First Scofflaw: 2013 Amendments to the ISO Additional Insured Endorsements – a Friend or a Foe?

ISO amended most of its additional insured endorsements effective April, 2013, so the new endorsements will reflect a 04 13 edition date. These revised endorsements provide that the insurance afforded to the additional insured (the "**2013 Additional Limitations**"):

- Applies only to the extent permitted by law;
- Will be no broader in scope than required by the contract; and
- Will not provide for more than the limit required by the contract or the policy limit, whichever is *less*.

A. Section II - Who is An Insured However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of Insurance shown in the Declarations; *whichever is less*. This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

(1) To the Extent Permitted by Law

This change was brought about by the wave of anti-indemnification sweeping the country and the many different manners in which the legislation is drafted. Anti-indemnity statutes in some states are silent or unclear as to whether the statute's prohibitions apply to insurance as well as indemnification. Most of ISO's additional insured endorsements provide coverage to the additional insured for negligence shared with the named insured. In those states, like Texas, where the statute expressly prohibits additional insured coverage for another party's negligence (except in specified exceptions), this language is to make clear that despite the wording extending coverage to an additional insured for its concurrent negligence (or even sole negligence), coverage applies only to the extent permitted by law. This change permitted the use of a uniform endorsement throughout the United States in lieu of the tailored state-by-state endorsements that ISO had previously promulgated for states with varying anti-indemnity statutes.

(2) Coverage Not Broader Than Required by Contract

This change was made to make it clear that additional insured coverage will be no broader than "required" in the underlying contract or agreement. This is to avoid giving an additional insured coverage broader than the coverage specified in the contract or agreement. Note that the 2013 ISO Additional Limitations import into the endorsement the scope of coverage and limitations of coverage contained in the additional insured specifications in the underlying contract documents. The "required" language stresses the importance of insurance specification drafting. This change introduces into the endorsement the potential for contract disputes over the meaning of contract wording. (See *e.g.*, Footnote 17 discussion of *In re Deepwater Horizon*, 470 S.W.3d 452 (Tex. 2015).

Questions Will Abound

- What was the parties' intent? If the additional insured endorsement is an 07 04 endorsement but the CGL policy required by the contract is an 04 13, will the endorsement be broader than the underlying policy?
- Will the adjuster have to divine the parties' intent? How will the adjuster divine the parties' intent (ask the parties, read the contract)?
- What if the insurance specifications in the contract merely state that a party is to be an additional insured, and does not specify the scope or limits of coverage?
- Even if the contract's additional insured specification specifies coverage for bodily injury and property damage, what if it does not specify additional insured coverage for otherwise covered risks (*e.g.*, fire damage legal liability coverage or medical payments or completed operations coverage)?
- Does the absence of a specific requirement mean that such coverage will not be available to the additional insured? (Narrative form insurance specifications generally do not go into this detail of insurance contracts.)
- Are these questions eliminated by a contract provision that the additional insured coverage will be the broader of the minimum required by the contract or that included within the named insured's policy, or a provision in the contract that states that if the additional insured endorsement contains such "no broader" language, that it shall in no way limit the "breadth" of insurance provided to the additional insured?
- Will the court or the insurance adjuster look to the indemnity provision and its qualifications to determine the scope of additional insured coverage intended?

A common example is the following limitation contained in the AIA A201-2007 General Conditions indemnity language (see AIA A201 § 3.18.1 (Indemnification) limiting the contractor's indemnity:

To the fullest extent permitted by law the Contractor shall indemnify, defend and hold harmless Owner ... **but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor**, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder

This language creates a "limited" form indemnity, since it does not involve the contractor's assumption of the owner's tort liability. Is it the intent of the parties to limit the additional insured coverage by this limitation to the indemnity? The Texas Anti-Indemnity Act, Texas Insurance Code Chapter 151 has the following significant express exceptions to the Anti-Indemnity Act's elimination of broad-form indemnity: (1) bodily injury or death of an employee of the indemnitor, its agent, or its subcontractor of any tier (§ 151.103); (2) claims arising from single-family residential construction (§ 151.105(10)(A)); and (3) claims arising from construction projects insured through CIPs, controlled insured programs (§ 151.105(1)).

(3) Dollar Limit Required by Contract or Policy, Whichever is Less

This change was made to limit the dollar limits of coverage afforded the additional insured to the lesser of the policy limits or the limit required in the underlying contract or agreement that specified additional insured coverage. For example, if the contract requires the contractor to maintain CGL limits of \$1,000,000 per occurrence, but the contractor obtains coverage for \$2,000,000 per occurrence, the additional insured owner is insured only to the extent of \$1,000,000.

More Questions Abound

- What constitutes "the amount of insurance ... required by the contract"?

•What happens in cases where the named insured/indemnitor's indemnity is not capped by a specific dollar amount, but the insurance specification provides for a specific dollar amount of coverage, and the named insured actually has greater limits? (In such case, the dollar amount of the additional insured coverage is limited to the amount specified for the liability policy, but the additional insured/indemnitee can claim against the named insured/indemnitor for amounts greater than the contract specified CGL limit. The named insured/indemnitor can then make a claim against its CGL policy for the limits within its actual policy. But what if the named insured/indemnitor does not pursue its claim on its CGL policy as it has no assets?) A court addressing a manuscripted additional insured endorsement held the limits for the additional insured were capped at the amount specified in the contract as the dollar coverage amount. *Bovis Lend Lease LMB, Inc. v. Great Am. Ins. Co.*, 53 A.D.3d 140 (N.Y. App. Div. [1st Dept.] 2008).

•What if the contract calls for coverage to be provided in an amount "of at least" or "shall be no less than" a stated amount? See *Mobil Oil Corp. v. Maryland Cas. Co.*, 681 N.E.2d 552 (1997) - court held that the additional insured's coverage under the CGL policy and excess layer policies was not limited by contract language that the insured was required to procure "at least \$250,000" of coverage, but extended to the full face value of the policies. Other cases construing similar language are cited at footnote 8 to *Forest Oil Corp. v. Strata Energy, Inc.*, 929 F.2d 1039 (5th Cir. [Tex.] 1991) in which the court found that an underlying contract's "with limits of not less than" a specified amount did not limit the additional insured's coverage to the contractually specified "not less than amount" and also held the primary insurer was not entitled to subrogate as to its insured against the excess insurer for a claim settled by the primary insurer above the "not less than amount" but below the actual limits of the primary coverage.

2. The Bad - The Second Scofflaw - Excess & Surplus Lines Insurance.

a. The Difference Between the Admitted Market and the Excess & Surplus Lines Market

(1) The Admitted Market

Most people think of insurance as one large marketplace, but there are really two different marketplaces – the admitted market and the excess and surplus lines market ("**E & S market**"). Insurance companies that participate in the admitted market are licensed and regulated by the state's agency charged with regulating insurers providing insurance coverage in the state (generically called herein the "**State Agency**").⁹ Coverage forms and rates that can be used must be approved by the State Agency.¹⁰ Insurance agents representing admitted insurance companies commonly have authority to both issue binders and certificates of insurance for those carriers.¹¹ Carriers in the

⁹ **The Business of Insurance as a State Matter.** Unlike other financial services, the regulation of insurance has been left to the states. As early as 1868, the United States Supreme Court proclaimed that each state has the power to regulate the insurance industry's activities within that state. See *Paul v Virginia*, 75 U.S. 168 (1868). Congress has also noted the state's role, 15 U.S.C. § 1011 (the McCarran-Ferguson Act: "[T]he continued regulation and taxation by the several States of the business of insurance is in the public interest.") and § 1012(b) "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance ... unless the Act specifically relates to the business of Insurance."). In *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408, 429 (1946) the United States Supreme Court acknowledged that Congress intended to defer insurance regulation to the states.

¹⁰ **State Approval of Insurance Forms.** The goal in state regulation of insurers, including requiring state approval of insurer's forms to be used in the state is to assure consumer faith in the insurance business; providing public oversight of insurance form language, public notice of approved issuers, and premiums paid for real risk coverage. See Spencer L. Kimball, *The Purpose of Insurance Regulation: A Preliminary Inquiry in the Theory of Insurance Law*, 45 MINN. L. REV. 471, 477 (1960-61). The National Association of Insurance Commissioners ("**NAIC**")-a voluntary association of commissioners from each state-has assured much uniformity in insurance regulation among the states. NAIC has formulated model codes governing insurance companies, brokers, agents, and adjusters. These codes form a template for state legislation, e.g., the NAIC has promulgated the Unauthorized Insurance Process Act and the Nonadmitted Insurance Act, which most states have adopted with local variations.

¹¹ **Authorized and Unauthorized Business of Insurance; What is Not the Business of Insurance.** The following is a brief discussion of Texas statutes. Similar legislation exists in most states. The Texas Insurance Code provides for civil and criminal penalties and the contractual rights of those who issue unauthorized insurance in Texas. An insurer may find itself subject to the "unauthorized practice of insurance" if it commits acts considered to be the "business of insurance" in the state of Texas. TEX. INS. CODE § 101.102(a) a "person, including an insurer, may not directly

admitted market include those that most of us have heard of: Allstate, Amerisure, Bituminous, Chubb, CNA, Farmers, Hartford, Liberty Mutual, State Farm, Travelers, Zurich and many more. Many of these companies have subsidiaries that operate in the E & S market for greater flexibility.

(2) The E & S Market

Insurance companies providing coverage through the E & S market in most states are not licensed by the State Agency but in most states must be authorized by the State Agency to operate in the state.¹² Insurance companies providing coverage through the E & S market ("**E & S carriers**") include some of the largest insurance companies in the nation but they are not required to file their rates and forms. As a result, manuscript forms abound arising in multitudinous coverage differences when compared to the coverage available through the admitted market.

Additionally, E & S carriers must operate through intermediaries ("**surplus lines insurance agents**"), through whom retail agents can access those insurance companies. Retail insurance agents are not contracted directly with E & S insurance companies and must also use those intermediaries. Retail agents do not have binding authority for these insurance companies and in many cases do not even have authority to issue certificates of insurance.

It is generally easy to identify a policy written in an E & S carrier, as usually the State Agency requires that a disclosure statement be stamped on the policy's Declarations Page. For example, the disclosure statement in Texas the following:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus lines coverage pursuant to the Texas insurance statutes. The Texas Department of Insurance does not audit the finance or review the solvency of the surplus lines insurer providing this coverage, and this insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Texas Insurance Code. Chapter 225, Insurance Code, requires payment of ___ (insert appropriate tax rate) percent tax on gross premium.

b. The Problem Giving Rise to the E & S Market

The admitted market shies away from providing insurance on a wide array of entities, such as those with:

or indirectly do an act that constitutes the business of insurance under this chapter except as authorized by statute." Insurers selling insurance within the state must be "admitted" and subject themselves to regulation by the state as to rates, forms, capital requirements, as well as other requirements. TEX. INS. CODE §§ 31.002, 37.001. The Insurance Code contains a lengthy definition of what acts constitutes the "business of insurance" (e.g., "making or proposing to make, as an insurer, an insurance contract" TEX. INS. CODE § 101.105(b)(1)). The Insurance Code lists several actions *not* constituting the "business of insurance", including the following:

- (1) the lawful transaction of surplus lines insurance under Chapter 981; ...
- (4) a transaction:
 - (A) that involves an insurance contract independently procured by the insured from an insurance company not authorized to do business in this state through negotiations occurring entirely outside this state;
 - (B) that is reported; and
 - (C) on which premium tax is paid in accordance with Chapter 226;

¹² **When a Surplus Lines Agent May Cause to be Issued a Surplus Lines Policy.** In Texas, the agent procuring the surplus lines insurance must possess a surplus lines license issued by the Texas Department of Insurance. TEX. INS. CODE § 981.202. Texas permits surplus lines insurance only when potential insureds have difficulty obtaining coverage from an admitted carrier. To ensure that the surplus lines insurance is only procured in this situation, a surplus lines agent must (1) make a "diligent effort" to obtain coverage from an insurer authorized to write and actually writing that kind and class of insurance in Texas, and (2) only procure insurance in an amount that exceeds the amount of insurance obtainable from authorized issuers. TEX. INS. CODE §§ 981.004(1), and (b). Further, the agent must make a "reasonable effort" to ascertain a surplus lines carrier's financing condition before placing the insurance and may not knowingly place the insurance with a "financially unsound" insurer. TEX. INS. CODE §§ 981.211.

- Adverse loss experience
- Higher risk that the premium warrants
- Limited experience in field of operations
- Small premium size

c. The Resulting Concern

There are a few admitted markets that attempt to limit their exposure in the above situations by using non-ISO, proprietary coverage policy and endorsement forms. More commonly, those businesses that do not qualify for the admitted market are relegated to the E & S market. Coverage issues (disappointments) arise more easily in a market like the E & S market that does not use standardized coverage forms filed with and approved for use by the State Agency. The insureds most likely adversely affected by non-standardized and unregulated coverage forms include small general contractors (especially "paper contractors", those that sub out all work) and the vast majority of subcontractors. These contractors are subjected to unregulated insurance coverage forms, just a few of which we will discuss today.

3. The Ugly - The Third Scofflaw - Invisible Limitations and Exclusions.

There is today a plethora of "invisible" exclusions and limitations being added to general liability coverage by endorsement by the insurance industry to minimize the carrier's exposures. These are invisible because they never show up on any certificate of insurance unless you are careful in your drafting of the insurance specifications. Some of these invisible exclusions and limitations are the following.

a. The Bad - ISO Limitations and Endorsements to an ISO CGL Policy

(1) ISO Exclusion 2.p - Electronic Data Liability Exclusion

Not an endorsement but a relatively new exclusion in all general liability policies is that of injury to or damage of electronic data. **Exclusion 2.p** in general liability policies states:

2. Exclusions. This insurance does not apply to:

p. Electronic Data. Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data. As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

As noted above in The Good as Item ___, coverage is readily available to cover this gap through an Electronic Data Liability endorsement CG 04 37 04 13 and should be required. Be sure to specify the amount of coverage required, as this endorsement is frequently provided with only a minimal sublimit (e.g., \$25,000 coverage).

