

Insurance for AIA Construction Contracts

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EDUCATION: B.A., The University of Texas (1969); and J.D. with Honors, The University of Texas (1972).

PROFESSIONAL ACTIVITIES:

- Board Certified in Real Estate Law: Commercial Real Estate Law (1984 – 2022), Residential Real Estate Law (1984 – 2022) and Farm and Ranch Real Estate Law (1985 - 2022).
- Life Fellow, Texas Bar Foundation (1985 – 2022).
- Member of State Bar of Texas Real Estate Forms Manual Committee (2017 – 2022).
- Past Board Member of REPTL Council of the State Bar of Texas (2011 – 2013).
- Fellow of the Texas Bar College (35 Year Maintaining Member, 1987 - 2022). <https://texasbarcollege.com/>
- American College of Real Estate Lawyers (ACREL), Insurance Committee (Past Chairman).
- Past President (1987-1988), Corpus Christi Bar Association (and numerous of its offices and committees).
- Founding Director, Texas College of Real Estate Lawyers (1991).
- Member of State Bar of Texas Assignment of Rents Committee to draft and obtain State Legislature adoption of the “Texas Assignments of Rents Act”, Texas Property Code Chapter 64 (2010 - 2011).
- Member, Statewide Committee to Support Adoption of MCLE (1986).
- Member, American Bar Association (1972 - 2022).
- Planning Committees: Numerous Mortgage Lending Institutes and Advanced Real Estate Law and Drafting Courses.

HONORS:

- Texas Bar CLE, The Jerry Charles Saegert Award for "Best CLE Paper" for State Bar of Texas, Annual Advanced Real Estate Law Course 2018 *Texas Risk Management Manual* and 2011 *Annotated Insurance Specifications*.
- ACREL Fellow, (2007 – 2022).
- The Best Lawyers in America (Real Estate) (2000 - 2022).
- Who's Who in American Law; Who's Who in America; and Albert Nelson Marquis Lifetime Achievement Award.
- Texas Monthly, Super Lawyer - Real Estate (2001 - 2022).

COMMUNITY:

Austin:

- Conceived of and assisted in obtaining designation of the Mexic-Arte Museum as “The Official Mexican and Mexican American Fine Arts Museum of the State of Texas” (2003).
- Rotary Club, International Friendship Committee – founded Rotary Club in St. Petersburg, Russia (2002).
- Leadership Austin Class 25 (2003).
- Revived PDAP of Austin (2000).

Corpus Christi:

- Founder of PDAP Corpus Christi (Board President for many years) (1979 – 2000). <http://pdapcc.org/>
- Past Chairman, Zoning and Planning Commission of City of Corpus Christi (1984 – 1985).
- Rotary Club, conceived and chaired Community Drug Abuse Prevention Conference – selected by Rotary International to be 1 of 8 projects to be disseminated worldwide as a model project for local clubs (1985).
- Leadership Corpus Christi Class 13 (1984); conceived of and assisted in obtaining designation of the Corpus Christi Aquarium as the “Official Aquarium of the State of Texas” (1985).
- Past Director, Gulf Coast Council of Boy Scouts.
- Past Director, National Conference of Christians and Jews, Corpus Christi Chapter.

LAW RELATED PUBLICATIONS:

Books: State Bar of Texas: TEXAS FORECLOSURE MANUAL (Co-Editors Locke, Novak and Bastian 3rd Ed. 2014) (Co-Authors Locke, Novak and Bastian 2nd Ed. 2006) (Co-Authors Locke and Novak 1st Ed. 1991) and Co-Author of the 2008; 2010; 2012; 2015; 2017 - 2022, Annual Supplements. <http://texasbarbooks.net/texas-foreclosure-manual/>

Numerous articles, webcasts and seminar presentations including the following, copies of which may be found and downloaded at <https://www.gdhm.com/attorneys/william-h-locke/>

2022:

- CLE article and presentation, State Bar of Texas Advanced Real Estate Strategies Course, *Texas Foreclosure Experiences* (Dec., 2022); and this article *Insurance for AIA Construction Contracts* (Dec., 2022).
- Webcast, American College of Real Estate Lawyers, Locke and Comiskey, *Insurance for AIA Construction Contracts* (Oct., 2022).

2020:

- ALI-ABA, PRACTICAL REAL ESTATE LAWYER, Locke and Maloney, *Top Ten Insurance Tips for Lenders* (2020).
- Webcast, ACREL, Locke and Johnson, *Waiver of Subrogation* (June, 2020).
- CLE article and presentation, State Bar of Texas, 42nd Advanced Real Estate Law Course, *Insurance for AIA Construction Contracts* (July 2020).

2019:

- Article, South Texas College of Law Houston, THE TEXAS JOURNAL OF BUSINESS LAW, Vol 47, Issue 4, *Insurance 101* (April 2019).
- Webcast, American Law Institute and American College of Real Estate Lawyers (ALI-ACREL, Locke and Johnson, *Waiver of Subrogation* (April 2019).

2018:

- CLE article and presentation, University of Texas School of Law, 52nd Mortgage Lending Institute, *Effective Risk Management* (Austin, Texas, Sept. 2018).
- CLE article and presentation, State Bar of Texas, 40th Advanced Real Estate Law Course, *Texas Risk Management Manual* (San Antonio, Texas, July 2018).
- CLE article and presentation, State Bar of Texas, 9th Annual Course – Essentials of Business Law: Protecting Your Business, *Insurance 101 and 201* (Houston, Texas, March 2018).
- CLE article and presentation, ALI CLE, *Commercial Leases – Allocating and Avoiding Risk* (February 2018).

2017:

- CLE article and presentation, New Mexico Bar Association, *Insurance for the Real Estate Law Practitioner* (Albuquerque, NM, Dec. 2017).
- CLE article and presentation, State Bar of Texas, 39th Advanced Real Estate Law Course, Locke and Comiskey, *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)* (San Antonio, Texas, July, 2017).
- CLE article, Georgetown University Law Center, Advanced Commercial Leasing Institute, *Leases and Property Insurance* (March 2017).
- CLE article and presentation, State Bar of Texas, 28th Annual Advanced Real Estate Drafting Course, *Drafting Indemnities and their Relationship to Insurance* (Houston, Texas, March 2017).

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- Professional Designations:
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- National Chairman, Construction Insurance Practice Group of RiskProNet International, the 5th largest insurance brokerage organization in the U.S.
- Pre-trial consultant/expert witness in well over 250 cases in State and Federal courts, serving for both plaintiff and defense testifying for and against insurance companies, insurance agencies, insureds and claimants.
- Published co-author, in United States Library of Congress – COMMERCIAL REAL ESTATE TRANSACTIONS HANDBOOK, Aspen Publishers, and numerous articles in periodicals.
- Nationally recognized expert and frequent speaker on a variety of risk management and insurance issues to construction, real estate, legal and similar groups across the country.

A complete CV is available upon request.

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This article contains citations to the following articles relating to insurance in construction projects presented by the authors at various ACREL meetings. The following are Web addresses for the articles:

- *A Dozen Things You Wish You Had Known About Commercial Project Insurance*, ACREL Fall, **2013** Meeting (Vancouver), by Charles E. Comiskey and William H. Locke, Jr. updated in *Insurance for Real Estate Lawyers* **2016**, listed below. <https://www.gdham.com/wp-content/uploads/2022/09/2013-ACREL-Vancouver-Fall-2013-A-Dozen-Things-You-Wish-You-Had-Known-About-Commercial-Project-Insurance.pdf>
- *CGL Coverage of “Property Damage” Losses Arising Out of Defective Work*, ACREL Fall Meeting, **2009** (Washington D.C.), by William H. Locke, Jr., and updated ACREL Insurance Committee March, **2016** (San Diego). https://www.gdham.com/wp-content/uploads/2016/08/CGL_Coverage_of_Construction_Defects.pdf
- *Protecting the Owner: Construction Insurance on a High-Rise Office Building (A Case Study)*, ACRELive!, February, **2013**, by Elizabeth A. Lowe and William H. Locke, Jr. https://www.gdham.com/wp-content/uploads/2022/09/ACREL-Live-Protecting-the-Owner_-_Construction-Insurance-on.pdf
- *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)*, ACRELive!, February, **2016**, by Charles E. Comiskey and William H. Locke, Jr. <https://www.gdham.com/wp-content/uploads/2022/09/2016-ACRELive-Three-Scofflaws-Are-On-The-Loose-But-There-Is-A-New-Sheriff-In-Town.pdf>
- *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, **2016** Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr. updating *A Dozen Things You Wish You Had Known About Commercial Project Insurance* listed above. <https://www.gdham.com/wp-content/uploads/2022/09/2016-Insurance-for-Real-Estate-Lawyers-Feb.-2016.pdf>

- *Drafting Indemnities (and Their Relationship to Insurance)*, ACREL Insurance Committee Spring, **2017** by William H. Locke, Jr. <https://www.gdhn.com/wp-content/uploads/2022/09/Indemnities-and-Their-Relationship-to-Insurance-ACREL-Insurance-Committee-Spring-2017-Meeting.pdf>

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Helpful Reading

The following is a bibliography of helpful books and articles:

- *If the Shoe Fits Wear It – Shoehorning Waivers of Subrogation into Commercial Leases*, ACRELive!, June, **2020**, by Janet M. Johnson and William H. Locke, Jr. <https://www.gdhn.com/wp-content/uploads/2016/07/If-the-Shoe-Fits-Wear-It.pdf>
- State Bar of Texas, 40th Advanced Real Estate Law Course, *Texas Risk Management Manual* (San Antonio, Texas, July **2018**). https://www.gdhn.com/wp-content/uploads/2016/07/Texas-Risk-Management-Manual_WHL.pdf
- CONSTRUCTION INSURANCE – A GUIDE FOR ATTORNEYS AND OTHER PROFESSIONALS, American Bar Association (**2011**) by Stephen D. Palley, Timothy E. Delahunt, John S. Sandberg, and Patrick J. Wielinski.
- THE HANDBOOK ON ADDITIONAL INSURED, American Bar Association (**2012**) by Michael Menapace, Charles Platto Timothy A. Diemand, and Joseph G. Grasso.
- THE ADDITIONAL INSURED BOOK, IRMI **2013** 7th Edition by Donald S. Malecki and Jack P. Gibson.
- THE BUILDERS RISK BOOK, IRMI **2019** 2nd Edition by Steven A. Combs and Donald S. Malecki.

INSURANCE FOR AIA CONSTRUCTION CONTRACTS ⁴ ⁵ ⁶

I. INTRODUCTION

A. Authors' Prior Presentations to ACREL – *A Dozen Things You Wish You Had Known*

Previously the authors presented at the 2013 ACREL meeting in Vancouver, Canada as *A Dozen Things You Wish You Had Known About Commercial Project Insurance*. This article was updated and presented to the ACREL Insurance Law Committee at its 2016 ACREL meeting in San Diego, CA as *Insurance for Real Estate Lawyers*. The following are the “*A Dozen Things You Wish You Had Known*”

⁴ **Approach Taken in the Paper.** This paper is written on three levels:

(1) a **Commentary** AIA's insurance specifications adopted in 2017 as its AIA Document A101-2017 Exhibit A *Insurance and Bonds* supplemented by Footnotes at the bottom of the pages of the Commentary (the Commentary is on [pages 1 - 45](#)).

(2) an **Appendix of Forms**, a copy of portions of the AIA A201 *General Conditions of Construction*, the AIA A101-2017 Exhibit A, a Modified Insurance Exhibit suggesting modifications to the AIA's insurance specifications, and ISO forms relevant to the insurance specifications (the forms are on [pages 46 - 203](#)), and

(3) extensive discussion of terminology used in the forms included by **Endnotes** to the forms (the Endnotes follow the forms) beginning on [page 204](#).

⁵ **Approach to be Taken in the Live Presentation.** The authors' presentation will not proceed through the paper beginning to end, but will be made directly from the AIA form and the suggested Modified Insurance Exhibit. The Commentary generally follows the order of the Sections in the two forms, but for simplicity in following the live presentation the webinar materials contain copies of the AIA form and the Modified Insurance Exhibit without their Endnotes. It is our suggestion that you merely follow our discussion as we reference sections in the AIA form and the Modified Insurance Exhibit. In our live presentation we will make reference to the page number in the Article for you to turn to that form for a particular point. We will return thereafter to our review of the two forms.

⁶ **Protocols:**

(1) **AIA Form Sections.** Of note is the complex section numbering system employed by the AIA, some with headings others not. For example, [§ A.3.3.2.1](#) does not have a heading but sets out the choice for the Contractor to provide builder's risk insurance. This specification then cross references the corresponding provision for the details of the specification for builder's risk insurance in Article [A.2 Owner's Insurance](#)

“§ A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section

about liability and property insurance and writing insurance specifications for real estate transaction documents addressed in the authors' 2013 and 2016 articles and presentations:

1. **About Knowledge.** What you did not know, and could have known, can hurt you (unless you as a real estate, or construction, lawyer understand liability and property insurance and change the method you employ in drafting liability and property insurance provisions and specifications). ⁷

2. **About Certificates of Insurance.** Certificates of insurance are not certificates. ⁸

3. **About Words.** Antiquated, problematic and just plain wrong terminology is used in insurance

A.2.3, which, if selected in this Section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3”.

(2) **Modified Insurance Exhibit Form Sections.** In the Article references to Sections in the Modified Insurance Exhibit is done by adding “*Mod.*” before the referenced Section number in order to identify Sections in the Modified Insurance Exhibit containing modifications. In the **Modified Insurance Specifications**, we adopt a format that adds headings to each section and then uses that heading *italicized* in the cross reference, and underlines and bolds the Section reference:

“**Mod. § A.3.3.2.1 Builder's Risk Insurance.** Property insurance of the same type and scope satisfying the requirements identified in **Section A.2.3 Required Property Insurance**, which, if selected in this **Section A.3.3.2.1 Builder's Risk Insurance**, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by **Section A.2.3.1.3 Insured Amount; Duration of Coverage** and **Section A.2.3.3 Insurance for Existing Structures.**”

A Dozen Things You Wish You Had Known

⁷ **About Knowledge.** 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. 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.”

⁸ **About Certificates of Insurance.** A certificate of insurance does not provide coverage if coverage is not provided in the underlying policy. Many courts have held that these disclaimers effectively negate reliance by certificate holders.

specifications. ⁹

4. About Notice. Additional insureds are not automatically notified of cancellation or modification, and never notified of non—renewal of coverage. ¹⁰

5. About Indemnities and Liability Insurance. Not all indemnified liabilities are insured. ¹¹

6. About Additional Insured Specifications. A general specification for “additional insured status” is meaningless. ¹²

7. About Completed Operations Coverage. Completed operations coverage is important. ¹³

8. About Blanket Additional Insured Coverage. Additional insureds may not be covered by a blanket additional insured endorsement. ¹⁴

9. About Builder’s Risk Insurance. Not all builder’s risk policies are the same. ¹⁵

⁹ **About Words.** Even after almost 36 years since the insurance industry changed their policy forms in 1986, leases, construction contracts and other forms drafted by many lawyers still employ “antiquated, problematic and just plain wrong” terminology.

¹⁰ **About Notice.** Additional insureds are not first named insureds; they are “additional” insureds and, therefore, the standard policy without endorsement does not commit the insurer to give notice to the additional insured if the insurer cancels the policy for nonpayment of premium or for any other reason.

¹¹ **About Indemnities.** Standard CGL insurance does not and cannot “cover” an indemnity. Only “bodily injury” and “property damage” are covered. Coverage is also limited to the policy amounts. It must be kept in mind that, since insurance potentially covers so few of the exposures for which indemnification may be required, the indemnification provision is potentially bankrupting to the indemnitor. Also, as noted in **Footnote 16 About Invisible Exclusions**, you cannot assume that contractual liability coverage afforded by the standard commercial general liability policy has not been limited or even deleted by endorsement.

¹² **About Additional Insured Specifications.** Unfortunately, although additional insured coverage is the most common risk management technique, it is also the most commonly misunderstood, even by professionals in the field such as risk managers, insurance agents and lawyers. The most common error is failing to specify the coverage terms to be contained in the additional insured endorsement.

¹³ **About Completed Operations Coverage.** 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.

¹⁴ **About Blanket Additional Insured Coverage.** Many additional

10. About Construction Defect Insurance. Commercial general liability insurance can apply to construction defects! ¹⁶

11. About Invisible Exclusions. Exclusions from coverage may be invisible. ¹⁷

12. About Self-Insurance. Self-insurance is not insurance. ¹⁸

The authors in their 2013 and 2016 presentations recommended that parties to transaction documents (for example, leases and construction contracts) draft specific (checklist style) insurance specifications as opposed general (narrative) insurance specifications. In addressing the difference between the then current approach and the authors’ recommended approach, the authors concluded:

“Included in this article are two approaches to writing insurance specifications, a narrative approach and an exhibit checklist approach. There are drafting advantages and disadvantages to each approach (one’s vice is

insured coverages are provided on a “blanket” or “automatic” basis. However, third parties may erroneously rely on such additional insured coverage as many blanket additional insured endorsements provide coverage only to “persons for whom you (the named insured) are performing operations when you and such person have agreed in a written contract that such person be added as an additional insured.” And do not provide coverage to third parties not in privity with the named insured.

¹⁵ **About Builder’s Risk Insurance.** There is no standard builder’s risk policy, unlike liability insurance where there is a commonly recognized standard ISO CGL policy. There is a wide divergence in builder’s risk coverages insurer to insurer.

¹⁶ **About Construction Defect Insurance.** In many jurisdictions, if not the majority of jurisdictions, a contractor’s CGL insurance insures the contractor for damages to property, even including its work product, if the damage occurs due to the defective work of its subcontractors.

¹⁷ **About Invisible 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.

¹⁸ **About Self-Insurance.** The term “*self-insurance*” is used to describe a range of risk retentions by the self-insurer. Self-insurance can range from no insurance (“going bare”), to a policy deductible, to insurance purchased over a large, self-insured retention (“*SIR*”). Unless the parties have established a restricted and encumbered fund or a reinsurance program, all that you have is the unsecured indemnity of self-insurer. The term “self-insurance” does not, without further detail, specify what procedures are to be followed and what protection is available.

the other's virtue).

Narrative	Exhibit
General	Specific
Brief	Detailed
Paragraph Style	Checklist Style

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. The authors urge "Remember your audience," which we argue is the insurance agents issuing and reviewing the insurance to be obtained."

B. AIA Prior to 2017

Prior to 2017, the AIA forms system (except for the Design Build forms)¹⁹ relied on the parties to craft insurance specifications. The AIA A201 - 2017 and other AIA forms contain general risk management provisions (e.g., indemnity and general insurance specifications). Accompanying this Article is an extract of the risk management provisions contained in the AIA A201 - 2017. Reference is made to those provisions in this Article. The prior AIA approach of generally referring to the types of claims to be insured by the parties many times resulted in parties giving little thought to the choices and many choices not being made.²⁰

The pre-2017 AIA approach was a narrative approach that relied upon further insurance specifications prepared by one of the parties, which also tended to be narrative. Sometimes a result of the prior practice was to use terms that were the subject of many choices without specification of the details of

coverage (e.g., "additional insured") and references to terminology no longer used in the insurance industry (e.g., "comprehensive general liability insurance", "fire and extended coverage insurance").²¹

C. 2017 Insurance Exhibit

Every 10 years (or so), AIA reviews and revises the AIA forms. The most recent revision occurred in 2017.

In 2017 AIA introduced its new approach to insurance specifications, its A101 Exhibit A Insurance and Bonds (the "2017 Insurance Exhibit"), a copy of which is included in the Appendix of Forms to this article beginning on page 54. Also, AIA revised its A201 General Conditions of Construction. An extract of the revised A201-2017 risk management provisions is included in the Appendix of Forms to this article beginning on page 46. For comparison attached is an extract of the risk management provisions in the AIA A201-2007. The Endnotes to the 2017 and 2007 editions explain and contrast the approach taken in these editions.

AIA's 2017 approach employs a check-the-box format versus the 2007 approach which was a narrative approach. The 2017 exhibit is in the nature of a **specific, detailed checklist** as to the most common insurance decisions between owners and contractors.

D. Modified Insurance Exhibit

The authors' approach, recommended in their 2013 and 2016 presentations to ACREL, has now been adopted by AIA in its 2017 revisions. The resultant 2017 Insurance Exhibit, although better than AIA's 2007 approach, includes some specifications and language that are problematic, and does not contain all changes that would have been beneficial.²²

¹⁹ 2014 Design Build Forms; 2017 Construction Contract Forms. In 2014 AIA in connection with the revision cycle for their design-build forms adopted insurance specifications for use with their design-build documents, AIA A141 - 2014 Exhibit B Insurance and Bonds for use in connection with the new edition of the A141 - 2014 *Standard Form of Agreement Between Owner and Design Builder* and the A142 - 2014 Standard Form of Agreement Between Design Builder and Contractor (as a revision to the preceding 2004 edition).. These 2014 forms were a precursor to AIA's adoption in 2017 of the insurance specifications for AIA's other construction contract forms (A102 - 2017 Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; A103 - 2017 Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price).

²⁰ Insurance Specifications Prior to 2017 AIA Change in Approach. The pre-2017 AIA A201 does not contain detailed insurance specifications.

²¹ Antiquated, Problematic and Just Plain Wrong Terminology. See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr. at *Liability Insurance - Antiquated, Problematic and Just Plain Wrong Terminology* at page 3 and *Property Insurance - Antiquated, Problematic and Just Plain Wrong Terminology* at page 36.

²² AIA Adopts a Blend of a Checklist Approach and a Narrative Approach for Insurance Specifications. See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr. at *Drafting: Specific Specifications Are Better than*

The AIA's 2017 Insurance Exhibit is improved upon by the authors' **Modified Insurance Exhibit** included in the **Appendix of Forms** to this Article beginning on **page 62**. The Modified Insurance Exhibit is annotated by **Endnote** explanations of the choices presented and terminology used. The approach taken in the Modified Insurance Exhibit is to reference specific industry forms and to state in detail the coverages required. This approach prompts discussion of insurance requirements while the parties are still in contract negotiation. It permits review of alternate coverages.

E. ISO Forms

1. 2017 Insurance Exhibit

Reference is made in the **2017 Insurance Exhibit** and in the **Modified Insurance Exhibit** to forms issued by the Insurance Service Office ("**ISO**"), a major provider of insurance forms and whose liability insurance forms are considered to be "The Standard" in the industry and are used by many insurers. As a result, they are a reasonable benchmark as to coverage to be specified. There exists substantial case law interpreting **ISO** forms. These cases provide a generally accepted understanding of the coverage reflected by **ISO** forms. **ISO** frequently issues new forms and issues updated editions of its forms.

2. Modified Insurance Exhibit

The **Modified Insurance Exhibit** identifies particular **ISO** forms to be prohibited and identifies other common deleterious forms as prohibited.²³

Note that most insurers' forms provide third party coverage only "*where required by written contract*". Many insurer's forms and some of the **ISO** promulgated forms limit coverage to "*not be broader than that which [the Named Insured] is required by contract to provide*" and "*Insurer will not pay more than the amount required by the contract*". These circumstances emphasize the **need to be specific** in the written contract as to what is required.

F. Additional Insureds – Owner, Architect Architect's Consultants; "Protected Persons"

General at **page 41**. Charles Comiskey was an advisor to the AIA committee drafting insurance specifications to accompany the 2017 forms. He was instrumental in steering the choice of "specific" insurance specifications. The **Modified Insurance Exhibit** and this Article is the author's attempt to fill gaps still existing in the new approach - the AIA's **2017 Insurance Exhibit**.

1. 2017 Insurance Exhibit

a. A201 Specifications

The **A201** at **§ 11.1.1 Contractor's Insurance and Bonds – Claims Insured** provides that

"the Owner, Architect and Architect's consultants shall be named as additional insureds under Contractor's commercial general liability policy or as otherwise described in the Contract Documents."

This wording in the **A201 General Conditions** does not address whether the additional insured coverage is as to either or both *ongoing* and *completed operations* of the Contractor.

b. 2017 Insurance Exhibit Specifications

The **2017 Insurance Exhibit** at **§ A.3.1.3 Additional Insured Obligations** specifies that the Contractor's commercial general liability insurance is to include

"(1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions *during* the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during *completed* operations."

Note the **A201** does not make the same distinction and does not address the concept of coverage being as to *operations*, whether *ongoing* or *completed* operations.

c. Omissions from 2017 Insurance Specifications

(1) Omits Coverage of Architect and Architect's Consultants as to Completed Operations of Contractor

The **2017 Insurance Exhibit** does not address including the Architect and the Architect's consultants

²³ **ISO Forms**. See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr., pages 93-199 for relevant **ISO** forms, and the **Commentary** on these forms at pp. 204 – 260.

as additional insureds as to claims for loss occurring during *completed* operations. This distinction is further made in **§ A.3.1.3** where it addresses specific ISO forms as providing the minimum required coverage. **§ A.3.1.3** provides that

“To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect’s consultants, **CG 20 32 07 04.**”

ISO CG 20 32 07 04 Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured ²⁴ provides additional insured coverage for only for claims arising out of the Contractor’s *ongoing* operations. If the Architect intends for its additional insured coverage to extend to claims arising out of the Contractor’s *completed* operations, it will need to include that specification in its Architect Agreement with the Owner, and then assure that the additional insured coverage provided by the Contractor so provides.

(2) Omits Specification that Additional Insurance afforded Architect and its Consultants is Primary and Non-Contributory

This distinction also plays out in the following wording in **§ A.3.1.3** of the **2017 Insurance Exhibit**

“The additional insured coverage shall be *primary and non-contributory* to any of the Owner’s general liability insurance policies and shall apply to both ongoing and completed operations.”

If the Architect and its consultants are to be insured as additional insureds, the **2017 Insurance Exhibit** does not specify that the Architect’s and its consultants liability insurance is to be excess to the additional insured coverage afforded on the Contractor’s CGL policy. If the Architect intends for the Architect’s CGL coverage to be excess, it will need to include that specification in its Architect Agreement with the Owner, and then assure that the additional insured coverage provided by the Contractor so provides.

2. Modified Insurance Exhibit

a. Expands Protection of “Owner” as Additional

²⁴ **Endorsement Providing Additional Insured Coverage to Architect and its Consultants.** See **Appendix of Forms** at **page p. 129** for **ISO CG 20 32 07 04 Additional Insured – Engineers,**

Insured to Protection of “Protected Persons”

Modified Insurance Exhibit

Special Terms and Conditions

§ A.4.5 “Protected Persons”. References in this **Exhibit A** to “**Protected Persons**” means the following persons and entities:

- .1 Owner: _____.
- .2 Development Manager: _____.
- .3 Owner’s Construction Lender: _____.
- .4 Additional Specified Persons and Entities: _____.
- .5 Additional Categories of Persons and Entities: _____.

As to the above listed persons:

- a. their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors, and assigns,
- b. any directors, officers, employees, or agents of such persons or entities, and
- c. other persons or entities designated to Contractor by any of the above listed persons or entities.

The **Modified Insurance Exhibit** expands the coverage for “Owner” to “**Protected Persons**”. The terms “Protecting Persons” and “Protected Persons” are employed in the **Modified Insurance Exhibit**. “**Protected Persons**” are the parties that are to be the additional insureds, the parties as to which the insurers subrogation claims are to be waived, the parties that are indemnitees, and the omnibus categories of derivative parties, such as officers, directors, employees, successors, and assigns. See the listing to be completed at **§ A.4.5 “Protected Persons”** of the **Modified Insurance Exhibit**. The Protected Persons are the parties to be protected by the Protecting Persons. “**Protecting Person**” will depend on the contract document, such as in the case of this **AIA A101 Exhibit A**, the Protecting Person is the Contractor.

b. No Change Made to Additional Insured Specifications for Architects and Architect’s Consultants

In these respects, the **Modified Insurance Exhibit** did not revise the **2017 Insurance Exhibit**, leaving these points to be first addressed in the B series **AIA Standard Form of Agreement between Owner and**

Architects or Surveyors Not Engaged by the Named Insured.

Architect, and then in the Insurance Exhibits as negotiated in the B series document.

G. ISO “Equivalents”

1. 2017 Insurance Exhibit

Specification that the Protecting Person’s insurance is to be a specific form or “*or equivalent*”²⁵ is a common practice in issuing insurance specifications, including in AIA’s **A201-2017** and its companion **2017 Insurance Exhibit**.

“*Equivalent*” is a problematic term. The concept of identifying specific policy forms, partially adopted in the **2017 Insurance Exhibit**, and more fully adopted in the **Modified Insurance Exhibit** proffered by the authors of this article, is to assure specific coverage and to force the Protecting Party to obtain industry standard coverage. A difficulty that arises under both the specific coverage approach and the equivalent coverage approach is that the Protecting Party may pay no attention to the coverage requirements and merely provide an extension off of its existing coverage or provide some coverage, leaving it up to the Protected Persons to figure out equivalency. Waiting to confirm adequacy of coverage until the Work commencement date is also problematic.

2. Modified Insurance Exhibit

The **Modified Insurance Exhibit** replaces this terminology with “*or more beneficial to the Protected Persons*” to permit the Contractor to provide insurance on non-ISO forms, but only if the proffered insurance is more beneficial to the Protected Persons than that as specified in the referenced ISO form.

The practice of some insurers is to state on their forms that they “*Include Copyrighted Material of ISO with Its Permission*”. This gives an impression (possibly false) that the form provides the insureds equivalent or better protection than afforded by an unmodified ISO form. This type of alternate form is a manuscripted form. There tends to be little to no case law as to such modified forms. This circumstance leads to conflicts in interpretation and litigation. If a manuscripted form is proposed in lieu of the forms specified in this Article, further review is required.

²⁵ “*Or Equivalents*”. See this phrase used in the Exhibit A and Modified Exhibit A insurance specifications at **§ A.2.3.1**, **§ A.3.3.2.1** and related **Endnote 25**.

²⁶ **Common Errors in Construction Property Insurance**. See

H. Common Errors ²⁶

1. Timing of Review of Insurance

The builder’s risk insurance policy may not, and likely will not, be issued or available prior to commencement of construction. The actual policy in many cases is not issued and delivered for weeks or months after work has begun. The policy itself is the contract of insurance and contains extensive terms and conditions that should be reviewed and approved prior to commencement of work. A great level of “distress” can occur, if an assumed coverage in fact is not included in the policy, despite the best written insurance specifications, when a loss occurs before issuance of the policy. If construction will commence before delivery of the policy, one avenue may be to have the insurer deliver a specimen policy and specimen endorsements.

2. Bonds

See **§ A.3.4 Performance and Payment Bond** below. AIA Insurance Exhibit calls for use of the AIA payment and performance bond forms. Some states (e.g., Texas) have a statutorily required payment bond form; and the AIA payment bond is not used in those states. Some states (e.g., Texas) afford the statutorily required payment bond special status protecting the Project from statutory mechanics and materialmen’s liens filed by unpaid subcontractors and suppliers (lifting their liens from the Project and relegating them to a claim on the payment bond). The form of each bond needs to be preapproved for use by the Project’s construction loan lender.

I. Overview of How the 2017 Insurance Exhibit Addresses *A Dozen Things You Wish You Had Known* and How the Modified Insurance Exhibit Improves upon It

The following list sets out with a broad brush how the **2017 Insurance Exhibit** addresses *A Dozen Things You Wish You Had Known* identified in the authors’ 2013 and 2016 presentations. This article reviews and explains in more detail AIA’s specifications in **Article II. Owner’s Insurance** beginning on **page 8**; and in **Article III. Contractor’s Insurance** beginning on **page 20**. The **2017 Insurance Exhibit**:

Insurance for Real Estate Lawyers, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr., at *Common Errors and Problems*, **pages 229-230**.

1. About Knowledge:

- a. Specifications:** sets out specifications for Owner's insurance and Contractor's insurance, and provides a place holder for Special Terms and Conditions to be addressed.

Modified Insurance Exhibit: sets out more specifications.