(2) CG 20 33 Additional Insured - Owners, Lessees Or Contractors - Automatic Status When Required in Construction Contract With You

This endorsement provides "blanket" additional insured status for ongoing operations but **privity of contract is required** for insured status.¹³

(3) CG 21 39 Contractual Liability Limitation

Contractual Liability Coverage is the funding mechanism for a portion of the liabilities assumed by an indemnitor by its indemnity. **ISO CG 21 39 10 93** Contractual Liability Limitation is one of the most egregious endorsements in the insurance industry. This form is contained in the Appendix of Forms. As stated above, the provision of contractual liability coverage includes a series of definitions of "insured contract". The first five definitions are referred to as incidental provisions, but the sixth definition is the provision that provides for the contractual assumption of tort liability. The sixth type of "insured contract" is most frequently the basis of insurance of a Named Insured on its indemnity of third parties (*e.g.*, indemnity for injuries to an employer's employees; indemnity for injuries to a subcontractor's employees). The CG 21 39 deletes this sixth definition in its entirety, deleting coverage for an indemnitor's indemnity of a third party for its negligence. If the indemnifying party's indemnity is not similarly limited, then the indemnifying party has undertaken a risk beyond its insurance and is acting as naked insurer, unless its indemnity falls within one of the five defined "insured contracts".

(4) CG 24 26 Amendment of Insured Contract Definition

ISO CG 24 26 04 13 Amendment of Insured Contract Definition modifies the sixth definition to eliminate coverage for the contractual assumption of another party's sole negligence. If the indemnifying party's indemnity is not similarly limited, then the indemnifying party has undertaken a risk beyond its insurance and is acting as naked insurer. This form is contained in the **Appendix of Forms**.

(5) ISO CG 22 94 and CG 22 95 Exclusions – Damage to Work Performed by Subcontractors

Exclusion 2.1 in the standard CGL policy contains a significant exception (the subcontractor work performed exclusion) to its coverage exclusion. Exclusion 2.1 states:

2. Exclusions. This insurance does not apply to:
1. Damage To Your Work. "Property damage" to "your work" arising out of and included in the "products-completed operations hazard". This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor. (emphasis added.)

Endorsements **ISO CG 22 94 10 11** Exclusion – Damage to Work Performed by Subcontractors and **ISO CG 22 95 10 01** Exclusion – Damage to Work Performed by Subcontractors on Your Behalf – Designated Sites or Operations delete the exception to the exclusion, thereby eliminating the single most important coverage under which many construction defect claims have historically been paid. A copy of the **ISO CG 22 94** is in the Appendix of Forms.

(6) CG 21 42 and CG 21 43 Exclusions – Explosion, Collapse and Underground Property Damage Hazard

The standard CGL policy does not exclude "explosion, collapse and underground property damage" hazards (commonly referred to as "XCU"). However, XCU coverage is deleted by addition of endorsement **ISO CG 21 42**

¹³ **Malpractice Alert.** It is essential to obtain a copy of the policy and read it as was learned by the general contractor in *Westfield Ins. Co. v. FCL Builders, Inc.*, 948 N.E.2d 115 (Ill. 2011). FCL, a general contractor, relied upon a certificate of insurance provided to it by its subcontractor listing FCL as an additional insured on the CGL policy of the sub-subcontractor. A tort action was brought by a severely injured employee of the sub-subcontractor against the general contractor. Unfortunately, although subcontractor's CGL policy was issued with an blanket additional insured endorsement, it extended additional insured coverage only to "persons for whom you are performing operations when you and such person have agreed in a written contract that such person be added as an additional insured." There was no written agreement between the sub-subcontractor and the general contractor. A similar circumstance exists between a landlord and a tenant's improvement contractor.

12 04 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations) and **CG 21 43 12 04** Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations Excepted).

b. The Ugly - Manuscript Endorsements to CGL Policies

(1) Exclusions and Limitations on Negligence Coverage

Admitted insurers generally issue on an ISO form, e.g., CG 20 10. Some E & S companies issue on the ISO form, but many issue on manuscripted endorsements. The following are examples of manuscript endorsements.

Manuscript Endorsement # 1:

This insurance applies **only with respect to negligent act or omission of the Named Insured.**

Manuscript Endorsement # 2:

We have no duty to indemnify the additional insured for damages, claims or any other **liabilities arising from actions, inactions, errors or omissions of the additional insured.** This endorsement does not create a duty on our part to defend the additional insured or to participate in, contribute to, or reimburse any person, organization or entity for any fees or expenses incurred in the defense of the additional insured.

Manuscript Endorsement # 3:

A person or organization's status as an insured under **Additional Insured-Completed Operations continues only until the earlier of the end of the policy period; or the period of time required by the written contract or agreement.** If no time period is required by the written contract or agreement, a person or organization's status as an additional insured under this endorsement will not apply beyond the lesser of the end of the policy period; or **five years from the completion of "your work"** on the project which is the subject of the written contract or agreement.

(2) Additional Insured Coverage to Be Primary - But Contributory!

Many agreements **call for the Named Insured's insurance to be primary.** The intent of a primary insurance requirement is to get the other party's insurance, on which an additional insured has been added, to pay first and to the maximum extent possible before the additional insured's own insurance is called into play. The problem with this is that all general liability policies state that they are primary, and that, if two or more policies cover a claim, they will share in payment of that loss. The insurance industry attempted a fix to this by including a provision that states that a Named Insured's coverage is excess where that Named Insured is added to another party's coverage as an additional insured. That works fine so long as the downstream party hasn't also modified its additional insured coverage to be provided on an excess liability or other modified basis.

Manuscript Endorsement # 1:

Primary & Noncontributory Additional Insured Endorsement

Who Is An Insured is amended to include as an insured the person or organization shown in the schedule of this endorsement, but only with respect to liability arising out of "your work" for that insured by or for you.

As respects additional insured as defined above, this insurance also applies to "bodily injury" or "property damage" arising out of your negligence when the following written requirements are applicable: Coverage available under this coverage part shall apply as primary insurance.

The first paragraph is the same wording as the CG 20 10 11 85 additional insured endorsement, offering broad coverage that includes coverage for the concurrent and sole negligence of the additional insured. What could possibly be wrong? Examine the second paragraph closely. For what causes of loss is primary coverage provided? Only for liability arising out of the named insured's negligence – not the additional insured.

Manuscript Endorsement # 2:

This insurance shall be primary and non-contributory but only in the event of a named insured's sole negligence.

(3) Waiver of Subrogation - But Conflicting with Indemnity

Manuscript Endorsement # 1:

This waiver shall not apply to "damages" resulting from the sole negligence of the person(s) or organization(s) indicated in the Schedule shown above.

Manuscript Endorsement # 2:

This waiver shall only apply to "damages" resulting from the sole negligence of the Named Insured.

Manuscript Endorsement # 3:

This waiver applies only if the designated construction project shown in the Schedule above is completed.

(4) Employer's Liability Manuscript Exclusion

Exclusion 2.e(1) to the standard CGL policy, ISO CG 00 01, states in part:

2. Exclusions. This insurance does not apply to: ...

e. Employer's Liability. "Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or Performing duties related to the conduct of the insured's business...

This exclusion does not apply to liability assumed by the insured under an "insured contract".

Manuscript endorsements to this provision may change "Employment by the insured" to "Employment by an insured", may delete the exception altogether, or may modify this provision in some other manner. All of these changes are aimed at eliminating coverage for third-party over actions.

Manuscript Endorsement # 1:

2. Exclusions. This insurance does not apply to: ...

e. Employer's Liability. "Bodily injury" to:

(1) An "employee" of ~~the~~ an insured arising out of and in the course of:

(a) Employment by ~~the~~ an insured; or Performing duties related to the conduct of the insured's business...

This exclusion does not apply to liability assumed by the insured under an "insured contract".

Manuscript Endorsement # 2:

Throughout this policy, with the exception of Section II – Who Is An Insured, when the word "insured(s)" is used it shall mean "any insured".

Manuscript Endorsement # 3:

This insurance does not apply to any liability arising out of "Action Over" or Indemnity Over" suits involving United States Longshoremen and Harbor Workers' Act, Jones Act, Outer Continental Shelf Extension Act, Workers' Compensation law or acts of any of the various states, or any other similar Workers' Compensation or Employers Liability Laws or act or Employers Liability Maritime Laws or Acts.

Manuscript Endorsement # 4:

~~This exclusion does not apply to liability assume by the insured under an "insured contract".~~

Manuscript Endorsement # 5:

This insurance does not apply to "Bodily Injury" to any employee of the Insured arising out of any Occupational Disease.

(5) Construction Defect - Completed Operations Manuscript Exclusion

One of the nation's leading providers of construction insurance sometimes includes the following endorsement:

This insurance excludes coverage for the actual or alleged deficiency in new construction, conversion, reconstruction, rehabilitation, renovation, remodeling, repair, maintenance or demolition.

What is left? Only bodily injury and on-going operations.

(6) Punitive Damages Exclusion

Some punitive damage endorsements state that coverage is excluded except where permitted by law, but many are absolute exclusions.

This insurance does not apply to fines, penalties, punitive, exemplary, vindictive or other non-compensatory damages imposed upon the insured, or any **multiplied portion of compensatory damages**.

(7) "Residential" or "Habitational" Exclusion

The meaning of "residential" or "habitational" differs from insurance company to insurance company. If the work being performed is on a structure that could conceivably be considered to be a "residence" by an insurance company adjuster, proceed with caution.

Manuscript Endorsement # 1:

It is agreed this insurance does not apply to liability arising in whole or in part, either directly or indirectly, out of any past, present, or future "residential construction activities" performed by or on behalf of any insured or others.

Manuscript Endorsement #2:

For the purposes of this endorsement, "residential construction activities" means any work or operations related to any job or project involving the construction, repair, remodeling, renovation, maintenance, change or modification of single-family dwellings, multi-family dwellings, condominiums, townhomes, townhouses, time-share units, fractional-ownership units, cooperatives and/or any other structure or **space used or intended to be used as a residence**, whether full-time, part-time, live-work combination, vacation or temporary residence, and **regardless of the actual use** or occupancy of any such structure or space.

(8) Classification Limitation Manuscript Exclusions

In a standard ISO general liability policy, the classifications, codes, and description of operations are rating factors only and have no effect whatsoever on the coverage provided. In policies on which a classification or business description limitation endorsement has been added, no coverage is provided except for those operations specifically included by the stated classifications, codes or descriptions. Have you ever had a contractor client that didn't upon

occasion perform some work that falls outside of its normal scope of operations? Classification limitation endorsements can defy logic. Their intent is to state that coverage is provided only for exposures declared to an insurance company, and new types of undeclared operations are not automatically included.¹⁴

Manuscript Endorsement #1:

Coverage under this contract is strictly **limited to the classification(s) and code(s) listed** on the policy Declarations page. No coverage is provided for any classification(s) and codes(s) not specifically listed on the Declaration page of this policy.

Manuscript Endorsement #2:

This insurance does not apply to any "bodily injury", "property damage", "personal and advertising injury", medical expenses or other injury or damage that **does not arise out of your operation described** in the above Schedule and performed by you or on your behalf.

(9) Height Exclusion

A height exclusion deletes coverage for work on a building or structure in excess of a stated height. Note that the below example does not state that the work must be performed above that stated height to be excluded. All work is excluded. The following is a height exclusion manuscript endorsement:

Manuscript Endorsement:

This policy does not insure against loss or expense, including but not limited to the cost of defense, arising from or resulting, directly or indirectly, from:

1. "Your work" on the exterior of any building or structure in excess of fifty feet in height; or
2. "Your work" on the exterior of any building or structure that is proposed to be over fifty feet in height.

(10) Underground Utility Location Warranty

In spite of one's best efforts to compile a listing of unacceptable endorsements, the insurance industry is quite imaginative in dreaming up exclusions and limitations and there's a new one around every corner. This is a good example. While contractors are very good at getting underground utilities marked, how often do they get "proof in writing"?

Manuscript Endorsement:

It is a condition of coverage that before the Named Insured commences any digging, excavation, boring or similar

¹⁴ **Important to Confirm Classification Scope of Work Covered.** See *Pekin Ins. Co. v. American Country Ins. Co.*, 213 Ill. App.3d 543, 572 N.E.2d 1112 (Ill. 1991), where the court held that an insurer was not liable to an additional insured, a general contractor, for coverage of injuries suffered by an employee of the Named Insured, a roofing subcontractor, even though the Named Insured subcontractor provided the additional insured with a certificate of insurance reflecting that the additional insured was covered by the Named Insured's liability insurance as to a particular project. The insurance policy was endorsed to expressly exclude coverage to the subcontractor for bodily injury arising out of the subcontractor's roofing work!

underground work, a local locator service must come to the job site and mark all underground lines, pipes, cables, and underground utilities. The **Named Insured must obtain proof in writing from the locator service**. If the above procedure is not completed, coverage under this policy is voided for any claim, loss, costs or expenses arising out of such digging operations. Where there is no coverage, there is no duty to defend.

(11) Escape Clauses and Manuscript Negligence Exclusions

Particularly egregious manuscripted exclusions are escape clauses and negligence exclusions.¹⁵

(12) Subsidence Manuscript Exclusion

This is truly a construction defect exclusion aimed at contractors engaged in any type of earth movement work, including but not limited to soil compaction, fill, or installation of storm or sewer drains.

(13) "Prior Work" or "Continuous and Progressive Injury and Damage" Exclusions

There are many versions of this exclusion being used. The first example shown below is an example where coverage is excluded for any progressive or continuing injury or damage that starts before the policy inception, regardless of whether any insured knew of the prior injury or damage. The second example shown below is one of the most abusive endorsements I have found. The insurer will argue that no coverage exists regardless of when the coverage is triggered. All that is required is an "allegation" that the loss was "caused" by a "condition" that existed before the policy took effect. Note that the "condition" is almost always in existence before a particular policy period begins. This begs the question: Does "condition" mean simply a condition from which injury or damage later results or latent injury or damage? Such an endorsement essentially turns the current coverage into a claims-made policy with no prior acts coverage and no extended reporting period (a/k/a "tail") if renewed with similar forms. Coverage is radically diminished in a way that most insureds and even their insurance agents do not understand. Contractors that regularly face exposures involving more than one policy period may face a bankrupting exposure.

Manuscript Endorsement #1:

This insurance does not apply to "bodily injury" or "property damage" within the "products-completed operations

¹⁵ **Escape Clauses and Negligence Manuscripted Exclusions.** The decision in *Elf Exploration, Inc. v. Cameron Offshore Boats, Inc.*, 863 F. Supp. 386 (E.D. Tex. 1994) illustrates the risk inherent in not reading the insurance policy of the party obligated to name the prospective additional insured as an additional insured. The court found that a fact issue existed defeating a summary judgment motion as to whether the proposed additional insured had accepted the defendant's insurance policy which contained an additional insured provision that included the plaintiff, but which provision was worded so as to exclude coverage in cases where the proposed additional insured was already insured (a so-called "Escape Clause"). The Named Insured's policy contained the following Escape Clause: "Provided that where the Assured is, irrespective of this insurance, covered or protected against any loss or claim which would otherwise have been paid by the Assurer, under this policy, there shall be no contribution by the Assurer on the basis of double insurance or otherwise." The party providing the insurance provided insurance naming the proposed additional insured as an additional insured and therefore did not violate the covenant to name the plaintiff as an additional insured, but the additional insured provision contained an Escape Clause. Timely review and objection may need to occur to defeat this waiver argument!

The holding in *BP Chemicals, Inc. v. First State Ins. Co.*, 226 F.3d 420 (6th Cir. 2000) emphasizes why it is important to obtain and read a copy of the additional insured endorsement and not to rely either upon a statement in the certificate of insurance that "'x' is an additional insured for liabilities arising out of the work of 'y'" or upon a general statement in the contract that "x" is to be listed as an additional insured on "y's" commercial general liability policy. The court in this case held that the additional insured endorsement meant exactly what it said "the negligence of the additional insured is excluded" and that the certificate of insurance stating that "x" was an additional insured and the contractual provision in the contract between "x" and "y" that "x" be listed as an additional insured did not clearly provide for coverage of the additional insured's negligence. The additional insured endorsement provided "It is agreed that additional insureds are covered under this policy as required by written contract, but only with respect to liabilities arising out of their operations performed by or for the named insured, but excluding any negligent acts committed by such additional insureds".

hazard" if the injury or damage first occurred prior to the effective date of this policy.

Manuscript Endorsement #2:

This insurance does not apply to "Bodily injury" or "property damage":

- (1) which first existed, or is **alleged to have first existed**, prior to the inception date of this Policy, or
- (2) which are, or are alleged to be, in the process of taking place prior to the inception date of this Policy, even if the actual or alleged "bodily injury" or "property damage" continues during this policy period; or
- (3) which were caused, or are **alleged to have been caused, by a condition that first existed** prior to the inception date of this Policy.

(14) Insured vs. Insured Manuscript Exclusion

A "Named Insured vs. Named Insured Exclusion" is acceptable, as it is aimed at preventing coverage for claims between insureds within the same economic family. An "**Insured vs. Insured Exclusion**" should never be accepted (except in professional liability policies, where it is customary), as it excludes coverage when the additional insured desires to bring claim against the named insured.

(15) Controlled Insurance Program ("CIP") or "Wrap" Manuscript Exclusion

All CIP programs include coverage for product-completed operations, but some limit the period for which that coverage is provided to two or three years after completion of the work. The subcontractor working on that project, however still has a liability exposure after the CIP's completed operations coverage expires for the entire statute of repose.

C. THE SHERIFF: SPECIFIC SPECIFICATIONS ARE BETTER THAN GENERAL

1. Two Approaches

There are two approaches to writing insurance specifications, a narrative approach and a detailed checklist approach. There are drafting advantages and disadvantages to each approach (one's vice is the other's virtue).

Narrative	Exhibit
General	Specific
Brief	Detailed
Paragraph Style	Checklist Style

2. A Contractual Specification for "Additional Insured Status" is Meaningless

If the insurance provision simply calls for additional insured status to be provided, who decides which one will be provided? The insurance company for the downstream party gets to make that decision. If an insurance provision fails to specify an adequate scope of additional insured coverage to be provided and a claim occurs that falls outside of the limited scope of additional insured status provide, how is coverage potentially provided? The policy may still

have to respond to the indemnification provision, in which case defense costs are shifted from outside the limit to inside the limit. In either case, who wins? The insurance company. Don't let that happen to your client.¹⁶

A court may determine that a general specification that a person is an additional insured triggers additional insured coverage under the named insured's liability policy, but then look beyond the four corners of the liability policy to the contract between the named insured and the additional insured to find that the parties intended that the named insured's coverage not extend to the liability in question.¹⁷

3. Remember Your Audience

¹⁶ **Most Common Drafting Error.** A landlord may specify in its lease that the tenant and the tenant's contractors will cause each of their CGL insurers to list the landlord, its lender and management company as additional insureds on the tenant's and the tenant's contractors' CGL policies; a tenant may specify in its contract with its tenant-finish contractor that the contractor is to cause its CGL insurer to list the tenant, its landlord, the landlord's lender and the management company as additional insureds on the tenant-finish contractor's CGL policy; the tenant's contractor may specify in its subcontract with its subcontractors that the subcontractors list the contractor as an additional insured on the subcontractor's CGL policy. Unfortunately, in each of these cases, the person desiring protection as an additional insured has, by this wording of its insurance clause, left it up to the other party's insurance carrier to define the scope of the coverage to be provided. This is equivalent to "letting the fox determine how, when, and if to protect the chicken." A mistake has been made because there is **no** commonly accepted definition of what is an "additional insured." The above-quoted specification neither specifies the triggers to coverage nor what exclusions to coverage are to be permitted. There are literally hundreds of different additional insured endorsements in current use, each providing a different scope of coverage. Without a detailed specification of the scope of coverage to be afforded by the insurer to the additional insured, you have left it up to the insurer to select the form of additional insured coverage to provide. Simply requiring "additional insured status" may get the additional insured coverage that (1) includes both completed and ongoing operations and concurrent and sole negligence, or (2) includes only ongoing operations and excludes sole negligence of the additional insured, or (3) includes only certain ongoing operations and excludes both concurrent and sole negligence of the additional insured, and has additional exclusions added to it, or (4) innumerable additional options.

¹⁷ **The \$750 M Comma.** In a case arising out of the infamous "British Petroleum" ("BP") oil spill in the Gulf of Mexico, the Texas Supreme Court held in *In re Deepwater Horizon*, 470 S.W.3d 452 (Tex. 2015), in answer to questions certified to it by the Fifth Circuit, that BP was not an additional insured on the liability insurance policies of Transocean, its drilling contractor. In the drilling contract, BP and Transocean agreed to a "knock-for-knock" allocation of risk that is standard in the oil and gas industry. Among other indemnity provisions, Transocean agreed to indemnify BP for above-surface pollution regardless of fault, and BP agreed to indemnify Transocean for all pollution risk Transocean did not assume, *i.e.*, subsurface pollution. The court interpreted the insurance policy's additional insured provision as incorporating the risk allocation provisions of the contract. The catastrophic damages resulted from subsurface pollution. The court found that the only reasonable construction of the additional insured provision in the BP drilling contract with Transocean was that "BP is an additional insured only as to liabilities assumed by Transocean under the Drilling Contract and no others. Because Transocean did not assume liability for subsurface pollution, Transocean was not "obliged" to name BP as an additional insured as to that risk. Because there is no obligation to provide insurance for that risk, BP lacks status as an "Insured" for the same." *Id.* at 9.

The additional insured provision in the drilling contract obligated Transocean to acquire various types and minimum limits of insurance, including CGL, workers' compensation, and employer's liability insurance. The additional-insured provision states

[BP], its subsidiaries and affiliated companies, co-owners, and joint venturers, if any, and their employees, officers, and agents shall be named as additional insureds in each of [Transocean's] policies, except Workers' Compensation for liabilities assumed by [Transocean] under the terms of this contract. (Emphasis added.)

The court held that "It is immediately apparent from the plain language of this provision that BP's status as an insured is **inexorably linked**, at least in some respect, to the extent of Transocean's indemnity obligations. What is in dispute is the intended breadth of the limiting language in the emphasized portion of the provision." *Id.* at 10. (emphasis added.) The court rejected BP's argument that the presence of a comma in the additional insured provision made the court's interpretation unreasonable. BP asserted that the court's interpretation was unreasonable because there is a comma before, but not after, the phrase "except Workers' Compensation" and further contended that a comma cannot be inserted where it does not exist (after "Workers' Compensation") when it would alter the plain meaning of the contract. See 37 No. 2 INS. LITIGATION RPTR. 2 The \$750 Million Comma? Texas Supreme Court Rules BP Is Not Entitled to Coverage for the Gulf Oil Spill as Additional Insured Under Policies Issued to Transocean (Feb. 2015). The drilling contract provides

[w]ithout limiting the indemnity obligation or liabilities of [Transocean] or its insurer, at all times during the term of this contract, [Transocean] shall maintain insurance covering the operations to be performed under this contract as set forth in Exhibit C.

The court held "But simply because the duties to indemnify and maintain insurance may be separate and independent does not prevent them from also being congruent; that is, a contract may reasonably be construed as extending the insured's additional-insured status only to the extent of the risk the insured agreed to assume." *Id.* at 12.

The authors urge "Remember your audience," which we argue is the insurance agents issuing and reviewing the insurance to be obtained. The people that most need to understand what is being required are the downstream party's insurance brokers. Make it easy for them to understand. Require a specific ISO endorsement or a specific scope of coverage. If requiring a specific ISO endorsement, do not say "or equivalent". What does that mean? What it does not mean is "identical". Make the downstream party declare what in fact they do have. Get a copy and read it. Make sure that it complies with your requirement.

4. Recommendations

The authors encourage the use of the exhibit checklist approach. In the authors' experience providing a specific, detailed, checklist style set of insurance specifications facilitates delivery of insurance meeting the parties' insurance requirements.

Inform your client of the severity of the exclusions that are so widely and increasingly utilized by the insurance industry, yet are invisible to most certificate holders.

Inform your client that a review of the coverage being provided must be performed, either by you, your client's insurance agent, or an independent consultant.

Protect your client contractually. Insert a prohibition in your insurance requirements similar to the following:

The following exclusions/limitations or their equivalents are prohibited from use in the [Downstream] Parties' general liability and excess liability insurance policies:

- Amendment of Insured Contract Definition ISO CG 24 26
- Classification or Business Description
- Construction Defect Completed Operations
- Contractual Liability Limitation ISO CG 21 39
- Damage to Work Performed by Subcontractors On Your Behalf ISOCG 22 94 or CG 22 95
- Endorsement modifying the Employer's Liability exclusion or deleting the exception to it
- Explosion, Collapse and Underground Property Damage Hazard, ISO CG 21 42 or CG 21 43
- Habitational or Residential
- "Insured vs. Insured" except Named Insured vs. Named Insured
- Limitation of Coverage to Designated Premises or Project ISO CG 21 44
- "Prior Work" or "Continuous or Progressive Injury or Damage"
- Punitive, Exemplary or Multiplied Damages
- Subsidence
- Work Height
- Any other exclusion or limitation reasonably unacceptable to the [Upstream] Parties

You are not through – this is a two-step process. Require that a copy of the general liability Schedule of Forms and Endorsements page be attached to the Certificate of Insurance. This will list every exclusion or limitation added by endorsement. Look for strangely worded endorsement titles (*e.g.*, Contractor's Enhancement endorsement) and demand copies of those. Note that this does not help protect against those insurance companies that utilize all proprietary wording, as the exclusions and limitations are built into their forms rather than being added by endorsement.

APPENDIX OF FORMS

A. STANDARD INDUSTRY FORMS

1. ISO Endorsements to ISO CGL Policy.

The Good - ISO Endorsements to ISO CGL Policy:

ISO CG 04 37 04 13 Electronic Data Liability
ISO CG 20 01 04 13 Primary and Noncontributory – Other Insurance Condition
ISO CG 20 10 04 13 Additional Insured - Owners, Lessees or Contractors - Scheduled Person Or Organization
ISO CG 20 11 04 13 Additional Insured - Managers or Lessors of Premises
ISO CG 20 37 04 13 Additional Insured – Owners, Lessees Or Contractors – Completed Operations
ISO CG 20 38 04 13 Additional Insured – Owners, Lessees Or Contractors – Automatic Status for Other Parties
When Required in Written Construction Agreement
ISO CG 24 04 05 09 Waiver of Transfer of Rights of Recovery Against Others to Us

The Bad - ISO Endorsements to ISO CGL Policy.