- b. Choices:** sets up a choice for either the Owner or the Contractor to obtain builder's risk insurance as to the new construction.
- c. Allocations:** allocates to the Owner responsibility for property insurance for existing structures if the Contractor is remodeling or constructing an addition to an existing structure.
- d. Alerts:** addresses occupancy of a completed or partially completed portion of the Contractor's Work prior to Substantial Completion of the Project.
- e. Options:** identifies and provides the parties options to extend the builder's risk insurance to insure consequential losses and expenses caused by causes of loss and other risks.

2. About Certificates of Insurance (Copy of Property Policies):

- a. Evidence of Owner's Insurance; Copy of Property Policy:**

(1) 2017 Insurance Exhibit: provides Owner is to provide evidence of liability and property insurance and a copy of Owner's property insurance but does not require Owner to provide Contractor with a copy of Owner's liability insurance.

(2) Modified Insurance Exhibit: provides a place holder for the parties to include specifications for liability insurance to be required of Owner.

- b. Certificates Contractor's Liability Insurance; Copy of Property Policy:**

(1) 2017 Insurance Exhibit: Contractor is to provide Owner with a Certificate of Insurance for Contractor's insurance and a copy of required property insurance, but does not specify that

Contractor is to provide Owner with a copy of Contractor's liability insurance.

(2) Modified Insurance Exhibit: Contractor is to provide Owner with a copy of Contractor's liability insurance policy in addition to providing Owner and Owner's Lender with a copy of Contractor's property insurance policy. If a copy either or both of the Contractor's liability policy and the builder's risk policy are not issued so a copy is not available, Contractor is to provide Owner with an **ACORD 75 Insurance Binder**; *provided, however*, as to Subcontractors the amount of whose work is agreed by Owner and Contractor to be of small amount or other basis to defer obtaining copies of the Subcontractors' liability insurance policy ("**Small Subcontractors**") proof of liability insurance, is to be by certificates of liability insurance issued on an **ACORD 25 Certificate of Liability Insurance**.

3. About Words:

employs current insurance terminology.

4. About Advanced Notification from Insurer:

a. 2017 Insurance Exhibit: does not specify or provide for the insurers to provide advanced notice of cancellation, material change or non-renewal of the insurance policies, other than to the 1st Named Insured (e.g., the additional insureds, the Owner's Lender).

b. Modified Insurance Exhibit: specifies that each of Contractor's liability insurers are to provide advanced notice of cancellation or material modification of the liability insurance policy to the additional insureds, the Owner's Lender.

5. About Insurance of Contractual Indemnities:

a. No Specification as to Owner's Insurance: does not provide that Owner's liability insurance will include insurance of Owner's indemnities of Contractor, Subcontractors, or the Architect, and the Architect's consultants.

b. Specification as to Contractor's Insurance: provides that Contractor's commercial general liability insurance shall insure Contractor for Contractor's indemnity obligations under **Section 3.18** of the **A201 General Conditions**.

6. About Additional Insured Specifications:

a. No Specification on Owner's Insurance: does not provide for Contractor or Architect to be insured as additional insureds on Owner's liability insurance.

b. Specifications as to Contractor's Insurance:

(1) **2017 Insurance Exhibit:** provides for Owner, Architect, and Architect's consultants to be an additional insured on Contractor's CGL insurance with coverage no less than that provided in specified forms of ISO additional insured endorsements.

(2) **Modified Insurance Exhibit:** expands the list of additional insureds to include all of the "Protected Persons" as defined in the Special Terms and Conditions; and to include Owner's Lender.

c. Certificates of Insurance:

(1) **2017 Insurance Exhibit:** provides for Owner's additional insured status to be addressed in the Certificate of Insurance to be provided to Owner, but does not provide for Contractor to provide Owner with a copy of the issued additional insured endorsements.

(2) **Modified Insurance Exhibit:** provides for Contractor to provide Owner and Owner's Lender with a copy of the following endorsements: additional insured, primary and noncontributory, waiver of subrogation, and advanced notice of cancellation or material modification.

d. Means Not Addressed to Assure Architect's and Architect's Consultants of Additional Insured Status: does not provide for Contractor to provide Architect and Architect's consultants with either a certificate of insurance or with a copy of the issued additional insured endorsements.

7. About Completed Operations Coverage:

a. Specification: specifies Contractor's liability insurance is to include coverage for products-completed operations hazards; and

b. Specification:

(1) **2017 Insurance Exhibit:** specifies Contractor's liability insurance includes coverage for claims including bodily injury or property damage arising out of completed operations.

(2) **Modified Insurance Exhibit:** provides for completed operations coverage to continue until expiration of the Statute of Repose.

8. About Blanket Additional Insurance:

provides for additional insured coverage by endorsement forms that call for designating the additional insured by name.

9. About Builder's Risk Insurance

(1) **2017 Insurance Exhibit:** provides detailed specifications for builder's risk insurance.

(2) **Modified Insurance Exhibit:** repeats in the Contractor specifications the detail comprising builder's risk as set out in the Owner specifications as opposed to incorporating them by reference; plus adds more specifications of coverages in the Contractor specifications for builder's risk insurance, including obtaining an Agreed Value endorsement.

10. About Construction Defect Insurance

deletes exclusion, thus creating insurance coverage for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damage Work or the Work out of which the damage arises was performed by a Subcontractor.

11. About Invisible Exclusions

a. 2017 Insurance Exhibit: identifies 11 coverage exclusions that are prohibited.

b. Modified Insurance Exhibit: identifies 12 more exclusions (for a total of 23) that are prohibited.

12. About Self-Insurance

requires Contractor's disclosure and Owner's approval.

II. OWNER'S INSURANCE – Article A.2

A. AIA A201 General Conditions

Included with this Article is an extract of provisions in the AIA **A201-2017 General Conditions**. These provisions are the injury and property damage risk management provisions, including the indemnities and insurance provisions. These provisions are set out to provide context for the

provisions of the 2017 Insurance Exhibit. A201-2017 *General Conditions*.

1. Allocation of Uninsured Damage to Contractor.

a. *A201: If the Loss or Damage is Caused in Whole or in Part by the Contractor Parties*

A201-2017 General Conditions of Construction, at Section 10.2.5 Risk of Loss or Damage ²⁷ allocates to the Contractor the entire loss if the Contractor, the Subcontractors or others for whom they are liable (the “Contractor Parties”) if the loss or damage is *caused in whole or in part by the Contractor Parties*. Section 10.2.5 Risk of Loss provides

The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor (Parties), and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. ²⁸ (Emphasis added.)

b. *Allocated to Contractor in Absence of Provision*

Note that in the absence of a provision in a construction contract allocating the risk of loss during construction have consistently held that the person who contracts to erect a structure or complete construction work bears the loss resulting from accidental damage or destruction of the work prior to its completion and acceptance.

2. A201 Provides for Limited Recourse by Contractor Against Owner.

The A201-2017 Section 10.2.5 Risk of Loss or Damage gives the Contractor a limited recourse against the Owner if the loss or damage that is not insured is

attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by

²⁷ A201-2017. Extracts from the A201-2017 are found in the Appendix of Forms beginning at page 46.

²⁸ A201-2017 Sections 10.2.1.2 and 10.2.1.3. “§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;

anyone for whose acts either of them may be liable, and *not attributable to the fault or negligence of the Contractor*.

Note though this recourse does not lie if the loss or damage is “attributable to the fault or negligence of the Contractor”.

3. Insure the Risk.

Arguably, it is in the best interest of both parties to contractually require and actually obtain the broadest commercially available property insurance.

a. Why Contractor and Subcontractors Should Support Insuring Risk

The Contractor and its Subcontractors of all tiers have a keen interest in assuring that such potential losses and damages to the Work and the Project are properly insured and that they are insureds under the property insurance policies. See the discussion in this Article as to the Contractor and its Subcontractors seeking to be insureds on Owner’s property insurance, which hopefully is builder’s risk insurance.

b. Why Owner Should Support Insuring Risk

Owner has equally compelling reasons for the risk to be adequately insured. Timely progression and funding for property damage and losses is in the Owner’s interest. It is preferable for the parties to have insurance proceeds to fund construction following a loss than to institute a claim resolution process under the construction contract including either arbitration or litigation over uninsured losses.

4. Owner-Procured Property Insurance.

a. The Default under the 2017 Insurance Exhibit is for Owner to Procure the Property Insurance

The 2017 Insurance Exhibit is aligned with the common practice of the Owner providing the property insurance, unless this obligation is placed on the Contractor by the parties choosing to do so. The default under the 2017 Insurance Exhibit is to require Owner to procure the property insurance. ²⁹ The

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.”

²⁹ 2017 Insurance Exhibit Section 2.3 Required Property

parties may instead choose to place this obligation on the Contractor by “checking the box” in **Section A.3.3.2.1.**³⁰

b. Builder’s Risk “Or Equivalent Policy Form”

Curiously, after identifying the Required Owner-Procured Property Insurance in a some-what generic fashion as “builder’s risk ‘all-risks’ property insurance,” the **2017 Insurance Specifications** then state that the form of insurance can be an “**equivalent policy form**”. The following can be the result:

- **Disagreement.** Disagreements between the parties as to what constitutes “equivalency”.
- **Uninsured Losses.** Uninsured losses result.
- **No New Builder’s Risk Policy.** Owner does not purchase a separate policy to cover the Project and relies on its existing property insurance covering its existing facilities, which policy may
 - (1) not adequately address property risks arising out of construction, and
 - (2) not include the Contractor and its subcontractors of every tier as insureds.
- **Contractor Parties Interests Not Insured.** The Contractor may not be an insured or a third party beneficiary of the Owner-Procured Property Insurance.

c. Advice for Contractors

- **Delete the “Equivalent” Language.** Negotiate for the deletion of “or equivalent policy form”.
- **Be a Named Insured.** Require that the Contractor and the Subcontractors of all tiers are named insureds on the property insurance.
- **Confirm Equivalency.** Review the property insurance and confirm that the coverage is the equivalent of what would be covered by a builder’s risk policy and with all of the

Insurance. “§ 2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase ... property insurance written on a builder’s risk “all-risks” ... or equivalent policy form...”

³⁰ **Choosing the Contractor to Procure the Property Insurance.**

revisions appropriate to cover scope of the Work and coordination with the coverage of the existing structure.

- **Do Not Accept Less than a Policy Copy.** Do not accept *evidence of insurance* or *certificate of insurance* in lieu of a copy of the property insurance.

d. Advice for Owners

- **Same Advice.** The same advice above for the Contractor.
- **Insist on an Owner-Procured Policy.** Do not choose to insure the property risk under a Contractor-Procured Property Insurance Policy or the Contractor’s master builder’s risk policy.

B. Owner Provides Evidence of Insurance and, on Request, Copy of Policies - § A.2.1 and Mod. § A.2.1

1. Property Insurance.

a. Owner’s Property Policy; But Copy of Liability Insurance Policy Not Specified as Required

Owner is required by **§ A.2.1** to provide Contractor a copy of Owner’s **property** insurance policies (but perhaps does **not** require Owner to provide Contractor with a copy of Owner’s **liability** insurance policies).

b. Existing Property Policy and/or Builder’s Risk Policy

The policies are to include the builder’s risk policy (if Owner is providing the builder’s risk insurance) or Owner’s existing property policy if builder’s risk insurance is not being obtained by Owner; and also, in the case of remodeling or adding to an existing structure, the property insurance required by **§ A.2.3.3 Insurance for Existing Structures.**

2. Proof of Liability Insurance?

a. Evidence of Coverage Required

“[**x**] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3 which if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase ... such insurance”

Owner is required by § A.2.1 *Owner's Insurance – General* to provide Contractor with “evidence of the coverage, required under this Article A.2”.

b. Owner Responsible to Purchase and Maintain Owner's Usual Liability Insurance

Since § A.2.2 *Liability Insurance* states that “Owner is to be responsible for purchasing and maintain the Owner's usual liability insurance”, is Owner's usual liability insurance a “*required insurance*” such that Owner is to provide Contractor with evidence of Owner's liability insurance? Note that § A.2.1 only refers to Owner providing Contractor with a copy of the required *property* policy (which assumes that a copy of its liability insurance is not required to be provided.)

c. Modified Insurance Exhibit

Mod. § A.2.1 modifies these requirements to require Owner to provide a copy of Owner's liability insurance.

3. Time of Consideration.

a. 2017 Insurance Exhibit

§ A.2.1 states “Prior to commencement of the work”

b. Modified Insurance Exhibit - Better Time

These requirements should be considered by Owner and Contractor prior to entering into the construction contract and these requirements adjusted to address what information Owner is willing to provide the Contractor and what insurance Contractor is to require Owner to carry.

C. Owner's “Usual” Liability Insurance – § A.2.2 Liability Insurance and Mod. § A.2.2

1. 2017 Insurance Exhibit.

§ A.2.2, assumes that the Owner's existing (its “*usual*”) liability insurance program is not to be specified in the construction contract.

2. Modified Insurance Exhibit.

The Modified Insurance Exhibit has not modified §A.2.2 Owner's “maintaining the Owner's usual general liability insurance”. There are circumstances where the Contractor has an interest in knowing the terms of Owner's liability insurance. Mod. § A.2.2

requires Owner, upon request of Contractor, to provide Contractor a copy of Owner's liability insurance. A placeholder is included in Mod. § A.2.2 for Contractor to specify any liability insurance requirements it has for the Owner.

D. Required Property Insurance During Construction - § A.2.3

1. Choice of Owner or Contractor to Procure the Builder's Risk Insurance - § A.2.3.1

§ A.2.3.1 sets up a **choice** as to whether Owner or Contractor purchases the builder's risk insurance (“*Unless this obligation is placed on the Contractor*”). The default position under this section is that the Owner purchases the builder's risk insurance. Reference is made to § A.3.3.2.1 *Contractor's Other Insurance - Builder's Risk Insurance* for the optional selection of the Contractor to purchase the builder's risk insurance.

2. Owner-Procured Builder's Risk Insurance - § A.2.3.1.

a. Specifications Lumped in Single Paragraph or Subdivided into Separate Subsections

(1) 2017 Insurance Exhibit

Property Insurance Specifications are set out in § A.2.3.1 *Required Property Insurance* and § A.2.3.1.1 *Causes of Loss* in their respective paragraph.

Specifications:

Owner shall purchase:

- Builder's risk
- “all-risks”
- Completed value
- Total Value of entire Project (including modifications)
- Replacement cost basis\
- Include interest of Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.
- Include the interests of mortgagees as loss payees.

Issues:

- “all risks” does not necessarily include theft, flood, earthquake, collapse, “green” exposures or terrorism.

- “include the interests of the Owner, Contractor Subcontractors, and Sub-subcontractors in the Project as insureds” = as Additional Insureds? Named Insureds? ATIMA? Preclude subrogation?
- “include the interests of mortgagees as loss payees” – loss payee vs. lender’s loss payable.
- Add requirement for Agreed Value or no-con-insurance form.

(2) **Modified Insurance Exhibit**

In the **Modified Insurance Exhibit**, the specifications in the respective paragraphs of **§ A.2.3.1 Required Property Insurance** and **§ A.2.3.1.1 Causes of Loss** are divided into subsections with headings. This reflects the fact that these specifications in the **2017 Insurance Exhibit** contain multiple specification items worthy of being separately called out to alert the parties.

b. Specification of an “All Risks” Builder’s Risk Policy and Specification of Causes of Loss Not to be Excluded

(1) **“All Risks”**

§ A.2.3.1 (Mod. § A.2.3.1(a)(2)) identifies the property insurance to be maintained by Owner during construction (which is predicated on the parties not having chosen the Contractor to procure the property insurance) as a builder’s risk “**all-risks**” policy. An “all-risks” policy does not however cover “all risks”. An “**all risks**” policy does not necessarily include the following causes of loss: theft, flood, earthquake, collapse, “green” exposures, or terrorism. There is no standard builder’s risk policy, unlike liability insurance where there is a commonly recognized standard ISO CGL policy. Builder’s risk policies are Inland Marine policies and there is a wide divergence in builder’s risk coverages insurer to insurer. “**Inland Marine**” policies are policies that are customized to the loss sought to be insured and are designed to provide coverage for special exposures typically associated with the type property at which they are directed, and the special valuation methods needed to address the exposure.

(2) **Specification of Causes of Loss Not to be Excluded**

(a) **2017 Insurance Exhibit**

§ A.2.3.1.1 Owner’s Insurance – Required Property Insurance - Causes of Loss (Mod. § A.2.3.1.1.2 Owner’s Insurance – Required Property

Insurance - Causes of Loss – Not Excluded Causes of Loss) address this possibility by providing that certain causes of loss (fire, explosion, theft, vandalism, malicious mischief, earthquake, flood and windstorm are *not to be excluded* from the builder’s risk insurance coverage. It is important to review the builder’s risk policy to confirm that none of these perils are excluded.

(b) **Modified Insurance Exhibit**

Mod. § A.2.3.1.1.2 Owner’s Insurance – Required Property Insurance - Causes of Loss – Not Excluded Causes of Loss adds to this list of causes of loss not to be expressly excluded “green” exposures and terrorism.

(3) **“Collapse”**

Many policies exclude “collapse” and require a *Collapses Additional Coverage Endorsement* to extend coverage to this cause of loss. Collapse coverage can be written to covers the damage or loss from collapse of the structure caused by certain causes of loss, including weight of rain, defective materials, or methods of construction. Collapse coverage almost always excludes the cost of correcting defective workmanship or work which was faultily designed and settling, cracking, shrinking, or bulging of the structure.

(4) **Errors, Omissions or Deficiency – Ensuing Loss – § A.2.3.1.1 (Mod. § A.2.3.1.1.3)**

(a) **Inclusion of Ensuing Loss Coverage by the Insurance Exhibits**

§ A.2.3.1.1 (Mod. § A.2.3.1.1.3) Causes of Loss extends builder’s risk coverage to include

“ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials”.

(b) **The Faulty Workmanship Exclusion**

Builder’s risk policies typically excluded from coverage faulty work, workmanship, or materials (the “**Faulty Workmanship Exclusion**” aka as the “**E & O Exclusion**”). This is the exclusion relied on most by builder’s risk insurers to deny coverage. The rationale for this exclusion is to keep the insurer from having to pay for rectifying faulty work, as this is considered by such insurers to be a risk of the parties doing business. The following are two samples of a Faulty Workmanship Exclusion:

Sample:

This policy does **not cover**:

Cost of making good faulty or defective workmanship, material, construction, or design, but this exclusion shall not apply to damage resulting from such faulty or defective workmanship, material, construction, or design.

Sample:

This policy does **not cover**:

Cost of making good faulty or defective workmanship or material, but this exclusion shall not apply to physical damage resulting from such faulty or defective workmanship or material; or

Loss or damage directly or indirectly caused by fault, defect, error or omission in design, plan or specification.

(c) Addition of an Ensuing Loss Exception to the Faulty Workmanship Exclusion

The following are examples of the addition of an “ensuing loss” coverage provision added as an exception to the Faulty Workmanship Exclusion:

Example:

But if an act, defect, error, or omission as described above results in a covered peril, “we” **do cover** the loss or damage caused by that covered peril.

Example:

But we **will pay** for “loss” to other Covered Property that results from such defective workmanship, materials or design, provided such loss or damage is not otherwise excluded in this policy.

The coverage of a builder’s risk policy may be extended to cover various risks with each risk carrying a “sublimit” (a limit less than the policy amount) or no sublimit. The insureds should consider eliminating as many sublimits as financially and practicably possible.

c. Completed Value Form - § A.2.3.1 (Mod. § A.2.3.1(a)(3))

(1) Non-Reporting Form vs. Reporting Form

§ A.2.3.1 (Mod. § A.2.3.1(a)(3)) provides that the builder’s risk policy is to be issued on a replacement cost basis. Builder’s risk insurance is mostly issued on a “completed value” form (also called a “non-reporting form”) as opposed to a “reporting” form.

A completed value form policy is issued for a specific construction project with the coverage limits and premium based on the expected value of the project as completed. The insured under a completed value basis form does not run the risk of under or misreporting and the associated contractual penalties that are involved with a reporting form basis policy. Under a completed value form coverage is automatically increased as construction occurs.

(2) Pricing

A completed value basis policy limit is based on the anticipated completed value of the project. Its premium is roughly 50% of the normal builder’s risk rate in recognition of the fact that the average value exposed to loss during the project is approximately one-half of the completed value of the project.

d. Replacement Cost Basis – § A.2.3.1 (Mod. § A.2.3.1(a)(4)(b))

(1) Replacement Cost vs. Actual Cash Value

(a) Both Insurance Exhibits

Builder’s risk insurance can be provided on either an **actual cash value** (“ACV”) basis or a **replacement cost basis**. The **2017 Insurance Exhibit** provides for builder’s risk insurance to be carried on a replacement cost basis. § A.2.3.1 (Mod. § A.2.3.1(a)(4)(b)).

(b) Modified Insurance Exhibit

Mod. § A.2.3.2.1(a) provides for the policy to be endorsed with an *Agreed Value Endorsement*.

(5) Sublimits - § A.2.3.1.1 (Mod. § A.2.3.1.1.4)

(2) Pricing

Normally, there is little to no difference between ACV and replacement cost on a newly constructed structure, but the potential exists that an adjuster could allege physical depreciation, especially when covering long-term construction projects. Replacement cost is the preferred valuation method.

e. Coverage Amount - Common Error – § A.2.3.1 (Mod. § A.2.3.1(b))

(1) Contract Sum

§ A.2.3.1 (Mod. § A.2.3.1(b) Amount) can be the source of unanticipated loss to an unsuspecting owner. This AIA form language provides for the builder's risk insurance "shall be no less than the amount of the *initial Contract Sum*" under the construction contract. This provision is then coupled with the AIA's form language in **§ A.2.3.3 Insurance for Existing Structures**, which provides that, if the Work involves remodeling an existing structure or construction of an addition to an existing structure, the Owner is to obtain "all risks" property insurance on a replacement cost basis protecting the existing structure and provides that the Owner shall be responsible for all co-insurance penalties. This opens the project to the following **common error**: failure of the builder's risk policy amount to reflect the full loss exposure. The Contractor's Contract Sum is a guide in setting the coverage amount, but additional factors need to be considered.

(2) Remodeling or Renovations and the Building Envelope

No Coverage. In projects involving remodeling (especially if the structure is a historic structure) or improvement to an existing building, limiting the builder's risk coverage amount to the Contractor's Contract Sum may well lead to a significant uninsured loss. Builder's risk policies will not insure the building envelope unless specifically added.

ACV Coverage. Also, some builder's risk policies insure the envelope only on an Actual Cash Value, a depreciated, basis ("**ACV**").

Mod. § A.2.3.3 Insurance for Existing Structures has been revised to provide that it applies only "**if**" this risk has not been shifted to the builder's risk insurance obtained by the Contractor.

f. Policy Period – § A.2.3.1 (Mod. § A.2.3.1(c))

(1) When Does Coverage Begin and End?

Builder's risk policy coverage generally begins at a stated inception date, and generally ends on the earlier to occur of the following (unless expressly addressed in advance): **(a)** the interest of the insured in the property ends, **(b)** the ultimate user accepts the property, **(c)** the property is put to its intended use or occupancy of any portion of the property by the ultimate user, **(d)** a fixed number of days after the project is completed, **(e)** the expiration date of the policy, **(f)** cancellation of the policy, **(7)** abandonment of construction, or **(g)** expiration of the Policy.

§ A.2.3.1 requires Owner to maintain the Owner-procured builder's risk insurance until Substantial Completion. Coverage should be purchased for more time than the construction is anticipated to take. It may be difficult and/or expensive to obtain an extension if coverage expires when the project is nearing completion. If, on the other hand, completion is accomplished prior to expiration, most builder's risk policies permit a pro-rata cancellation.

(2) Early Occupancy - § A.2.3.2**2017 Insurance Exhibit**

"§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company ... has consent in writing to the continuation of coverage."

Issues:

- Many builder's risk policies cease upon occupancy.
- Many Owners begin or permit occupancy prior to completion.

Recommendation: Prohibit any provision that causes coverage to cease upon occupancy.

Most builder's risk policies state that coverage ceases upon the first to occur of a variety of circumstances, including occupancy. A significant problem arises when one of those circumstances is occupancy. The typical builder's risk policy does not include an occupancy loading. That said, no definition of "**occupancy**" is typically provided. Preferably, the provision governing when coverage ceases should not

include a reference to occupancy or there should be a specific grant for occupancy. Do not wait until the time that early occupancy is needed to have the conversation with the insurer.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion alerts to one of the means by which a builder's risk policy may terminate by providing that the Owner is not to use the property prior to Substantial Completion without the consent of the insurer being obtained. Most projects have someone that occupies to some degree before substantial completion. Any degree of occupancy could invalidate the coverage if the policy is not properly worded or endorsed.

A **phased completion project** involving Owner occupancy of parts a project prior to Substantial Completion of the project will require an endorsement to permit pre-Substantial Completion of the project (a typical example is completion and lease of offices on floors substantially completed or the closing of the sale of condominiums prior to Substantial Completion of the project).

g. "Unless Otherwise Agreed to by the Parties" – § A.2.3.1 (Mod. § A.2.3.1(c))

This qualifying language recognizes that other provisions in the Contract Documents for the Project may provide for a different result than as provided in these sections, **§ A.2.3.1 (Mod. § A.2.3.1(c) Duration of Coverage)** ("unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement") and **§ A.2.3.1.3 Insured Amount; Duration of Coverage** ("Unless the parties agree otherwise....").

h. The Insureds - § A.2.3.1 (Mod. § A.2.3.1(d))

(1) Expand the List

The Owner, Contractors and major Subcontractors should be named as named insureds under a builder's risk policy because at any given point of construction prior to completion each of these parties could have ownership of or an investment in the completed portion of the building and the materials, supplies, and other property installed or intended to be installed in the improvements under construction. Some owners or general contractors decline to do so in order to protect their construction insurance program from loss so that the risk is passed back onto its subcontractors. This stance contradicts the fundamental purposes of builder's risk insurance, which is first-party coverage and therefore not fault based.

(2) Waivers of Subrogation

Subrogation can impact coverage and frustrate the objective of avoiding liability disputes and litigation between the Owner, Contractors, and Subcontractors, potentially slowing down or stopping a project. Builder's risk policies generally include a provision entitled "Transfer of Rights of Recovery Against Others to Us" or similar wording. The most common language is:

"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 the loss to impair them. At our request, the insured will bring suit or transfer those rights to us."

Note that in this example, the insured is prohibited from relinquishing its rights **after** a loss.

Beware: Some builder's risk policies prohibit insureds from relinquishing their rights at any time.

An endorsement to the builder's risk policy may be necessary to delete a **pre-loss prohibition** on the waiver of subrogation in the construction contract.

(3) ATIMA

Phrases like "**as their interests may appear**" (aka "**ATIMA**") should not be included either in contractual specifications, insurance certificates or the policy, as this qualification has been the source of subrogation claims by insurers against an insured under builder's risk policies in cases where there has not been an express waiver of subrogation. The **2017 Insurance Exhibit** and the **Modified Insured Exhibit** do not use this phrase.

i. Loss Payee

(1) A201-2017 - Owner as Loss Adjustor

A201 § 11.5.1 Adjustment and Settlement of Insured Loss - Owner as Adjuster [see the AIA A201 extract in the **Appendix of Forms** for this provision] provides for property loss to be adjusted by the Owner and paid to Owner as a fiduciary for the insureds (which in the case of the builder's risk policy are the Owner, Contractor, Subcontractors as stipulated in this Section's list of insureds).

(2) Owner as Loss Payee**[a] 2017 Insurance Exhibit**

The **2017 Insurance Exhibit** at **§ A.2.3.1** *Owner's Insurance - Required Property Insurance* does **not** include an express statement that the Owner is to be the loss payee of the property insurance proceeds on Owner-procured builder's risk insurance. Delivery to the parties of a **loss payee endorsement** is a part of the documentation that should be provided by Owner to Contractor in the "**evidence of coverage**" to be provided by Owner to Contractor required by **§ A.2.1** *Owner's Insurance - General*.

[b] Modified Insurance Exhibit

Mod. § A.2.3.1(d) *Owner's Insurance - Required Property Insurance Insureds and Loss Payee* modifies this provision to expressly state that the Owner is the loss payee.

Mod. § A.3.1.1.2.2.2 *Contractor's Insurance and Bonds - Matters Certified - Evidence of Property Insurance - Loss Payee* specifies that a Loss Payee Endorsement designating the Owner and Owner's Lender as loss payees is an item to be delivered by the Contractor to the Owner, if the Contractor is the purchaser of the builder's risk insurance.

(3) Mortgagee as Loss Payee - § A.2.3.1 (Mod. § A.2.3.1(e))

The **2017 Insurance Exhibit** specifically addresses the prospect that there may be an Owner's lender ("**mortgagee**"), and states that the builder's risk insurance "*shall include the interests of mortgagees as loss payees.*" The builder's risk insurer will have its own form to designate a mortgagee as a loss payee.

j. Specific Required Coverages - § A.2.3.1.2 (Mod. § A.2.3.1.2.1)

2017 Insurance Exhibit at **§ A.2.3.1.2** contains a short-list of specific required coverages.

Recommendation

Covered Property should include permanent and temporary works including but not limited to:

- 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;

- All temporary structures (e.g., cofferdams, cribbing, false work, construction forms, hoarding, fencing, scaffolding, signs, site lighting, temporary utilities and buildings or structures) located at the site and incidental to completion of the Project;
- All property including equipment, machinery, materials and supplies on site for installation;
- All property including equipment, machinery, materials and supplies at other locations but intended for use at the site;
- All property including equipment, machinery, materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and
- Other property for which an insured is liable in connection with the Project.

(1) Temporary Structures; Building Systems - § A.2.3.1.2 (Mod. § A.2.3.1.2.1)

§ A.2.3.1.2 (Mod. § A.2.3.1.2.1) specifies that the builder's risk insurance shall provide coverage for loss or damage to "*false work and temporary buildings*".

If the Owner is to purchase the builder's risk insurance, the parties should review **Mod. § A.3.3.2.1.3.1** *Contractor's Other Insurance Coverages - Builder's Risk Insurance Specific Required Coverages of Property Insurance - Temporary Structures; Building Systems*, the modified definition of this term in **Article A.3** applicable to Contractor-procured builder's risk insurance, and determine whether these items are included. Owner and Contractor can determine the risk of not including an item and the means of adding the item if desired.

(2) Testing and Startup - § A.2.3.1.2 (Mod. § A.2.3.1.2.2)**2017 Insurance Exhibit**

§ A.2.3.1.2 Specific Required Coverages. The insurance ... shall provide coverage for ... building systems from testing and startup."

Issues:

- Testing can be hot or cold.

“**Hot testing**” is introduction of feed stock, catalyst or similar media for processing and handling or commencement of supply to a system.

“**Cold testing**” is hydrostatic, pneumatic, electrical, hydraulic or mechanical, commonly thought of as “**startup**”.

- An **endorsement** to the insurer’s builder’s risk policy may be needed to confirm that damage to building systems due to hot testing and cold testing (startup) is insured.

(3) Debris Removal - § A.2.3.1.2
(Mod. § A.2.3.1.2.3)

2017 Insurance Exhibit

§ A.2.3.1.2 Specific Required Coverages. The insurance ... shall provide coverage for ... *debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Contractor’s services and expenses required as a result of such insured loss, including claim preparation expense.*”

Issues – Debris Removal:

- Debris removal is commonly limited to a percentage (e.g., 25%) of the reconstruction limit provided, and erodes that limit.
- Additional debris removal coverage may be provided, but a low limit is commonly provided.
- The cost of debris removal is generally estimated to be approximately 13% of hard construction costs and is in addition to the reconstruction cost.

Recommendation:

- Debris removal shall be provided as an additional benefit with a limit of \$_____.