ISO CG 20 33 04 13 Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required in Construction Agreement With You
ISO CG 21 39 10 93 Contractual Liability Limitation
ISO CG 21 42 12 04 Exclusion – Explosion, Collapse And Underground Property Damage Hazard (Specified Operations)
ISO CG 21 43 12 04 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations Excepted)
ISO CG 21 44 07 98 Limitation of Coverage To Designated Premises Or Project
ISO CG 22 79 04 13 Exclusion – Contractors – Professional Liability
ISO CG 22 94 10 01 Exclusion – Damage to Work Performed by Subcontractors on Your Behalf
ISO CG 22 95 10 01 Exclusion – Damage to Work Performed by Subcontractors on Your Behalf – Designated Sites or Operations
ISO CG 24 26 04 13 Amendment of Insured Contract Definition

2. ISO CG 00 01 - Commercial General Liability Coverage Form.

3. ACORD - Certificate of Liability Insurance.

B. INSURANCE SPECIFICATIONS

1. Lease.

2. Construction.

A. STANDARD INDUSTRY FORMS

1. ISO Endorsements to ISO CGL Policy

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ELECTRONIC DATA LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Loss Of Electronic Data Limit: \$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. Exclusion 2.p. of Coverage A – Bodily Injury And Property Damage Liability in Section I – Coverages** is replaced by the following:
- 2. Exclusions**
- This insurance does not apply to:
- p. Electronic Data**
- Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.
- However, this exclusion does not apply to liability for damages because of "bodily injury".
- B. The following paragraph is added to Section III – Limits Of Insurance:**
- Subject to 5. above, the **Loss of Electronic Data Limit shown in the Schedule** above is the most we will pay under Coverage **A** for "property damage" because of all loss of "electronic data" arising out of any one "occurrence".
- C. The following definition is added to the Definitions section:**
- "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- D. For the purposes of the coverage provided by this endorsement, the definition of "property damage" in the Definitions section is replaced by the following:**
- 17. "Property damage" means:**
- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
 - b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it; or
 - c.** Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.
- For the purposes of this insurance, "electronic data" is not tangible property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

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

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is **primary** to and will not seek contribution from any **other insurance** available to an additional insured under your policy provided that:

- (1) The additional insured is a **Named Insured** under such other insurance; and

- (2) You have **agreed in writing** in a contract or agreement that this insurance would be **primary** and would **not seek contribution** from any other insurance available to the additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" **caused, in whole or in part, by:**

1. **Your acts or omissions;** or
2. The acts or omissions of those acting on your behalf;

in the performance of **your ongoing operations** for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only **applies to the extent permitted by law;** and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured **will not be broader than that which you are required by the contract or agreement** to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional **exclusions** apply:

This insurance does not apply to "bodily injury" or "property damage" **occurring after:**

1. **All work,** including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations **has been completed;** or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation Of Premises (Part Leased To You):
Name Of Person(s) Or Organization(s) (Additional Insured):
Additional Premium: \$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf; in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been **completed**; or
- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement you have entered into with the additional insured;
or
- 2. Available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations

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

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" **caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard"**.

However:

1. The insurance afforded to such additional insured only applies **to the extent permitted by law**; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the occurrence which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

- b. That portion of "your work" out of which the injury or damage arises has been **put to its intended use** by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

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

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – EXPLOSION, COLLAPSE AND UNDERGROUND PROPERTY DAMAGE HAZARD (SPECIFIED OPERATIONS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Location And Description Of Operations	Excluded Hazard(s)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. The following exclusion is added to Paragraph 2. Exclusions in Section I – Coverages:

This insurance does not apply to "property damage" included within the "explosion hazard", the "collapse hazard" or the "underground property damage hazard" if any of these hazards is entered as an excluded hazard on the Schedule.

This exclusion does not apply to:

- a. Operations performed for you by others; or
- b. "Property damage" included within the "products completed operations hazard":

B. The following definitions are added to the Definitions Section:

- 1. "Collapse hazard" includes "structural property damage" and any resulting "property damage" to any other property at any time.
- 2. "Explosion hazard" includes "property damage" arising out of blasting or explosion. The "explosion hazard" does not include "property damage" arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.

3. "Structural property damage" means the collapse of or structural injury to any building or structure due to:

- a. Grading of land, excavating, borrowing, filling, back-filling, tunneling, pile driving, cofferdam work or caisson work; or
- b. Moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support of that building or structure.

4. "Underground property damage hazard" includes "underground property damage" and any resulting "property damage" to any other property at any time.

5. "Underground property damage" means "property damage" to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus used with them beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – EXPLOSION, COLLAPSE AND UNDERGROUND PROPERTY DAMAGE HAZARD (SPECIFIED OPERATIONS EXCEPTED)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Location And Description Of Operations	Covered Hazard(s)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. The following exclusion is added to Paragraph 2. **Exclusions** in **Section I – Coverages**:

This insurance does not apply to "property damage" arising out of the "explosion hazard", the "collapse hazard" or the "underground property damage hazard".

This exclusion does not apply to:

- a. Operations performed for you by others;
- b. "Property damage" included within the "products-completed operations hazard"; or
- c. Any operation described in the Schedule above, if any of these hazards is entered as a covered hazard.

B. The following definitions are added to the **Definitions** Section:

- 1. "Collapse hazard" includes "structural property damage" and any resulting "property damage" to any other property at any time.
- 2. "Explosion hazard" includes "property damage" arising out of blasting or explosion. The "explosion hazard" does not include "property damage" arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.
- 3. "Structural property damage" means the collapse of or structural injury to any building or structure due to:
 - a. Grading of land, excavating, borrowing, filling, back-filling, tunnelling, pile driving, cofferdam work or caisson work; or
 - b. Moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support of that building or structure.
- 4. "Underground property damage hazard" includes "underground property damage" and any resulting "property damage" to any other property at any time.
- 5. "Underground property damage" means "property damage" to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus used with them beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following **exclusion is added** to Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph 2. **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

1. This **insurance does not apply** to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any **professional services** by you or on your behalf, but only with respect to either or both of the following operations:
 - a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
 - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.
2. Subject to Paragraph 3. below, **professional services include**:
 - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
 - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

This exclusion applies **even if** the claims against any insured allege **negligence** or other wrongdoing in the **supervision**, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you or on your behalf with respect to the operations described above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DAMAGE TO WORK PERFORMED BY SUBCONTRACTORS ON YOUR BEHALF

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion I. of **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

2. Exclusions

This insurance **does not apply to:**

I. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and **included in the "products-completed operations hazard"**.

EXCLUSION – DAMAGE TO WORK PERFORMED BY SUBCONTRACTORS ON YOUR BEHALF – DESIGNATED SITES OR OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description Of Designated Sites Or Operations

(If no entry appears above, information required to completed this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to those sites or operations designated in the Schedule of this endorsement, Exclusion I. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

I. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

POLICY
NUMBER:

COMMERCIAL GENERAL LIABILITY

CG 24 04 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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:

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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph **9.** of the **Definitions** Section is replaced by the following:

9. "Insured contract" means:

- a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b.** A sidetrack agreement;
- c.** Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d.** An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e.** An elevator maintenance agreement;
- f.** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

- (1)** That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a)** Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b)** Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3)** Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities.

2. Commercial General Liability Coverage Form.

ISO CG 00 01 04 13 Commercial General Liability Coverage Form

SECTION 1 - COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. pay ... insured becomes legally obligated to pay as damages and duty to defend
- b. "bodily injury and "property damage"
 - (1) caused by an "occurrence"

2. Exclusions

- a. **Expected Or Intended Injury**
- b. **Contractual Liability**
- c. **Liquor Liability**
- d. **Workers' Compensation And Similar Liability Laws**
- e. **Employer's Liability**
- f. **Pollution**
- j. **Damage to Property**
 - (5) That particular part ... on which you ... are performing operations, if "property damage" arises out of those operations
 - (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it. Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations" hazard
- k. **Damage to Your Product**
- l. **Damage to Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor
- p. **Electronic Data**

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

- 4. **Other Insurance**
 - a. **Primary Insurance**
 - b. **Excess Insurance**
- 8. **Transfer Of Rights Of Recovery Against Others To Us**
- 9. **When We Do Not Renew**

SECTION V - DEFINITIONS

- 9. "Insured contract"
- 13. "Occurrence"
- 16. "Products-completed operations hazard"
- 17. "Property damage"
- 22. "Your work"

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
- (b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;

- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a.**, **b.** and **c.** of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

COVERAGE C – MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

SECTION II – WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by;
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by; you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
 - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
- No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.
- SECTION III – LIMITS OF INSURANCE**
1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage **C**;
 - b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage **B**.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph **2.** above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage **A**; and
 - b. Medical expenses under Coverage **C** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;

- (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.
You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
 - c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
 - d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

(1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

- (2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication; provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a **lease** of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- (a) When all of the work called for in your contract has been completed.
- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
- (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 21. "Your product":
 - a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
 - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

A. STANDARD INDUSTRY FORMS

3. ACORD - Certificate of Liability Insurance.

It is Not Reasonable to Rely Upon an ACORD Certificate of Insurance

The **ACORD 25** Certificate of Liability Insurance is labeled a certificate, is addressed to a "certificate holder" and states "This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated." However, it also contains the following disclaimers:

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. THE CERTIFICATE OF INSURANCE DOES **NOT** CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN **REDUCED BY PAID CLAIMS**.

IMPORTANT: If the certificate holder is an additional insured, the policy(ies) must be endorsed. A statement on this certificate does **not** confer rights to the certificate holder in lieu of such endorsement(s). 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).

Many courts have held that these disclaimers effectively negate reliance by certificate holders. See *e.g.*, the following statements by courts: *Prudential Property and Casualty Ins. Co. v. Anderson*, 922 A.2d 236 (Conn. 2007):

Troublesome as it may be that Zurich permits its agents to issue certificates when it knows prior to the certificate's being issued that coverage was cancelled and lacks an identifiable procedure for notifying certificate holders that coverage has been cancelled, the allegations in plaintiff's complaint do not state a cause of action against Zurich.

Bradley Real Estate Trust v. Plummer & Rowe Ins. Agency, 609 A.2d 1233, 1235 (N.H. 1992):

In effect, the certificate is a worthless document; it does no more than certify that insurance existed on the day the certificate was issued. We leave it to the legislature or to future bargaining of parties to rectify inequities in the notification process.

TIG Ins. Co. v. Sedgwick James of Washington, 276 F.3d 754 (5th Cir. 2002), *aff'g* 184 F. Supp.2d 591 (S.D. Tex. 2001):

Had Plaintiffs taken the reasonable step of obtaining a copy of (the policy) ... Plaintiffs would have learned that there was no additional insured coverage in the policy at all. Thus, the Court finds that the Plaintiffs' reliance upon (the insurance broker's) representation of additional insured status was not reasonable. Accordingly, as a matter of law, Plaintiffs' claims for negligent and fraudulent misrepresentation fail.

A certificate of insurance, if incorrect, may provide a claim against the agent who issued the incorrect certificate, but it does not obligate the underwriter under the policy.

B. INSURANCE SPECIFICATIONS

1. Lease.

EXHIBIT A - LANDLORD'S INSURANCE SPECIFICATIONS FOR TENANT

A. SPECIFIC INSURANCE REQUIREMENTS

1. Policies To Be Provided by Tenant. Subject to review and revision by Landlord from time to time, in Landlord’s good faith judgment, the following insurance shall be maintained by Tenant with limits not less than those set forth below at all times during the term of this Lease and thereafter as required:

No.	Specification	Coverages, Limits & Other Requirements						
A. LIABILITY								
§1.	Commercial General Liability. Tenant is to maintain commercial general liability insurance (“CGL”) issued on an Occurrence Basis meeting at least the following specifications.							
§1.1	Minimum Limits	The minimum limits of coverage are subject to the periodic review and approval by Landlord, but are not to be less than the following amounts: <table border="1" data-bbox="667 869 1247 974"> <tr> <td>\$ __,000,000</td> <td>Per Occurrence.</td> </tr> <tr> <td>\$ __,000,000</td> <td>General Aggregate.</td> </tr> <tr> <td>\$ __,000,000</td> <td>Personal and Advertising Injury Limit.</td> </tr> </table>	\$ __,000,000	Per Occurrence.	\$ __,000,000	General Aggregate.	\$ __,000,000	Personal and Advertising Injury Limit.
\$ __,000,000	Per Occurrence.							
\$ __,000,000	General Aggregate.							
\$ __,000,000	Personal and Advertising Injury Limit.							
§1.2	General Aggregate	If the CGL insurance contains a General Aggregate limit, it shall apply separately to these Premises and Property.						
§1.3	Form	This insurance is to be issued on an ISO form CG 00 01 .						
§1.4	Insured Contracts	Coverage shall apply to but not be limited to liability assumed by Tenant under the Lease (including the tort liability of another assumed in a business contract).						
§1.5	Additional Insureds	This insurance is to be endorsed with an ISO CG 20 11 04 13 , Additional Insured Endorsement listing Landlord Parties as additional insureds. No language excluding coverage for the acts or omissions of the additional insured shall be contained in the endorsement. The specification above of minimum limits does not limit the limits of coverage to be available to the Landlord Parties as additional insureds. If Tenant’s insurance has limits greater than the above limits, the amount of coverage available to Landlord Parties is increased to the limits of Tenant’s insurance, including limits under any umbrella or excess policies. Additional insured coverage of the Landlord Parties shall be maintained for the greater of the Term of the Lease, the holding over or possession of the Leased Premises by Tenant, or as long as Tenant is obligated to a Landlord Party for bodily injuries, property damage or other liabilities insurable by an ISO form CG 00 01 CGL policy.						
§1.6	Primary	This insurance shall be endorsed to provide primary and non-contributing liability coverage. It is the specific intent of the parties to this Agreement that all insurance held by Landlord Parties shall be excess, secondary and non-contributory.						
§1.7	Waiver of Subrogation	This insurance is to be endorsed with an ISO CG 29 88 10 93 Waiver of Transfer of Rights of Recovery Against Others Endorsement to provide a waiver of subrogation by insurer as to the Landlord Parties.						
§1.8	Deletion of Personal Injury Exclusion to Contractual Liability Coverage	The personal injury contractual liability exclusion shall be deleted.						
§1.9	Notice	This insurance is to contain a provision for 30 days’ prior written notice by insurance carrier to the Landlord required for cancellation [or material change].						
§1.10	Prohibited Endorsements	The following exclusions/limitations (or their equivalents) are not permitted:						

No.	Specification	Coverages, Limits & Other Requirements
		<ul style="list-style-type: none"> a. ISO CG 21 39 Contractual Liability Limitation. b. ISO CG 24 26 Amendment Of Insured Contract Definition. c. ISO CG 21 44 Limitation of Coverage to Designated Premises or Project. d. Any endorsement modifying or deleting the exception to the Employer's Liability exclusion. e. Any "Insured vs. Insured" exclusion. f. Any type of punitive, exemplary or multiplied damages exclusion.
§1.11	Certificate of Insurance	A copy of the required Endorsements along with the Schedule of Forms and Endorsements page of the policy listing the required Endorsements as issued modifications to the policy shall be attached to the Certificate of Insurance provided by Tenant to Landlord.
§2.		Business Auto Liability. Tenant is to maintain a Business Auto Policy issued on an Occurrence Basis meeting at least the following specifications.
§2.1	Minimum Limit	The minimum limits of coverage are subject to the periodic review and approval by Landlord, but are not to be less than \$1,000,000 per Accident.
§2.2	Form	This insurance is to be written on the current ISO edition of ISO CA 00 01 .
§2.3	Scope	This insurance shall cover damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of an auto (Symbol 1), including owned, hired and nonowned.
§2.4	Notice	This insurance is to contain a provision for 30 days' prior written notice by insurance carrier to the Landlord required for cancellation [or material change].
§2.5	Waiver of Subrogation	This insurance is to include a waiver of subrogation by insurer as to the Landlord Parties.
§3.		Workers' Compensation and Employer's Liability. Tenant is to maintain workers' compensation and employer's liability insurance meeting at least the following specifications.
§3.1	WC Limits	The minimum limits of this insurance shall be no less than the statutory limits.
§3.2	EL Limits	The minimum limits of coverage are subject to the periodic review and approval by Landlord, but are not to be less than \$1,000,000 each Accident and Disease.
§3.3	USL&H	USL&H coverage must be provided where such exposure exists.
§3.4	Territory	Where work is to be performed must be listed under Item 3.A. on the Information Page of the policy.
§3.5	Scope	This insurance is to cover liability arising out of the Tenant's employment of workers and anyone for whom the Tenant may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance is permitted.
§3.6	Leased Employees	Where a Professional Employer Organization ("PEO") or "leased employees" are utilized, Tenant shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Landlord.
§3.7	Notice	Contain a provision for 30 days' prior written notice by insurance carrier to the Landlord required for cancellation [or material change].
§3.8	Waiver of Subrogation	This insurance is to include a waiver of subrogation by insurer as to the Landlord Parties.
§4.		Liquor Liability. Tenant is to maintain liquor liability insurance issued on an Occurrence Basis meeting at least the following specifications.

No.	Specification	Coverages, Limits & Other Requirements				
§4.1	Minimum Limits	<p>The minimum limits of coverage are subject to the periodic review and approval by Landlord, but are not to be less than</p> <table border="1" data-bbox="662 317 1265 369"> <tr> <td data-bbox="662 317 802 344">\$1,000,000</td> <td data-bbox="802 317 1265 344">Each Occurrence</td> </tr> <tr> <td data-bbox="662 344 802 369">\$2,000,000</td> <td data-bbox="802 344 1265 369">Annual Aggregate</td> </tr> </table>	\$1,000,000	Each Occurrence	\$2,000,000	Annual Aggregate
\$1,000,000	Each Occurrence					
\$2,000,000	Annual Aggregate					
§4.2	Scope	This insurance shall cover operation of Tenant at the Leased Premises described by the Lease.				
§4.3	Defense Coverage	Coverage of defense costs is to be provided outside of the limit of liability coverage.				
§4.4	Notice	Contain a provision for 30 days' prior written notice by insurance carrier to the Landlord required for cancellation or material change.				
§4.5	Waiver of Subrogation	This insurance is to include a waiver of subrogation by insurer as to the Landlord Parties.				
§5.	Excess/Umbrella Liability. If any of the required coverages are to be maintained by and through an excess/umbrella policy, they are to be by a policy issued on an Occurrence Basis meeting at least the following specifications.					
§5.1	Scope	<p>This insurance shall be excess over and be no less broad than all coverages described above. The policy limits for the primary and excess/umbrella policy may be allocated between the primary and excess/umbrella as selected by the named insured.</p> <p>The specification above of minimum limits does not limit the limits of coverage to be available to the Landlord Parties as additional insureds. If Tenant's insurance has limits greater than the above limits, the amount of coverage available to Landlord Parties is increased to the limits of Tenant's insurance, including limits under any umbrella or excess policies.</p>				
§5.2	Primary	This insurance shall be endorsed to provide primary and non-contributing liability coverage. It is the specific intent of the parties to this Agreement that all insurance held by Landlord Parties shall be excess, secondary and non-contributory.				
§5.3	Drop-Down Coverage	Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.				
§5.4	Defense Costs	This insurance is to include a duty to defend any insured.				
§5.5	Additional Insureds	Listing the Landlord Parties as additional insureds.				
§5.6	Notice	This insurance is to contain a provision for 30 days' prior written notice by insurance carrier to the Landlord required for cancellation [or material change].				
§5.7	Waiver of Subrogation	This insurance is to include a waiver of subrogation by insurer as to the Landlord Parties.				
§6.	Environmental Liability. Tenant is to maintain environmental liability insurance issued on an Occurrence Basis meeting at least the following specifications.					
§6.1	Minimum Limits	<p>The minimum limits of coverage are subject to the periodic review and approval by Landlord, but are not to be less than</p> <table border="1" data-bbox="662 1551 1265 1604"> <tr> <td data-bbox="662 1551 802 1579">\$1,000,000</td> <td data-bbox="802 1551 1265 1579">Each Occurrence</td> </tr> <tr> <td data-bbox="662 1579 802 1604">\$2,000,000</td> <td data-bbox="802 1579 1265 1604">Annual Aggregate</td> </tr> </table>	\$1,000,000	Each Occurrence	\$2,000,000	Annual Aggregate
\$1,000,000	Each Occurrence					
\$2,000,000	Annual Aggregate					
§6.2	Scope	This insurance is to cover any environmental loss to the leased premises or adjoining properties; shall include coverage for mold, fungus and related bacteria.				
§6.3	Defense Costs	Coverage of defense costs is to be provided outside of the limit of liability coverage.				
§6.4	Notice	This insurance is to contain a provision for 30 days' prior written notice by insurance carrier to the Landlord required for cancellation, non-renewal [or material change].				
§6.5	Waiver of Subrogation	This insurance is to include a waiver of subrogation by insurer as to the Landlord Parties.				

No.	Specification	Coverages, Limits & Other Requirements
B. PROPERTY		
§1.	Property Insurance on Causes of Loss Special Form. Tenant is to maintain property insurance on a Causes of Loss – Special Form meeting at least the following specifications. This insurance is formerly known as “all risk”.	
§1.1	Scope of Coverage	This insurance is to be issued for 100% Replacement Cost, on an Agreed Value Basis, and in compliance with all laws, regulations or ordinances affecting such property at any time during the Lease for the excess value of the Tenant Improvements to the Leased Premises over the Construction Allowance provided by Landlord for the initial Tenant Improvements, and all equipment and other property used in connection therewith, including Tenant’s business personal property, HVAC, trade fixtures and signs from time to time in, on, adjacent to or upon the Leased Premises, [Tenant is not responsible to insure tenant improvements to the Leased Premises constructed by prior tenants], and all alterations, additions, or changes made by Tenant pursuant to the terms of this Lease and shall not be subject to coinsurance.
§1.2	Form	This insurance is to be issued on an ISO CP 10 30 .
§1.3	Insureds	The insureds on this policy are to be Tenant and Landlord.
§1.4	Endorsements or Coverages	The scope of coverage, at Landlord’s option, is to include coverage for Earthquake, Flood, Glass, Ordinance or Law, Terrorism, Theft, and Debris Removal with an increased coverage of \$ _____. Tenant at its election may cover loss arising out of cancellation of this Lease, including loss of its undamaged improvements and betterments.
§1.5	Waiver of Subrogation	This insurance is to include a waiver of subrogation by insurer as to the Landlord Parties.
Alternative. The following specification allocates to the Tenant the responsibility for carrying property insurance for the tenant improvements.		
§1.	Property Insurance on Causes of Loss - Special Form. Tenant is to maintain property insurance on a Causes of Loss – Special Form meeting at least the following specifications. This insurance is formerly known as “all risk”.	
§1.1	Scope of Coverage	This insurance is to be issued for 100% Replacement Cost, on an Agreed Value Basis, and in compliance with all laws, regulations or ordinances affecting such property at any time during the Lease, for the Tenant’s improvements and betterments, including all the items included in Tenant’s Work, and all equipment and other property used in connection therewith, including Tenant’s business personal property, HVAC, trade fixtures and signs from time to time in, on, adjacent to or upon the Leased Premises, and all alterations, additions, or changes made by Tenant pursuant to the terms of this Lease, and shall not be subject to coinsurance.
§1.2	Form	This insurance is to be issued on an ISO CP 10 30 .
§1.3	Insureds	The insureds on this policy are to be Tenant and Landlord.
§1.4	Endorsements or Coverages	The scope of coverage, at Landlord’s option, is to include coverage for Antennas, Earthquake, Flood, Glass, Ordinance or Law, Terrorism, Theft, Signs, and Debris Removal with an increased coverage of \$ _____. Tenant at its election may cover loss arising out of cancellation of this Lease, including loss of its undamaged improvements and betterments. (See ISO CP 00 60 06 95).
§1.5	Waiver of Subrogation	This insurance is to include a waiver of subrogation by insurer as to the Landlord Parties.
§2.	Business Income and Extra Expense. Tenant is to maintain business income and extra expense insurance meeting at least the following specifications.	
§2.1	Scope	Coverage is to be provided on all operations at the Leased Premises.

No.	Specification	Coverages, Limits & Other Requirements
§2.2	Income Coverage Limit	Coverage is to be equal to no less than [12] months of income and ongoing expenses. [Coverage is to be provided in an amount of not less than 80% of Tenant's gross annual income at the Leased Premises less non-continuing expenses.] [Coverage is to be endorsed to cover losses arising from interruption of utilities outside the Leased Premises.]
§2.3	Form	This insurance is to be issued on an ISO CP 00 30 10 12 Business Income (And Extra Expense Coverage Form.
§2.4	Valuation Basis	Insurance is to be issued on an Agreed Value basis.
§2.5	Notice	This insurance is to contain a provision for 30 days' prior written notice by insurance carrier to the Landlord required for cancellation [or material change].
§2.6	Waiver of Subrogation	This insurance is to include a waiver of subrogation by insurer as to the Landlord Parties.
§3.	Boiler & Machinery. Tenant is to maintain boiler and machinery insurance meeting at least the following specifications.	
§3.1	Scope of Coverage	Coverage is to be provided on all operations at the described Leased Premises.
§3.2	Form	This insurance is to be written on a Comprehensive Form, including Business Income.
§3.3	Valuation Basis	This insurance is to be issued on a Replacement Cost, Agreed Value basis.
C. OTHER INSURANCE		
Such other insurance against other insurable liabilities or hazards as Landlord may from time to time reasonably require.		

2.Policies To Be Provided By Tenant's Contractors. Subject to review and revision by Landlord from time to time, in Landlord's good faith judgment, the following insurance shall be maintained by Tenant's construction contractors with limits not less than those set forth below at all times during the term of this Lease and thereafter as required:

No.	Specifications	Coverages, Limits & Other Requirements								
A. LIABILITY										
§1.	Commercial General Liability. Tenant's contractor is to maintain commercial general liability insurance ("CGL") issued on an Occurrence Basis meeting at least the following specifications, but only to the extent permitted by law.									
§1.1	Minimum Limits	The minimum limits of coverage are subject to approval by Landlord, but not are not to be less than the following amounts: <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>\$,000,000</td> <td>Per Occurrence.</td> </tr> <tr> <td>\$,000,000</td> <td>General Aggregate.</td> </tr> <tr> <td>\$,000,000</td> <td>Products-Completed Operations Aggregate</td> </tr> <tr> <td>\$,000,000</td> <td>Personal and Advertising Injury Limit.</td> </tr> </table>	\$,000,000	Per Occurrence.	\$,000,000	General Aggregate.	\$,000,000	Products-Completed Operations Aggregate	\$,000,000	Personal and Advertising Injury Limit.
\$,000,000	Per Occurrence.									
\$,000,000	General Aggregate.									
\$,000,000	Products-Completed Operations Aggregate									
\$,000,000	Personal and Advertising Injury Limit.									
§1.2	General Aggregate	If the CGL insurance contains a General Aggregate Limit, it shall apply separately to these Premises and Property pursuant to an ISO CG 25 04 09 Designated Location(s) General Aggregate Limit.								
§1.3	Post-Completion Coverage	Contractor agrees to maintain Products-Completed Operations coverage with respect to "Bodily Injury" and "Property Damage" caused, in whole or in part, by Contractor's work at the Premises and Property for a period of ___ years after final completion of the construction of the Improvements. This insurance is to be endorsed with an ISO CG 20 37 04 13 Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement to schedule Landlord Parties for the entirety of this post-completion period.								
§1.4	Form	This insurance is to be issued on an ISO CG 00 01, and shall cover liability arising								

No.	Specifications	Coverages, Limits & Other Requirements
		from premises, operations, Owner's & Contractor's Protective Liability for contractor's liability arising out of the hire of subcontractors (independent contractors coverage), and incidental design liability arising from the contractor's construction means and methods.
§1.5	Insured Contracts	Coverage shall include but not be limited to liability assumed by Tenant's contractor under the construction contract (including the tort liability of another assumed in a business contract).
§1.6	Additional Insureds	This insurance is to be endorsed with an ISO CG 20 10 [07 04] [04 13], Additional Insured Endorsement listing the Landlord Parties as additional insureds. No exclusion for the acts or omissions of the additional insured.
§1.7	Primary	This insurance shall be endorsed with an ISO CG 20 01 04 13 Primary and Noncontributory – Other Insurance Condition endorsement for this insurance to provide primary and non-contributing liability coverage. It is the specific intent of the parties to this Agreement that all insurance held by Landlord Parties shall be excess, secondary and non-contributory.
§1.8	Waiver of Subrogation	This insurance is to be endorsed with an ISO CG 29 88 10 93 Waiver of Transfer of Rights of Recovery Against Others Endorsement to include a waiver of subrogation by insurer as to the Landlord Parties.
§1.9	Deletion of Personal Injury Exclusion to Contractual Liability Coverage	The personal injury contractual liability exclusion shall be deleted.
§1.10	Notice	This insurance is to contain a provision for 30 days' prior written notice by insurance carrier to the Landlord required for cancellation [or material change].
§1.11	Prohibited Endorsements	<p>The following exclusions/limitations (or their equivalents) are not permitted:</p> <ul style="list-style-type: none"> a. ISO CG 21 39 Contractual Liability Limitation. b. ISO CG 24 26 Amendment Of Insured Contract Definition. c. ISO CG 21 44 Limitation of Coverage to Designated Premises or Project. d. Any endorsement modifying or deleting the exception to the Employer's Liability exclusion. e. Any "Insured vs. Insured" exclusion. f. Any type of punitive, exemplary or multiplied damages exclusion. h. ISO CG 22 34 04 13 Exclusion – Construction Management Errors and Omissions. i. ISO CG 22 79 04 13 Exclusion – Contractors – Professional Liability.
§1.12	Electronic Data Endorsement	This insurance is to include an Electronic Data Liability endorsement, ISO CG 04 37 with coverage to the full limits of the policy.
§1.13	Certificate of Insurance	A copy of the required Endorsements along with the Schedule of Forms and Endorsements page of the policy listing the required Endorsements as issued modifications to the policy shall be attached to the Certificate of Insurance provided by Tenant's contractor to Landlord.
§2.	Business Auto Liability. Tenant's contractor is to maintain a Business Auto Policy issued on an Occurrence Basis meeting at least the following specifications.	
§2.1	Minimum Limits	Limits of coverage are to be not less than \$1,000,000 per Accident.
§2.2	Form	This insurance is to be issued on the current edition of the ISO CA 00 01.
§2.3	Scope	This insurance is to cover damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of any auto (Symbol 1), including owned, hired and nonowned.