Issues – Enforcement of Legal Requirements:

- Coverage is provided by an Ordinance or Law Endorsement. Obtained?
- Why limit this requirement to demolition only?
 - Coverage for Loss to the Undamaged Portion of the Building.
 - Demolition Cost.
 - Increased Cost of Construction.
- See **§ A.2.4.2 Optional Ordinance of Law Insurance**. Not really so optional?

Most builder’s risk policies provide a basic level of dollar coverage for debris removal costs. The scope of coverage and coverage limits will need to be reviewed as to amount and items constituting insured costs. The dollar limits of coverage afforded by the policy need to be reviewed. Generally, the scope of coverage and the limits specified in the insurer’s standard policy are **inadequate** and the scope of coverage and the limits in such case should be increased. The AIA language specifies the following trigger to coverage:

“debris removal, including demolition occasioned by enforcement of applicable legal requirements”

and specifies the following as to covered costs:

“reasonable compensation for the Architect’s and Contractor’s services” and “expenses required as a result of such insured loss, including claim preparation expense.”

(4) Sublimits - § A.2.3.1.2 (Mod. § A.2.3.1.2.4)

The **Insurance Exhibits** provide a placeholder for the specification of Sublimits as to any of these Specific Required Coverages.

k. Post-Completion Coverage - Owner to Continue Property Coverage “Unless the Parties Agree Otherwise” - § A.2.3.1.3

§ A.2.3.1.3 Insured Amount; Duration of Coverage

Unless the parties agree otherwise, upon Substantial Completion, the Owners shall continue the insurance required by Section A.2.3.1 Builder’s Risk, or, if necessary, replace the insurance”

This provision ties to the prior provision that assumes the Owner carries the builder's risk insurance "unless the parties agree otherwise" in order to match the bearer of the pre-completion and post-completion property insurance.

l. Deductibles and Self-Insured Retentions - § A.2.3.1.4

"§ A.2.3.1.4 Deductibles and Self-Insured Retentions
If the insurance required by this Section A.2.3 is subject to *deductibles* or *self-insured retentions*, the Owner shall be responsible for all loss not covered because of such deductibles or self-insured retentions."

Comment and Issues:

- **Deductible:** The insurer's obligations are triggered upon the first dollar of loss.
- **Self-Insured Retention:** The insurer's obligations are not triggered until the SIR is fully exhausted.

A self-insured retention = no insurance.

None of the insurance requirements are applicable to an SIR.

Carefully address any potential liability or property SIRs.

Builder's risk policies frequently include multiple deductibles. One may apply to most causes of loss, another to wind, yet another to flood, another to earthquake, and another to indirect (delayed completion) costs. A common requirement might be for

- **General Deductible:** \$10,000 deductible,
- **Wind Deductible:** 1% of the value in place (or even worse, the total insurable value) at the covered property location at the time of loss applies subject to a \$100,000 minimum,
- **Flood Deductible:** equal to the maximum amount of coverage available from the National Flood Insurance Program,
- **Earthquake Deductible:** (depending on the

location of the insured property) of 5% of the value in place at the covered property location at the time of loss applies subject to a \$500,000 minimum, and

- **Delayed Completion Deductible:** a deductible of 15 days.

m. Existing Structures - § A.2.3.3

"§ A.2.3.3 Insurance for Existing Structures
"If the Work involves remodeling an existing structure or construction to an addition to an existing structure ... the Owner shall purchase 'all-risks' property insurance on a replacement cost basis protecting the existing structure.... The Owner shall be responsible for all coinsurance penalties."

Issues:

- Existing structures are not covered unless specifically endorsed onto a builder's risk policy.
- "all-risks" does not necessarily include theft, flood, earthquake, or collapse.
- Prohibit coinsurance.

(1) 2017 Insurance Exhibit

Note this provision of the AIA form provides the Owner "**shall**" maintain property insurance on the existing structure when an addition is undertaken as opposed to including its coverage under a builder's risk policy purchased by the Contractor.

(2) Modified Insurance Exhibit

Mod. § A.2.3.3 Insurance for Existing Structures
has been revised to state that it applies only "**if**" this risk has not been shifted to the builder's risk insurance obtained by the Contractor. As noted above, there are circumstances involving renovation of historic structures and remodeling existing buildings, where it may be prudent to insure the existing structure and the Contractor's Work in a combined policy obtained either by the Owner or the Contractor with a single insurer. This can avoid finger pointing between insurers and will avoid the risk of a catastrophic uninsured loss referenced above.

See the following provisions revised from the

AIA approach:

Mod. § A.3.3.2.1.3.3 *Contractor's Other Insurance Coverage - Builder's Risk - Specific Required Coverages – Additional Properties*; and

Mod. § A.3.3.2.1.6 *Insurance for Existing Structures* for the addition of existing structure coverage as an item to be insured in a Contractor-purchased builder's risk policy, if the parties have elected for the Contractor to carry the builder's risk insurance.

n. Optional Extended Property Insurance - § A.2.3.4

(1) Common Events Only Covered by Added Endorsement

Many commonly expected coverages are available only through policy endorsement and are not part of the issuer's standard policy form, such as (1) coverage for the owner's additional architect's fees arising out of an insured loss; (2) coverage for owner supplied materials; (3) amending the Ordinance or Law exclusion to cover costs of demolition of the intact portion of a building when a law, ordinance or regulation requires that the entire structure be torn down; (4) endorsement to include full collapse coverage, including collapse resulting from design error; and (5) verification that sublimits (*e.g.*, sublimits for flood and earthquake coverage) are adequate or eliminated.

(2) Soft Costs Insurance – § A.2.4.7

2017 Insurance Exhibit

“§ A.2.4 Optional Extended Insurance. The Owner shall purchase and maintain the insurance selected and described below....

[**« X »**] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance; including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.”

Summary:

Soft costs are additional expenses which result in delay in the completion of the Project beyond the date it would have been completed had no loss occurred. The delay must be due to direct physical loss to Covered Property and be caused by or result from a Covered Cause of Loss.

Examples of additional Soft Costs expenses include:

- Advertising and Promotion
- Insurance
- Interest
- Leasing/Commission
- Legal and Accounting
- License, building Inspection and Permit Fees
- Real Estate Taxes/Ground Rents/Other Assessments
- Professional Fees
- Project Administration/General Overhead

Builder's risk policies typically do not cover damages caused by delays arising out of a covered loss. These **“soft costs”** can be covered by a soft cost endorsement. A soft cost endorsement can be tailored to cover loss of (1) expected revenue, (2) additional interest expense, (3) loan fees, (4) property taxes, (5) design fees, (6) insurance premiums, (7) legal and accounting costs and (8) additional commissions arising from the renegotiation of leases.

Typical **exclusions** contained in a soft cost endorsement are for (1) cost to correct construction deficiencies, (2) costs to comply with laws or ordinances, and (3) loss caused by strikes.

(3) Delayed Completion and Force Majeure - § A.2.4.1

2017 Insurance Exhibit

“§ A.2.4 Optional Extended Insurance. The Owner shall purchase and maintain the insurance selected and described below.

[**« X »**] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operation due to a covered cause of loss.”

Issues:

- If the Contractor procures this coverage for the Owner, confirm that it addresses the Owner's exposures to loss (*i.e.*, does not refer to "you" on the Contractor's policy).
- See also Soft Costs Insurance in § A.2.4.7.
- Limits must be stipulated.

Delayed Completion provides coverage for an actual loss of net income which results from delay beyond the projected completion date. The delay must be due to direct physical loss to Covered Property and be caused by or result from a Covered Cause of Loss. Coverage is readily available and cost-effective and is usually purchased in conjunction with Soft Cost Insurance. This coverage is added by endorsement to the Builder's Risk policy. It supplements the risk of covered loss to cover **consequential damage** losses due to completion delays and force majeure events not otherwise covered. The delayed completion and force majeure endorsement extends coverage for losses due to strikes and labor disputes, changes in law (*e.g.*, building codes, emission standards), acts of God, adverse weather conditions and off-site physical damage to materials or equipment.

(4) Ordinance or Law Insurance - § A.2.4.2

2017 Insurance Exhibit

"§ A.2.4 Optional Extended Insurance. The Owner shall purchase and maintain the insurance selected and described below....

[**« X »**] **§ A.2.4.2 Ordinance or Law Insurance** ... regulating the demolition, construction, repair, replacement or use of the Project."

Issues:

- This should not be optional.
- Coverage should be provided without sublimit.

III. CONTRACTOR'S INSURANCE – Article A.3

A. Certificates of Insurance - § A.3.1.1
Proof of Insurance Mod. § A.3.1.11. Liability Insurance

2017 Insurance Exhibit

"§ A.3.1.1 Certificates of Insurance. The Contractor shall provide **certificates of insurance acceptable to the Owner** evidencing compliance with the requirements in this Article A.3 at the following times: (1) **prior to commencement of the Work**; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of **commercial liability coverage**, including coverage for **completed operations**, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage **until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1**. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies."

a. Prior to Work - A Checklist Item

Initiating the process of obtaining proof of Contractor's insurance, both **liability and property** insurance meeting Owner's specifications, needs to be initiated sooner rather than later, and best even before completion of negotiation of the construction contract. Confirmation that the Contractor has in place the various coverages and limits required by the Owner is a detail-oriented process. The **Modified Insurance Exhibit** has been embedded into the section addressing the Proof of Liability Insurance and the Proof of Property Insurance to be provided by the Contractor a **Checklist** of items to be sought. See the detailed list of coverages in **Mod. § A.3.1.1.2 Contractor's Insurance – Proof of Insurance - Matters Certified** and with a listing of the attachments to be provided at **Mod. § A.3.1.1.2 Contractor's Insurance – Proof of Insurance - Attachments**.

b. At Construction Completion – A Checklist Item – § A.3.1.1 (Mod. § A.3.1.1.1.3)

At Substantial Completion Owner will need to confirm that Contractor's liability insurance will

continue until the punch list items are completed and for the **one-year warranty period** has passed; additionally, Owner will need to assure that Contractor's Completed Operations coverage continues for the post-completion period specified in the construction documents (e.g., until expiration of the **statute of repose**).

(1) 2017 Insurance Exhibit

The **2017 Insurance Exhibit** does **not** provide for continuation of completed operations coverage until expiration of the statute of repose. **§ A.3.2.1 Contractor's Required Insurance Coverage** provides a placeholder for the parties to specify a longer duration:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

(2) Modified Insurance Exhibit

Mod. §A.3.2.1.2 Contractor's Required Insurance Coverage modifies this provision as follows:

"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 the Date of Substantial Completion of the Work by Contractor."

c. Certificates of Insurance – § A.3.1.1 and Mod. § A.3.1.1.2.1 Proof of Liability Insurance

(1) 2017 Insurance Exhibit– § A.3.1.1 Certificates of Insurance

(a) Certificate Specifications

The **2017 Insurance Exhibit** contains two specifications as to matters to be addressed in the Contractor's Certificate of Liability Insurance.

2017 Insurance Exhibit

"§ A.3.1.1 Certificates of Insurance. ... The certificates will show the Owner as an additional insured on the Contractor's Commercial General

Liability and excess or umbrella policy or policies...."

Issues:

- Owner only?
- "additional insured" is meaningless without further definition (see **§ A.3.1.3**).
- GL and excess policies only? Add auto and pollution policies.
- Attachment of required forms.

[1] Certificate Acceptable to Owner

The **2017 Insurance Exhibit** at **§ A.3.1.1 Contractor's Insurance and Bonds – General – Certificates of Insurance** provides for the Contractor to provide the Owner "**certificates of insurance acceptable to the Owner**". Note if the Certificate is an **ACORD** form of certificate, it is issued **subject to** the **disclaimers** set out in the **ACORD** Certificate.³¹

[2] Certificates Showing Owner as an Additional Insured on Commercial General Liability and Excess Policy

The **2017 Insurance Exhibit** at **§ A.3.1.1** specifies that the certificates "*will show the Owner as an additional insured*" (and specifies that the additional insured status will be as to the Contractor's Commercial General Liability and excess or umbrella liability policies).

(b) Certificate Specification Deficiencies

The specifications in the **2017 Insurance Exhibit** has the following deficiencies.

[1] Lack of Specificity

The **§ A.3.1.1** specification does **not** state (except by the generality of "*acceptable to the Owner*");

[a] Form: the **form** of the Certificates (e.g., **ACORD 25**) and thus does not list as being addressed in the Certificate the various columns set out in the **ACORD** form (e.g., policy issuer, policy period,

³¹ **Effect of the Disclaimers.** See **Endnote 51** for a discussion of the effect of the **ACORD** disclaimers.

coverage limits, relevant policy endorsements);

[b] Certificate Holders: that the Certificate is to be to a Certificate Holder and the addressee and the addressee's address for the Certificate Holder; and does not state that the Owner and the Owner's Lender are to be Certificate Holders and provided Certificates;

[c] Types of Insurance: the liability insurance types to be addressed in the Certificate (e.g., CGL, Business Auto, Workers Comp., Employer's Liability, Professional Liability Policy, Pollution Policy); and

[d] Exceptions to Coverage: relevant exceptions to coverage.

[2] Fails to Specify All Policies upon which Additional Insureds are to Be Insured

§ A.3.1.1 does **not** state that Owner is to be shown as an additional insured on the

[a] Business Automobile Liability Policy,

[b] Employer's Liability Policy, or

[c] Pollution Policy.

[3] Fails to Specify the Form of Additional Insured Endorsement

This specification as to the Certificate also does not state that the Certificate is to state the form of the additional insured endorsement although § A.3.1.1.3 *Additional Insured Obligations* specifies the minimum coverage forms.

Being designated as the Certificate Holder does not designate the Certificate Holder as an insured or additional insured. The standard forms of certificate of insurance contain "Additional Remarks" placeholder for additional information as to the coverages to be set out. ³²

[4] Fails to Specify the Certificate is to Show All of the Protected Persons, the Architect and the Architect's Consultants as Additional Insureds

The Certificate required by § A.3.1.1 is limited to showing the Owner as the additional insured. However, the Protected Persons, plus the Architect and the Architect's consultants need to be included in the list of the additional insureds on the Certificate.

[5] Fails to Specify the Certificate is to State the Primary and Noncontributing Status of the Contractor's Liability Insurance

Although § A.3.1.1.3 specifies that the additional insured coverage is to be primary and non-contributory, § A.3.1.1 does not state that the Certificate of Insurance is to make this statement as to the additional insured coverage.

[6] Fails to Specify the Certificate is to State the Waiver of Subrogation as to the Protected Persons

§ A.3.1.1 does not specify that the Certificate is to certify as to the insurer's waiver of subrogation as to claims against the Protected Persons.

[7] Fails to Specify that the Certificate is to State that Advanced Notice of Cancellation or Material Change is to be Sent to the Protected Persons

§ A.3.1.1 does not specify that the Certificate is to certify as to the endorsement by each insurer as to the insurer's policy to give advanced notice to the Protected Persons of cancellation or material change of the insurer's policy.

[8] Fails to Call for Attachment of the Policies' Declaration Page, Relevant Endorsements and the Policies' Schedule of Forms

§ A.3.1.1 does not specify that the Certificate is to call for and have attached to it the Policies' Declaration Page, the relevant endorsements (e.g., additional insured endorsements, waiver of subrogation endorsements, the advanced notice endorsements) and the Policies' Schedule of Forms for each of the required policies.

(2) Modified Insured Exhibit – Mod. § A.3.1.1.2.1 Proof of Liability Insurance and Mod. § A.3.1.1.2.2 Proof of Property Insurance

Mod. § A.3.1.1.2.1 Proof of Liability Insurance – Matters Certified and **Mod. § A.3.1.1.2.2 Proof of Property Insurance** address the gaps created by the cryptic language in § A.3.1.1.

(a) Certificate Holder

³² **Remarks Box.** See ACORD 25 *Certificate of Liability Insurance* attached in the **Appendix of Forms** box "Description of Operations/ Locations /Vehicles (ACORD 101, *Additional Remarks*

Schedule may be attached if more space is required)" on page 198.

Do not accept a Certificate with the Certificate Holder stated as “*for information only*” or “*parties required by written contract to be a Certificate Holder*”, but rather require the Owner to be specified as the Certificate Holder by specific entity name and proper address.

Additionally, additional remarks as to aspects of the coverage and as to the additional insureds can and should be set out in the Certificate’s remarks box and if needed continued on to an attached supplemental page. Generally, the Certificate is first tendered without such remarks, so persistence is the key. Comfort and clarity results from this practice.

(b) Form

The **Modified Insurance Exhibit** identifies the required form of certificate (ACORD #), states both the Owner and Owner’s Lender are to be provided with Certificates addressed separately to each as Certificate Holder, states in detail what is to be set out in the certificates, and calls for attachment of the required endorsements as to each Certificate Holder.

See the discussion of *Certificates of Insurance* at **Endnote 51**.

(c) Additional Insureds – Mod. § A.3.1.1.2.1.1

The **Modified Insurance Exhibit** modifies the AIA form to require the certificate of insurance to certify not only that the Owner is an additional insured on the Commercial General Liability Insurance and any excess liability insurance, but also all the other persons comprising the “**Protected Persons**” are additional insureds. See definition of Protected Persons at **Mod. Article A.4 Special Terms and Conditions**.

33 **Liability Insurance Endorsements to be Attached to Certificate of Insurance.** The list of endorsements required to be attached to the Certificate of Liability Insurance are set out in this Section. They include endorsements as to:

(1) **Project Limits:** dedication of limits to the project (General Aggregate designated to the Project, Products-completed Operations Aggregate Limit);

(2) **Additional Insured Endorsements:** for each of the Protected Persons including specification of the relevant **ISO** endorsement form as to the CGL (ongoing and completed operations), Business Auto Liability and specification of Additional Insured endorsements to the Employers’ Liability, Pollution Liability, and Excess Liability policies;

(3) **Primary and Noncontributory Endorsements:** including specification of the relevant **ISO** endorsement form for the CGL and Business Auto Liability;

In addition to certifying that the Owner is an additional insured on the Contractor’s Commercial General Liability Insurance and the excess liability insurance, if any, the **Modified Insurance Exhibit** modifies the AIA form to require the Certificate of Liability Insurance to certify that the Protected Persons, including the Owner and the Owner’s Lender, are additional insureds on the **Business Auto Liability Insurance** and the **Pollution Liability Insurance** (if Pollution Liability Insurance is required by the insurance specifications).

(d) Attach the Endorsements – Mod. § A.3.1.1.2.2

The **Modified Insurance Exhibit** modifies the AIA form to require that copies of the required endorsements be attached to the Certificate of Liability Insurance so that Owner can confirm that the coverage required by the required specifications as to endorsements is in place **33** and has not been modified.**34**

(e) Attach the Policy Language – Mod. § A.3.1.1.2.2.8

It is possible that the Contractor’s insurance program is built on an insurance form system providing **automatic or blanket coverages** designed to meet an Owners’ insurance requirements. It is a best practice to require specific **ISO** endorsements as specified in the **Modified Insurance Exhibit** as opposed to having to review manuscripted policy language. Note **manuscripted policy language** generally relies upon an understanding of multiple provisions located in various policy forms and as a result is much more difficult to confirm adequacy of coverage.

(4) **Waiver of Subrogation Endorsements:** as to the CGL, Business Auto, Excess/Umbrella, Workers Compensation, Employers Liability, Professional Liability, Pollution Liability, and Comprehensive Crime policies;

(5) **Advanced Notice of Cancellation-Material Change Endorsements:** as to the CGL, Business Auto, Excess/Umbrella, Workers Compensation, Employers Liability, Professional Liability, Pollution Liability, and Comprehensive Crime policies;

34 **Schedule of Forms and Endorsements.** Each policies Schedule for Forms and Endorsements to confirm that (1) the proffered copies of the endorsements are attached to the policies and (2) the endorsements have been issued and have not been modified.

2. Property Insurance

a. Advice to Owner

- **New Builder's Risk Policy.** If Contractor is to procure the property insurance, require that it be on a newly acquired builder's risk policy form and not a project scheduled on the Contractor's master builder's risk policy.
- **Negotiate the terms of the Policy.**
- **Insist on Timely Delivery of the Policy.** Do not rely on evidence of insurance or a certificate of property insurance, but obtain a copy of the property policy and review its provisions for compliance with the **Modified Insurance Exhibit**.

b. Evidence of Property Insurance – § A.3.3.2.1 Contractor's Other Insurance Coverage, Mod. § A.3.1.1.2.2 Evidence of Property Insurance

(1) Time Provided - Upon Request

§ A.3.3.2.1 Contractor's Other Insurance Coverage provides for Contractor to provide Owner with a copy of the property policy upon request.

(2) Time Provided - Prior to Work

Mod. § A.3.1.1.1 Certificates and Evidences of Insurance – Times Provided and **Mod. § A.3.1.1.2.2** Proof of Insurance - Matters Certified – Proof of Property Insurance; Copies of Policies modify the General requirements applicable to the Contractor to require evidence of property insurance be provided prior to commencement of the Contractor's Work, and not rely upon the Owner to request a copy of the property policy. Evidence of Contractor-procured builder's risk insurance should be obtained as early as possible prior to commencement of the Work. Although the property policy likely will be delayed to even after commencement of the Work, evidence of property insurance in the form of a properly completed **ACORD 28 Certificate of Commercial Property Insurance**, and preferably an **ACORD 75 Insurance Binder**, be obtained in advance of Work.

b. Attachments - Mod. § A.3.1.1.2.2

The **Mod. § A.3.1.1.2.2** Certificates and Evidences of Insurance - Matters Certified - Evidence of Property Insurance provides for attachment to the **ACORD 28 Evidence of Commercial Property Insurance** of the following endorsements:

(1) Loss Payee: Owner as the loss payee or the Owner's Lender, if the case;

(2) Waiver of Subrogation: Waiver of subrogation by the insurer as to Owner, Owner's Lender, and the other Protected Persons; and

(3) Advanced Notice: Advanced notice of cancellation, material modification or non-renewal to Owner, Owner's Lender, and the other Protected Persons.

B. Liability Insurance: Additional Insured Obligations - § A.3.1.3

Upstream Issues:

- Limited parties covered by AI endorsement.
- The **07 04** or later editions do not provide coverage for the Additional Insured's sole negligence.
- The **07 04** or later editions do not provide coverage for a third party action over.
- Upstream will prefer additional insured status on combination of **CG 29 10 10 01** and **CG 20 37 10 01** (which remains available from many insurance companies).

Downstream Issues:

- Downstream party is sharing its limits with each additional insured party.
- AI status would likely be provided on **04 13** edition instead of **07 04**.

1. State Law Limitations - "To the fullest extent permitted by law" – § A.3.1.3 (Mod. § A.3.1.3.1).

Many states have laws prohibiting contractual indemnities in a "construction contract" by a protecting person as to a protected person's negligence causing injuries and damage (except sometimes with a list of permitted exceptions).

Some of these laws extend this prohibition to

additional insured coverage.³⁵ The phrase “*to the fullest extent permitted by law*” is in the AIA insurance form to save the insurance protection to the fullest extent permitted.

2. Primary and Noncontributory – § A.3.1.3 (Mod. § A.3.1.3.2).

All general liability policies state that they are “*primary*”, unless any other insurance (“*other insurance*”) covering the same loss is also primary, in which case the primary policies share in payment of that loss. That is usually contrary to the objective of the additional insured who wants the named insured’s insurance to pay until it is exhausted without contribution from the additional insured’s insurance. To achieve this result, ISO promulgated its **CG 20 01 04 13 Primary and Noncontributory – Other Insurance Condition** endorsement which states that the named insured’s coverage (e.g., coverage by the Contractor’s CGL insurance of as

“is primary and will not seek contribution from any other insurance available to an additional insured under (the Named Insured’s) policy provided that (1) the additional insured is a Named Insured under such other insurance; and (2) the (Named Insured has) 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.”³⁶

Warning: Note that requiring that the Named Insured’s insurance be “primary” is not sufficient. The endorsement requires that the named insured’s insurance also state that it “*will not seek contribution*”. The “*not seek contribution*” will need to be expressed in the contract to assure additional insured protection.

3. ISO Forms - “To the extent commercially available” – § A.3.1.3 (Mod. § A.3.1.3.3).

The most current ISO edition and many prior ISO editions for additional insured coverage are “*commercially available*”, but the difficulty is that many insurers do not use ISO forms unamended or use manuscripted forms. Surplus lines carriers typically do not issue on ISO forms. There are hundreds of manuscript additional insured endorsements currently

in use. These may (1) limit the parties covered, (2) limit the scope of coverage, (3) limit the operations coverage, (4) add new exclusions; or (5) do all of the foregoing (the “*five gotchas*”).

4. ISO Forms - “No less than the ISO form’s coverage”- § A.3.1.3 (Mod. § A.3.1.3.3).

a. Non-ISO Forms and the Five Gotchas

If other than an ISO (unmodified) form is used, it needs to be examined to determine if any of the *five gotchas* exist and to determine the issue presented.

b. ISO Form Numbering System – § A.3.1.3 (Mod. § A.3.1.3.3)

The last four numbers of an ISO endorsement indicate the edition date. So, the **ISO CG 20 10 07 04 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization** was promulgated by ISO in **July 2004**.

The first four numbers indicate the type of ISO endorsement, with “**20**” being an additional insured endorsement, and “**10**” being the additional insured endorsement form scheduling a named owner (or named contractor) as the additional insured on an ISO CGL policy of the contractor or subcontractor, as the case may be, for the Named Insured’s (contractor’s or subcontractor’s, as the case may be) ongoing operations.

There have been **six CG 20 10** editions, each progressively more restricted as to coverage. **ISO CG 20 10 12 19 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization** is the latest ongoing operations additional insured endorsement; it is in effect identical to its predecessor, **ISO CG 20 10 04 13 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization**.

The **12 19** and the **04 13** editions of the **CG 20 10**, like its predecessor the **ISO CG 20 10 07 04 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization**, exclude coverage for the additional insured’s sole negligence, but also the **12 19** and **04 13** introduced the following three additional restrictions (the “*whether conditions*”):

(1) **To Extent Permitted by Law:** additional

³⁵ **Anti-Indemnity/Anti-Additional Insured Statutes.** See **Endnote 2** for further discussion of these statutes.

³⁶ **ISO Endorsement Form.** See **Appendix of Forms** at page 122 for a copy of the **ISO CG 20 01 04 13 Primary and Noncontributory**.

insured coverage applies only to the extent permitted by law;

(2) **Limited by Contract:** coverage will not be broader than that which (the Named Insured is) required by contract to provide; and

(3) **Limited by Policy:** coverage will not pay any more than the amount required by the policy.

(these three restrictions are sometimes referred to as the “**whether conditions**” – “whether” or not the contract’s insurance specifications are adequately drafted determines the extent of coverage, **even if** the issued insurance would otherwise provide for more coverage to the additional insured.

Issues beginning with the 04 13 edition:

1. Only applies to the extent permitted by law;
2. Will not be broader than that which [the Named Insureds’ are required by the contract or agreement to provide such additional insured; and
3. The most [the insurance company] will pay on behalf of the additional insured is the amount required by the contractor or agreement or available under the applicable Limits of Insurance.

c. **ISO CG 20 10 07 04 - § A.3.1.3.3 and Mod § A.3.1.3.3.1**

2017 Insurance Exhibit

CG 20 10 07 04 *Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization* provides in part:

“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 locations designated above.”

[Note: “your” refers to the Named Insured, e.g., the Contractor.]

(thus, excluding the additional insured’s sole negligence).³⁷

Modified Insurance Exhibit

The **Modified Insurance Exhibit** at Mod. § **A.3.1.3.3.1** *Ongoing Operations – Owner* is revised to provide the drafter with a choice of specifying the **10 01** edition or the **07 04** edition. The **10 01** edition is recommended as the **1st choice**. The **10 01** edition of the **ISO CG 20 10** and **ISO CG 20 37** are still available from many insurers. The **10 01** edition broadens the additional insured coverage to include the sole negligence of the additional insured. Availability should be confirmed, and, if available, this specification should be revised to specify the **10 01** edition.

CG 20 10 10 01 *Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization* provides in part:

“A. **Section II – Who Is An Insured** is amended to include as an additional insured the person or organization shown in the Schedule, but only with respect to liability arising out of your **ongoing** operations for that insured.”

d. **ISO CG 20 37 - § A.3.1.3.3 and Mod. § A.3.1.3.3**

ISO CG 20 37 *Additional Insured – Owners, Lessees or Contractors – Completed Operations*³⁸ provides additional insured status regarding **completed** operations. This endorsement is subject to the same

Lessees or Contractors – Completed Operations.

³⁷ **ISO Endorsement Form.** See **Appendix of Forms** on page 124 for a copy of the **ISO CG 20 10 07 04** *Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization*.

³⁸ **ISO Endorsement Form.** See **Appendix of Forms** on page 132 for a copy of the **ISO CG 20 37** *Additional Insured – Owners,*

editions and issues pertinent to the **six edition dates** of the **ISO CG 20 10 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization**.

e. ISO CG 20 18 and – Mod. § A.3.1.3.3

Modified Insurance Exhibit

Mod. § A.3.1.3.3 provides for the Contractor to insure Owner's Lender on Contractor's CGL policy under and an **ISO CG 20 18 Additional Insured – Mortgagee, Assignee or Receiver**. It provides additional insured status to a mortgagee (e.g., Owner's Lender) as follows:

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 their liability as **mortgagee**, assignee or receiver and arising out of **your operations or** the ownership, maintenance or use of the premises by you.

but first it needs to be modified to add "**your operations or**" and to delete **Exclusion B**. "This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization"

5. Contractor's Insurance Issued by Authorized Insurer – § A.3.2.1 (Mod. § A.3.2.1.1)

§ A.3.2.1 Contractor's Required Insurance provides for its insurers providing the required insurance be **authorized** to issue insurance in the jurisdiction where the Project is located. Authorized issuers are generally issuers that are not surplus line insurers. Surplus lines insurer's policies generally are not issued on industry standard forms but on forms designed to reduce premium costs by eliminating many of the coverages of a standard policy. Many good insurer choices are "**authorized**" to do business but are not "**admitted**" in the state of the project's location. Also, not every state requires an insurer to be licensed (admitted) in that state.

6. Duration of Insurance Coverage - "unless a different duration is stated below" – § A.3.2.1 (Mod. § A.3.2.1.2)

2017 Insurance Exhibit

"§ A.3.2 Contractor's Required Insurance

§ A.3.2.1 The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, *unless a different duration is stated below*:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)"

Modified Insurance Exhibit

"Mod. § A.3.2.1 Duration of Insurance 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 the Date of Substantial Completion of the Work by Contractor."

a. 2017 Insurance Exhibit

§ A.3.2.1 Contractor's Required Insurance Coverage requires Contractor's required insurance to be maintained

"until the expiration of the period of correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below."

b. Modified Insurance Exhibit

Mod. § A.3.2.1.2 Contractor's Required Insurance Coverage - Duration of Insurance Coverage modifies this provision to specify that Contractor is to maintain Products-Completed Operations coverage for the full term of the Statute of Repose following the Date of Substantial Completion of the Work by Contractor.

C. Commercial General Liability - § A.3.2.2

1. Aggregate of Primary and Umbrella Limits - § A.3.2.2.1

2017 Insurance Exhibit

"§ A.3.2.2.1 Commercial General Liability Insurance for the Project ... with policy limits of not less than \$___ each occurrence, \$___ general aggregate, and \$___ aggregate for products-

completed operations hazard....”

Issues:

- How do you know if the general aggregate has been eroded or exhausted by claims elsewhere?
- Add requirements for Designated Construction Project General Aggregate Limit **ISO CG 25 03 05 09** or much higher excess limits.
- Consider use of Project Specific Program

The standard practice has been to provide for a floor amount for the primary policy and to state an umbrella amount on top of that for an aggregate amount of required coverage.

a. 2017 Insurance Exhibit

The AIA’s new approach in the **2017 Insurance Exhibit § A.3.2.2.1 Commercial General Liability Insurance** is to state the required minimum limit and allow the parties to choose the amount to allocate to the primary policy and the balance to the excess insurance, if needed to meet the minimum limits specified.

b. Modified Insurance Exhibit

Added to **Mod. § A.3.2.2.1** is the following language emphasizing this approach “(which limits may be the aggregate of a primary policy and an excess or umbrella policy).”

2. Coverages - § A.3.2.2.1

a. 2017 Insurance Exhibit

§ A.3.2.2.1 sets forth five types of claims insured up to the limits of the CGL policy, which coverages are fairly standard.³⁹

The types of claims to be insured are the following:

(1) Damages Because of Bodily Injury, Sickness or Disease; Deaths - § A.3.2.2.1.1 (Mod. § A.3.2.2.1.2.1)

2017 Insurance Exhibit

“**§ A.3.2.2.1 Commercial General Liability Insurance** ... providing coverage for claims including: ...

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;”

(2) Personal and Advertising Injury - § A.3.2.2.1.2 (Mod. § A.3.2.2.1.2.2)

2017 Insurance Exhibit

“**§ A.3.2.2.1 Commercial General Liability Insurance** ... providing coverage for claims including: ...

- .2 personal and advertising injury;”

(3) Physical Damage or Destruction of Tangible Property - § A.3.2.2.1.3 (Mod. § A.3.2.2.1.2.3)

2017 Insurance Exhibit

“**§ A.3.2.2.1 Commercial General Liability Insurance** ... providing coverage for claims including: ...

- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;”

Issues:

- Environmental/pollution damage is physical damage to tangible property and is largely if not totally excluded from most contractor’s CGL coverage.
- Coverage is excluded for damage to or loss of intangible property.

³⁹ **CGL – Coverages.** See the **Endnotes** to this section of the **Modified Insurance Exhibit** and to the **ISO CG 00 01 04 13 Commercial General Liability Coverage Form** beginning on **page**

98 of the **Appendix of Forms.**

Note that although environmental/pollution damage is physical damage to tangible property, such damage is largely, if not totally (absolutely), excluded from most contractor's CGL coverage, ⁴⁰ which coverage is the subject of Pollution Liability Insurance as set out in § A.3.2.9 (*Pollution Liability*). See AIA A201 § 10.3 (*Hazardous Materials and Substances*) in the AIA A201 Risk Management Provisions in the Appendix of Forms to this Article for provisions addressing contractor's covenants and indemnities for hazardous materials liability on the project.

(4) Bodily Injury or Property Damage Arising Out of Completed Operations - § A.3.2.2.1.4 (Mod. § A.3.2.2.1.2.4)

2017 Insurance Exhibit

"§ A.3.2.2.1 Commercial General Liability Insurance ... providing coverage for claims including: ...

- .4 bodily injury or property damage arising out of completed operations;"

(5) "Insured Contracts" Coverage – § A.3.2.2.1.5 (Mod. § A.3.2.2.1.2.5)

2017 Insurance Exhibit

"§ A.3.2.2.1 Commercial General Liability Insurance ... providing coverage for claims including: ...

- .5 providing coverage for claims including ... the Contractor's indemnity obligations under Section 3.18 *General Conditions*."

Upstream Parties' Position:

The unmodified AIA A201 § 3.18 is extremely limited and fails to meet the scope permitted by some anti-indemnity laws. So, § 3.18 should be revised to expand the indemnity to indemnify [the Upstream Parties] for the permitted exceptions (e.g., injuries to and death of the employees of the Contractor and of the Subcontractors of every tier,

caused in part by the negligence of the Upstream Parties).

Downstream Parties' Position:

The unmodified § 3.18 strictly follows the limited scope of coverage provided by general liability insurance.

Comments:

- Assuming that AIA A201 § 3.18 will be modified by most attorneys, be aware that CGL insurance is generally responsive to allegations of Bodily Injury and Physical Injury to Tangible Property, subject to the limits of liability, and nothing else.
- Also, be aware that insurance applies to but does not "cover" a broader indemnification requirement.

AIA A201 Section 3.18 is AIA's indemnity language as to the Contractor's indemnity of the Owner and other persons. ⁴¹ The standard form ISO CGL policy provides insurance to the named insured (e.g., Contractor) for its "Insured Contracts," as that term is defined and limited in the ISO CGL policy.

The scope of the Contractor's indemnity as set out in the AIA printed form A201 is many times broadened by negotiations between the Owner and the Contractor. CGL "Insured Contract" coverage is generally responsive to allegations of "bodily injury" and "physical injury to tangible property", subject to the limits of liability and limits imposed by applicable state's anti-indemnity statutes, and nothing else (many liabilities do not fall within the insurance terms "bodily injury" and "physical injury" to "tangible property" and thus are not insured even though indemnified by the Contractor.

CGL insurance "*applies to*" but does not "*cover*" Contractor's contractual indemnification provision in the Contract Documents as the policy's exclusions

⁴⁰ CGL – Absolute Pollution Exclusion. See this exclusion at Section I 2.f of ISO CG 00 01 04 13 *Commercial General Liability Coverage Form* on page 100 of the Appendix of Forms.

⁴¹ A201 § 3.18 Contractor's Indemnity. See the AIA A201-2017 provisions accompanying this Article beginning on page 46 of the Appendix of Forms. The AIA language is usually modified by negotiations of the parties.

apply to indemnified liabilities to the extent they exceed the *exception to the exclusion*. Enforceability of the Contractor's indemnity as written in an unamended **A201-2017** or as modified by the parties is subject to and limited by state laws. Many states have anti-indemnity laws applicable to indemnities in construction contracts which affect the scope of an enforceable indemnity. These laws have exceptions that permit certain indemnities which statutorily permitted indemnities are not expressly permitted by the AIA's wording. For instance, AIA **A201 Section 3.18** does **not** provide for indemnity by the Contractor for injuries caused by the *sole negligence* of the Owner, although some states anti-indemnity statutes permit a Contractor to indemnify an Owner for injuries to the Contractor's and Subcontractor's employees caused by the sole negligence of the indemnified person. That case is the typical **third-party over action** brought by an injured employee of a contractor or subcontractor against the owner alleging the injury is caused by the negligence of the owner, without suit being filed by the employee against its employer due to the Workman's Comp. Bar.

b. Modified Insurance Exhibit

(1) "Substitute Providing Coverage More Beneficial to the Protected Persons"

Mod. § A.3.2.2.1 specifies that the CGL insurance is to be written on an **ISO CG 00 01** "or a substitute providing coverage more beneficial to the Protected Persons."

(2) Forms

Mod. § A.3.2.2.1.2 (.6 - .8) modifies the **2017 Insurance Exhibit** specifications to identify the following forms and coverages to be included:

.6 Deletion of Personal Injury Contractual Liability Exclusion. General liability insurance excludes coverage for the assumption of personal injury liability in a contract or agreement. Depending on the type of contractor (*e.g.*, security) being engaged, it may be advisable to require the deletion of the Personal Injury Contractual Liability Exclusion.

.7 Waiver of Subrogation: Specifies that the CGL is to be endorsed with an **ISO form CG 24 04 12**

⁴² **Waiver of Subrogation.** See these **ISO** forms attached in the **Appendix of Forms**.

⁴³ **Advanced Notice.** See the **Appendix of Forms** for an example of such type of notice, **ISO CG 02 05 12 04 Texas Changes – Amendment of Cancellation provisions or Coverage Change**.

19 Waiver of Transfer of Rights of Recovery Against Others Endorsement or a **CG 24 53 12 19** as to the Protected Persons and such other persons as are designated by Owner to Contractor as Protected Persons. ⁴² Also see **AIA A201 § 11.3.1** of the *General Conditions* providing limited waiver of subrogation requirements.

.8 Advanced Notice: Specifies that the CGL is to be endorsed to provide 30 advanced notice from the insurer to Owner and the Owner's Lender of cancellation, non-renewal or material change, except 10 days' for cancellation for nonpayment of premiums. ⁴³

.9 Post-Completion Coverage: Specifies that Contractor is to maintain Products-Completed Operations coverage with respect to the Work for the term of the Statute of Repose following Substantial Completion Date of the Contractor's Work. ⁴⁴

3. Prohibited Exclusions or Restrictions - § A.3.2.2.2

There are a large number of coverage exclusions or restrictions added to the standard CGL policy by endorsement unless prohibited by the insurance specifications of the parties and by the vigilance of the party to be protected. These exclusions or restrictions can be *invisible* in that they do not show up on most certificates of insurance and can be detected only by a careful reading of the CGL policy. A few of the most egregious have been listed in the Modified Insurance Exhibit as being prohibited. This list only scratches the surface of manuscripted exclusions and restrictions. The following are a few (more are listed and discussed in the **Endnotes** to the **Insurance Exhibits**.

a. "Insured vs. Insured" – § A.3.2.2.2.1

2017 Insurance Exhibit:

"§ A.3.2.2.2 The Contractor's Commercial General Liability ... shall not contain an exclusion ... of coverage for the following:

- .1** Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the

⁴⁴ **Completed Operations Coverage Post Substantial Completion.** See **ISO CG 20 37 04 13 Additional Insured – Owners, Lessees Or Contractors – Completed Operations** in the **Appendix of Forms**.

claimant is an insured, and there would otherwise be coverage for the claim.”

This prohibition appears in the **2017 Insurance Exhibit**. An “*insured vs. insured*” exclusion excludes coverage if an additional insured brings suit against a named insured when both are covered by the same policy. This type of exclusion if added to the policy would prohibit coverage of an additional insured on the named insured’s CGL policy for one of the most typical reasons for seeking additional insured coverage, the **third-party over action**, suit by an injured person on a construction project that has sued both the owner (the additional insured) and the contractor (the named insured) and the owner has sued the contractor on the contractor’s indemnity of the owner.

b. Property Damage Arising Out of Work Performed by Subcontractors § A.3.2.2.2.2

2017 Insurance Exhibit:

“§ A.3.2.2.2 The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

- .2 Claims for property damage to the Contractor’s Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.”

ISO CGL Wording:

“This insurance does **not apply** to:

Exclusion 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.

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.”

This prohibition appears in the **2017 Insurance Exhibit**.⁴⁵ If this prohibited endorsement is added to the CGL policy, it results in the loss of insured protection available to the Contractor (in most jurisdictions). Most jurisdictions have interpreted the standard CGL policy as insuring the Contractor against construction defects caused by the Work of its subcontractors. The standard CGL policy contains an “*exception to an exclusion*”.

The CGL policy “**excludes**” insurance for damages to property caused by the Work of the Contractor, but then “**excepts**” from this exclusion damage to the project property if the damage is caused by the negligence of the subcontractor effectuating the construction, but in a defective manner. These jurisdictions generally hold that the subcontractor’s construction in a defective manner is an “occurrence” under the policy and is an insured “accident”.

c. Prohibition of Limitations on Bodily Injury Coverage - § A.3.2.2.2.3

This prohibition appears in the **2017 Insurance Exhibit**. § A.3.2.2.2.3 prohibits the addition of exclusions to coverage of “bodily injuries” except for bodily injuries to employees of the insured. This specification is designed to flush out (prohibit) provisions in the Contractor’s policy that limit coverage for this category of bodily injury. As to injuries to employees of the Contractor and injuries to employees of subcontractors see the explanation of the purposes of § A.3.2.2.2.4, §A.3.2.2.2.12, and § A.3.2.2.2.13 below.

d. Prohibition of Exclusion of Coverage for Insured’s Indemnity for Injuries to Employees of the Insured - § A.3.2.2.2.4

2017 Insurance Exhibit:

“§ A.3.2.2.2 The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees the insured.”

⁴⁵ **CGL Coverage of Construction Project Property Damage.** *CGL Coverage of Defective Work*, ACREL Insurance Committee March, **2016** (San Diego) by William H. Locke, Jr., updating *CGL Coverage of “Property Damage” Losses Arising Out of Defective*

Work, ACREL Fall Meeting, 2009 (Washington D.C.) – see link to the 2016 article following the Table of Contents at the beginning of this Article.

Issues:

- Such allegations are commonly a claim of sole negligence (of the indemnified person, *e.g.*, Owner).
- **AIA A201** § 3.18 does not require indemnification (by the Contractor or the Owner) for sole negligence.
- Coverage for sole negligence is necessary with regard to 3rd party over actions.

This prohibition is to protect the upstream party (*e.g.*, Owner) against the Contractor's insurer endorsing out of the Contractor's policy insurance of the Contractor for Contractor's indemnity of the Owner against "third party over claims" by injured employees of the Contractor's subcontractors. If the Contractor's insurer has not endorsed out this coverage of the Contractor on its indemnity of the Owner, then the Contractor will have insurance to fund its indemnity of the Owner for claims by injured employees of subcontractors.

It is equally advisable that the Contractor's subcontracts prohibit subcontractor's liability insurers from endorsing out of the subcontractor's insurer's liability coverage indemnities by the subcontractor of its general contractor for injuries to the subcontractor's employees. Upon claim by an injured subcontractor's employee against the Contractor or the Owner, or both, the Owner will seek indemnity from its Contractor; the Contractor will seek protection from its insurer and seek indemnity from its subcontractor; and the subcontractor will seek insurance coverage from its insurer.

The standard **ISO CGL** policy states:

"This insurance does not apply to (e) Employers Liability, "bodily injury" to an employee of the insured arising out of or in the course of employment by the insured".

The standard policy goes on to state:

"This exclusion does not apply (aka the "**exception to the exclusion**") to liability assumed by the insured under an "**insured contract**".

Thus, the insured - employer (the subcontractor who employees the worker that is bringing the claim against the Contractor or the Owner, or both, has insurance under its CGL policy insuring its indemnity of the upstream party(ies). When this coverage is triggered by a claim, the subcontractor's workers compensation coverage has already made payment, and now the subcontractor's general liability coverage is making further payment for that same claim.

Note that the exclusion in the standard **ISO CGL** policy excludes coverage for insurance of "the insured", this exclusion excludes from the CGL insurance by the insurer of "the" insured, not "any insured", and so does not extend as an exclusion to coverage of additional insureds. Thus, the exclusion is an exclusion from insuring the insured contractor (subcontractor) for injuries to its employees. The injured employee is to look to the workers compensation coverage of her employer, but that does not prohibit claim by the injured employee against third parties in cases where the injured employee is dissatisfied with the limits of the statutory benefits provided by the workers compensation system and insurance, *e.g.*, suit against the Owner as to injuries to the Contractor's employees and the Owner and Contractor as to injuries to employees of the subcontractor.

The injured employee is prohibited by the workers compensation system from suing the employer, so that employee sues the upstream parties, *e.g.*, on the basis that the upstream party provided an unsafe workplace (aka the "Workers' Comp. Bar"). As the lawsuits are against the upstream party only, this is an allegation of sole negligence. Generally, an additional insured is not insured for its sole negligence. This prohibition is aimed at the practice of many insurers of simply adding an endorsement deleting the "exception to the exclusion".

e. Prohibition of Claims under a Prior Work § A.3.2.2.2.5 and Prior Injury Endorsement § A.3.2.2.2.6

2017 Insurance Exhibit:

"§ A.3.2.2.2 The Contractor's Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language."

2017 Insurance Exhibit:

“§ A.3.2.2.2 The Contractor’s Commercial General Liability policy ... shall no contain an exclusion ... for the following:...

- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.”

Issues:

Upstream Position: Critically important.

Downstream Position: Difficult to avoid if a small contractor.

These endorsements essentially revert a GL policy to a Claims-Made form with no prior acts coverage and no “tail” (extended reporting period).

f. Prohibition of Claims Related to Habitational Projects § A.3.2.2.7

2017 Insurance Exhibit:

“§ A.3.2.2.2 The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

- .7 Claims related to residential, multi-family, or other habitational projects.”

Issues:

- The term “habitational” varies widely from carrier to carrier.
- Condominiums? Apartments? Barracks? Dorms? Jails? Retirement centers? Tract homes? Custom homes? Other?

g. Prohibition of Claims Related to Roofing - § A.3.2.2.8

2017 Insurance Exhibit:

“§ A.3.2.2.2 The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

- .8 Claims related to roofing, if the Work involves roofing.”

Issues:

- Why limit to roofing?
- Insurance companies utilize numerous other forms of exclusions regarding the Work.

Recommended: Prohibit any endorsement limiting coverage to business or classification description, or designated premises, project or operation.

h. Prohibition of Claims Related to EIFS - § A.3.2.2.9

2017 Insurance Exhibit:

“§ A.3.2.2.2 The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces if the Work involves such coatings or surfaces.”

Issues:

- This coverage is not readily available to most contractors.
- When available, certified applicators are required, and the cost is not economical.

i. Prohibition of ISO CG 40 04 Exclusion – Earth Movement and ISO CG 40 05 Exclusion – Earth Movement – Completed Operations - § A.3.2.2.10

2017 Insurance Exhibit:

“§ A.3.2.2.2 The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.”

See **Appendix of Forms** at **page 154** for **ISO CG 40 04 12 19 Exclusion – Earth Movement** and at **page 155** for **ISO CG 40 05 12 19 Exclusion – Earth Movement – Completed Operations**.

j. Prohibition of ISO CG 21 42 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations) and ISO CG 12 43 12 19 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations Excepted) and Similar Exclusions - § A.3.2.2.11

2017 Insurance Exhibit:

“§ A.3.2.2.2 The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.”

See **Appendix of Forms** at **page 136** for **ISO CG 21 42 12 04 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations)** and at **page 138** for **ISO CG 21 43 12 04 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations Excepted)**.

k. Prohibition of Contractual Liability Limitation - Mod. § A.3.2.2.12

Modified Insurance Exhibit:

“**Mod. § A.3.2.2.2 Prohibitions.** The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

- .12 Contractual Liability Limitation: ISO CG 21 39 Contractual Liability Limitation** or equivalent is not permitted.

See **Appendix of Forms** at **page 135** for **ISO CG 21 39 10 93 Contractual Liability Limitation** endorsement.

l. Prohibition of ISO CG 24 26 Amendment of Insured Contract Definition – Mod. § A.3.2.2.13

Modified Insurance Exhibit:

“**Mod. § A.3.2.2.2 Prohibitions.** The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

- .13 Amendment of Insured Contract Definition: ISO CG 24 26 Amendment of Insured Contract Definition** or equivalent is not permitted.

See **Appendix of Forms** at **page 146** for **CG 24 26 04 13 Amendment of Insured Contract Definition**.

Mod. § A.3.2.2.2.13 is added to prohibit another ISO form, the **ISO CG 24 26 Amendment of Insured Contract Definition**. **ISO CG 24 26 Amendment of Insured Contract Definition** amends the definition of “**Insured Contracts**” to limit the insurance of the insured’s indemnity to bodily injury and property damage “**caused, in whole or in part, by the insured** (by the Contractor). Addition of this endorsement limits insurance of the indemnitor (the Contractor) to cases where the indemnitor is at least partly negligent (allowing coverage of the additional insured for its **contributory negligence**). This endorsement should be avoided if the transfer of **sole negligence** is required (and permitted by the statutes of the state where the work is undertaken).

m. Prohibition of Limitation of Coverage to Designated Premises or Project Endorsement – Mod. § A.3.2.2.2.14

Modified Insurance Exhibit:

“**Mod. § A.3.2.2.2 Prohibitions.** The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:..

.14 Limitation of Coverage to Designated Premises or Project: ISO CG 21 44 *Limitation of Coverage to Designated Premises or Project*, or similar limitation is not permitted.

Mod. § A.3.2.2.2.14 is **added** to the **Modified Insurance Exhibit**. This endorsement, **ISO CG 21 44** *Limitation of Coverage to Designated Premises or Project*, restricts coverage only to those premises, projects or operations listed and excludes all others. If your premises, project, or operation is not listed, you are **not** insured.⁴⁶

n. Prohibition of Punitive, Exemplary or Multiplied Damages Exclusion – Mod. § A.3.2.2.2.15

Modified Insurance Exhibit:

“**Mod. § A.3.2.2.2 Prohibitions.** The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

.15 Fines, Punitive, Exemplary or Multiplied Damages Exclusion: Any type of punitive, exemplary, multiplied damages, or fines exclusion is not permitted (coverage is to be provided for each of these exposures where permitted by law).”

Mod. § A.3.2.2.2.15 is added to the list of prohibitions listed in the AIA insurance specifications. If this exception cannot be eliminated, seek to provide that coverage is provided where permitted by law.

o. Prohibition of Classification or Business

Description Exclusion – Mod. § A.3.2.2.2.16

Modified Insurance Exhibit:

“**Mod. § A.3.2.2.2 Prohibitions.** The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

.16 Classification or Business Description Exclusion. Any restriction of coverage restricting coverage to only to classifications or descriptions specifically listed and excluding all others.”

Mod. § A.3.2.2.2.16 is added to the list of prohibitions listed in the AIA insurance specifications. An example of this type of exclusion is an exclusion from coverage for any type of work other than the specifically described line of work. For instance, if the classification or business description states “roofer” and that contractor performs any other type of work, no coverage will be provided for liabilities arising out of that other type of work. This is a flip of § A.3.2.2.2.8.

p. Prohibitions of Continuous or Progressive Injury and Damage Exclusion - § A.3.2.2.2.17

Modified Insurance Exhibit:

“**Mod. § A.3.2.2.2 Prohibitions.** The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

.17 Continuous or Progressive Injury and Damage Exclusion. Any exclusion for damages arising out of or related to bodily injury or property damage which first occurred in whole or in part prior to the inception date of the policy, or which are, or are alleged to be, in the process of occurring as of the inception date of the policy; or which were caused, or are alleged to have been caused, by the same condition or defective construction which first existed prior to the inception of the policy.

⁴⁶ **Prohibition of Modification to Employers Liability Exclusion.** See **ISO CG 21 44** *Limitation of Coverage to Designated Premises or Project* in the **Appendix of Forms**.

Example of Continuous or Progressive Injury and Damage Exclusion:

This insurance does **not apply** to:

1. Any damages arising out of or related to “bodily injury” or “property damage” whether such “bodily injury” or property damage” is known **or** unknown;
- (a) Which first occurred in whole or in part prior to the inception date of this policy); or
- (b) Which are, or are alleged to be, in the process of occurring as of the inception date of the policy; or
- (c) Which were caused, or are alleged to have been caused, by the same condition(s) or defective construction which first existed prior to the inception of this policy.

This prohibition has been **added** to the list of prohibitions listed in the AIA insurance specifications. See discussions at **Mod. § A.3.2.2.2.5**, and **Mod. § A.3.2.2.2.6**. This prohibition is added in addition to the prohibitions set out in these other similar prohibitions out of an abundance of caution.

q. Prohibition Electronic Data Liability Exclusions - Mod. § A.3.2.2.2.18

Modified Insurance Exhibit:

“**Mod. § A.3.2.2.2 Prohibitions.** The Contractor’s Commercial General Liability policy ... shall not contain an exclusion ... for the following:...

.18 Electronic Data Liability Exclusions. Any exclusion excluding for electronic data liability, including the following endorsements are prohibited: **ISO CG 04 71 12 19 Electronic Data Liability – Limited Bodily Injury exception Not Included** and **ISO CG 04 72 12 19 Electronic Data Liability Coverage (Coverage A) with Access or Disclosure of Confidential or Personal Information Exclusion (Coverage B)**.

See **Appendix of Forms** at **page 118** for **CG 04 71 12 19 Electronic Data Liability – Limited Bodily Injury**; at **page 120** for **CG 04 72 12 19 Electronic Data Liability Coverage (Coverage A) with Access or Disclosure of Confidential or Personal Information Exclusion (Coverage B)**.

4. Electronic Data Liability Endorsement - Mod. § A.3.2.2.3

“**Mod. § A.3.2.2.3 Electronic Data Endorsement.** If any of the Work could cause damage to electronic data, this insurance is to include an **ISO CG 04 37 04 13 Electronic Data Liability** endorsement with coverage to the full limits of the policy....”

Without an Electronic Data Liability Endorsement, which has been added to the **Modified Insurance Exhibit** as **Mod. § A.3.2.2.3 Electronic Data Endorsement**, the CGL insurance specifications do not include insurance for loss to intangible property, including electronic data.

See **Appendix of Forms** at **page 117** for **CG 04 37 04 13 Electronic Data Liability**.

D. Business Auto Policy - § A.3.2.3

2017 Insurance Exhibit:

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the contractor”

1. Hired Vehicles – Mod. § A.3.2.3

The **Mod. § A.3.2.3 Business Automobile Liability** amends the AIA language to add **hired vehicles** to the type of vehicles the use of which is to be insured for injury liability arising out of their use by the Contractor.

2. Additional Insureds – Mod. § A.3.2.3.2

The AIA language is **revised** by the **Modified Insurance Exhibit** to add **Mod. § A.3.2.3.2 Additional Insureds** to specify that the **Protected Persons** are to be additional insureds on the Contractor’s business auto policy, and specifies coverage to be on an **ISO form CA 20 48 10 13** or better form.

See **Appendix of Forms** at **page 157** for **CA 20 48 Designated Insured for Covered Autos Liability Coverage**.

3. Waiver of Subrogation – Mod. § A.3.2.3.3

The AIA language is by the **Modified Insurance Exhibit** to add this requirement that the insurers waive subrogation in favor of the Protected Persons on the Contractor's business auto policy, and specifies the waiver is to be on an **ISO form CA 04 44 10 13** or better form.

See **CA 04 44** *Waiver of transfer of Rights of Recovery Against Other to Us (Waiver of Subrogation)*.

4. Primary and Noncontributory Status - Mod. § A.3.2.3.4

The **Modified Insurance Exhibit** revises the 2017 Insurance Exhibit to add the requirement that the Contractor's business auto liability insurance is primary and noncontributory as to other insurance held by the additional insureds. The standard **ISO** business auto endorsement form, **ISO CA 04 49**, is prescribed.

See **Appendix of Forms** at **page 158** for **CA 04 49** *Primary and Noncontributory – Other Insurance Condition* and at **page 159** for **CA 04 50** *Primary and Noncontributory – Other Insurance Condition*.

5. Advanced Notices – Mod. § A.3.2.3.5

The **Modified Insurance Exhibit** revises Exhibit A to add a requirement that the insurers provide the Protected Persons with advanced notice of cancellation or material change.

6. Pollution Liability – Mod. § A.3.2.3.6

The **Modified Insurance Exhibit** revises the 2017 Insurance Exhibit to add a requirement that, if the Work involves the transportation of hazardous materials, this insurance is to be endorsed to provide pollution liability on an **ISO CA 99 48 10 13**.

See **Appendix of Forms** at **page 160** for **CA 99 48** *Pollution Liability – Broadened Coverage for Covered Autos – Business Autos*.

E. Umbrella Liability – § A.3.2.4 (Mod. § A.3.2.4)

2017 Insurance Exhibit:

“§ A.3.2.4 Contractor may [use] ... a combination of primary and excess ... insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess

policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.”

Issues:

- This is excess over General Liability and Automobile Liability only.
- Fails to require coverage excess of § A.3.2.6 *Employer's Liability*.
- Does not specify that Protected Persons' insurance as additional insureds is primary and noncontributory as to Protected Persons' other insurance.
- Does not address waiver of subrogation by insurer as to subrogation claims against the Protected Persons.
- Does not provide for insurer to provide advance notice of cancellation or material change in policy provisions to the Owner and Owner's Lender.

Modified Insurance Exhibit

“**Mod. § A.3.2.4 Combination of Policies; Umbrella Liability.** The Contractor may achieve the required limits and coverage for Commercial General Liability, Automobile Liability and Employers Liability through a combination of primary and excess or umbrella liability insurance, provided:

- 1 Equivalent Coverage:** such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under **Mod. Section A.3.2.6 Employers Liability**, **Mod. Section A.3.2.2 Commercial General Liability** and **Mod. Section A.3.2.3 Business Automobile Liability**, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. This insurance shall follow form of the underlying coverages and conditions described above, including but not limited to the required additional insured status, designated construction project and/or location general aggregate, waiver of subrogation, and prohibited exclusions or limitations, and will be primary to and not seek contribution from any other insurance (primary, umbrella, contingent or excess) maintained Owner and any of the other

Protected Persons. This insurance is to include a duty to defend any insured.

- .2 **Minimum Limits.**(See Mod. Ins. Ex.)
- .3 **Exhaustion of Primary by Payment of Underlying Limits.** ... (See Mod. Ins. Ex.)
- .4 **Primary and Noncontributory**....(See Mod. Ins. Ex.)
- .5 **Waiver of Subrogation.**(See Mod. Ins. Ex.)
- .6 **Advanced Notice.**(See Mod. Ins. Ex.)
- .7 **Concurrency.**(See Mod. Ins. Ex.)
- .8 **Defense Costs.**(See Mod. Ins. Ex.)

1. **Employer's Liability – Mod. § A.3.2.4**

The **Modified Insurance Exhibit** revises the 2017 Insurance Exhibit to provide that the umbrella/excess liability policy will provide excess coverage for liabilities insured by the Contractor's Employer's Liability insurance.

2. **Exhaustion of Horizontal Limits - § A.3.2.4**

This exhaustion of horizontal limits specification is in the **2017 Insurance Exhibit**. It is to counter the requirement in some states that in the absence of a contract to the contrary all insurance including additional insured's liability insurance is to be primary and exhausted (horizontal exhaustion) to play the named insured's insured claims prior to triggering coverage by the named insured's umbrella/excess liability insurance.

3. **Primary and Noncontributory – Mod. § A.3.2.4.3**

The 2017 Insurance Exhibit is modified by the **Mod. § A.3.2.4.3** to provide that the umbrella/excess liability insurance is primary and noncontributory as regards to the "other insurance" of the Protected Persons (e.g., the additional insureds).

4. **Waiver of Subrogation – Mod. § A.3.2.4.5**

The AIA language is revised to add this requirement that the umbrella/excess liability insurer waive subrogation in favor of the additional insureds.

5. **Advanced Notices – Mod. § A.3.2.4.5**

This form will be a manuscript form of the insurer.

6. **Concurrency - § A.3.2.6**

"**Concurrency**" means there are no gaps in coverage, terms, and conditions.

F. **Workers Compensation - § A.3.2.5**

2017 Insurance Exhibit

"§ 3.2.5 Workers' Compensation at statutory limits."

Issues:

- No specification that leased employees through a PEO is not permitted.
- Does not provide for advanced notice to the Owner and Owner's Lender of cancellation of coverage or material change of provisions.
- Does not provide for a waiver of subrogation of claims by insurer as to the Protected Persons.

Modified Insurance Exhibit

"§ 3.2.5 **Workers' Compensation.** Workers Compensation at no less than the statutory limits. This insurance is to cover liability arising out of the Contractor's employment of workers and anyone for whom the contractor may be liability for Workers compensation claims. Workers compensation insurance is required, and no "alternative" form of insurance is permitted. Employees leased through a Professional Employment Organization ("**PEO**") are not permitted. The state in which the Work is to be performed must be listed under **Item 3.A.** on the Information Page of the policy.

- .1 **Waiver of Subrogation:** (See Mod. Ins. Ex.).
- .2 **Advanced Notice.** ... (See Mod. Ins. Ex.).

G. **Employers Liability - Stop Gap – § A.3.2.6 Mod. § A.3.2.6.4**

2017 Insurance Exhibit:

"§ 3.2.6 Employers' Liability with policy limits not less than"

Issues:

- Does not address stop gap coverage if Work is to be performed in a monopolistic state.
- Does not provide for advanced notice to the Owner and Owner's Lender of cancellation of coverage or material change of provisions.
- Does not provide for a waiver of subrogation of claims by insurer as to the Protected Persons.

“Mod. § 3.2.6 Employer's Liability.

.1 Coverage: Coverage to the insured (employer) for liability to employees for work-related bodily injury or disease, other than liability imposed on the insured by the Workers compensation law (“Employer's Liability Coverage”).

.2 Minimum Limits: Employer's Liability with policy limits not less than

.3 Term: The Employers Liability insurance is to be maintained in effect until the expiration of the period for correction of Work as set forth in the construction contract documents.

.4 Stop Gap Coverage: Stop gap coverage must be provided if Work is to be performed in a monopolistic state, listing the states in which Work is to be performed.