No.	Specifications	Coverages, Limits & Other Requirements
§2.4	Waiver of Subrogation	This insurance is to include a waiver of subrogation by insurer as to the Landlord Parties.
§3.	Workers' Compensation and Employer's Liability. Tenant's contractor is to maintain workers' compensation and employer's liability insurance meeting at least the following specifications.	
§3.1	WC Limits	The minimum limits of this insurance shall be no less than the statutory limits.
§3.2	EL Limits	The minimum limits of coverage are subject to the periodic review and approval by Landlord, but are not to be less than \$1,000,000 each Accident or Disease.
§3.3	USL&H	USL&H coverage must be provided where such exposure exists.
§3.4	Territory	Where work is to be performed must be listed under Item 3.A. on the Information Page of the policy.
§3.5	Scope	This insurance is to cover liability arising out of the Tenant's contractor's employment of workers and anyone for whom the contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance are permitted.
§3.6	Leased Employees	Where a Professional Employer Organization ("PEO") or "leased employees" are utilized, Tenant's contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Landlord.
§3.7	Notice	Contain a provision for 30 days' prior written notice by insurance carrier to the Landlord required for cancellation [or material change].
§3.8	Waiver of Subrogation	Include a waiver of subrogation by insurer as to the Landlord Parties.
B. PROPERTY		
§1.	Builder's Risk Insurance. Tenant's contractor is to maintain builder's risk insurance meeting at least the following specifications.	
§1.1	Amount	Limits of coverage are to be the Initial Contract Sum, plus an amount to be acceptable to Landlord, to increase by amount of subsequent modification of the Contract Sum. Coverage shall be provided in amount equal at all times to the full replacement value and costs of debris removal for any single occurrence. Coverage is to include Contractor's overhead and profit.
§1.2	Covered Property	<p>The following property is to be insured:</p> <ul style="list-style-type: none"> a. All structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, pilings, underground pipes and wiring, excavations, grading, backfilling or filling. b. All temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site. c. All property including materials and supplies on site for installation. d. All property including materials and supplies at other locations but intended for use at the site. e. All property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit. f. Other Work at the site identified in the Lease. g. Other property for which an insured is liable regarding the project. h. Sod, trees, shrubs and plants.

No.	Specifications	Coverages, Limits & Other Requirements	
§1.3	Deductibles	Deductibles shall not exceed an amount acceptable to Landlord.	
§1.4	Insureds	Insureds shall include: <ol style="list-style-type: none"> a. Landlord, Contractor and all Loss Payees and Mortgagees as Named Insureds. b. Tenant, and other tenants designated by Landlord to Contractor. c. Subcontractors of all tiers. 	
§1.5	Form	Causes of Loss – Special Form. Coverage on this insurance is to be written to cover “all risks” of physical loss except those specifically excluded in the policy, and all exclusions must be pre-approved by Landlord and Contractor, and coverage shall be at least as broad as an unmodified ISO Causes of Loss – Special Form, and shall insure at least against the perils of fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, theft, vandalism, malicious mischief, and collapse and such additional perils and coverages as indicated below, with each of the perils as added as a cause of loss, if not otherwise listed in the policy as a cause of loss. <ol style="list-style-type: none"> a. Completed Value Basis. This insurance is to be written on a Completed-Value, Non-Reporting form basis. b. Insureds Other Insurance Excess and Noncontributing. Builder’s Risk shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing. 	
§1.6	Prohibition	No protective safeguard warranty is permitted.	
§1.7	Coverage and Minimum Sublimits	Required Endorsements as to Coverage & Limits. To include	
		Coverage	Minimum Sublimit
		Additional expenses due to delay in completion of project and contract penalties	Amount subject to approval by Landlord.
		Agreed Value	Included without sublimit.
		Business income/rental value	Amount subject to approval by Landlord.
		Collapse	Included without sublimit.
		Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse and ensuing loss	Included without sublimit.
		Debris removal including demolition as may be made legally necessary by operation of any law, ordinance, or regulation	[Included without sublimit.][\$ __.]
		Faulty or defective planning, designs, materials or maintenance resulting in damage to Covered Property, including collapse	Included without sublimit.
		Mechanical breakdown, including hot & cold testing	Amount subject to approval by Landlord.
		Occupancy pre-completion clause	To be included.
		Ordinance or law	Included without sublimit.
		Pollutant cleanup and removal	\$ __.

No.	Specifications	Coverages, Limits & Other Requirements	
		Property in transit	\$__.
		Preservation of property	Included without sublimit.
		Property off premises	\$__.
		Replacement cost	To be included.
		Soft costs	Amount subject to approval by Landlord.
		Terrorism	Amount subject to approval by Landlord.
		Theft	Included without sublimit.
		Waiver of subrogation	To be included.
		[Earthquake, earth movement	\$__.]
		[Earthquake sprinkler leakage	\$__.]
		[Flood	\$__.]
		[Landscaping	\$__.]
		[Volcanic activity	\$__.]
§1.8	Term and Termination	<p>The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed. This insurance shall be maintained in effect, unless otherwise provided for the Contract Documents, until the earliest of the following dates:</p> <ol style="list-style-type: none"> The date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; The date of final payment, as provided for in the Contract Documents; or The date on which the insurable interests in the Covered Property of all insureds other than Tenant’s Contractor have ceased. 	
§2.	Boiler and Machinery Insurance. This coverage may be included in the builder’s risk policy or be by a separate policy.		
§3.	Contractor’s Pollution Liability. Tenant’s contractor is to maintain Contractor’s Pollution Liability insurance issued meeting at least the following specifications.		
§3.1	Coverage	Contractor shall provide Contractor’s Pollution Liability (“CPL”) insurance providing third party liability coverage for bodily injury, property damage, clean up expenses, and defense arising from the operations of the Contractor. Coverage provided in the policy shall apply to operations and completed operations of the Contractor without separate restrictions for either of these time frames. Mold, microbial matter, fungus and biological substances shall be specifically included within the definition of “pollutants” in the Policy.	
§3.2	Limits	Coverage is to be provided with a limit of not less than \$1,000,000.	
§3.3	Form	This insurance shall include prior acts coverage sufficient to cover all services rendered by the Contractor and by its consultants. This coverage may be provided on a claims-made basis.	
§3.4	Endorsements	Landlord shall be listed as an additional insured. There shall be no separate limitation for the time period of this additional insured status within the additional insured endorsement.	
§3.5	Notice	This insurance is to be endorsed to give Landlord at least 30 days’ advance notice of	

No.	Specifications	Coverages, Limits & Other Requirements
		cancellation of [or material change] in coverage.
§3.6	Waiver of Subrogation	This insurance is to be endorsed to waive subrogation against the Landlord Parties.

C. OTHER INSURANCE. Tenant is to maintain such other insurance against other insurable liabilities or hazards as Landlord may from time to time reasonably require.

3.Policies To Be Provided By Landlord. Subject to Landlord’s judgment, Landlord is to provide the following insurance:

No.	Specifications	Coverages, Limits & Other Requirements												
A. LIABILITY														
§1.	Commercial General Liability. Landlord is to maintain commercial general liability insurance (“CGL”) issued on an Occurrence Basis meeting at least the following specifications.													
§1.1	Minimum Limits	<p>The minimum limits of coverage are subject to the periodic review and approval by Landlord, but are not to be less than the following amounts:</p> <table border="1"> <tbody> <tr> <td>\$ __,000,000</td> <td>Per Occurrence.</td> </tr> <tr> <td>\$ __,000,000</td> <td>General Aggregate.</td> </tr> <tr> <td>\$ __,000,000</td> <td>Product-Completed Operations Aggregate Limit.</td> </tr> <tr> <td>\$ _____</td> <td>Personal and Advertising Injury limit.</td> </tr> <tr> <td>\$ _____</td> <td>Damage to Premises Rented to You Limit.</td> </tr> <tr> <td>\$ _____</td> <td>Medical Expense Limit.</td> </tr> </tbody> </table>	\$ __,000,000	Per Occurrence.	\$ __,000,000	General Aggregate.	\$ __,000,000	Product-Completed Operations Aggregate Limit.	\$ _____	Personal and Advertising Injury limit.	\$ _____	Damage to Premises Rented to You Limit.	\$ _____	Medical Expense Limit.
\$ __,000,000	Per Occurrence.													
\$ __,000,000	General Aggregate.													
\$ __,000,000	Product-Completed Operations Aggregate Limit.													
\$ _____	Personal and Advertising Injury limit.													
\$ _____	Damage to Premises Rented to You Limit.													
\$ _____	Medical Expense Limit.													
§1.2	General Aggregate	If the CGL insurance contains a General Aggregate limit, it shall apply separately to this Property.												
§1.3	Form	This insurance is to be on the current edition of an ISO CG 00 01 .												
§1.4	Waiver of Subrogation	This insurance is to be endorsed with an ISO CG 24 04 Waiver of Transfer of Rights of Recovery Against Others Endorsement to include a waiver of subrogation by insurer as to the Landlord Parties and other persons as may be designated by Landlord.												
B. PROPERTY														
§1.	Property Insurance on Causes of Loss - Special Form. Landlord is to maintain property insurance on a Causes of Loss – Special Form meeting at least the following specifications. This insurance is formerly known as “all risk”.													
§1.1	Coverage	This insurance is to be issued for 100% of Replacement Cost, on an Agreed Value basis, for the Project including all Buildings [including the leasehold improvements] [up to the amount of the Construction Allowance for the initial Tenant Improvements] [excluding Tenant Improvements and Betterments] and all Landlord-owned equipment and other property used in connection therewith.												
§1.2	Form	This insurance is to be issued on an ISO CP 10 30 .												

§1.3	Insureds	This insurance is to name as insureds Landlord and such other persons as may be designated by Landlord.
§1.4	Required Endorsements as to Coverage/Limits	This insurance is to be endorsed to include coverages as shall be required by Landlord, but may include Business Income and Extra Expense; Rental Value; Glass; Ordinance or Law; Terrorism; Signs.
§1.5	Waiver of Subrogation	This insurance is to include a waiver of subrogation by insurer as to the Landlord, Tenant and other persons as may be designated by Landlord.

B. GENERAL INSURANCE REQUIREMENTS

1. **Definitions.** For purposes of this Lease:

a. Landlord Parties. “Landlord Parties” means (a) _____ (“Landlord”), (b) the project manager, (c) any lender whose loan is secured by a lien against the Leased Premises, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, and (e) any directors, officers, employees, or agents of such persons or entities.

b. Tenant. “Tenant” means (a) _____ and (b) subtenants of any tier.

c. ISO. “ISO” means Insurance Services Office.

2. **Policies.**

a. Insurer Qualifications. All insurance required to be maintained by Tenant must be issued by carriers having a Best’s Rating of A or better, and a Best’s Financial Size Category of VIII, or better, and/or Standard & Poor Insurance Solvency Review A-, or better, and authorized to engage in the business of insurance in the State in which the Improvements are located.

b. No Waiver. Failure of Landlord to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Landlord to identify a deficiency from evidence that is provided shall not be construed as a waiver of Tenant’s obligation to maintain such insurance.

c. Delivery Deadlines. Tenant shall provide Landlord within 10 days of Landlord’s request with certified copies of all insurance policies. Renewal policies, if necessary, shall be delivered to the Landlord prior to the expiration of the previous policy.

d. Occupancy. Commencement of occupancy without provision of the required certificate of insurance and/or required endorsements, or without compliance with any other provision of this Lease, shall not constitute a waiver by any Landlord Party of any rights. The Landlord shall have the right, but not the obligation, of prohibiting the Tenant or any subtenant from occupying the Leased Premises until the certificate of insurance and/or required endorsements are received and approved by the Landlord.

3. **Limits, Deductibles and Retentions.**

a. Coverage Limits. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

b. Deductible and Retention Limits. No deductible or self-insured retention shall exceed \$_____ without prior written approval of the Landlord, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Tenant’s sole risk. The Tenant shall not be reimbursed for same.

c. Policy Limits. “Limits” set out in these specifications are the minimum dollar amount of insured coverage for the risk or peril specified. If Tenant or its contractors maintain greater limits, then these specifications shall not limit the amount of recovery available to Landlord and Landlord the limits specified below as the minimum limits are increased to the greater limits.