.5 Waiver of Subrogation: This insurance is to include a waiver of subrogation by the insurer as to Owner and the other Protected Parties.

.6 Advanced Notice: This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

The **Modified Insurance Exhibit** addresses stop gap coverage. “Stop gap” coverage is effectuated by an endorsement. This endorsement provides liability coverage for work-related injuries arising out of exposures in monopolistic fund states (fund workers compensation policies do not provide employers liability coverage). If the employer has operations in non-monopolistic states, the endorsement is attached to the workers compensation policy providing coverage in those states. For employers operating

exclusively in a monopolistic fund state, the endorsement is attached to the employers general liability policy.

The **Modified Insurance Exhibit** adds specifications requiring advance notices from the insurer, waiver of subrogation, and maintenance through Work warranty period.

H. Professional Liability - § A.3.2.8

2017 Insurance Exhibit

“§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ...”

Issues:

- Does not adequately specify scope of insurance and does not specify prohibited exclusions from coverage.
- Does not specify maintenance of insurance until expiration of the Statute of Repose.
- Does not require waiver of subrogation protective of the Protected Persons.
- Does not address insurers providing advanced notice of cancellation or material provision changes to the Owner or to the Owner's Lender.

Modified Insurance Exhibit

“§ A.3.2.8 **Professional Liability.** If the Contractor's Work (or any Work of any party for whom the Contractor is responsible) includes design, engineering, consulting, construction management or professional services, Contractor shall procure Professional Liability insurance covering performance of the professional services,

.1 Minimum Limits: ... (See Mod. Ins. Ex.).

.2 Deductible: Unless otherwise agreed by Owner, the deductible shall be no greater than \$___.

.3 Scope: Such insurance shall cover all professional services rendered by the Contractor

(or any Work of any party for whom the Contractor is responsible), including vicarious liability arising out of Contractor's engagement of subcontractors, under the Agreement, and shall include defense costs with defense costs covered outside of the policy limits. A professional liability endorsement to a general liability policy is not acceptable.

.4 Claims Made and Retroactive Date:

Professional liability coverage may be on a "claims made" basis. With respect to any of the professional liability policies issued as "claims made" policies, which are canceled or not renewed, Contractor (or subcontractor if the case) shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of the Contract Documents and which provides for retroactive coverage to the date of cancellation or non-renewal to fill any gaps in coverage which may exist due to the cancellation or non-renewal of the prior "claims made" policies. With respect to all "claims made" policies which are renewed, Contractor (or subcontractor if the case) shall provide coverage retroactive to the date of commencement of the Work in said renewed policy. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for the term of the **Statute of Repose**. Nothing herein shall affect the continuing effect of the indemnity clauses in the Contract Documents.

.5 Prohibitions: (See the extensive list of prohibited exclusions from coverage in the Modified Insurance Exhibit).

.6 Term: Policies written on a claims-made basis shall be maintained for at least the 10-year term of the **Statute of Repose** 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.

.7 Waiver of Subrogation: ... (See Mod. Ins. Ex.).

.8 Advanced Notice: ... (See Mod. Ins. Ex.)."

Contractors have professional liability exposures from shop drawings, samples, "value engineering", construction management, "green" construction, and design-build. See AIA **A201 Section 3.12 Shop Drawings, Product Data and Samples** of the General Conditions in the AIA Risk Management Provisions in the **Appendix of Forms** to this Article.

I. Pollution Liability - § A.3.2.9

2017 Insurance Exhibit

"§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ..."

Issues:

- Does not adequately specify scope of insurance and does not specify prohibited exclusions from coverage.
- Does not specify maintenance of insurance until expiration of the Statute of Repose.
- Does not specify that the Protected Persons are to be additional insureds and that the additional insured coverage is to be primary and noncontributing with the Protected Persons' other insurance.
- Does not require waiver of subrogation protective of the Protected Persons.
- Does not address insurers providing advanced notice of cancellation or material provision changes to the Owner or to the Owner's Lender.

Modified Insurance Exhibit

"§ A.3.2.9 Pollution Liability. If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Legal Liability insurance (written on an occurrence policy form) shall be procured by those contractors or their subcontractors involved with on-site (on or under the Property) Work and off-site (beyond the boundaries of the Property) Work in connection with this Property or Project which may involve the mitigation, disposal, transportation and handling of hazardous materials including, but not limited to demolition, erosion control, earthwork and utility work.

.1 Coverage Inclusions: This insurance shall include coverage for:

.1 Full Scope of Operations: This insurance is to provide for coverage of the full scope of the named insured's operations (on-going and completed operations) as described with the scope of Services under the contract, and including operations of its subcontractors.

.2 On-Site and Off-Site Bodily Injury and Property Damages: This insurance is to insure the liability for such on-site and off-site bodily injury, and property damage from pollution conditions or pollution events arising from the work or operations performed by or on behalf of the Contractor or subcontractor, including, but not limited to the treatment, abatement, removal and transportation of hazardous substances or materials in connection with this project, and property restoration and replacement.

.3 Pollutants: Loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica, and contaminated drywall.

.4 Transportation: Transportation pollution condition.

.5 Owned and Non-owned Disposal Sites: Claims arising from non-owned disposal sites, including recycling centers, utilized in the performance of the operations.

.6 Fines: Civil and administrative fines and penalties to the extent insurable.

.7 Clean-up and Removal: On-site (on or under the Property) and off-site (beyond the boundaries of the Property) clean-up and removal.

.8 Punitive Damages: Punitive damages where insurable by law.

.9 Insured Contracts: Contractual liability for assumed liability.

.10 Diminution of Value: Diminution of value and natural resources damages.

.11 Defense: Defense including costs and expenses incurred in the investigation, defense, or settlement of claims.

.2 Minimum Limits: ... (See Mod. Ins. Ex.).

.3 Deductible: ... (See Mod. Ins. Ex.).

.4 Term: Coverage for completed operations shall be continued for this project for no less than the

applicable **statute of repose** or 10 years from the date of Final Completion of the Work under this Agreement, whichever is longer. An extended reporting period on a claims-made based policy does not fulfill this requirement. This insurance is to have completed operations coverage for the foregoing period.

.5 Prohibitions: (See the extensive list of prohibited exclusions from coverage in the Modified Insurance Exhibit).

.6 Additional Insureds: The **Protected Persons** are to be insured as additional insureds on the Pollution Liability insurance. This policy shall include a separation of insureds provision.

.7 Primary and Noncontributory: This insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to Owner and the other Protected Parties.

.7 Waiver of Subrogation: ... (See Mod. Ins. Ex.).

.8 Advanced Notice: ... (See Mod. Ins. Ex.)."

1. Coverage

The **2017 Insurance Exhibit** specifications are not specific as to coverage and prohibited provisions. Specifications for this insurance will need to be crafted on a project by project basis in connection with the negotiation of the construction contract (e.g., a broader description of the scope of coverage, term for which coverage must be maintained beyond course of construction).

2. Additional Insureds – Mod. § A.3.2.9.6

The **Modified Insurance Exhibit** specifies that the **Protected Persons** will be insured as additional insureds on the Contractor's Pollution Liability Policy. This form will be a manuscripted form obtained from the insurer.

3. Primary and Noncontributory – Mod. § A.3.2.9.7

The **Modified Insurance Exhibit** specifies that the Pollution Liability Insurance will be primary and noncontributory with the "other insurance" of the **Protected Persons**. This form will be a manuscripted form obtained from the insurer.

4. Waiver of Subrogation – Mod. § A.3.2.9.8

The **Modified Insurance Exhibit** specifies that the insurer of the Pollution Liability Insurance is to waive its right of subrogation as to claims against the **Protected Persons**. This form will be a manuscripted form obtained from the insurer.

5. **Advanced Notices – Mod. § A.3.2.9.9**

The **Modified Insurance Exhibit** specifies that the insurer of the Pollution Liability Insurance is to provide advance notice of cancellation of the Pollution Liability Policy to the **Protected Persons**. This form will be a manuscripted form obtained from the insurer.

J. **Unmanned Aircraft - § A.3.2.12**

General Liability insurance excludes coverage for operations of **drones**. This coverage can be added to a CGL policy by endorsement and usually for a nominal premium. Require coverage to be insured by the excess liability insurance.

K. **Comprehensive Crime – Mod. § A.3.2.13**

L. **Contractor Procured Builder's Risk Insurance – Mod. § A.3.3.2.1**

1. **Scope of Coverage.**

See discussion above at **§ A.2.3.1 Owner's Insurance – Required Property Insurance – Builder's Risk Insurance** as to Owner-procured builder's risk insurance for basic concepts of builder's risk insurance as they are applicable to Contractor procured builder's risk insurance.

Mod. § A.3.3.2.1 Contractor's Other Insurance Coverage – Types and Limits – Builder's Risk Insurance modifies **§ A.3.3.2.1** to repeat the builder's risk insurance specifications of **§ A.2.3.1** as opposed to incorporating them by reference in order to **focus the parties** on the scope of the builder's risk coverage where the contractor is chosen to procure the builder's risk insurance. This allows the parties to specify required coverages more clearly and to delete coverages not required.

Many contractors, and typically large contractors, have in place a **master builder's risk policy** which they can add a project and pass along the cost to the Owner in the Contract Sum. This "*one size, fits all approach*" and its availability for projects scheduled by the contractor has "*pros*" and "*cons*" for an Owner.

Mod. § A.3.3.2.1 Contractor's Other Insurance Coverage – Builder's Risk Insurance sets out greater

detail than **§ A.3.3.2.1** in:

- **Mod. § A.3.3.2.1.1 Contractor's Other Insurance Coverage – Builder's Risk Insurance – Causes of Loss** as to the "causes of loss" to be insured and applicable Sub-limits, if any, and
- **Mod. § A.3.3.2.1.2 Contractor's Other Insurance Coverage – Builder's Risk Insurance – Covered Property Interests** the components of the improvements to be insured.

2. **Existing Structures.**

Mod. § A.3.3.2.6 Contractor's Other Insurance Coverage – Builder's Risk Insurance – Insurance for Existing Structures has been added to the **Modified Insurance Exhibit** to address the circumstances where the Contractor's builder's risk policy should insure existing structures as opposed to leaving existing structures to the Owner's property insurance.

§ A.2.3.3 Owner's Insurance – Required Property Insurance – Insurance for Existing Structures provides that, if the Work involves **remodeling** an existing structure or construction of an addition to an existing structure, "*Unless the parties agree otherwise,*" the **Owner** is to obtain "all risks" property insurance on a replacement cost basis protecting the existing structure and provides that the **Owner** shall be responsible for all **co-insurance penalties**. **§ A.3.3.2 Contractor's Other Required Insurance – Builder's Risk** sets up the **choice** for the parties to designate the **Contractor** as the party to obtain the builder's risk insurance, "*except insurance required by ... Section A.2.3.3*" (**Owner's Insurance – Required Property Insurance – Insurance for Existing Structures**), retaining in the Owner responsibility for the property insurance on the existing structures.

This approach opens the project to the following **common error**: failure of the **builder's risk** policy amount to reflect the full loss exposure. The Contractor's Contract Sum is a guide in setting the coverage amount for builder's risk insurance. In projects involving remodeling (especially if the structure is a historic structure) or improvement to an existing building, limiting the **builder's risk** coverage amount to the Contractor's Contract Sum, could lead to an **unintended significant uninsured loss**. Builder's risk policies do **not insure** the **building envelope** unless specifically added. Some builder's risk policies insure the envelope only on an Actual Cash Value, a depreciated, basis ("**ACV**").

AIA's **unamended § A.3.3.2.1** applicable to the choice of a Contractor-procured builder's risk policy sets up a **placeholder (a parenthetical prompt)** for the parties to add further specifications

("Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3...").

In adding provisions in response to this prompt, the parties may not focus on increasing the scope of builder's risk coverage to include damage to the existing structure arising out of causes of loss insured by the Contractor's builder's risk insurance.

3. Contractor Obtains Builder's Risk – Soft Costs - Mod. § A.3.3.2.1.7.7

Builder's risk policies typically do not cover damages caused by delays arising out of a covered loss. These "**soft costs**" can be covered by an endorsement.⁴⁷

A soft cost endorsement can be **tailored to cover** *loss of expected revenue, additional interest expense, loan fees, property taxes, design fees, insurance premiums, legal and accounting costs and additional commissions arising from the renegotiation of leases*. These are **time element exposures**, similar in many respects to business interruption exposures on a completed project, in that the extent of the loss is impacted by the length of the delay.

Soft cost coverage responds to additional expenses made necessary by the delay in completion. Lenders may require the inclusion of interest on the construction loan, property taxes, architectural and engineering supervisory costs, costs to renegotiate leases, brokerage commissions, and legal and accounting costs.

Coverage is widely variable, and it is incumbent upon the insured to describe what is needed. A thorough understanding of the project, contract documents, financing terms, materials and supply agreements, leasing agreements and construction regulations is needed to craft this specification.

Coverage is provided on an **actual loss sustained basis** (i.e., the insured can recover only for the actual loss of income, or the actual additional expenses incurred regardless of the limit of coverage

purchased). The period of indemnity usually begins a specified number of days after the date when construction is to be completed. The maximum time period commonly ranges up to **12 months**.

Typical **exclusions** contained in a soft cost endorsement are for *cost to correct construction deficiencies, costs to comply with laws or ordinances, loss caused by adverse weather and loss caused by strikes*.

2. Other Common Extended Property Endorsements

a. Occupancy Pre-Completion Clause

If the property will be occupied, or arguably occupied (e.g., a tenant building out its premises), the builder's risk policy should be reviewed to confirm that pre-completion occupancy is permitted and under what conditions. It may be necessary, to have the policy endorsed to permit pre-completion occupancy.

b. Preservation of Property Coverage – Mod. § A.3.3.2.1.1.13

Coverage may be extended to insure the cost of removing covered property from the premises to preserve it from loss from a covered cause of loss.

c. Replacement Cost – Contractor's Overhead and Profit – Mod. § A.3.3.2.1.1.15

Coverage may be extended by a Replacement Cost Endorsement to include contractor's "overhead and profit" to cover the cost to repair, replace, or rebuild the damaged property, (without consideration for depreciation or obsolescence) plus reasonable overhead costs including profit (subject to the policy limit).

d. Scaffolding and Construction Forms – Mod. § A.3.3.2.1.3.1

Coverage may be extended to include *Scaffolding and Construction Forms* coverage insuring damage to and loss of scaffolding and construction forms from a covered cause of loss.

e. Sidewalks, Curbs, Gutters, Streets, or Parking Lots – Mod. § A.3.3.2.1.3.10

⁴⁷ **Builder's Risk – Soft Costs Coverage.** See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H.

Locke, Jr. at *Soft Costs Coverage Added to Builder's Risk Policy* at pages 232 - 233.

Coverage may be extended by an endorsement insuring damage to sidewalks, curbs, gutters, streets, or parking lots from a covered cause of loss.

3. **Prohibition of Protective Safeguard Warranty** – **Mod. § A.3.3.2.1.8.6**

“**Protective safeguard warranties**” are conditions precedent to coverage sometimes built into a builder’s risk policy to assure the insurance company of certain protections being provided at the job site. Typical protective safeguard warranties address the following: emergency response protocols; fencing surrounding the project (e.g., “site must be fenced with a cyclone fence at least 6 foot high which must be locked during non-working hours”); project lighting during night hours; site surveillance must be maintained by a licensed and bonded watchperson during non-construction hours; and water for fire suppression must be stored on site, or a working fire hydrant must be within 1,000 feet of the structure being constructed. Protective safeguard warranties are usually attached by endorsement to the policy and are not referenced on the policy’s Declarations Page. Their inclusion is justified by the insurer on grounds of reduced premium. However, a violation of a protective safeguard warranty **voids coverage**, potentially even if the loss is not tied to the violated protective safeguard warranty.

4. **Extended Coverages**

a. **Site Preparation Costs**


Coverage may be extended to include coverage of “site preparation costs” such as excavation, grading, and backfilling arising from a covered loss.

b. **Testing**

Coverage may be extended to cover “**testing**” sometimes called “**Hot and Cold Testing**” or “**Mechanical Breakdown**” coverage insuring damage or loss from start up or performance testing of boilers or other pressure vessels, air conditioning systems, and mechanical or electrical devices.

M. **Property in Storage or in Transit - § A.3.3.2.4**

2017 Insurance Exhibit

“[] **§ A.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an ‘all-risks’ completed value basis.”

Issues:

- “Physical damage” does not include theft.
- “Property” should be modified to include “equipment, machinery, materials and supplies at other locations or in transit and which is intended to become part of the Project.
- “All-risk” does not necessarily include theft, flood or quake.
- “Completed value form” has no application to these particular exposures.
- Does not contain specifications addressing waiver of recovery and waiver of subrogation, and advanced notices from insurer.

Modified Insurance Exhibit

“[] **Mod. § A.3.3.2.4 Property in Storage or in Transit.**

.1 Scope. Insurance for physical damage to property including equipment, machinery, materials and supplies while it is in storage or in transit to the construction site on an ‘all-risks’ basis and shall not exclude but shall include the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm.

.2 Waiver of Subrogation: This insurance shall contain a waiver of subrogation by the insurer as to claims on the Protected Persons.

.3 Waiver of Recovery: Owner shall have no liability to Contractor for loss or damage (including theft) to Contractor’s tools or equipment located at the jobsite and Contractor waives recovery from the Protected Persons from any damage or loss thereto, including as a result of the negligence of the Protected Persons.

.4 Advanced Notice: This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days’ prior written notice to Owner and Owner’s Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner’s Lender with such notice.

N. Property Owned by Contractor – Mod. § A.3.3.2.5

2017 Insurance Exhibit

“§ A.3.3.2.5 Property insurance on an “all-riks” completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.”

Issues:

- “All-riks” does not necessarily include theft, flood or earthquake.
- “Completed value form” has no application to this exposure.
- Does not contain specifications addressing waiver of recovery and waiver of subrogation, and advanced notices from insurer.

This insurance specification is listed in the AIA form as additional other insurance to be acquired by Contractor, if this additional insurance is selected by **check marking the option box**. The insurance specifications for the builder’s risk insurance has been modified in the **Modified Insurance Exhibit** to include this insurance as part of the builder’s risk insurance. The option box is to be check marked **if this type of insurance is not able to be added to the builder’s risk but must be obtained as stand-alone property insurance**.

IV. SPECIAL TERMS AND CONDITIONS – Article A.4

A. 2017 Insurance Exhibit

Article A.4 *Special Terms and Conditions* is a **placeholder** for the parties to add provisions.

B. Modified Insurance Exhibit

The Modified Insurance Exhibit sets out a number of these provisions.

1. A. M. Best’s Key Rating Guide.

BEST’S KEY RATING GUIDE published by

A.M. Best Company assigns to insurance companies one of three types of rating opinions, a “*Best’s Rating*,” a “*Financial Performance Rating*” or a “*Qualified Rating*.” In addition, Best’s assigns all companies to “*Financial Size Categories*.” More information concerning Best’s and its ratings is available at Best’s website, <http://www.ambest.com>. Insurance specifications in real estate documents will typically specify both the minimum acceptable Best Rating and minimum Financial Size Category for the insurance issuer.

For example, “*the insurer will be at least a Best’s A-: VII.*”

2. “Protected Persons”.

This term ***Protected Persons*** is used to include both persons and entities to be specified by the Owner as additional insureds and as being persons protected by waivers of the insurer’s contractual and law rights to subrogation. The term has been defined to include omnibus categories of persons derivative of the specified persons. The **Modified Insurance Exhibit** has been crafted with blanks for the Owner to complete with the respective project.

APPENDIX OF FORMS

A. AIA 201 General Conditions of Construction

AIA 201 - 2017 Insurance and Risk Management Provisions

ARTICLE 3 CONTRACTOR

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings. “Shop Drawings” are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

...

§ 3.12.4 Informational Submittals. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7 Minor Changes in the Work. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

...

§ 3.12.10 Professional Services. The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work **or unless the Contractor needs to provide such services** in order to carry out the Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If Contract Documents Specifically Require of Contractor Professional Design Services or Certification Related to Systems, Materials, or Equipment. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all **drawings, calculations, specifications, certifications, Shop Drawings, and other submittals** prepared by such professional. Shop Drawings, and other submittals related to the Work, designed, or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10 Professional Services, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If Contract Documents Require Contractor’s Design Professional to Certify Work Performed in Accordance with Design Criteria. If the Contract Documents require the **Contractor’s design professional to certify** that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

...

§ 3.18 Indemnification

§ 3.18.1 Indemnified Matters.

To the fullest extent permitted by law, the Contractor shall **indemnify and hold harmless** the Owner, Architect, Architect’s consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys’ fees, **arising out of or resulting from performance of the Work**, provided that such claim, damage, loss, or expense is attributable to **bodily injury**, sickness, disease or **death**, or to injury to or **destruction of tangible property** (other than the Work itself), **but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, 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.** Such obligation

shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this **Section 3.18**.

Section 3.18.

...
§ 3.18.2 Workers Compensation. In claims against any person or entity **indemnified** under this **Section 3.18 Indemnification** by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under **Section 3.18.1 Indemnified Matters shall not be limited by** a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under **workers compensation acts**, disability benefit acts, or other employee benefit acts. **4**

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent **damage, injury, or loss to**

- .1 employees** on the Work and other persons who may be affected thereby;
- .2 the Work** and materials and equipment to be incorporated therein, whether in storage on or off the site, **under care, custody, or control of the Contractor**, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.**

§ 10.2.2 Contractor's Compliance. The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 Safeguards. The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 Notice of Explosives or Hazardous Materials or Equipment or Unusual Methods. When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 Risk of Loss or Damage. **48** The **Contractor** shall promptly remedy **damage and loss (other than damage or loss insured under property insurance** required by the Contract Documents) to property referred to in **Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, 5** a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under **Sections 10.2.1.2 and 10.2.1.3**. The Contractor may make a Claim for the cost to remedy the damage or loss **to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them,** or by anyone for whose acts either of them may be liable, and **not attributable to the fault or negligence of the Contractor. 6** The foregoing obligations of the Contractor are in addition to the Contractor's obligations under **Section 3.18 Indemnification**.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 Protocols: Contractor's Notice to Owner. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous

48 **If Loss or Damage is Caused in Whole or In Part by the Contractor Parties.** See Commentary at page 9.

material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl ("PCB"), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

...

§ 10.3.3 Owner's Indemnity. *To the fullest extent permitted by law*, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, *arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death* as described in **Section 10.3.1** *Protocols; Contractor's Notice to Owner* and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), *except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.*

§ 10.3.4 Contractor's Responsibility. The Owner shall not be responsible under this **Section 10.3** *Hazardous Materials and Substances* for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, *except to the extent of the Contractor's fault or negligence* in the use and handling of such materials or substances.

§ 10.3.5 Contractor's Indemnity. The Contractor shall *reimburse* the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site *and negligently handles*, or (2) where the Contractor fails to perform its obligations under **Section 10.3.1** *Protocols; Contractor's Notice to Owner*, *except to the extent that the cost and expense are due to the Owner's fault or negligence.*

§ 10.3.6 Contractor's Compliance with Environmental Laws. If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

...

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 Claims Insured. *The Contractor shall purchase* and maintain insurance of the types and limits of liability, *containing the endorsements*, and subject to the terms and conditions, *as described in the Agreement* or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully *authorized* to issue insurance in the jurisdiction where the Project is located. *The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.*

§ 11.1.2 Bonds. The Contractor shall provide *surety bonds* of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

...

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the *Contractor shall provide notice* to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 Claims Insured. *The Owner shall purchase* and maintain insurance of the types and limits of liability, *containing the endorsements*, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract

Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully **authorized** ¹⁰ to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, *with all of the coverages and in the amounts described in the Agreement* or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the *Contract Sum and Contract Time shall be equitably adjusted*. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

...

§ 11.3 Waivers of Subrogation

§ 11.3.1 Waivers of Recovery and Subrogation. The Owner and Contractor *waive all rights against* ¹¹ (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by *fire, or other causes of loss*, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. *The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors.* The *policies of insurance* purchased and maintained by each person or entity agreeing to waive claims pursuant to this **Section 11.3.1** shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) *even though that person or entity would otherwise have a duty of indemnification*, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 Owner's Property Insurance on Adjoining Property and Post-Completion Property Insurance. If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the *Owner waives* all rights in accordance with the terms of **Section 11.3.1 Waivers of Recovery and Subrogation** for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, *at the Owner's option*, may purchase and maintain insurance that will protect the Owner against *loss of use of the Owner's property*, or the inability to conduct normal operations, due to fire or other causes of loss. *The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.*

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 Owner as Adjuster. A loss insured under the *property insurance required by the Agreement* shall be *adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear*, subject to requirements of any applicable mortgagee clause and of **Section 11.5.2 Owner to Notify Contractor Prior to Proposed Settlement and Allocation of Insurance Proceeds**. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Owner to Notify Contractor Prior to Proposed Settlement and Allocation of Insurance Proceeds. Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate

account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a *Change Order* for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to **Article 15 Claims and Disputes**. Pending resolution of any dispute, the Owner may issue a *Construction Change Directive* for the reconstruction of the damaged or destroyed Work.

...

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 One Year Limited Express Warranty. In addition to the Contractor's obligations under **Section 3.5 Warranty**, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under **Section 9.91 Submittals**, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with **Section 2.5 Owner's Right to Carry Out the Work**.

...

§ 12.2.5 No Override of Statute of Limitations. Nothing contained in this **Section 12.2 Correction of Work** shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the *one-year period for correction of Work* as described in **Section 12.2.2 After Substantial Completion** relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

AIA A201-2007 General Conditions of Construction (Insurance Provisions)**ARTICLE 11 INSURANCE AND BONDS****§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

§ 11.1.1 Claims Insured. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance *as will protect the Contractor* from claims set forth below which may arise out of or result from the Contractor's *operations* and *completed operations* under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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

§ 11.1.2 Limits; Coverage Period; Occurrence Basis Policies. The insurance required by **Section 11.1.1 Claims Insured** shall be *written for not less than limits of liability specified in the Contract Documents* or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work *or for such other period for maintenance of completed operations coverage as specified in the Contract Documents*.


§ 11.1.3 Certificates of Insurance; Notices from Insurer; Information from Contractor. *Certificates of insurance* acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this **Section 11.1 Contractor's Liability Insurance** shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' *prior written notice* has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by **Section 9.10.2 Submittals** and thereafter upon renewal or replacement of such coverage until the expiration of the time required by **Section 11.1.2 Limits; Coverage Period; Occurrence Basis Policies**. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 Additional Insured Coverage; Waiver of Subrogation. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as *additional insureds* for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's *operations*; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's *completed operations*.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's *usual* liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Specifications. *Unless otherwise provided*, the Owner shall purchase and maintain, in a company or companies lawfully *authorized* to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" *or equivalent policy form*  in the amount of the *initial Contract Sum*, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a *replacement cost* basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in **Section 9.10 Final Completion and Final Payment** or until no person or entity other than the Owner has an insurable interest in the property required by this **Section 11.3 Property Insurance** to be covered, whichever is later. This insurance shall include interests of the *Owner, the Contractor, Subcontractors and Sub-subcontractors* in the Project.

§ 11.3.1.1 Scope of Coverage. Property insurance shall be on an "all-risk" *or equivalent policy form* and shall include, without limitation, *insurance against the perils* of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 Contractor May Purchase Property Insurance if Owner Does Not. If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 Risk of Deductible Loss. If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 Off Site and In Transit Coverage. This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Occupancy. Partial occupancy or use in accordance with **Section 9.9 Partial Occupancy or Use** shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against *loss of use* of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 Optional Additional Risks or Causes Covered. If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 Owner's Waiver of Claims Against Contractor for Claims Covered by Certain Property Insurance. If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of **Section 11.3.7** *Waivers of Recovery and Subrogation* for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Copies of Policies. Before an exposure to loss may occur, the *Owner shall file with the Contractor a copy* of each policy that includes insurance coverages required by this **Section 11.3** *Property Insurance*. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

B. AIA Document A101 - 2017 Exhibit A Insurance and Bonds (Unmodified)

**AIA[®] Document A101[™] – 2017
Exhibit A**

Insurance and Bonds

This Insurance and Bonds Exhibit ¹³ is part of the Agreement, between the Owner and the Contractor, dated the « » day of « » in the year « »
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

« »
« »

THE OWNER:
(Name, legal status and address)

« »« »
« »

THE CONTRACTOR:
(Name, legal status and address)

« »« »
« »

TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, ¹⁴ and provide bonds, ¹⁵ as set forth in this Exhibit. ¹⁶ As used in this Exhibit, the term General Conditions refers to AIA Document A201[™]-2017, General Conditions of the Contract for Construction. ¹⁷

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General ⁴⁹ ⁵⁰

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy

⁴⁹ **Owner Provides Copy of Property Policy; But Copy of Liability Policy Not Specified as Required.** See Commentary at page 10.

⁵⁰ **Time of Consideration.** See Commentary at page 11.

or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements. ¹⁸

§ A.2.2 Liability Insurance ⁵¹

The Owner shall be responsible for purchasing and maintaining the Owner's **usual** general liability insurance. ¹⁹

§ A.2.3 Required Property Insurance ⁵² ⁵³

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, ²⁰ the Owner shall purchase ²¹ and maintain, from an insurance company or insurance companies lawfully **authorized** ²² to issue insurance in the jurisdiction where the Project is located, property insurance written on a **builder's risk** "all-risks" ²³ **completed value** ²⁴ **or equivalent policy form** ²⁵ and sufficient to cover the **total value of the entire Project on a replacement cost basis**. ²⁶ The Owner's property insurance coverage shall be no less than the amount of the **initial Contract Sum, plus** the value of subsequent Modifications and labor performed and materials or equipment supplied by others. ²⁷ The property insurance shall be maintained until Substantial Completion ²⁸ and thereafter as provided in Section A.2.3.1.3, **unless otherwise provided** in the Contract Documents ²⁹ or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, ³⁰ Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. ³¹ This insurance shall include the interests of mortgagees as **loss payees**. ³²

§ A.2.3.1.1 **Causes of Loss**. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and **shall not exclude** the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, ³³ or windstorm. ³⁴ The insurance shall also provide coverage for ensuing loss or resulting damage from **error, omission, or deficiency in construction methods**, design, specifications, workmanship, or materials. ³⁵ Sub-limits, if any, are as follows: ³⁶

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss

Sub-Limit

§ A.2.3.1.2 **Specific Required Coverages**. The insurance required by this Section A.2.3.1 shall provide coverage for ⁵⁴ loss or damage to falsework and other **temporary structures, and to building systems** ³⁷ from **testing and startup**. ³⁸ The insurance shall also cover ⁵⁵ **debris removal**, ³⁹ including **demolition** occasioned by enforcement of any applicable legal requirements, and reasonable compensation ⁴⁰ for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. **Sub-limits**, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

Sub-Limit

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall **continue** ⁴¹ the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect **until** expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

⁵¹ **Owner Responsible to Purchase and Maintain Owner's Usual Liability Insurance**. See Commentary at **page 9**.

⁵² **The Default Under the 2017 Insurance Exhibit is for Owner to Procure the Property Insurance**. See Commentary at **page 9**.

⁵³ **Owner-Procured Builder's Risk Insurance**. See Commentary at **pages 11 - 12**.

⁵⁴ **Temporary Structures; Building Systems**. See Commentary at **page 16**.

⁵⁵ **Debris Removal**. See Commentary at **page 17**.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles⁴² or self-insured retentions,⁴³ the Owner shall be responsible for all loss not covered because of such deductibles or retentions.⁵⁶

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.⁴⁴

§ A.2.3.3 Insurance for Existing Structures⁵⁷

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.⁴⁵

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.⁴⁶

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- [☒] **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,** to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[Sub-limit \$ _____] [Included without sub-limit]

- [☒] **§ A.2.4.2 Ordinance or Law Insurance,** for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.⁴⁷

[Included without sub-limit]

- [☒] **§ A.2.4.3 Expediting Cost Insurance,** for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[Sub-limit \$ _____] [Included without sub-limit]

- [☒] **§ A.2.4.4 Extra Expense Insurance,** to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[Sub-limit \$ _____] [Included without sub-limit]

⁵⁶ **Deductibles and Self-Insured Retentions.** See Commentary at page 18.

⁵⁷ **Existing Structures.** See Commentary at pages 18 - 19.

- [☒] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[Sub-limit \$ _____] [Included without sub-limit]

- [☒] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[Sub-limit \$ _____] [Included without sub-limit]

- [☒] **§ A.2.4.7 Soft Costs Insurance**, ⁴⁸ to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: ⁴⁹ including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses. ⁵⁰

[Sub-limit \$ _____] [Included without sub-limit]

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- [☐] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

« »

- [☐] **§ A.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

_____ \$ _____

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner ⁵¹ evidencing compliance with the requirements in this Article A.3 at the following times: ⁵² (1) prior to commencement of the Work; ⁵³ (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, ⁵⁴ shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. ⁵⁵ The certificates will show the Owner as an additional insured ⁵⁶ on the Contractor's Commercial General Liability ⁵⁷ and excess or umbrella liability policy or policies. ⁵⁸

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall **disclose** to the Owner any deductible or self-insured retentions ⁵⁹ applicable to any insurance required to be provided by the Contractor. ⁵⁸

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, ⁶⁰ the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be **primary and non-contributory** ⁶¹ to any of the Owner's general liability insurance policies and shall apply to both **ongoing and completed operations**. To the extent commercially available, ⁶² the additional insured coverage shall be **no less than** ⁶³ that provided by Insurance Services Office, Inc. (ISO) forms ⁶⁴ CG 20 10 07 04, ⁶⁵ CG 20 37 07 04, ⁶⁶ and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. ⁶⁷ ⁵⁹

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully **authorized** ⁶⁸ to issue insurance in the jurisdiction where the Project is located. ⁶⁹ The Contractor shall maintain the required insurance **until the expiration of the period for correction of Work** as set forth in Section 12.2.2 of the General Conditions, **unless a different duration is stated below:** ⁶⁰ *(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

<< >>

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance ⁷⁰ for the Project written on an occurrence form ⁷¹ with policy limits of not less than ⁷² << >> (\$ << >>) each occurrence, << >> (\$ << >>) general aggregate, ⁷³ and << >> (\$ << >>) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of **bodily injury**, sickness or disease, including occupational sickness or disease, and **death** of any person;
- .2 **personal injury and advertising injury**; ⁷⁴
- .3 damages because of **physical damage** to or destruction of tangible property, ⁶¹ including the **loss of use** of such property;
- .4 **bodily injury** or **property damage** arising out of **completed operations**; ⁷⁵ and
- .5 the **Contractor's indemnity** obligations under Section 3.18 of the General Conditions. ⁷⁶ ⁶²

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall **not contain** an exclusion or restriction of coverage for the following: ⁷⁷

- .1 Claims by one **insured against another insured**, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim. ⁷⁸
- .2 Claims for property damage to the Contractor's Work arising out of the **products-completed operations hazard** where the damaged Work or the Work out of which the damage arises was **performed by a Subcontractor**. ⁷⁹
- .3 Claims for bodily injury other than to **employees of the insured**. ⁸⁰
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured. ⁸¹
- .5 Claims or loss excluded under a **prior work endorsement** or other similar exclusionary language.

⁵⁸ **Deductibles and Self-Insured Retentions.** See Commentary at **page 18**.

⁵⁹ **ISO Form Numbering System.** See Commentary at **page 25**.

⁶⁰ **Duration of Coverage.** See Commentary at **page 27**.

⁶¹ **Physical Damage or Destruction of Tangible Property.** See Commentary at **Pages 28 – 29**.

⁶² **"Insured Contracts".** See Commentary at **Pages 29 – 30**.

- .6 Claims or loss due to *physical damage under a prior injury endorsement* or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other *habitational projects*, if the Work is to be performed on such a project.
- .8 Claims related to *roofing*, if the Work involves roofing. ⁸²
- .9 Claims related to exterior insulation finish systems (*EIFS*), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to *earth subsidence or movement*, where the Work involves such hazards. ⁸³
- .11 Claims related to *explosion, collapse and underground hazards*, where the Work involves such hazards. ⁸⁴

§ A.3.2.3 **Automobile Liability** covering vehicles owned, and non-owned vehicles ⁸⁵ used, by the Contractor, with policy limits of not less than ⁸⁶ « » (\$ « ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. ⁸⁷

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a **combination** ⁸⁸ of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the *same or greater coverage* as the coverages required under Section A.3.2.2 and A.3.2.3, ⁸⁹ and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. ⁹⁰ The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. ⁹¹ ⁶³

§ A.3.2.5 **Workers' Compensation** at statutory limits. ⁹²

§ A.3.2.6 **Employers' Liability** with policy limits not less than ⁹³ « » (\$ « ») each accident, ⁹⁴ « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near **navigable waterways**, including vessels and docks. ⁹⁵

§ A.3.2.8 If the Contractor is required to furnish **professional services** as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate. ⁹⁶

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure **Pollution Liability insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate. ⁹⁷

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a **Combined Professional Liability and Pollution Liability insurance policy**, with combined policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ A.3.2.11 Insurance for **maritime liability** risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

§ A.3.2.12 Insurance for the use or operation of **manned or unmanned aircraft**, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate. ⁹⁸

⁶³ **Combination of Primary and Excess or Umbrella Limits.** See Commentary at pages 27 – 28.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully **authorized to issue insurance in the jurisdiction** where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- [« »] **64 § A.3.3.2.1** **Property insurance** of the same type and scope satisfying the requirements identified in **Section A.2.3,** **99** which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance **100 except** insurance required by Section A.2.3.1.3 **101** and Section A.2.3.3. **102** The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. **Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy** or policies required. **103** The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions **unless otherwise set forth below:** **104** *(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

« »

- [« »] **§ A.3.3.2.2** **Railroad Protective Liability Insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for Work within fifty (50) feet of railroad property.
- [« »] **§ A.3.3.2.3** **Asbestos Abatement Liability Insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- [« »] **§ A.3.3.2.4** Insurance for physical damage to property while it is **in storage and in transit** to the construction site on an "all-risks" completed value form.
- [« »] **§ A.3.3.2.5** Property insurance on an "all-risks" completed value form, covering **property owned by the Contractor** and used on the Project, including **scaffolding and other equipment.**
- [« »] **§ A.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

64 The Default Under the 2017 Insurance Exhibit is for Owner to Procure the Property Insurance. See Commentary at **page 9.**

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Coverage

Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type

Penal Sum (\$0.00)

Payment Bond

Performance Bond

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, ¹⁰⁵ are as follows:

<< >>

B. AIA Document A101 - 2017 Exhibit A Insurance and Bonds (Modified) ¹⁰⁶

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the ____ day of _____ in the year 202__.

for the following **PROJECT**:
(Name and location or address)

THE OWNER:

_____, a _____

THE CONTRACTOR:

(Name, legal status and address)

_____, a _____

TABLE OF ARTICLES

Mod. A.1 GENERAL

Mod. A.2 OWNER'S INSURANCE

Mod. A.3 CONTRACTOR'S INSURANCE AND BONDS

Mod. A.4 SPECIAL TERMS AND CONDITIONS

MOD. ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term "General Conditions" refers to AIA Document **A201™–2017**, *General Conditions of the Contract for Construction*, as modified by the parties.

MOD. ARTICLE A.2 OWNER'S INSURANCE

Mod. § A.2.1 General. ⁶⁵ Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 Owner's Insurance and, upon the Contractor's request, provide a copy of Owner's liability insurance policies ¹⁰⁷ and the property insurance policy or policies required by Mod. Section A.2.3 Required Property Insurance. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

Mod. § A.2.2 Liability Insurance. The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

(If Owner is to purchase and maintain liability insurance other than its usual general liability insurance, delete the preceding sentence and set out the insurance specifications including relevant conditions, definitions, exclusions, and endorsements). ⁶⁶

⁶⁵ Time of Consideration – Modified Insurance Exhibit – Better Time. See Commentary at page 11.

⁶⁶ Owner's Liability Insurance – Modified Insurance Exhibit. See Commentary at page 11.

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Mod. § A.2.3 Required Property Insurance. ⁶⁷

Mod. § A.2.3.1 Builder's Risk Insurance. Unless this obligation is placed on the Contractor pursuant to **Mod. Section A.3.3.2.1 Builder's Risk Insurance**, the Owner shall purchase and maintain,

(a) **State Authorized Insurer; "All-Risks"; Completed Value Form; Replacement Cost Basis; Amount:** from an insurance company or insurance companies (1) lawfully authorized to issue insurance in the jurisdiction where the Project is located, (2) property insurance written on a builder's risk "all-risks" ("**builder's risk insurance**") and (3) completed value policy form or other policy form more beneficial to the Protected Persons and sufficient to cover the total value of the (i) entire Project on (ii) a replacement cost basis.

(b) **Amount:** The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. ⁶⁸

(c) **Duration of Coverage:** The property insurance shall be maintained until Substantial Completion and thereafter as provided in **Mod. Section A.2.3.1.3 Insured Amount; Duration of Coverage**, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement.

(d) **Insureds and Loss Payee:** This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. The Owner shall be the loss payee. ⁶⁹

(e) **Owner's Lender as Loss Payee:** This insurance shall include the interests of Owner's Lender as loss payee.

Mod. § A.2.3.1.1 Causes of Loss. The insurance required by this **Mod. Section A.2.3.1.1 Causes of Loss** shall

.1 **Direct Physical Loss or Damage:** provide coverage for direct physical loss or damage.

.2 **Not Excluded Causes:** not exclude but shall include the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. Coverage shall be at least as broad as an unmodified ISO Special Causes of Loss form. ¹⁰⁸

.3 **Errors, Omissions or Deficiency:** also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials without Sub-limits.

.4 **Sub-limits:** Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit
_____	\$ _____

Mod. § A.2.3.1.2 Specific Required Coverages.

⁶⁷ **Owner-Procured Builder's Risk Insurance.** See Commentary at pages 9 - 14.

⁶⁸ **Coverage Amount – Common Error.** See Commentary at page 14.

⁶⁹ **Owner as Loss Payee.** See Commentary at page 16.

.1 Temporary Structures; Building Systems: The insurance required by this **Mod. Section A.2.3.1** *Builder's Risk* shall provide coverage for loss or damage to falsework and other **temporary structures, and to building systems** from **hot and cold testing and startup**. ⁷⁰

.2 Debris Removal: ⁷¹ The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, **loss to the undamaged portion of the improvements, increased cost of construction** and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

.3 Sub-limits: **Sub-limits**, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Causes of Loss	Sub-Limit
_____	\$ _____

Mod. § A.2.3.1.3 Insured Amount; Duration of Coverage: Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by **Mod. Section A.2.3.1** *Builder's Risk* or, if necessary, replace the insurance policy required under **Mod. Section A.2.3.1** *Builder's Risk* with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in **Mod. Section 12.2.2** *After Substantial Completion* of the General Conditions.

Mod. § A.2.3.1.4 Deductibles and Self-Insured Retentions: If the insurance required by this **Mod. Section A.2.3** *Required Property Insurance* is subject to **deductibles** or **self-insured retentions**; the **Owner** shall be responsible for all loss not covered because of such **deductibles or retentions**. ⁷²

Mod. § A.2.3.2 Occupancy or Use Prior to Substantial Completion.

.1 Consent for Occupancy or Use Prior to Substantial Completion: The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under **Mod. Section A.2.3.1** *Builder's Risk* have consented in writing to the continuance of coverage.

.2 Take No Action That: The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

Mod. § A.2.3.3 Insurance for Existing Structures. If the Work involves remodeling an existing structure or constructing an addition to an existing structure, **and if the parties have not elected to have the Contractor insure the existing structure under the builder's risk policy to be obtained by Contractor pursuant to Mod. Section 3.3.2.1.3.3(c) Specific Required Coverages – Other or Mod. Section 3.3.2.1.6 Insurance for Existing Structures**, ¹⁰⁹ the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in AIA A201 – 2017 **Mod. Section 12.2.2** *After Substantial Completion* of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in **Mod. Section A.2.3.1** *Builder's Risk*, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties, except as otherwise provided for in this **Exhibit A**.

⁷⁰ **Testing and Startup.** See Commentary at **pages 16-17**.

⁷¹ **Debris Removal.** See Commentary at **page 17**.

⁷² **Deductibles and Self-Insured Retentions.** See Commentary at **page 18**.

Mod. § A.2.4 Optional Extended Property Insurance. The Owner shall purchase and maintain the insurance selected and described below. ¹¹⁰ ⁷³

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

[☒] **Mod. § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance.** Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[Sub-limit \$ _____] [Included without sub-limit]

Loss of net rental income which results from delay beyond the projected completion date due to a covered cause of loss. < >

[☒] **Mod. § A.2.4.2 Ordinance or Law Insurance.** Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project. ¹¹¹

[Sub-limit \$ _____] [Included without sub-limit]

[☒] **Mod. § A.2.4.3 Expediting Cost Insurance.** Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property. < >

[☒] **Mod. § A.2.4.4 Extra Expense Insurance.** Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[Sub-limit \$ _____] [Included without sub-limit]

[☒] **Mod. § A.2.4.5 Civil Authority Insurance.** Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[Sub-limit \$ _____] [Included without sub-limit]

[☒] **Mod. § A.2.4.6 Ingress/Egress Insurance.** Ingress/Egress Insurance, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[Sub-limit \$ _____] [Included without sub-limit]

[☒] **Mod. § A.2.4.7 Soft Costs Insurance.** Soft Costs Insurance, ¹¹² to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: ¹¹³ including

[☒] **.1 Construction Loan Fees:** construction loan fees.

⁷³ **Optional Extended Property Insurance.** See Commentary pages 19-20.

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[☒] **.2 Leasing and Marketing Expenses:** leasing and marketing expenses, including commissions on renegotiated leases.

[☒] **.3 Additional Fees:** additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction.

[☒] **.4 Carrying Costs:** carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses. ¹¹⁴

[☒] **.5 Overhead:** additional overhead.

[☒] **.6 Other:** [☐].

Mod. § A.2.5 Other Optional Insurance. The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

[☒] **Mod. § A.2.5.1 Cyber Security Insurance.** Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

<< >>

[☐] **Mod. § A.2.5.2 Other Insurance.**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

\$ _____

MOD. ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

Mod. § A.3.1 General

Mod. § A.3.1.1 Proof of Insurance.

Mod. § A.3.1.1.1 Times Provided. The Contractor shall provide proof of insurance (liability and property) acceptable to the Owner as set forth in **Mod. § A.3.1.1.2.1 Proof of Liability Insurance** and **Mod. § A.3.1.1.2.2 Proof of Property Insurance** evidencing compliance with the requirements in this **Article A.3 Contractor's Insurance and Bonds** at the following times:

.1 Prior to Work: prior to commencement of the Work; ⁷⁴

.2 Upon Renewal or Replacement: upon renewal or replacement of each required policy of insurance; and

.3 Thereafter: Thereafter, additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and

⁷⁴ **Prior to Work – A Checklist Item.** See Commentary pages 20-24.

thereafter upon renewal or replacement of such coverage **until the expiration of the periods required by Mod. Section A.3.2.1 Types; Limits; Duration of Insurance Coverage and Mod. Section A.3.3.1 State Authorized Insurers; Duration of Insurance Coverage.**

Mod. § A.3.1.1.2 Matters Certified. ¹¹⁵

.1 Insurance Binders; Proof of Liability Insurance: The **liability** insurance required of Contractor and its Subcontractors are to be evidenced by an **ACORD 75 Insurance Binder** currently dated, issued by on or on behalf of Contractor's and Subcontractors' insurers to **Owner and Owner's Lender**; *provided*, if the policies have been issued, and **copies** are available, Contractor shall deliver to Owner and Owner's Lender copies of the policies; and *provided, however*, as to Subcontractors the amount of whose work is agreed by Owner and Contractor to be of small amount or other basis to defer obtaining copies of the Subcontractors' liability insurance policy ("**Small Subcontractors**"), proof of liability insurance, is to be by certificates of liability insurance issued on an **ACORD 25 Certificate of Liability Insurance** currently dated, issued by or on behalf of the insurers to **Owner and Owner's Lender** as Certificate Holder. Proof of Liability Insurance shall include at least the following:

.1 Certifying: proof of the existence of the insurance required to be provided by Contractor and show

.1 Additional Insureds: the **Protected Persons**, the Architect, and the Architect's consultants each as an additional insured on the Contractor's Commercial General Liability as specified in **Section A.3.1.3.1 Additional Insured Obligations - Additional Insureds** and **Section A.3.1.3.3 ISO Forms and excess or umbrella liability** policy or policies as specified in **Section A.3.2.4 Combination of Policies; Umbrella Liability** and the **Business Auto Policy** ¹¹⁶ as specified in **Section A.3.2.3.2 Business Automobile Liability – Additional Insureds** and **Pollution Liability Policy** ¹¹⁷ as specified in **Section A.3.2.9.6 Pollution Liability - Additional Insureds**, with each of the Endorsements attached hereto as listed in **Section A.3.1.1.1 Matters Certified – Insurance Binder; Proof of Liability Insurance - Attachments**,

.2 Primary and Noncontributory: the primary and noncontributory status of Contractor's insurance with **Owner's and the other Protected Persons'** insurance stipulated to be excess as specified as to each of the lines of liability insurance as set forth herein, with each of the Endorsements attached hereto as listed in **Section A.3.1.1.1 Matters Certified – Insurance Binder; Proof of Liability Insurance - Attachments**,

.3 Waiver of Subrogation: that subrogation is waived by the insurers as to claims against Owner, the other Protected Persons, the Architect, and the Architect's consultants as specified as to each of the lines of liability insurance as set forth herein, with each of the Endorsements attached hereto as listed in **Section A.3.1.1.1 Matters Certified – Insurance Binder; Proof of Liability Insurance - Attachments**,

.4 Advanced Notices: advanced notice of cancellation or material modification is to be afforded **Owner, Owner's Lender [, and the Development Manager (if any)]** by the insureds to a proper address specified in the proof of insurance, ¹¹⁸ as specified as to each of the lines of liability insurance as set forth herein, with each of the Endorsements attached hereto as listed in **Section A.3.1.1.1 Matters Certified – Insurance Binder; Proof of Liability Insurance - Attachments**; and

.5 Other Matters: such other matters required by this **Exhibit A**.

.2 Attachments: attached thereto a copy of each of the Endorsements required to be issued by these insurance specifications including the following:

.1 General Aggregate Designated to Project Endorsement: A copy of the following endorsement in form acceptable to Owner is required to accompany the Proof of Liability Insurance: **ISO CG 25 04 05 09 Designated Locations General Aggregate Limit** as specified in **Mod. Section A.3.2.2.1.1 Commercial General Liability – Occurrence Form; Limits; Coverage – Minimum Limits.** ¹¹⁹

.2 Products-Completed Operations Aggregate Limit Endorsement: A copy of the following endorsement in form acceptable to Owner is required to accompany the Proof of Liability Insurance: **ISO CG 25 45 12 19 Designated Project(s) Products - Completed Operations Aggregate Limit** as specified in **Section A.3.2.2.1.1 Commercial General Liability – Occurrence Form; Limits; Coverage – Minimum Limits.** ¹²⁰

.3 Additional Insured Endorsements: A copy of the following endorsements in form acceptable to Owner insuring the additional insured specified below are required to accompany the Proof of Liability Insurance:

.1 CGL - Ongoing Operations - Owner: ISO [**1st choice: CG 20 10 10 01**] [**or 2nd choice: CG 20 10 07 04**] *Additional Insured - Owners, Lessees or Contractors – Scheduled Person Or Organization* scheduling Owner as an additional insured as specified in **Mod. Section A.3.1.3.3.1 ISO Forms – Ongoing Operations – Owner;**

.2 CGL - Owner's Lender: ISO **CG 29 18 12 19** *Additional Insured - Mortgagee, Assignee or Receiver* as to **Owner's Lender** as specified in **Mod. Section A.3.1.3.3.2 ISO Forms – Owner's Lender** modified to delete **Exclusion B.** "This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization";

.3 CGL - Ongoing Operations - Other Protected Persons: ISO **CG 20 26 10 01** *Additional Insured - Designated Person or Organization* as to the other **Protected Persons** as specified in **Mod. Section A.3.1.3.3.3 ISO Forms – Ongoing Operations – Other Protected Persons;**

.4 CGL - Architect and Architect's Consultants: ISO **CG 20 32** [**1st choice: 10 01**] [**2nd choice: 07 04**] *Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured* with respect to the Architect and the Architect's consultants as specified in **Mod. Section A.3.1.3.3.4 ISO Forms – Architect and Architect's Consultants;**

.5 CGL - Completed Operations: ISO **CG 20 37** [**1st choice: 10 01**] [**2nd choice: 07 04**] *Additional Insured – Owners, Lessees or Contractors – Completed Operations* with respect to the **Protected Persons** as specified in **Mod. Section A.3.1.3.3.5 ISO Forms – Completed Operations – Protected Persons;** and

.6 Business Auto - Each Protected Person: ISO **CA 20 48 10 13** *Additional Insured – Designated Insured* as specified in **Mod. Section A.3.2.3.2 Business Automobile Liability – Additional Insureds.**

.7 Pollution Liability: as specified in **Mod. Section A.3.2.9.6 Pollution Liability – Additional Insureds.**

.4 Primary-Noncontributory Endorsements: A copy of Primary-Noncontributory Endorsements in form acceptable to Owner in favor of each of the **Protected Persons** are required to accompany the Proof of Liability Insurance for the following insurance:

.1 CGL: ISO **CG 20 01 04 13** *Primary and Noncontributory – Other Insurance Condition* as specified in **Mod. Section A.3.1.3.2 Primary and Noncontributory.**

.2 Business Auto: ISO **CA 04 49 11 16** as specified in **Mod. Section A.3.2.3.4 Business Automobile Liability – Primary and Noncontributory Status.**

.3 Pollution Liability: as specified in **Mod. Section A.3.2.9.7 Pollution Liability – Primary and Noncontributory.**

.5 Waiver of Subrogation Endorsements: A copy of the Waiver of Subrogation Endorsements in form acceptable to Owner protecting each of the **Protected Persons** are required to accompany the Proof of Liability Insurance for the following insurance:

.1 CGL: **ISO CG 24 04 12 19** as specified in **Mod. Section A.3.2.2.1.2.7**
Commercial General Liability -Occurrence Form; Limits; Coverage – Coverage and Form – Waiver of Subrogation.

.2 Business Auto: **ISO CA 04 44 10 13** as specified in **Mod. Section A.3.2.3.3**
Business Automobile Liability -Waiver of Subrogation.

.3 Umbrella: as specified in **Mod. Section A.3.2.4.5** *Combination of Policies; Umbrella Liability – Waiver of Subrogation.*

.4 Workers' Compensation: **ISO WC 42 03** as specified in **Mod. Section A.3.2.5.1**
Workers' Compensation – Waiver of Subrogation.

.5 Employer's Liability: as specified in **Mod. Section A.3.2.6.5** *Employer's Liability – Waiver of Subrogation.*

.6 Professional Liability: as specified in **Mod. Section A.3.2.8.7** *Professional Liability – Waiver of Subrogation.*

.7 Pollution Liability: as specified in **Mod. Section A.3.2.9.8** *Pollution Liability – Waiver of Subrogation.*

.8 Comprehensive Crime: as specified in **Mod. § A.3.3.2.6.1.5** *Comprehensive Crime – Waiver of Subrogation.*

.6 Advanced Notices: A copy of Notice of Cancellation-Material Change endorsements acceptable to **Owner** and **Owner's Lender** are required to accompany the Proof of Liability Insurance for the following insurance:

.1 CGL: as specified in **Mod. Section A.3.2.2.1.8** *Commercial General Liability – Occurrence Form; Limits; Coverage – Coverage and Forms – Advanced Notice.*

.2 Business Auto: as specified in **Mod. Section A.3.2.3.5** *Business Automobile Liability – Advanced Notice.*

.3 Umbrella: as specified in **Mod. Section A.3.2.4.6** *Combination of Policies; Umbrella Liability – Advanced Notice.*

.4 Workers' Comp: as specified in **Mod. Section A.3.2.5.2** *Workers' Compensation – Advanced Notice.*

.5 Employer's Liability: as specified in **Mod. Section A.3.2.6.6** *Employer's Liability – Advanced Notice.*

.6 Professional Liability: as specified in **Mod. Section A.3.2.8.8** *Professional Liability – Advanced Notice.*

.7 Pollution Liability: as specified in **Mod. Section A.3.2.9.9** *Pollution Liability – Advanced Notice.*

.8 Comprehensive Crime: as specified in **Mod. Section A.3.3.2.6.1.6**

Comprehensive Crime – Advanced Notice.

.7 Schedule of Forms and Endorsements Pages: The *Schedule of Forms and Endorsements* for the respective policy listing the required Endorsements as issued modifications to each of the policies.

.8 Policy Language: to the extent that these coverages and provisions are included in the policy language and not by endorsement or modification or are effected by blanket endorsements, then a copy of the relevant portions of each of the policies and issued forms providing such coverages and provisions.

.2 Proof of Property Insurance; Copy of Policies. *Proof of property insurance* is to be issued on an **ACORD 75 Insurance Binder** currently dated, issued by or on behalf of Contractor's and Subcontractors' insurers to **Owner and Owner's Lender**; *provided, if* the policies are issued and a **copy** is available, then a copy of the liability policies and property policies are to be delivered to Owner and Owner's Lender; and *provided, however,* as to Subcontractors the amount of whose work is agreed by Owner and Contractor to be of small amount or other basis to defer obtaining copies of the Subcontractors' property insurance policy ("**Small Subcontractors**"), proof of property insurance, is to be by evidence of property insurance issued on an **ACORD 28 Evidence of Commercial Property Insurance** currently dated, issued by or on behalf of the insurers to **Owner and Owner's Lender**. Proof of Insurance shall include at least the following:

.1 Named Insureds: the **Owner** as a named insured on the builder's risk insurance together with as insureds, the **contractor and subcontractors of all tiers** as specified in **Mod. Section A.3.3.2.1(c) Builder's Risk Insurance – Insureds and Loss Payee**,

.2 Loss Payee: **Owner and Owner's Lender** as loss payees as specified in **Mod. Section A.3.3.2.1(c) & (d) Builder's Risk Insurance – Insureds and Loss Payee and Builder's Risk Insurance – Mortgagees as Loss Payees**,¹²¹

.3 Waiver of Subrogation: subrogation is waived by the insurers as to claims against **Owner, Owner's Lender, and the other Protected Persons** as specified in **Mod. Section A.3.3.2.1(e) Builder's Risk Insurance - Waiver of Subrogation**, and

.4 Other Matters: such other matters required by this **Exhibit A**, including but not limited to the following:

.1 All Risks Covered - Causes of Loss: "All risks" covered **specifying the categories of causes of loss insured** as provided in **Mod. Section A.3.3.2.1(a) "All-Risks"; Completed Value Form; Replacement Cost Basis, Mod. Section A.3.3.2.1.2 Covered Property Interests, and Mod. Section A.3.3.2.1.3 Specific Required Coverages.**

.2 Amount; Replacement Cost: The method of calculating the amount of insurance; certifying coverage is on a replacement cost basis as provided in **Mod. Section A.3.3.2.1(a) "All-Risks"; Completed Value Form; Replacement Cost Basis and Mod. Section A.3.3.2.1(b) Amount.**

.3 Covered Property: Specifying the categories of property covered as provided in **Mod. Section A.3.3.2.1.2 Covered Property Interests, Mod. Section A.3.3.2.1.3 Specific Required Coverages, and Mod. Section A.3.3.2.1.5 Insurance for Existing Structures.**

.4 Deductibles and Sub-limits: Any and all deductibles and sub-limits as provided in **Mod. Section A.3.3.2.1.1.4 Causes of Loss - Limits; Sub-limits; Section A.3.3.2.1.3 Specific Required Coverages;**

Mod. Section A.3.3.2.1.3.2 *Specific Required Coverages - Debris Removal*; **Mod. Section A.3.3.2.1.3** *Specific Required Coverages*; and **Mod. Section A.3.3.2.1.7** *Optional Extended Property Insurance*.

.5 Optional Extended Property Insurance Selected: The optional extended property insurance selected by Owner and bound for coverage and any and all sub-limits as provided in **Mod. Section A.3.3.2.1.3** *Specific Required Coverages*.

.6 Waiver of Subrogation: Waiver of subrogation as to the Protected Persons by the insurer as provided in **Mod. § A.3.3.2.1.3** *Specific Required Coverages*.

.7 Advanced Notice: Commitment of insurer to provide Owner, Owner's Lender [and Development Manager] advanced notice of cancellation as provided in this provision and in **Mod. Section A.3.3.2.5** *Property Owned by Contractor - Advanced Notice*.

Mod. § A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. ⁷⁵

If Contractor elects to self-insure or to maintain liability insurance required herein subject to deductible and/or retentions exceeding \$_____, Owner and Contractor shall have all rights and obligations between themselves as if Contractor fully maintained the insurance required herein including but not limited to additional insured status, primary and noncontributory liability, waivers or rights of recovery, other insurance clauses and any other extensions of coverage required herein. Contractor shall pay from its assets the costs, 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 Contractor had maintained the insurance pursuant this Exhibit without said deductible or self-insured retention. Deductibles and retentions shall be paid by, assumed by, for the account of, and at the sole risk of Contractor. Contractor shall not be reimbursed for same by Owner or other additional insureds.

Mod. § A.3.1.3 Additional Insured Obligations.

Mod. § A.3.1.3.1 Additional Insureds. To the fullest extent permitted by law, ⁷⁶ and as further set forth in **Mod. Section A.3.1.3.3** *ISO Forms*, the Contractor shall cause the commercial general liability coverage to include

.1 During (Ongoing) Operations: the Owner and the other Protected Persons, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and

.2 Completed Operations: the Owner and the other Protected Persons as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. ¹²²

Mod. § A.3.1.3.2 Primary and Noncontributory. The additional insured coverage shall be primary and noncontributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations with regards to insurance maintained by the Protected Persons, by endorsement with an **ISO CG 20 01 12 19** *Primary and Noncontributory - Other Insurance*; it being the specific intent of the parties to this Agreement that all liability insurance required herein of Contractor shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess maintained by a Protected Person, with Protected Persons' liability insurance being excess, secondary and noncontributing).

⁷⁵ **Deductibles and Self-Insurance.** See Commentary page 18.

⁷⁶ **State Law Limitations.** See Commentary pages 24-25.

Mod. § A.3.1.3.3 ISO Forms. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (“ISO”) forms ⁷⁷

.1 Ongoing Operations - Owner: ISO CG 20 10 [*1st choice: 10 01*] [*2nd choice: 07 04*] Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization as to Owner, ⁷⁸

.2 Owner’s Lender: ISO CG 20 18 12 19 Additional Insured - Mortgagee, Assignee or Receiver as to Owner’s Lender modified to delete **Exclusion B.** “This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization”, ^{123 79}

.3 Ongoing Operations - Other Protected Persons: ISO CG 20 26 10 01 Additional Insured - Designated Person or Organization as to the other Protected Persons,

.4 Architect and Architect’s Consultants: ISO CG 20 32 [*1st choice: 10 01*] [*2nd choice: 07 04*] Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured with respect to the Architect and the Architect’s consultants, and

.5 Completed Operations - Protected Persons: ISO CG 20 37 [*1st choice: 10 01*] [*2nd choice: 07 04*] Additional Insured – Owners, Lessees or Contractors – Completed Operations with respect to the Protected Persons. ⁸⁰

Mod. § A.3.2 Contractor’s Required Insurance Coverage

Mod. § A.3.2.1 Types; Limits; Duration of Insurance Coverage.