4. **Forms.**

a. Approved Revisions and Substitutions. If the forms of policies, endorsements, certificates, or evidence of insurance required by these specifications are superseded or discontinued, Landlord will have the right to require other equivalent forms.

b. Approved Forms. Any policy or endorsement forms other than a form specified in this Exhibit must be approved in advance by Landlord.

c. Compliance with Laws. If any additional insured requirements are deemed to violate any law, statute or ordinance, the additional insured requirements, including any additional insured policy provision or endorsements procured pursuant to this Lease, shall be reformed to provide the maximum amount of protection to the Landlord Parties as allowed under the law.

5. **Evidence of Insurance.** Insurance must be evidenced as follows:

a. Form. Liability insurance: ACORD™ Form 25 (2010/05) *Certificates of Liability Insurance* for liability coverages. Property Insurance: ACORD™ Form 28 (2011/11) *Evidence of Commercial Property Insurance* for property coverages.

b. Delivery Deadlines. Evidence to be delivered to Landlord prior to entry on Leased Premises and thereafter at least 30 days prior to the expiration of current policies or on replacement of each certified coverage and within 10 days of Landlord's request for an updated certificate.

c. Certificate Requirements. Certificates must:

(1) **Insured.** State the insured's name and address.

(2) **Insurer.** State the name of each insurance company affording each coverage, policy number of each coverage, policy dates of each coverage, all coverage limits and sublimits, if any, by type of coverage, and show the signature of the authorized representative signing the certificate on behalf of the insurer.

(3) **Additional Insured Status and Subrogation Waiver.** Specify the additional insured status and waivers of subrogation as required by these specifications.

(4) **Primary Status.** State the primary and non-contributing status required herein.

(5) **Deductibles and Self-Insured Retentions Stated.** State the amounts of all deductibles and self-insured retentions.

(6) **Copy of Endorsements and Policy Declaration Page.** Be accompanied by certified copies of all required endorsements and policy declaration page reflecting issuance of the endorsements.

(7) **Notices.** Be accompanied by insurer certified copy of notice of cancellation endorsement providing that 30 days' notice of cancellation [and material change] will be sent to the certificate holder.

(8) **Certificate Holder.** Be addressed to the Landlord as the certificate holder and show Landlord's correct address. A separate certificate is to be addressed and delivered to Landlord's lender.

(9) **Producer.** State the producer of the certificate with correct address and phone number listed.

(10) **Authorized Representative.** Be executed by a duly authorized representative of the insurers.

6. Tenant Insurance Representations to Landlord Parties.

a. Minimum Requirements. It is expressly understood and agreed that the insurance coverages required herein (a) represent Landlord Parties' minimum requirements and are not to be construed to void or limit the Tenant's indemnity obligations as contained in this Lease nor represent in any manner a determination of the insurance coverages the Tenant should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Tenant in support of the Tenant's liability and indemnity obligations under this Lease. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Tenant, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Lease.

b. Defaults. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Lease. If the Tenant shall fail to remedy such breach within five business days after notice by the Landlord, the Tenant will be liable for any and all costs, liabilities, damages and penalties resulting to the Landlord Parties from such breach, unless a written waiver of the specific insurance requirement is provided to the Tenant by the Landlord. In the event of any failure by the Tenant to comply with the provisions of this Lease, the Landlord may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Tenant, purchase such insurance, at the Tenant's expense, provided that the Landlord shall have no obligation to do so and if the Landlord shall do so, the Tenant shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

c. Survival. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Lease.

7. Insurance Requirements of Tenant's Subtenants.

a. Subtenant Coverage. If Tenant is permitted by the Lease to sublease any space, insurance similar to that required of the Tenant shall be provided by all subtenants (or provided by the Tenant on behalf of subtenants) to cover operations performed under any sublease agreement. The Tenant shall be held responsible for any modification in these insurance requirements as they apply to subtenants. The Tenant shall maintain certificates of insurance from all subtenants containing provisions similar to those listed herein (modified to recognize that the certificate is from subtenants) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Landlord upon request.

b. Subtenant's Waiver of Recovery; Subtenant's Waiver of Subrogation. Tenant is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Tenant's or its subtenant's property shall be the Tenant's and its subtenant's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Tenant shall not be reimbursed for same. Should the Tenant or its subtenants choose to self-insure this risk, it is expressly agreed that the Tenant hereby waives, and shall cause its subtenants to waive, any claim for damage or loss to said property in favor of the Landlord Parties.

8. Use of the Landlord's Property.

Tenant, its agents, employees, subtenants or suppliers shall use the Landlord's property only with express written permission of the Landlord's designated representative and in accordance with the Landlord's terms and conditions for such use. If the Tenant or any of its agents, employees, subtenants or suppliers utilize any of the Landlord's property for any purpose, including machinery, equipment or similar items owned, leased or under the control of the Landlord, the Tenant shall defend, indemnify and be liable to the Landlord Parties for any and all loss or damage which may arise from such use.

9. INDEMNITY, RELEASE AND WAIVER.

a. WAIVER OF CLAIMS. TO THE EXTENT PERMITTED BY LAW, EACH OF TENANT AND LANDLORD (THE "RELEASING PARTY") RELEASES AND WAIVES ANY CLAIMS IT MAY HAVE AGAINST THE OTHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (THE "RELEASED PERSONS") FOR BUSINESS INTERRUPTION OR DAMAGE TO PROPERTY SUSTAINED BY THE RELEASING PARTY AS THE RESULT OF ANY ACT OR OMISSION OF THE RELEASED PERSON IN ANY WAY CONNECTED WITH ANY LOSS COVERED BY INSURANCE, WHETHER REQUIRED HEREIN OR NOT, OR WHICH SHOULD HAVE BEEN COVERED BY INSURANCE REQUIRED HEREIN, INCLUDING THE DEDUCTIBLE AND/OR UNINSURED PORTION THEREOF, MAINTAINED AND/OR REQUIRED TO BE MAINTAINED BY THE RELEASING PARTY PURSUANT TO THIS LEASE. THE WAIVER OF CLAIMS CONTAINED IN THIS SECTION 9.a (A) WILL SURVIVE THE END OF THE TERM AND (B) WILL APPLY EVEN IF THE LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PERSONS BUT WILL NOT APPLY TO THE EXTENT A LOSS OF DAMAGE IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PERSONS.

b. INDEMNIFICATION.

(1) **TENANT.** TO THE EXTENT PERMITTED BY LAW, TENANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE LANDLORD PARTIES AGAINST ANY CLAIM BY ANY THIRD PARTY FOR INJURY TO ANY PERSON OR DAMAGE TO OR LOSS OF ANY PROPERTY OCCURRING IN OR AROUND THE PROJECT AND ARISING FROM THE USE OR OCCUPANCY OF THE LEASED PREMISES OR FROM ANY OTHER ACT OR OMISSION OR NEGLIGENCE OF TENANT OR SUBTENANTS OR ANY OF TENANT'S OR SUBTENANT'S OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS OR AGENTS.

(2) **LANDLORD.** TO THE EXTENT PERMITTED BY LAW, LANDLORD SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS TENANT AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AGAINST ANY CLAIM BY ANY THIRD PARTY FOR INJURY TO ANY PERSON OR DAMAGE TO OR LOSS OF ANY PROPERTY OCCURRING IN THE PROJECT AND ARISING FROM ANY ACT OR OMISSION OR NEGLIGENCE OF ANY OF THE LANDLORD PARTIES.

(3) **PROPORTIONATE RESPONSIBILITY.** THE INDEMNITIES CONTAINED IN THIS SECTION 9.b ARE (A) INDEPENDENT OF TENANT'S AND LANDLORD'S INSURANCE (AS APPLICABLE), (B) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, AND (C) WILL SURVIVE THE END OF THE TERM. NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, TO THE EXTENT THE INDEMNIFIED LIABILITY, LOSS, COST, DAMAGE OR EXPENSE ARISES OUT OF THE JOINT, CONCURRENT OR COMPARATIVE NEGLIGENCE, CAUSATION, RESPONSIBILITY OR FAULT OF TENANT AND LANDLORD, WHETHER NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTY, EXPRESS OR IMPLIED, PRODUCTS LIABILITY, BREACH OF THE TERMS OF THIS LEASE OR WILLFUL MISCONDUCT, THEN THE INDEMNIFYING PARTY'S OBLIGATION TO THE INDEMNIFIED PERSONS SHALL ONLY EXTEND TO THE PERCENTAGE OF TOTAL RESPONSIBILITY OF THE INDEMNIFYING PARTY IN CONTRIBUTING TO SUCH LIABILITY, LOSS, COST, DAMAGE OR EXPENSE OF THE INDEMNIFIED PERSONS.

10. Self-Insurance, Large Deductibles and/or Retentions.

a. Continued Liability of Tenant. If Tenant elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding \$_____, Landlord and Tenant shall maintain all rights and obligations between themselves as if Tenant maintained the insurance with a commercial insurer including any additional insured status, primary liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. Tenant shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Tenant had maintained the insurance pursuant to this Exhibit.

b. Deductibles, Retentions and Uninsured Losses. All deductibles, retentions, and/or uninsured amounts shall be paid by, assumed by, for the account of, and at Tenant's sole risk. Landlord shall not be responsible for payment of any deductible or self-insured retention or uninsured amount.

c. Financial Test. The Tenant's right to self-insure shall terminate at any time (a) Tenant's net worth, as reported in its latest annual report, or audited financial statement prepared in accordance with GAAP, drops below \$_____, (b) Tenant's Moody's rating on its long-term debt drops below investment grade, or (c) Tenant fails to maintain adequate loss reserves to fund its self-insurance obligations.

B. INSURANCE SPECIFICATIONS

2. Construction.

Exhibit A - Owner's Insurance Specifications for Contractor

This Exhibit (the “Insurance Specifications”) is attached as an Exhibit as part of the Contract Documents. In the event of conflict between any of the following Insurance Specifications with any provision in the Contract Documents, these Insurance Specifications control, amend and supplement the conflicting provision.

A. Specifications, Coverages, Limits & Other Requirements

No.	Specifications	Coverages, Limits and Other Requirements								
A. LIABILITY										
§1.	Commercial General Liability.	Contractor is to maintain commercial general liability (“CGL”) insurance and, if necessary, commercial excess insurance, issued on an Occurrence Basis meeting at least the following specifications.								
§1.1	Minimum Limits	The limits of coverage shall not be less than the following amounts: <table border="1" style="margin-left: 20px;"> <tr> <td style="text-align: center;">\$5,000,000</td> <td style="text-align: center;">Per Occurrence</td> </tr> <tr> <td style="text-align: center;">\$5,000,000</td> <td style="text-align: center;">General Aggregate</td> </tr> <tr> <td style="text-align: center;">\$5,000,000</td> <td style="text-align: center;">Products and Completed Operations Aggregate</td> </tr> <tr> <td style="text-align: center;">\$5,000,000</td> <td style="text-align: center;">Personal and Advertising Injury</td> </tr> </table>	\$5,000,000	Per Occurrence	\$5,000,000	General Aggregate	\$5,000,000	Products and Completed Operations Aggregate	\$5,000,000	Personal and Advertising Injury
\$5,000,000	Per Occurrence									
\$5,000,000	General Aggregate									
\$5,000,000	Products and Completed Operations Aggregate									
\$5,000,000	Personal and Advertising Injury									
§1.2	General Aggregate	The General Aggregate shall apply separately to this project.								
§1.3	Post-Completion Coverage	Contractor agrees to maintain Products-Completed Operations coverage with respect to the Work performed under the Agreement in identical coverage, form and amount, including required endorsements, for the full term of the Statute of Repose following Date of Substantial Completion of the Work. Contractor shall provide written representation to Owner stating Work completion date.								
§1.4	Form	This insurance is to be issued on an ISO CG 00 01, or equivalent, and shall coverage liability arising from premises, operations, _____								
§1.5	Insured Contracts	Coverage shall include but not be limited to liability assumed by Contractor under the Agreement to which this Exhibit is attached, including the tort liability of another assumed in a business contract.								
§1.6	Additional Insureds	Additional Insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01.								
§1.7	Primary and Noncontributory	This insurance shall be endorsed to provide primary and noncontributing liability coverage by ISO CG 20 01 04 13. It is the specific intent of the parties to the Agreement that all insurance required herein shall be primary to and shall seek no contribution from all insurance held by Owner Parties, with Owner Parties’ insurance being excess, secondary and noncontributing.								
§1.8	Electronic Data	This insurance is to include an Electronic Data Liability endorsement ISO CG 04 37 with coverage to the full limits of the policy.								
§1.9	Personal Injury Contractual Liability	The personal injury contractual liability exclusion shall be deleted.								
§1.10	Prohibitions	The following exclusions/limitations or their equivalents are not permitted: <ol style="list-style-type: none"> a. Contractual Liability Limitation ISO CG 21 39 b. Amendment of Insured Contract Definition ISO CG 24 26 c. Limitation of Coverage to Designated Premises or Project ISO CG 21 44 d. Exclusion-Damage to Work Performed by Subcontractors On Your Behalf ISO CG 22 94 or CG 22 95 e. Exclusion-Explosion, Collapse and Underground Property Damage Hazard, ISO CG 21 42 or CG 21 43 f. Any Classification limitation g. Any Construction Defect Completed Operations exclusion h. Any endorsement modifying the Employer’s Liability exclusion or deleting the exception to it i. Any endorsement modifying or deleting Explosion, Collapse or Underground coverage j. Any Habitational or Residential exclusion k. Any “Insured vs. Insured” exclusion except Named Insured vs. Named Insured l. Any Punitive, Exemplary or Multiplied Damages exclusion m. Any Subsidence exclusion 								