Mod. § A.3.2.1.1 Types; Limits. The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

Mod. § A.3.2.1.2 Duration of Insurance Coverage. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in AIA A201 **Section 12.2.2 After Substantial Completion** of the General Conditions, *unless a different duration is stated below:*

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

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 the Date of Substantial Completion of the Work by Contractor. ⁸¹

Mod. § A.3.2.2 Commercial General Liability.

Mod. § A.3.2.2.1 Occurrence Form; Limits; Coverage. Commercial General Liability (“CGL”) insurance for the Project written on an ISO CG 00 01 or a *substitute providing coverage more beneficial to the Protected Persons* occurrence

⁷⁷ **ISO Form Numbering System.** See Commentary at page 25.

⁷⁸ **ISO CG 20 10 07 04.** See Commentary at page 26.

⁷⁹ **ISO CG 20 18.** See Commentary at page 27.

⁸⁰ **ISO CG 20 37.** See Commentary at pages 26-27.

⁸¹ **Duration of Insurance Coverage.** See Commentary at page 27.

form with policy limits of not less than the following limits (which limits may be the aggregate of a primary policy and an excess or umbrella policy): ⁸²

.1 Minimum Limits:

\$ _____	Each Occurrence,
\$ _____	General Aggregate, and the general aggregate shall apply separately to this Project by endorsement by an ISO CG 25 04 05 09 Designated Location(s) General Aggregate, ¹²⁴
\$ _____	Aggregate for Products-Completed Operations Hazard . The CGL is to be endorsed by an ISO CG 25 45 12 19 Designated Project(s) Products-Completed Operations Aggregate Limit designating the products and completed operations aggregate limit to this Project, ¹²⁵ and
\$ _____	Personal and Advertising Injury.

.2 Coverage and Form: This insurance is to be issued on the most recent reasonably available and unmodified **ISO CG 00 01** ¹²⁶ or substitute providing coverage more beneficial to the Protected Person ¹²⁷. The scope of coverage is to include coverage for claims including

.1 Bodily Injury: damages because of *bodily injury*, sickness, or disease, including occupational sickness or disease, and *death* of any person; ¹²⁸

.2 Personal and Advertising Injury: *personal injury and advertising injury*; ¹²⁹

.3 Damage or Destruction of Tangible Property: damages because of *physical damage* to or destruction of tangible property, including the *loss of use* of such property; ¹³⁰

.4 Completed Operations: *bodily injury* or *property damage* arising out of *completed operations*; ¹³¹
and

.5 Insured Contracts: the *Contractor's indemnity* obligations under the Contract Documents, including the tort liability of another person assumed in a business contract, including **Mod. Section 3.18 Indemnification** of the AIA **A201 General Conditions**, as modified by the parties, and shall include unmodified **Separation of Insureds coverage**; and, if any of the Work is to be performed within 50 feet of railroad property, a contractual liability-railroads **ISO form CG 24 17 10 01** or substitute providing coverage more beneficial to the Protected Person ¹³² shall be provided;

.6 Deletion of Personal Injury Contractual Liability Exclusion: Any exclusion from coverage of the insured's contractual assumption of liability for personal injuries occurring in connection with the Work;

.7 Waiver of Subrogation: Endorsed with an **ISO CG 24 04 12 19 Waiver of Transfer of Rights of Recovery Against Others Endorsement** or **CG 24 53 12 19** to include a waiver of subrogation by insurer as to the

⁸² **Aggregate of Primary and Umbrella Limits.** See Commentary at pages 27 - 28.

Protected Persons and such other persons as are designated by Owner or Development Manager to Contractor as Protected Persons; ¹³³

.8 Advanced Notice: This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to the Owner and Owner's Lender required for cancellation, non-renewal or material change except 10 days' for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice; ¹³⁴ and

.9 Post-Completion Coverage: Contractor agrees to maintain the *Products-Completed Operations* coverage with respect to the Work in identical coverage, form and amount, including required endorsements for the term of the Statute of Repose following the Substantial Completion Date of the Contractor's Work. ¹³⁵

.10 Additional Insureds: Contractor shall cause the commercial general liability coverage to include the additional insured endorsements specified in **Mod. Section A.3.1.3.1 Additional Insureds** and **Mod. Section A.3.1.3.3 ISO Forms**. This policy shall include an unmodified ISO separation of insureds provision.

Mod. § A.3.2.2.2 Prohibitions. The Contractor's Commercial General Liability policy under this **Mod. Section A.3.2.2 Commercial General Liability** shall not contain an exclusion or restriction of coverage for the following: ⁸³

.1 Insured vs. Insured Exclusion other than Named Insured vs. Named Insured: Claims by one *insured against another insured*, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim, except Named Insured vs. Named Insured. ¹³⁶

.2 Property Damage Arising Out of Work Performed by Subcontractors: Claims for *property damage* to the Contractor's Work arising out of the *products-completed operations hazard* where the damaged Work or the Work out of which the damage arises was *performed by a Subcontractor*.

.3 Bodily Injury Other than to Employees of Insured: Claims for *bodily injury other than to employees of the insured*. ¹³⁷

.4 Indemnity as to Injuries to Employees of Insured: Claims for *indemnity* under **Mod. Section 3.18 Indemnification** of the General Conditions arising out of *injury to employees of the insured*. ¹³⁸

.5 Prior Work Endorsement: Claims or loss excluded under a *prior work endorsement* or other similar exclusionary language.

.6 Physical Damage under Prior Injury: Claims or loss due to *physical damage under a prior injury endorsement* or similar exclusionary language.

.7 Habitational Projects: Claims related to residential, multi-family, or other *habitational projects*, if the Work is to be performed on such a project.

.8 Roofing: Claims related to *roofing* if the Work involves roofing. ¹³⁹

.9 EIFS: Claims related to exterior insulation finish systems ("*EIFS*"), synthetic stucco or similar exterior coatings or surfaces if the Work involves such coatings or surfaces.

.10 Earth Subsidence or Movement: Claims related to earth subsidence or movement, where the Work involves such hazards, *including the following endorsements* (including any earlier or later editions) are prohibited:

⁸³ **Prohibited Exclusions or Restrictions.** See commentary at pages 20 – 36.

ISO CG 40 04 12 19 *Exclusion - Earth Movement*; **ISO CG 40 05 12 19** *Exclusion - Earth Movement - Completed Operations*; **ISO CG 40 06 12 19** *Earth Movement - Exclusion for Designated Operation(s) or Project(s)*. ¹⁴⁰

.11 XCU: Claims related to *explosion, collapse and underground hazards* (“XCU”), where the Work involves such hazards, *including the following endorsements* (including any earlier or later editions) are prohibited: **ISO CG 21 42** *Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations)* and **ISO CG 21 43** *Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations Excepted)*. ¹⁴¹

.12 Contractual Liability Limitation: **ISO CG 21 39** *Contractual Liability Limitation* or equivalent is not permitted. ¹⁴²

.13 Amendment of Insured Contract Definition: **ISO CG 24 26** *Amendment of Insured Contract Definition* or equivalent is not permitted. ¹⁴³

.14 Limitation of Coverage to Designated Premises or Project: **ISO CG 21 44** *Limitation of Coverage to Designated Premises or Project*, or similar limitation, is not permitted. ¹⁴⁴

.15 Fines, Punitive, Exemplary or Multiplied Damages Exclusion: Any type of punitive, exemplary, multiplied damages, or fines exclusion is not permitted (coverage is to be provided for each of these exposures where permitted by law). ¹⁴⁵

.16 Classification or Business Description Exclusion: Any *restriction of coverage* restricting coverage to only to classifications or descriptions specifically listed and excluding all others. ¹⁴⁶

.17 Continuous or Progressive Injury and Damage Exclusion. Any exclusion for damages arising out of or related to *bodily injury or property damage* which *first occurred in whole or in part prior to the inception date* of the policy, or which are, or are alleged to be, in the process of occurring as of the inception date of the policy; or which were caused, or are alleged to have been caused, by the same condition or defective construction which first existed prior to the inception of the policy. ¹⁴⁷

.18 Electronic Data Liability Exclusions. Any exclusion excluding for electronic data liability, *including the following endorsements* are prohibited: **ISO CG 04 71 12 19** *Electronic Data Liability - Limited Bodily Injury Exception Not Included* and **ISO CG 04 72 12 19** *Electronic Data Liability Coverage (Coverage A) with Access or Disclosure of Confidential or Personal Information Exclusion (Coverage B)*.

.19 Damage to Work Performed by Subcontractors. Damage to Work performed by subcontractors on behalf of the Contractor under ISO forms **CG 22 94** or **CG 22 95** or equivalent. ¹⁴⁸

.20 Overspray Exclusions. Exclusion of *overspray* if the Work includes that exposure.

.21 Work Height Exclusions. Exclusions based on *height of the Work* or equivalent exclusions. ¹⁴⁹

.22 Incidental Design Liability. Exclusions based on Contractor’s professional liability including the following endorsement: **ISO CG 22 34 04 13** *Exclusion – Construction Management Errors and Omissions*, **ISO CG 22 34 04 13** *Exclusion – Engineers, Architects or Surveyors Professional Liability*, and the **ISO CG 22 79 04 13** *Exclusion – Contractors – Professional Liability*. ¹⁵⁰

.23 Construction Defect – Completed Operations. Exclusions based on construction defects. ¹⁵¹

.24 Other Unacceptable Exclusions. *Any other coverage exclusion not acceptable to Owner.*

Mod. § A.3.2.2.3 Electronic Data Endorsement. If any of the Work could cause damage to electronic data, this insurance is to include an **ISO CG 04 37 04 13** *Electronic Data Liability* endorsement with coverage to the full limits of the policy. The minimum limits shall be no less than \$ _____. ⁸⁴

Mod. § A.3.2.3 Business Automobile Liability. ⁸⁵Automobile Liability covering vehicles *owned and non-owned*, and *hired* vehicles used, by the Contractor, ¹⁵²

.1 Minimum Limits: with policy limits of not less than \$ _____ per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of (a) those motor vehicles along with any other statutorily required automobile coverage and (b) any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws. The policy limits 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 accident be less than the above minimum limit amount.

.2 Additional Insureds: Additional insured status shall be provided in favor of Protected Persons and such other persons as are designated by Owner to Contractor as additional insureds, on an **ISO CA 20 48 10 13** or *other additional insured form more protective of the Protected Persons*.

.3 Waiver of Subrogation: This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner to Contractor on an **ISO CA 04 44 10 13** or *other form more protective of the Protected Persons*.

.4 Primary and Noncontributory Status: This insurance is to provide primary and noncontributory coverage with regards to insurance maintained by the Protected Persons, by endorsement with an **ISO CA 04 49** or *other form more protective of the Protected Persons*; it being the specific intent of the parties to this Agreement that all liability insurance required herein of Contractor shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess maintained by a Protected Person, with Protected Persons' liability insurance being excess, secondary and noncontributing.

.5 Advanced Notice: This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner required for cancellation, non-renewal, or material change.

.6 Pollution Liability: If the Work involves the transportation of hazardous materials, this insurance shall be endorsed to provide pollution liability on an **ISO CA 99 48 10 13**, **MCS-90**, and the state equivalent form for the state in which the Work will be performed. ¹⁵³

Mod. § A.3.2.4 Combination of Policies; Umbrella Liability. ⁸⁶ The Contractor may achieve the required limits and coverage for Commercial General Liability, Automobile Liability and Employers Liability through a combination of primary and excess or umbrella liability insurance, provided: ¹⁵⁴

.1 Equivalent Coverage: such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under **Mod. Section A.3.2.6 Employers Liability**, **Mod. Section A.3.2.2 Commercial General Liability** and **Mod. Section A.3.2.3 Business Automobile Liability**, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. This insurance shall follow form of the underlying coverages and conditions described above, including but not limited to the required additional insured status, designated construction project and/or location general aggregate, waiver of subrogation, and prohibited exclusions or limitations, and will be primary to and not seek contribution from any other insurance

⁸⁴ **Electronic Data Liability Endorsement.** See commentary at page 36.

⁸⁵ **Business Auto Policy.** See commentary at page 36.

⁸⁶ **Umbrella Liability.** See commentary at pages 37 - 38.

(primary, umbrella, contingent or excess) maintained Owner and any of the other Protected Persons. This insurance is to include a duty to defend any insured.

.2 Minimum Limits: If any of the required minimum limits for the Commercial General Liability, Automobile Liability and Employers liability are to be met through a combination of primary and excess or umbrella insurance, the limits shall be no less than a total of \$_____ for each occurrence and annual aggregate.

.3 Exhaustion of Primary by Payment of Underlying Limits: The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.

.4 Primary and Noncontributory: This insurance shall be primary and non-contributing liability coverage. It is the specific intent of the parties to the Agreement that all insurance held by the Protected Persons shall be excess, secondary, and noncontributory. The Umbrella/Excess Liability policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.

.5 Waiver of Subrogation: This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner to Contractor.

.6 Advanced Notice: This insurance shall be endorsed to provide a 30 days' notice of cancellation to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

.7 Concurrency: Such coverage shall have the same inception date as the Commercial General Liability, Automobile Liability and Employers Liability coverages.

.8 Defense Costs: This insurance is to include a duty to defend the insureds and associated defense costs shall be outside of or in addition to the limits of liability.

Mod. § A.3.2.5 Workers' Compensation. ⁸⁷ Workers Compensation at no less than the statutory limits. 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. Workers compensation insurance is required, and no "alternative" form of insurance is permitted. Employees leased through a Professional Employment Organization ("PEO") are not permitted. The state in which the Work is to be performed must be listed under **Item 3.A.** on the Information Page of the policy.

.1 Waiver of Subrogation: This insurance is to include a waiver of subrogation by insurer as to the Protected Persons and such other persons as are designated by Owner to Contractor, on form **ISO WC 42 03 04.**

.2 Advanced Notice: This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner and Owner's Lender required for cancellation, non-renewal or material change except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

Mod. § A.3.2.6 Employer's Liability. ⁸⁸

.1 Coverage: Coverage to the insured (employer) for liability to employees for work-related bodily injury or disease, other than liability imposed on the insured by the Workers compensation law ("Employer's

⁸⁷ **Workers' Compensation.** See commentary at page 38.

⁸⁸ **Employer's Liability.** See commentary at page 38.

Liability Coverage”).

.2 Minimum Limits: Employer’s Liability with policy limits not less than

\$ _____	each accident,
\$ _____	each employ, and
\$ _____	policy limit.

The policy limits 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 accident be less than the above minimum limit amount.

.3 Term: The Employers Liability insurance is to be maintained in effect until the expiration of the period for correction of Work as set forth in the construction contract documents.

.4 Stop Gap Coverage: Stop gap coverage must be provided if Work is to be performed in a monopolistic state, listing the states in which Work is to be performed.

.5 Waiver of Subrogation: This insurance is to include a waiver of subrogation by the insurer as to Owner and the other Protected Parties.

.6 Advanced Notice: This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

Mod. § A.3.2.7 Navigable Waters Hazards. Jones Act, and the Longshore & Harbor Workers Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

Mod. § A.3.2.8 Professional Liability. ⁸⁹If the Contractor's Work (or any Work of any party for whom the Contractor is responsible) includes design, engineering, consulting, construction management or professional services, Contractor shall procure Professional Liability insurance covering performance of the professional services,

.1 Minimum Limits: with policy limits of not less than

\$ _____	per claim and
\$ _____	in the aggregate.

.2 Deductible: Unless otherwise agreed by Owner, the deductible shall be no greater than \$ _____.

⁸⁹ **Professional Liability.** See commentary at pages 39 – 40.

.3 Scope: Such insurance shall cover all professional services rendered by the Contractor (or any Work of any party for whom the Contractor is responsible), including vicarious liability arising out of Contractor's engagement of subcontractors, under the Agreement, and shall include defense costs with defense costs covered outside of the policy limits. A professional liability endorsement to a general liability policy is not acceptable.

.4 Claims Made and Retroactive Date: Professional liability coverage may be on a "claims made" basis. With respect to any of the professional liability policies issued as "claims made" policies, which are canceled or not renewed, Contractor (or subcontractor if the case) shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of the Contract Documents and which provides for retroactive coverage to the date of cancellation or non-renewal to fill any gaps in coverage which may exist due to the cancellation or non-renewal of the prior "claims made" policies. With respect to all "claims made" policies **which are renewed**, Contractor (or subcontractor if the case) shall provide **coverage retroactive** to the date of commencement of the Work in said renewed policy. All said substitute or renewed "claims made" policies shall be maintained in full force and effect **for the term of the Statute of Repose**. Nothing herein shall affect the continuing effect of the indemnity clauses in the Contract Documents.

.5 Prohibitions: This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:

- .1 Bodily Injury or Property Damage Exclusion:** Bodily injury or property damage where coverage is provided on behalf of design professionals or design/build contractors;
- .2 Habitational Operations Exclusion:** Habitational or residential operations;
- .3 Mold, Microbes, Fungus, Biological Substances Exclusion:** Mold or microbial matter and fungus or biological substance;
- .4 Punitive, Exemplary or Multiplied Damages Exclusion:** Punitive, exemplary, or multiplied damages;
- .5 Contractual Assumed Liability Exclusion:** Contractual assumed liability;
- .6 Project Timely Completion Exclusion:** Failure to complete the Project on time or failure to perform professional services on time;
- .7 Copyright, Patent or Trademark Infringement Exclusion:** Infringement of copyrights, patents, or trademarks;
- .8 Faulty Workmanship Exclusion:** Faulty workmanship including work performed by a Subcontractor for which the Contractor is liable;
- .9 Safety Programs Exclusion:** Liability arising out of failure to implement or enforce safety programs;
- .10 Fines and Penalties Exclusion:** Fines and penalties including liquidated damages;
- .11 Construction Management:** Construction Management Exclusions;
- .12 Cost Estimating:** Cost estimating;
- .13 Subcontractor's Faulty Work:** Cost to repair or replace subcontractors' faulty work;
- .14 Design/Build:** Professional liability for Work arising out of design/build;

.15 EIFS: EIFS, if the Work includes such exposure;

.16 Habitational Projects: Habitational, residential, or multi-family operations;

.17 Pollution: Pollution liability including liability arising out of asbestos, lead, silica, mold microbial matter, fungus, or biological substances; and

.18 Technology: Liability arising out of technology.

.6 Term: Policies written on a claims-made basis shall be maintained for at least the 10-year term of the Statute of Repose 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.

.7 Waiver of Subrogation: Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of the Protected Persons.

.8 Advanced Notice: This insurance shall be endorsed to provide a 30 days’ notice of cancellation to Owner and Development Manager.

Mod. § A.3.2.9 Pollution Liability.⁹⁰ If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Legal Liability insurance (written on an occurrence policy form) shall be procured by those contractors or their subcontractors involved with on-site (on or under the Property) Work and off-site (beyond the boundaries of the Property) Work in connection with this Property or Project which may involve the mitigation, disposal, transportation and handling of hazardous materials including, but not limited to demolition, erosion control, earthwork and utility work.

.1 Coverage Inclusions: This insurance shall include coverage for:

.1 Full Scope of Operations: This insurance is to provide for coverage of the full scope of the named insured’s operations (on-going and completed operations) as described with the scope of Services under the contract, and including operations of its subcontractors.

.2 On-Site and Off-Site Bodily Injury and Property Damages: This insurance is to insure the liability for such on-site and off-site bodily injury, and property damage from pollution conditions or pollution events arising from the work or operations performed by or on behalf of the Contractor or subcontractor, including, but not limited to the treatment, abatement, removal and transportation of hazardous substances or materials in connection with this project, and property restoration and replacement.

.3 Pollutants: Loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica, and contaminated drywall.

.4 Transportation: Transportation pollution condition.

.5 Owned and Non-owned Disposal Sites: Claims arising from non-owned disposal sites, including recycling centers, utilized in the performance of the operations.

.6 Fines: Civil and administrative fines and penalties to the extent insurable.

.7 Clean-up and Removal: On-site (on or under the Property) and off-site (beyond the boundaries of

⁹⁰ **Pollution Liability.** See commentary at pages 40 - 42.

the Property) clean-up and removal.

.8 Punitive Damages: Punitive damages where insurable by law.

.9 Insured Contracts: Contractual liability for assumed liability.

.10 Diminution of Value: Diminution of value and natural resources damages.

.11 Defense: Defense including costs and expenses incurred in the investigation, defense, or settlement of claims.

.2 Minimum Limits: With policy limits of not less than

\$ _____	per claim and
\$ _____	annual aggregate.

.3 Deductible: Unless otherwise agreed by Owner, the deductible shall be no greater than \$ _____.

.4 Term: Coverage for completed operations shall be continued for this project for no less than the applicable statute of repose or 10 years from the date of Final Completion of the Work under this Agreement, whichever is longer. An extended reportation period on a claims-made based policy does not fulfill this requirement. This insurance is to have completed operations coverage for the foregoing period.

.5 Prohibitions: This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:

.1 Disposal Sites: Owned and non-owned disposal site utilization;

.2 Liability Assumed by Contract Exclusions: Exclusion of liability assumed by contract;

.3 Property Damage to Contractor's or Subcontractors' Work Exclusion: Property damage to the Work performed by the contractor or by its subcontractors;

.4 Diminution of Value: Diminution of value;

.5 EIFS: Exclusion of Work involving EIFS;

.6 Limitation of Scope of Insured Services: Exclusion of environmental or remediation services;

.7 Faulty Workmanship Exclusion: Faulty workmanship as it relates to clean up costs;

.8 Insured vs. Insured Exclusion: Claims by one insured against another insured, if the exclusion or restriction is based on the fact that the claimant is an insured, and there would otherwise be coverage for the claim;

.9 Impairment without Physical Injury: Impaired property that has not been physically injured;

.10 Exclusion of Certain Substances or Materials: Exclusion of loss arising from certain pollutants, for example, lead, silica, mold, microbial matter, fungus, biological substances, asbestos, or drywall;

.11 Materials Supplied or Handled by the Named Insured Exclusion: 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;

.12 Naturally Occurring Substances: Naturally occurring substances;

.13 Natural Resource Damage: Damages to natural resources;

.14 Transportation: Pollution condition that arises in connection with the transportation any waste or water materials away from the Site;

.15 Damage to Work Performed by Subcontractors: Property damage to Work performed by subcontractors;

.16 Punitive, Exemplary or Multiplied Damage Exclusion: Punitive, exemplary, or multiplied damages;

.17 Injury to Employee Due to Subcontractor's Work Exclusion: Contractual liability incurred as a result of an injury to an employee of the insured;

.18 Brokerage Services: Waste brokering, waste site selection, or arranging for disposal;

.19 Products or Completed Operations Exclusion: Products or completed operations;

.6 Additional Insureds: The **Protected Persons** are to be insured as additional insureds on the Pollution Liability insurance. This policy shall include a separation of insureds provision.

.7 Primary and Noncontributory: This insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to Owner and the other Protected Parties.

.8 Waiver of Subrogation: Contractor shall cause this insurance to be endorsed by an **ISO CG 24 12 19 Waiver of Transfer of Rights of Recovery Against Other to Us (Waiver of Subrogation)** to waive all rights of subrogation in favor of Protected Persons.

.9 Advanced Notice: This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner and Owner's Lender required for cancellation, non-renewal or material change except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

Mod. § A.3.2.10 Combined Policy. Coverage under **Mod. Section A.3.2.8 Professional Liability** and **Mod. Section A.3.2.9 Pollution Liability** may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than

\$ _____	per claim and
\$ _____	in the aggregate.

Mod. § A.3.2.11 Maritime Liability. Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, Contractor shall purchase and maintain maritime liability insurance:

.1 Limits. This insurance is to have policy limits of not less

\$ _____	per claim and
\$ _____	in the aggregate.

.2 Additional Insureds: The Protected Persons are to be insured as additional insureds on the Maritime Liability insurance.

.3 Primary and Noncontributory: This insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to Owner and the other Protected Parties.

.4 Waiver of Subrogation: Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Protected Persons.

.5 Advanced Notice: This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner and Owner's Lender required for cancellation, non-renewal or material change except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

Mod. § A.3.2.12 Aircraft Liability (Including Drones). Insurance for the use or operation of manned or unmanned aircraft (including "Drones"), if the Work requires such activities, Contractor shall purchase and maintain aircraft liability insurance or add this coverage to Contractor's CGL Insurance, and which coverage shall extend to bodily injury, property damage, and personal injuries (e.g., invasion of a right of privacy) ("Aircraft Liability Insurance"):

.1 Limits. This insurance is to have policy limits of not less

\$ _____	per claim and
\$ _____	in the aggregate.

Coverage is to be included in the excess liability insurance.

.2 Additional Insureds: The Protected Persons are to be insured as additional insureds on the Aircraft Liability insurance.

.3 Primary and Noncontributory: This insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to Owner and the other Protected Parties.

.4 Waiver of Subrogation: Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Protected Persons.

.5 Advanced Notice: This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to Owner and Owner's Lender required for cancellation, non-renewal or material change except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

Mod. § A.3.3 Contractor's Other Insurance Coverage.

Mod. § A.3.3.1 State Authorized Insurers; Duration of Insurance Coverage.

.1 State Authorized Insurers: Insurance selected and described in this **Mod. Section A.3.3 Contractor's Other Insurance Coverage** shall be purchased from an insurance company or insurance companies lawfully **authorized** to issue insurance in the jurisdiction where the Project is located.

.2 Duration of Insurance Coverage: The Contractor shall maintain the required insurance until the **expiration of the period for correction of Work** as set forth in **Mod. Section 12.2.2 After Substantial Completion** of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

Mod. § A.3.3.2 Types and Limits. The Contractor shall purchase and maintain the following types and limits of insurance in accordance with **Mod. Section A.3.3.1 State Authorized Insurers; Duration of Insurance Coverage**.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the **policy limit** in the appropriate fill point.)*

[« »] **Mod. § A.3.3.2.1 Builder's Risk Insurance.**⁹¹ Property insurance of the same type and scope satisfying the requirements identified in **Mod. Section A.2.3 Required Property Insurance**, which, if selected in this **Mod. Section A.3.3.2.1 Builder's Risk Insurance**, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by **Mod. Section A.2.3.1.3 Insured Amount; Duration of Coverage** and **Mod. Section A.2.3.3 Insurance for Existing Structures**. The Property insurance is to be written as follows:

(a) "All-Risks"; Completed Value Form; Replacement Cost Basis: The property insurance is to be written on a builder's risk "all-risks" (i) **completed value or policy form providing more beneficial coverage** to the Protected Persons and enough to cover (ii) the total value of the entire Project (iii) on a replacement cost basis. Coverage includes but is not limited to the coverages set out in **Mod. Section A.3.3.2.1.3 Specific Required Coverages of Property Interests**. The policy is to be endorsed with an **Agreed Value Endorsement** for a value approved by Owner and Contractor. ¹⁵⁵

(b) Amount: The property insurance coverage shall be **no less than** the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. No co-insurance is permitted.

(c) Insureds and Loss Payee: This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds and Owner shall be the loss payee.

(d) Mortgagees as Loss Payees: This insurance shall include the interests of mortgagees as loss payees.

⁹¹ **Contractor-Procured Builder's Risk Insurance.** See commentary at pages 42 - 45.

(e) **Waiver of Subrogation:** Insurer is to waive subrogation for the benefit of the **Protected Persons**.

(f) **Prohibited Forms.** Use of an **AAIS form** is not permitted. **Protective safeguard warranties** are not permitted.

Mod. § A.3.3.2.1.1 Causes of Loss: In addition to the Optional Extended Property Insurance, if any, selected in **Mod. Section 3.3.2.1.7 Optional Extended Property Insurance**, coverage shall be at least as broad as an unmodified **ISO Special Causes of Loss** form and shall include, but not be limited to, coverage for the following causes of loss, and without sub-limit except as stated below:

#	Causes of Loss	No Sub-Limit or Sub-Limit
.1	Collapse	Included without sub-limit
.2	Debris removal additional limit ⁹²	No less than [\$1,000,000]
.3	Direct physical loss or damage	Included without sub-limit
.4	Earthquake/Earth Movement (to include landslide, earth sinking, rising, and shifting soil condition) and Earthquake Sprinkler Leakage	No less than [\$1,000,000]
.5	Error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials	Included without sub-limit
.6	Explosion	Included without sub-limit
.7	Fire	Included without sub-limit
.8	Flood (including surface water, mudslide, water that backs up or is otherwise discharged from sewer, water under the surface of the ground seeping through foundations, wall, or basements)	No less than [\$1,000,000]
.9	Freezing	Included without sub-limit
.10	Malicious mischief	Included without sub-limit
.11	Mechanical breakdown, including hot and cold testing	Included without sub-limit

⁹² **Debris Removal.** See Commentary at **page 17**.

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.12	Pollutant clean-up and removal	No less than [\$1,000,000]
.13	Preservation of property	Included without sub-limit
.14	Rain, Snow, Sleet or Ice exclusion shall be modified to apply only to personal property left in the open	Included without sub-limit
.15	Replacement Cost to include labor and delivery charges and general and specific overhead and charges	Included without sub-limit
.16	Subsidence , shrinking, settling, cracking and expansion	Included without sub-limit
.17	Theft	Included without sub-limit
.18	Unintentional Errors in Description	Included without sub-limit
.19	Vandalism	Included without sub-limit
.20	War, hostile or warlike actions in time of peace or war; Insurrection, rebellion, revolution, civil war, or commotion	Included without sub-limit
.21	Windstorm	Included without sub-limit

Mod. § A.3.3.2.1.2 Covered Property Interests: Such insurance shall cover the Work, including among other items:

.1 Buildings or Structures: Buildings or structures under construction or being erected, including retaining walls, paved surfaces and roadways, bridges, glass, foundations, pilings, footings, underground pipes and wiring, excavations, grading, backfilling, or filling.

.2 Tangible Property On Site or at Other Locations: Fixtures, materials, supplies, machinery, and equipment on site that will become part of the completed structures. Fixtures, materials, supplies, machinery, and equipment at other locations but intended for use at the site.

.3 Other Specific Required Coverages of Property Interests: The additional properties listed in **Mod. Section A.3.3.2.1.3 Specific Required Coverages of Property Interests.**

Mod. § A.3.3.2.1.3 Specific Required Coverages of Property Interests: The builder's risk insurance obtained by Contractor shall include the following property as covered property and the properties are covered for the full cost thereof except as a sub-limit, if any, is stated below:

.1 Temporary Structures; Building Systems: ⁹³ The insurance required by this **Mod. Section A.3.3.2.1** *Builder's Risk* shall provide coverage for loss or damage to falsework and other **temporary structures** (e.g., **scaffolding**, construction forms, false work, cofferdams, cribbing, falsework, signs, site lighting, temporary utilities and buildings or structures), **and to building systems** from **hot and cold testing and startup**. ⁹⁴

.2 Debris Removal: ⁹⁵ The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, **loss to the undamaged portion of the improvements, increased cost of construction** and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

.3 Additional Properties: The following additional properties:

.1	Airborne property.
.2	Contractor's tools and equipment not destined to become part of the structure.
.3	Existing buildings and structure to which alterations or additions are being made.
.4	Foundation, underground pipes, and other underground works.
.5	Maps, plans, blueprints, specifications.
.6	Materials and supplies in transit to the site for installation by all means of transportation other than ocean transit.
.7	Offices and utility trailers.
.8	Other property for which an insured is liable regarding the project.
.9	Personal property of others for which the insured may be liable.
.10	Sidewalks and other paved surfaces.
.11	Signs.
.12	Site preparation and excavation works.

⁹³ **Temporary Structures; Building Systems.** See Commentary at **page 16**.

⁹⁴ **Testing and Startup.** See Commentary at **pages 16 - 17**.

⁹⁵ **Debris Removal.** See Commentary at **page 17**.

.13	Television or radio antennas, including lead-in wiring, masts, and towers.
.14	Trees, grass, shrubbery, plants, landscaping materials.
.15	Waterborne property.