§2.	Business Auto Liability. Contractor is to maintain business auto insurance meeting at least the following specifications.	
§2.1	Minimum Limits	The limits of liability shall be no less than \$5,000,000 per accident.
§2.2	Form	This insurance is to be issued on the current edition of the ISO CA 00 01
§2.3	Scope	This insurance is to coverage damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of any auto, including owned, hired and non-owned autos.
§3.	Workers' Compensation and Employer's Liability. Contractor is to maintain workers' compensation and employer's liability insurance meeting at least the following specifications.	
§3.1	Workers' Compensation Limits	The minimum limits of this insurance shall be no less than the statutory limits.
§3.2	Employer's Liability Limits	The minimum limits of this insurance shall be no less than \$5,000,000 each accident and disease.
§3.3	Territory	The state in which the Work is to be performed must be listed under Item 3.A. on the Information Page of the policy.
§3.4	Scope	This insurance is to cover liability arising out the Contractor's employment of workers and anyone for whom the contractor may be liability for workers' compensation claims. Worker's compensation insurance is required and no "alternative" form of insurance is permitted.
§3.5	Prohibitions	Employees leased through a Professional Employment Organization ("PEO") are not permitted.
§3.6	Stop Gap	Stop Gap coverage must be provided if Work is to be performed in a monopolistic state, listing the state in which Work is to be performed.
§3.7	United States Longshoremen and Harborworkers ("USL&H")	USL&H coverage must be provided where such exposure exists listing the state in which Work is to be performed.
§4.	Excess Liability. If any of the required coverages are to be maintained by and through excess liability insurance, Contractor is to maintain excess liability insurance meeting at least the following specifications.	
§4.1	Scope	This insurance shall be excess over and be no less broad than all coverages and conditions described above. The policy limits required herein may be provided by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident by less than the amount required herein.
§4.2	Concurrency	Such coverage shall have the same inception date as the commercial general liability and employer's liability coverages.
§4.3	Drop Down Coverage	Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.
§4.4	Defense Costs	This insurance is to include a duty to defend any insured.
§5.	Professional Liability. Contractor is to maintain Professional Liability insurance meeting at least the following specifications.	
§5.1	Minimum Limits	Limits of coverage shall be no less than: \$1,000,000 each loss \$2,000,000 annual aggregate If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.
§5.2	Scope	Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement, including but not limited to design or design/build services.
§5.3	Retroactive Date	Any retroactive date must be effective prior to beginning of services for the Owner.
§5.4	Prohibitions	This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: a. bodily injury or property damage where coverage is provided in behalf of design professionals or design/build contractors; b. habitational or residential operations; c. mold and/or microbial matter and/or fungus and/or biological substance; or d. punitive, exemplary or multiplied damages. A professional liability endorsement to a general liability policy is not acceptable.
§5.5	Term	B. Policies written on a Claims-Made basis shall be maintained for at least two years beyond termination of the Agreement. The purchase of an extended discovery period or an extended§

		reporting period on a Claims-Made policy will not be sufficient to meet the terms of this provision.
§6.	Pollution Liability.	If any of the required coverages are to be maintained by and through excess liability insurance, Contractor is to maintain excess liability insurance meeting at least the following specifications.
§6.1	Minimum Limits	Limits of coverage shall be no less than: \$1,000,000 each loss \$2,000,000 annual aggregate If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.
	Scope	The policy must provide coverage for: a. the full scope of the named insured's operations (on-going and completed) as described within the scope of work for this Agreement b. loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall c. third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations; d. diminution of value and Natural Resources damages e. contractual liability f. claims arising from owned and non-owned disposal sites utilized in the performance of this Agreement. Coverage extensions to the General Liability insurance policy without a separate insurance agreement for Contractors Pollution Liability insurance will not fulfill this requirement
	Additional Insured and Primary and Noncontributory	The policy must insure contractual liability, name Owner Parties as an Additional Insured, and be primary and noncontributory to all coverage available to the Additional Insured.
	Retroactive Date	If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of this Agreement or the commencement of contractor services relation to the Work.
	Prohibitions	This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: a. Insured vs. insured actions. However exclusion for claims made between insured within the same economic family are acceptable. b. impaired property that has not been physically injured c. materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval. d. property damage to the work performed by the contractor e. faulty workmanship as it relates to clean up costs f. punitive, exemplary or multiplied damages g. work performed by subcontractors h. contractual liability incurred as a result of an injury to an employee of the insured.
	Term	Completed operations coverage shall be maintained for a minimum of 7 years after the completion of work. (The extended reporting period on a claims made based policy does not fulfill this requirement) CPL insurance policies insuring a specific job shall have completed operations coverage for at least the duration of the work plus 7 years.
C. PROPERTY		
§7.0	Builder's Risk.	Contractor is to maintain "all risk" builder's risk at all times prior to acceptance of the Work by Owner.
§7.1	Amount	Limits of coverage are to be the initial contract sum as increased by amount of subsequent modification of the contract sum. Coverage shall be provided in amount equal at all times to the full replacement value and cost of debris removal for any single occurrence.
§7.2	Covered Property	Such insurance shall cover: a. All structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling. b. All temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site. c. All property including materials and supplies on site for installation. d. All property including materials and supplies at other locations but intended for use at the site. e. All property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit. f. Other property for which an insured is liable regarding the project.

§7.3	Insureds	Insureds shall include: a. Owner, Contractor, and all Loss Payees and Mortgagees as Named Insureds b. Subcontractors of all tiers.	
§7.4	Deductible(s)	Deductibles shall not exceed: D.	
		a. All Risks of Direct Damage, Per Occurrence, except	\$10,000
		b. Delayed Opening Waiting Period	5 days
		c. Earthquake and Earthquake Sprinkler Leakage, Per Occurrence	\$50,000
		d. Flood, Per Occurrence or excess of maximum available through National Flood Insurance Program	\$50,000
§7.5	Form	Coverage shall be at least as broad as an unmodified ISO Special Causes of Loss form and shall include coverage for theft, collapse, flood and earthquake. All exclusions must be pre-approved by Owner. This insurance is to be written on a Completed Value, non-reporting form basis and shall be primary to any other insurance coverage available to the named insureds, with that other insurance being excess, secondary and noncontributing.	
§7.6	Prohibition	No protective safeguard warranty is permitted.	
§7.7	Coverage and Minimum Sublimits	Coverage	Minimum Sublimit
		Additional expenses due to delay in completion of project (where applicable)	TBD
		Agreed Value	Included without sublimit
		Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse and ensuing loss	Included without sublimit
		Debris removal additional limit	Included without sublimit
		Earthquake and Earthquake Sprinkler Leakage	\$1,000,000
		Flood	\$1,000,000
		Freezing	Included without sublimit
		Mechanical breakdown including hot & cold testing (where applicable)	Included without sublimit
		Occupancy pre-completion	
		Ordinance or law	Included without sublimit
		Pollutant clean-up and removal	\$1,000,000
		Preservation of property	Included without sublimit
		Replacement cost	Included without sublimit
		Theft	Included without sublimit
§7.8	Occupancy	The termination of coverage provision shall be endorsed to permit occupancy of the coverage property being constructed.	
§7.9	Term and Termination	This insurance shall be maintained in effect, unless otherwise provided for in the Contract Documents, until the earliest of the following dates: a. The date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; b. The date of final payment, as provided for in the Contract Documents; or c. The date on which the insurable interests in the Covered Property of all insureds other than Contractor have ceased.	

B. GENERAL INSURANCE REQUIREMENTS

1. **Definitions.** For purposes of this Lease:

a. Owner Parties. "Owner Parties" means (a) _____ ("Owner"), (b) the project manager, (c) any lender whose loan is secured by a lien against the Property, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Construction Documents.

b. Contractor. "Contractor" means _____ and subcontractors of any tier.

c. ISO. "ISO" means Insurance Services Office.

2. **Policies.**

a. Insurer Qualifications. All insurance required to be maintained by Contractor must be issued by carriers having a Best's Rating of A or better, and a Best's Financial Size Category of VIII, or better, and/or Standard & Poor Insurance Solvency Review A-, or better, and authorized to engage in the business of insurance in the State in which the Improvements are located.

b. No Waiver. Failure of Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Contract, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

c. Delivery Deadlines. Contractor shall provide Owner within 10 days of Owner's request with certified copies of all insurance policies. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.

d. Waiver of Subrogation. All policies maintained by Contractor, whether required herein or not, shall contain a waiver of subrogation in favor of the Owner Parties.

e. Notice. All policies maintained by Contractor shall provide for 30 days prior written notice of cancellation to Owner.

f. Compliance With Laws. If any insurance requirements are deemed to violate any law, statute or ordinance, the insurance requirements shall be reformed to provide the maximum amount of protection to Owner as allowed under the law.

3. **Limits, Deductibles and Retentions.**

a. Coverage Limits. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

b. Deductible and Retention Limits. No deductible or self-insured retention shall exceed \$_____ without prior written approval of the Owner, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same.

c. Policy Limits. "Limits" set out in these specifications are the minimum dollar amount of insured coverage for the risk or peril specified. If Contractor or its contractors maintain greater limits, then these specifications shall not limit the amount of recovery available to Owner and Owner the limits specified below as the minimum limits are increased to the greater limits.

d. Post Completion Coverage. With respect to the insurance to be maintained after final payment to Contractor, an additional certificate(s) evidencing such coverage shall be provided to Owner with final application for payment if prior certificate has expired, and thereafter upon renewal or replacement of such insurance until the expiration of the time period for which such insurance must be maintained.

e. Use of the Owners Equipment. The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use. If the Contractor or any of its agents, employees, subcontractors or suppliers utilize any of the Owners equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the Contractor shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use.

4. **Forms.**

a. Approved Revisions and Substitutions. If the forms of policies, endorsements, certificates, or evidence of insurance required by these specifications are superseded or discontinued, Owner will have the right to require other equivalent forms.

b. Approved Forms. Any policy or endorsement forms other than a form specified in this Exhibit must be approved in advance by Owner.

c. Compliance with Laws. If any additional insured requirements are deemed to violate any law, statute or ordinance, the additional insured requirements, including any additional insured policy provision or endorsements procured pursuant to this Contract, shall be reformed to provide the maximum amount of protection to the Owner Parties as allowed under the law.

5. Evidence of Insurance. Insurance must be evidenced as follows:

a. Form. Liability insurance: ACORD™ Form 25 (2010/05) *Certificates of Liability Insurance* for liability coverages. Property Insurance: ACORD™ Form 28 (2011/11) *Evidence of Commercial Property Insurance* for property coverages.

b. Delivery Deadlines. Evidence to be delivered to Owner prior to entry on the Property and thereafter at least 30 days prior to the expiration of current policies or on replacement of each certified coverage and within 10 days of Owner's request for an updated certificate.

c. Certificate Requirements. Certificates must:

(1) Insured. State the insured's name and address.

(2) Insurer. State the name of each insurance company affording each coverage, policy number of each coverage, policy dates of each coverage, all coverage limits and sublimits, if any, by type of coverage, and show the signature of the authorized representative signing the certificate on behalf of the insurer.

(3) Additional Insured Status and Subrogation Waiver. Specify the additional insured status and waivers of subrogation as required by these specifications.

(4) Primary Status. State the primary and non-contributing status required herein.

(5) Deductibles and Self-Insured Retentions Stated. State the amounts of all deductibles and self-insured retentions.

(6) Copy of Endorsements and Policy Declaration Page. Be accompanied by certified copies of all required endorsements and policy declaration page reflecting issuance of the endorsements.

(7) Notices. Be accompanied by insurer certified copy of notice of cancellation endorsement providing that 30 days' notice of cancellation [and material change] will be sent to the certificate holder.

(8) Certificate Holder. Be addressed to the Owner as the certificate holder and show Owner's correct address. A separate certificate is to be addressed and delivered to Owner's lender.

(9) Producer. State the producer of the certificate with correct address and phone number listed.

(10) Authorized Representative. Be executed by a duly authorized representative of the insurers.

d. Suspension. Owner shall have the right, but not the obligation, of suspending Contractor's services, without an increase in the sum payable by Owner to Contractor due to such suspension, until such certificates or other evidence that the required insurance has been placed in compliance with these requirements is received and approved by Owner.

6. Contractor Insurance Representations to Owner Parties.

a. Minimum Requirements. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Contract nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Contract. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Contract.

b. Defaults. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Contract. If the Contractor shall fail to remedy such breach within five business days after notice by the Owner, the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement is provided to the Contractor by the Owner. In the event of any failure by the Contractor to comply with the provisions of this Contract, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

c. Survival. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Contract.

9. RELEASE AND WAIVER. TO THE EXTENT PERMITTED BY LAW, EACH OF CONTRACTOR AND OWNER (THE "RELEASING PARTY") RELEASES AND WAIVES ANY CLAIMS IT MAY HAVE AGAINST THE OTHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS (THE "RELEASED PERSONS") FOR BUSINESS INTERRUPTION OR DAMAGE TO PROPERTY SUSTAINED BY THE RELEASING PARTY AS THE RESULT OF ANY ACT OR OMISSION OF THE RELEASED PERSON IN ANY WAY CONNECTED WITH ANY LOSS COVERED BY INSURANCE, WHETHER REQUIRED HEREIN OR NOT, OR WHICH SHOULD HAVE BEEN COVERED BY INSURANCE REQUIRED HEREIN, INCLUDING THE DEDUCTIBLE AND/OR UNINSURED PORTION THEREOF, MAINTAINED AND/OR REQUIRED TO BE MAINTAINED BY THE RELEASING PARTY PURSUANT TO THIS LEASE. THE WAIVER OF CLAIMS CONTAINED IN THIS SECTION (A) WILL SURVIVE THE COMPLETION OF THE WORK OR THE TERMINATION OF THE CONTRACT AND (B) WILL APPLY EVEN IF THE LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PERSONS BUT WILL NOT APPLY TO THE EXTENT A LOSS OF DAMAGE IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PERSONS.

10. Insurance Requirements of Contractor's Subcontractors.

a. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional Insured status, and primary liability as required herein, and make them available to the Owner upon request.

b. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means of recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self-insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.