Mod. § A.3.3.2.1.4 Insured Amount; Duration of Coverage. Unless the parties agree otherwise, upon **Substantial Completion**, the Owner shall obtain and maintain commercial property insurance on the property as it deems appropriate.

Mod. § A.3.3.2.1.5 Occupancy or Use Prior to Substantial Completion:

.1 Consent for Occupancy or Use Prior to Substantial Completion: The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under **Mod. Section A.2.3.1 Builder's Risk** have **consented in writing** to the continuance of coverage. If early occupancy of a portion of the project is contemplated, then the builder's risk policy obtained by the Contractor is to be endorsed to permit early occupancy and be on terms negotiated and approved by Owner.

.2 Take No Action That: The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

Mod. § A.3.3.2.1.6 Insurance for Existing Structures. If the Work involves **remodeling an existing structure or constructing an addition to an existing structure**, the builder's risk insurance to be purchased by Contractor shall **insure the existing structure** on an "all-risks" replacement cost basis, with an *Agreed Value Endorsement* in an amount approved by Owner protecting the existing structure against direct physical loss or damage from the causes of loss identified in **Mod. Section A.3.3.2.1 Builder's Risk**, notwithstanding the undertaking of the Work. The insurance shall **eliminate all co-insurance penalties.** ¹⁵⁶

Mod. § A.3.3.2.1.7 Optional Extended Property Insurance. The Contractor shall purchase and maintain the insurance selected and described below. ¹⁵⁷

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

[« X »] **.1.1 Loss of Use, Business Interruption, and Delay in Completion Insurance.**

.1.1 Loss of Use, Business Interruption, and Delay in Completion Insurance. Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the Owner for loss of use of the Owner's property, and additional expenses due to delay in completion of project, including soft costs and loss of income, or the inability to conduct normal operations due to a covered cause of loss.

<input checked="" type="checkbox"/>	Loss of Use, Business Interruption, and Delay in Completion Insurance	[To be determined] or [Included without sub-limit]
-------------------------------------	---	---

.1.2 Loss of Net Rental Income. Loss of net rental income which results from delay beyond the projected completion date due to a covered cause of loss.

<input checked="" type="checkbox"/>	Loss of net rental income which results from delay beyond the projected completion date due to a covered cause of loss	[Sub-limit \$ _____] or [Included without sub-limit]
-------------------------------------	--	---

[☒] **.2 Ordinance or Law Insurance.** Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project. ¹⁵⁸

.1	Coverage A – Undamaged Portion of the Building	[Included without sub-limit]
.2	Coverage B – Demolition Cost and Coverage C-Increased Cost of Construction	No less than [\$1,000,000]

[☒] **.3 Expediting Cost Insurance.** Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

	Expediting Cost Insurance	No less than [\$250,000]
--	---------------------------	---------------------------------

[☒] **.4 Extra Expense Insurance.** Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[Sub-limit \$ _____] [Included without sub-limit]

[☒] **.5 Civil Authority Insurance.** Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[Sub-limit \$ _____] [Included without sub-limit]

[☒] **.6 Ingress/Egress Insurance.** Ingress/Egress Insurance, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[Sub-limit \$ _____] [Included without sub-limit]

[☒] **.7 Soft Costs Insurance.** Soft Costs Insurance, ¹⁵⁹ to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: ¹⁶⁰

[Sub-limit \$ _____] [Included without sub-limit]

Including,

[☒] **.1 Construction Loan Fees:** construction loan fees.

[☒] **.2 Leasing and Marketing Expenses:** leasing and marketing expenses, including commissions on renegotiated leases.

[☒] **.3 Additional Fees:** additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction.

[☒] **.4 Carrying Costs:** carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses. ¹⁶¹

[☒] **.5 Overhead:** additional overhead.

[☐] **.6 Other:** [☐]

Mod. § A.3.3.2.1.8 Additional Specifications Applicable to Contractor. The Contractor shall comply with all obligations of the Owner under **Section A.2.3 Required Property Insurance** except to the extent provided below.

.1 Deductible: The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. The amount of any deductible must be approved by Owner.

.1	All Risks of Direct Damage, Per Occurrence, except for the following permitted deductible	[\$10,000]
.2	Delayed Opening Waiting Period	[3 days]
.3	Earthquake and Earthquake Sprinkler Leakage, Per Occurrence	[\$50,000]
.4	Flood, Per Occurrence, excess of maximum available through National Flood Insurance Program	[\$50,000]

.2 Copy of Policy: The Contractor shall provide the Owner with a **copy of the property insurance policy** or policies required.

.3 Adjustments and Settlement: The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with **AIA A201-2017 Article 11 Insurance and Bonds** of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property, insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

.4 Term and Termination: This insurance shall be maintained in effect, unless otherwise provided for in the Agreement, 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 Agreement; or (c) The date on which the insurable interests in the Covered Property of all insureds other than Contractor have ceased. The termination of coverage provision shall be **endorsed to permit occupancy of the coverage property being constructed**. This insurance shall not be subject to cancellation by the insurer for any reason other than nonpayment of premium without 60 days prior written notice to the Owner.

.5 Stand Alone Policy: The builder's risk insurance is to be a stand-alone policy covering only the Project and not part of a master or blanket policy covering other projects of the Contractor. The policy is not to be a reporting form policy.

.6 Prohibition: No protective safeguard warranty is permitted.

[« »] **Mod. § A.3.3.2.2 Railroad Protective Liability Insurance.** Railroad Protective Liability Insurance, with policy limits of not less than \$ _____ per claim and \$ _____ in the aggregate, for Work within 50 feet of railroad property.

[« »] **Mod. § A.3.3.2.3 Asbestos Abatement Liability Insurance.** Asbestos Abatement Liability Insurance, with policy limits of not less than \$ _____ per claim and \$ _____ in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[« »] **Mod. § A.3.3.2.4 Property in Storage or in Transit.**

1. **Scope:** Insurance for physical damage to or theft of property including equipment, machinery, materials and supplies while it is in storage or in transit to the construction site on an “all-risk” basis and shall not exclude but shall include the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm.

2. **Waiver of Subrogation:** This insurance shall contain a waiver of subrogation by the insurer as to claims on the Protected Persons.

3. **Waiver of Recovery:** Owner shall have no liability to Contractor for loss or damage (including theft) to Contractor’s tools or equipment located at the jobsite and Contractor waives recovery from the Protected Persons from any damage or loss thereto, including as a result of the negligence of the Protected Persons.

4. **Advanced Notice:** This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner’s Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner’s Lender with such notice.

[« »] **Mod. § A.3.3.2.5 Property Owned by Contractor.**

1. **Scope:** Property insurance on an “all-risk”, covering property that is not intended to become part of the project except as specifically covered by the policy and owned by the Contractor and used on the Project, including scaffolding and other equipment.

2. **Waiver of Subrogation:** This insurance shall contain a waiver of subrogation by the insurer as to claims on the Protected Persons.

3. **Waiver of Recovery:** Owner shall have no liability to Contractor for loss or damage (including theft) to Contractor’s tools or equipment located at the jobsite and Contractor waives recovery from the Protected Persons

from any damage or loss thereto, including as a result of the negligence of the Protected Persons.

.4 Advanced Notice: This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

§ A.3.3.2.6 Other Insurance.

Mod. § A.3.3.2.6.1 Comprehensive Crime. Contractor is required to purchase and maintain comprehensive crime insurance in accordance with the following specifications:

.1 Scope: Comprehensive crime insurance, including Employee Dishonesty (also known as fidelity bonding), forgery or alteration and computer systems coverage.

.2 Minimum Limits: Limits of at least \$ _____ per loss or otherwise reasonably acceptable to Owner.

.3 Additional Coverage Inclusion: Contractor's crime insurance shall include third-party/client property coverage and shall not exclude coverage for losses resulting from social engineering fraud.

.4 Loss Payee: Owner and Owner's Lender shall be a loss payee on Contractor's crime insurance.

.5 Waiver of Subrogation: Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Protected Persons.

.6 Advanced Notice: This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

Mod. § A.3.3.2.6.2 Riggers Legal Liability. If the Work includes rigging operations, Contractor is required to purchase and maintain riggers legal liability insurance in accordance with the following specifications:

.1 Scope: This insurance is to cover all rigging liability arising out of the Work including rigging liability arising out of the lift, set in place, or moving of tangible property of others that is in the Contractor's or its subcontractor's care, custody or control. Coverage shall be provided on a direct damage basis and shall include (a) building and structures coverage when in connection with the insured's rigging, assembling or dismantling, and (b) valuation of property in the care, custody and control of the insured on a replacement cost basis.

.2 Minimum Limits: Limits of at least \$ _____ each project and \$ _____ catastrophe limit.

.3 Additional Insureds: The Protected Persons are to be insured as additional insureds on this insurance.

.4 Primary and Noncontributory. This insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to Owner and the other Protected Parties.

.5 Waiver of Subrogation: Contractor shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Protected Persons.

.6 Advanced Notice: This insurance is to contain a provision that the insurer shall provide that this insurance shall not be canceled without at least 30 days' prior written notice to Owner and Owner's Lender except 10 days for cancellation for nonpayment of premiums. Contractor shall additionally provide Owner and Owner's Lender with such notice.

Mod. § A.3.3.2.6.3 Other. (List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
	\$

Mod. § A.3.4 Performance Bond and Payment Bond. [« »]

.1 General. The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	Contract Sum
Performance Bond	Contract Sum

[Contractor is required to arrange and furnish separate performance and payment bonds, each for the full amount of the Guaranteed Maximum Price plus Contractor's Fee guaranteeing the faithful performance of all of the provision of the Agreement as well as payment to all persons for labor and material used in the performance of the Agreement.] **Any additions to the Agreement occasioned by Change Orders will include any additional bond premiums.**

The Bonds are to be issued by an issuer that is at least a *Best's Key Rating Guide* A/VII company and listed on the United States Department of the Treasury's List of Acceptable Sureties and Reinsurers (the "T" list). The Bonds are to name as additional obligees such persons as designated by Owner and its lender. Owner may withhold payments on account until such time as said bonds have been furnished and accepted. No change, alteration or modification in the terms and conditions of the Agreement, or in the terms or manner of payment shall in any way exonerate or release, in whole or in part, any surety on any bond furnished on behalf of Contractor. The cost of the bonds is included in the Contract Sum.

.2 Payment Bond. The Payment Bond is to conform to the following requirements:

.1 Texas: The Payment Bond is to be in statutory form. The AIA form is not acceptable. The Payment Bond is to be in effect for the period required by the Texas Property Code. The Payment Bond and all required attachments (issuer's agent's power of attorney and memorandum of the Agreement) is to be recorded in the County's Official Public Records.

.2 Other than Texas: Payment Bond shall be AIA Document **A312™**, *Payment Bond and Performance Bond*, or contain provisions identical to AIA Document **A312™**, current as of the date of this Agreement.

.3 Coverage: The Payment Bond is to include coverage for consequential and delay damages due to Contractor's default.

.3 Performance Bonds.

.1 Form: Performance Bonds shall be on an AIA Document **A312™**, *Performance Bond*, or contain provisions identical to AIA Document **A312™**, current as of the date of this Agreement.

.2 Term: The Performance Bond is to be in effect for a period of not less than one year following Final Completion.

.3 Extended Coverages: The Performance Bond is to cover risk of contract penalties and delay damages. The Performance Bond is to cover Contractor's express warranty and obligations to correct defective Work arising under the Agreement.

MOD. ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Mod. § A.4.1 Subcontractor's Insurance. Insurance similar to that required of the Contractor shall be provided by all of its subcontractors (or provided by the Contractor on behalf of its 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 of its subcontractors containing provisions similar to those listed in this Exhibit (modified to recognize that the certificate is from the subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required in this Exhibit, and make them available to the Owner upon request. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor'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, Contractor and its subcontractors are not to be reimbursed for same by the Protected Persons. It is expressly agreed that Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of Protected Persons.

Mod. § A.4.2 General Insurance Requirements.

.1 Policies: All policies be written through insurance companies authorized to do business in the State of the Property's location which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide ¹⁶² at all times Work is to be performed, unless a different rating is approved by Owner.

.2 Forms: If the forms of policies, endorsements, certificates, or evidence of insurance required by these insurance specifications are superseded or discontinued, Owner will have the right to require other forms providing more beneficial coverage to the Protected Persons. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Owner.

.3 Copies of Policies: Contractor will provide to Owner a certified copy of any or all insurance policies and endorsements.

.4 Limits: "Limits" set out in these specifications are the minimum dollar amount of insured coverage for the risk, cause of loss or peril specified. If Contractor maintains greater limits, then these specifications shall not limit the amount of recovery available to Protected Persons and the limits specified above as the minimum limits are increased to the greater limits. For those policies containing an aggregate, as soon as incurred loss activity (paid plus reserve) depletes the aggregate by 50% or more, written notice must be delivered to Owner and Owner's Lender.

.5 Deductibles: If the Contractor elects to self-insure or to maintain liability insurance required by this Exhibit subject to deductibles and/or retentions, then the Protected Persons and the Contractor shall maintain all rights and obligations between themselves as if the Contractor fully maintained the insurance required in this Exhibit with an insurer licensed and admitted in the state of the location of the Project including but not limited to requirements under sections titled Additional Insureds, Primary and Noncontributory, Waiver of Rights of Recovery and Subrogation, General Insurance Requirements and any other extensions of coverage required in this Exhibit. The Contractor shall pay from its assets the costs, 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 the Contractor had maintained the insurance pursuant to this Exhibit without said deductible or self-insured retention. All liability deductibles and retentions shall be paid by, assumed by, for the account of, and at

the sole risk of the Contractor. The Contractor shall not be reimbursed for same by the Protected Persons. The Owner may require the Contractor to post security or obtain gap coverage for large deductibles.

.6 Severability of Interest: All insurance required by this Exhibit (excluding only Workers Compensation Insurance and Professional Liability Insurance) shall be endorsed to provide that, in as much as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. No cross-liability exclusion will be accepted. Nor shall there be any restrictions in any policies that limit coverage for a claim brought by an Additional Insured against a named insured.

.7 Notice of Cancellation, Material Change and Non-Renewal: Contractor shall not cause any insurance to be cancelled nor permit any insurance to lapse during the term of the Agreement or as required in the Contract Documents. All insurance required in this Exhibit to be obtained by Contractor shall be endorsed to provide a 30 day notice of cancellation, material change and non-renewal to the Owner. Contractor will immediately provide written notice to the Owner should any of the insurance policies required in this Exhibit be cancelled, limited in scope, or not renewed upon expiration. This notice from the Contractor must be provided no later than 30 days prior to any such action being taken.

.8 Primary and Noncontributory: Requirements for primary and noncontributory insurance means that it is the specific intent of the parties to the Agreement that all insurance required in this Exhibit shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess) maintained by the Protected Persons, with the Protected Persons' insurance being excess, secondary and noncontributing.

.9 WAIVER OF RECOVERY AND WAIVER OF SUBROGATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT DOCUMENTS OR IN THE CONTRACTOR'S CONTRACT WITH ITS SUBCONTRACTORS AND TO THE EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES, AND SHALL CAUSE ITS SUBCONTRACTORS TO WAIVE, ITS AND THEIR RESPECTIVE RIGHTS OF RECOVERY FROM THE PROTECTED PERSONS FOR ALL CLAIMS (A) THAT ARE COVERED BY ANY INSURANCE MAINTAINED BY THE CONTRACTOR OR ITS SUBCONTRACTORS, (B) WOULD HAVE BEEN COVERED BY ANY INSURANCE REQUIRED TO BE MAINTAINED BY THE CONTRACTOR OR ITS SUBCONTRACTORS UNDER THIS EXHIBIT, OR (C) THAT CONSTITUTE ANY RETAINED, SELF-INSURED OR UNINSURED RISK OF THE CONTRACTOR OR ITS SUBCONTRACTORS. ALL INSURANCE POLICIES REQUIRED TO BE PROVIDED BY THE CONTRACTOR PURSUANT TO THIS EXHIBIT SHALL INCLUDE A WAIVER OF SUBROGATION AND ANY OTHER RIGHTS OF RECOVERY BY THE INSURER IN FAVOR OF THE PROTECTED PERSONS. THE PROVISIONS OF THIS PARAGRAPH SHALL BE DEEMED INCORPORATED INTO EACH SUBCONTRACT TO THE EXTENT NECESSARY TO ACHIEVE THE RESULT INTENDED. THESE WAIVERS SHALL BE EFFECTIVE AS TO A PERSON OR ENTITY (1) EVEN THOUGH THAT PERSON OR ENTITY WOULD OTHERWISE HAVE A DUTY OF INDEMNIFICATION, CONTRACTUAL OR OTHERWISE, (2) EVEN THOUGH THAT PERSON OR ENTITY DID NOT PAY THE INSURANCE PREMIUM DIRECTLY OR INDIRECTLY, (3) WHETHER OR NOT THE PERSON OR ENTITY HAD AN INSURABLE INTEREST IN THE DAMAGED PROPERTY AND (4) EVEN IF THE PERSON OR ENTITY WAS AT FAULT, NEGLIGENT, OR LIABLE UNDER STRICT LIABILITY.

Mod. § A.4.3 Miscellaneous.

.1 No Waiver: Failure of any Protected Person to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Protected Person to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.

.2 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.

.3 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.

.4 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.

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

.6 Effect of Specified Coverages: In specifying minimum requirements herein, Owner does not assert nor recommend this insurance as adequate for Contractor or any Subcontractor. Contractor and its Subcontractors are solely responsible to inform themselves of types of insurance it may need beyond these minimum requirements to protect themselves from loss, damage, or liability. More current editions of the ISO forms specified herein may not be used except if approved in advance by Owner. If the forms of policies, endorsements, certificates, or evidence of insurance required by these insurance specifications are superseded or discontinued, Owner will have the right to require other forms providing more beneficial coverage to the Protected Persons. Any policy or endorsement form other than a form specified in this **Exhibit A** must be approved in advance by Owner.

.7 Survival: This Exhibit is an independent contract provision and shall survive the completion of the Work. All policies are to be subject to Owner's approval in its sole discretion and this Contract is conditioned on Owner's approval.

.8 Waiver of Workers' Compensation Immunity: The indemnification obligations contained in this Agreement shall not be limited by any Workers Compensation, benefit or disability laws, and each indemnifying party hereby waives (solely for the benefit of the indemnified party) any immunity that said indemnifying party may have under applicable laws.

§ A.4.4 Condition Precedent. If insurance to be provided by Contractor is not acceptable to Owner, Owner may terminate this Contract, and Owner's approval is a condition precedent to this Contract. Owner has 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.

§ A.4.5 "Protected Persons". References in this **Exhibit A** to "**Protected Persons**" means the following persons and entities:

.1 Owner:

.2 Development Manager:

.3 Owner's Construction Lender:

.4 Additional Specified Persons and Entities:

.5 Additional Categories of Persons and Entities: As to the above listed persons and entities:

- a. their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors, and assigns,
- b. any directors, officers, employees, or agents of such persons or entities, and
- c. other persons or entities designated to Contractor by any of the above listed persons or entities.

D. STANDARD INSURANCE FORMS

1. Liability Insurance ¹⁶³

COMMERCIAL GENERAL LIABILITY ¹⁶⁴
CG 00 01 04 13

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 ¹⁶⁵

"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 ¹⁶⁶

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

e. Employers' 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 ¹⁶⁷

- (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;¹⁶⁸
- (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. ¹⁶⁹

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 ¹⁷⁰

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 ¹⁷¹

"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 ¹⁷²

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 ¹⁷³

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. ¹⁷⁴

(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 ¹⁷⁵

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 ¹⁷⁶

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 ¹⁷⁷

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. ¹⁷⁸

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.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 02 05 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS CHANGES – AMENDMENT OF CANCELLATION PROVISIONS OR COVERAGE CHANGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

LIQUOR LIABILITY COVERAGE PART

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

POLLUTION LIABILITY COVERAGE PART

PRODUCT WITHDRAWAL COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

RAILROAD PROTECTIVE LIABILITY COVERAGE PART

In the event of cancellation or material change that reduces or restricts the insurance afforded by this Coverage Part, we agree to mail prior written **notice of cancellation or material change** to:

SCHEDULE

1. Name:	
2. Address:	
3. Number of days advance notice:	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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.

ELECTRONIC DATA LIABILITY – LIMITED **BODILY INJURY EXCEPTION NOT INCLUDED**

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

This insurance does not apply to:

p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) 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.**

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

- B. The following is added to Paragraph 2. **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

C. The following paragraph is added to **Section III – Limits Of Insurance:**

Subject to Paragraph 5. above, the Loss Of Electronic Data Limit shown in the Schedule above is the most we will pay under Coverage A

D. 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.

E. 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.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ELECTRONIC DATA LIABILITY COVERAGE
(COVERAGE A) WITH ACCESS OR DISCLOSURE
OF CONFIDENTIAL OR PERSONAL INFORMATION
EXCLUSION (COVERAGE B)**

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

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 is added to Paragraph 2. **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit

card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

- C. The following paragraph is added to **Section III – Limits Of Insurance:**

Subject to Paragraph 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".

- D. 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.

E. 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

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.

SAMPLE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION 180

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.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 01

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 Person or Organization:

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

<p>A. Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.</p> <p>B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:</p> <p>2. Exclusions</p> <p>This insurance does not apply to "bodily injury" or "property damage" occurring after:</p>	<p>(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 site of the covered operations has been completed; or</p> <p>(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.</p>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION 182

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.

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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION ¹⁸³

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;** ¹⁸⁴ or
2. The acts or omissions of those acting on your behalf;

in the performance of **your ongoing operations** ¹⁸⁵ 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;** ¹⁸⁶ 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 – MORTGAGEE, ASSIGNEE OR RECEIVER

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name(s) Of Person(s) Or Organization(s)	Description Of Premises
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 their liability as mortgagee, assignee or receiver and arising out of your operations or the ownership, maintenance or use of the premises by you and 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. ~~This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.~~

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 26 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION ¹⁸⁸

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
<i>[insert name of additional insureds: (a) _____ (the primary additional insured), and its successors and assigns, and its members and employees and (b) _____ (the designated primary additional insured's lender.)]</i>
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 **your acts or omissions** ¹⁸⁹ or the acts or omissions of those acting on your behalf:

1. In the performance of your **ongoing operations**; ¹⁹⁰ or
2. In connection with your **premises owned by or rented to you**.

However:

1. The insurance afforded to such additional insured **only applies to the extent permitted by law**; ¹⁹¹ 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.

COMMERCIAL GENERAL LIABILITY
CG 20 32 07 04

**ADDITIONAL INSURED - ENGINEERS, ARCHITECTS OR
SURVEYORS NOT ENGAGED
BY THE NAMED INSURED** 192

SCHEDULE

Name Of Additional Insured Engineers, Architects Or Surveyors Not Engaged By The Named Insured:
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 architects, engineers or surveyors 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 performed by you or on your behalf.
- Such architects, engineers or surveyors, while not engaged by you, are contractually required to be added as an additional insured to your policy.
- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services, including:
1. The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 2. Supervisory, inspection or engineering services.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU ¹⁹³

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 ¹⁹⁴
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;** ¹⁹⁵ 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 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.

SAMPLE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 10 01

**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 Person or Organization:
Location And Description of Completed Operations
Additional Premium:

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

Section II – Who Is An Insured is amended to include as an additional insured the person or organization shown in the Schedule, but only with respect to liability arising out of “**your work**” at the **location designated and described in the schedule** of this endorsement performed for that insured and included in the **“products-completed operations hazard”**.

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 AGREEMENT¹⁹⁷

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;¹⁹⁸ 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;¹⁹⁹ 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.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – EXPLOSION, COLLAPSE AND UNDERGROUND PROPERTY DAMAGE HAZARD (SPECIFIED OPERATIONS) 201

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.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – EXPLOSION, COLLAPSE AND UNDERGROUND PROPERTY DAMAGE HAZARD (SPECIFIED OPERATIONS **EXCEPTED**) ²⁰²

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.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 21 44 07 98

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

203

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Premises:

Project:

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

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. The project shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – CONSTRUCTION MANAGEMENT ERRORS AND OMISSIONS 204

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**:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

1. The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which you serve as construction manager; or

2. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager.

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 that which is described in Paragraph 1. or 2.

This exclusion does not apply to "bodily injury" or "property damage" due to construction or demolition work done by you, your "employees" or your subcontractors.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ENGINEERS, ARCHITECTS OR SURVEYORS 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**:

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 any engineer, architect or surveyor who is either employed by you or performing work on your behalf in such capacity.

Professional services include:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

2. 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 failure to render any professional services by you or any engineer, architect or surveyor who is either employed by you or performing work on your behalf in such capacity.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY 206

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.

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.

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.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 22 94 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – DAMAGE TO WORK PERFORMED BY SUBCONTRACTORS ON YOUR BEHALF ²⁰⁷

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 208

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 209

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
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;
- 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. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. 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, roadbeds, 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Location(s):

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

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which can be attributed only to operations at a single designated "location" shown in the Schedule above:
1. A separate Designated Location General Aggregate Limit applies to each designated "location", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Location General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Location General Aggregate Limit for that designated "location". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location General Aggregate Limit for any other designated "location" shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Location General Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which cannot be attributed only to operations at a single designated "location" shown in the Schedule above:

1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Location General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Location General Aggregate Limit.
- D. For the purposes of this endorsement, the **Definitions** Section is amended by the addition of the following definition:
- "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
- E. The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED PROJECT(S)
PRODUCTS-COMPLETED OPERATIONS
AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Project(s):

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

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I — **Coverage A** because of "bodily injury" and "property damage" included in the "products-completed operations hazard" which can be attributed only to "**your work**" at a single designated project shown in the Schedule above:
1. A separate Designated Project Products-Completed Operations Aggregate Limit applies to each designated project, and that limit is equal to the amount of the Products-Completed Operations Aggregate Limit shown in the Declarations.
 2. The Designated Project Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all damages under Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard", regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits",
 3. Any payments made under **Coverage A** for damages shall reduce the Designated Project Products-Completed Operations Aggregate Limit for that designated project. Such payments shall not reduce the Products-Completed Operations Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Project Products-Completed Operations Aggregate Limit for any other designated project shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence continue to apply. However, instead of being subject to the Products-Completed Operations Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Project Products-Completed Operations Aggregate Limit.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I — Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard" which cannot be attributed only to "your work" at a single designated project shown in the Schedule above:
1. Any payments made under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" shall reduce the amount available under the Products-Completed Operations Aggregate Limit; and
 2. Such payments shall not reduce any Designated Project Products-Completed Operations Aggregate Limit.
- C.** Any payments for damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", will reduce the General Aggregate Limit, and will not reduce the Products-Completed Operations Aggregate Limit nor any Designated Project Products-Completed Operations Aggregate Limit.
- D.** If the applicable designated project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same project.
- E.** The provisions of Section III — Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED LOCATION(S) PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Location(s):

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

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I — Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard" which can be attributed only to:
- a. **Operations** at; or
 - b. "Your products" manufactured, sold, handled or distributed at, from or in connection with;
- a single designated "location" shown in the Schedule above:
1. A separate Designated Location Products-Completed Operations Aggregate Limit applies to each designated "location", and that limit is equal to the amount of the Products-Completed Operations Aggregate Limit shown in the Declarations.
 2. The Designated Location Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all damages under Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard", regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits",
 3. Any payments made under Coverage A for damages shall reduce the Designated Location Products-Completed Operations Aggregate Limit for that designated "location". Such payments shall not reduce the Products-Completed Operations Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location Products-Completed Operations Aggregate Limit for any other designated "location" shown in the Schedule above,
 4. The limit shown in the Declarations for Each Occurrence continues to apply. However, instead of being subject to the Products-Completed Operations Aggregate Limit shown in the Declarations, such limit will be subject to the applicable Designated Location Products-Completed Operations Aggregate Limit.
- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I — Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard" which cannot be attributed only to:
- a. Operations at; or
 - b. "Your products" manufactured, sold, handled or distributed at, from or in connection with;

a single designated "location" shown in the Schedule above:

1. Any payments made under Coverage **A** for damages shall reduce the amount available under the Products-Completed Operations Aggregate Limit; and
 2. Such payments shall not reduce any Designated Location Products-Completed Operations Aggregate Limit.
- C.** Any payments for damages, except damages because of "bodily injury" or "property damage" included in the "products completed operations hazard" will reduce the General Aggregate Limit, and will not reduce the Products Completed Operations Aggregate Limit for any Designated Location Products Completed Operations Aggregate Limit.
- D.** For the purposes of this endorsement, the Definitions section is amended by the addition of the following definition. "Location" means

premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right of way of a railroad.

- E.** The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – **AUTOMATIC STATUS** WHEN
REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT
WITH YOU (COMPLETED OPERATIONS)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS 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 have performed 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" or "property damage" caused, in whole or in part, by "your work" performed for that additional insured and included in the "products-completed operations hazard".

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.

- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

"Bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

2. 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" involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- 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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - EARTH MOVEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. Exclusions of Section I — Coverage A — Bodily Injury And Property Damage Liability:

This insurance does not apply to "bodily injury" or "property damage arising out of "earth movement" that is:

1. **Caused by** or alleged to have been caused by, in whole or in part; or
2. Aggravated by or alleged to have been aggravated by;

"your work",

B. The following definition is added to the Definitions section:

"Earth movement" means:

1. Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;

2. Landslide, including any earth sinking, rising or shifting related to such event;
3. Mine subsidence, meaning subsidence of a man-made mine whether or not mining activity has ceased; or
4. Earth sinking, rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - EARTH MOVEMENT - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

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

- A. The following exclusion is added to Paragraph 2. Exclusions of **Section I — Coverages — Coverage A — Bodily Injury And Property Damage Liability**:
This insurance does not apply to "bodily injury" or "property damage" arising out of "earth movement" that is:
1. Caused by or alleged to have been caused by, in whole or in part; or
 2. Aggravated by or alleged to have been aggravated by;
"your work" and included in the "products-completed operations hazard".
- B. The following definition is added to the **Definitions** section:
"Earth movement" means:
1. Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
 2. Landslide, including any earth sinking, rising or shifting related to such event;
 3. Mine subsidence, meaning subsidence of a man-made mine whether or not mining activity has ceased; or
 4. Earth sinking, rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty, Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EARTH MOVEMENT - EXCLUSION FOR DESIGNATED OPERATION(S) OR PROJECT(S)

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Description Of Operations(s) Or Project(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 of Section 1 — Coverages — Coverage A — Bodily Injury And Property Damage Liability:

With respect to the operation(s) or project(s) described in the Schedule, this insurance does not apply to "bodily injury" or "property damage" arising out of "earth movement" that is:

1. Caused by or alleged to have been caused by, in whole or in part; or
2. Aggravated by or alleged to have been aggravated by;

"your work".

- B.** The following definition is added to the Definitions section:

"Earth movement" means:

1. Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;

2. Landslide, including any earth sinking, rising or shifting related to such event;
3. Mine subsidence, meaning subsidence of a man-made mine whether or not mining activity has ceased; or
4. Earth sinking, rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Name Of Person(s) Or Organization(s):

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

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The following is added to the Other Insurance Condition in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "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 such "insured".

- B.** The following is added to the **Other Insurance** Condition in the Auto Dealers Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "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 such "insured".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The following is added to the **Other Insurance** Condition in the Business Auto and Garage Coverage Forms and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "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 such "insured".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLLUTION LIABILITY – BROADENED COVERAGE FOR COVERED AUTOS – BUSINESS AUTO AND MOTOR CARRIER COVERAGE FORMS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Covered Autos Liability Coverage is changed as follows:

1. Paragraph a. of the Pollution Exclusion applies only to liability assumed under a contract or agreement.
2. With respect to the coverage afforded by Paragraph A.1. above, Exclusion **B.6. Care, Custody Or Control** does not apply.

B. Changes In Definitions

For the purposes of this endorsement, Paragraph **D.** of the **Definitions** Section is replaced by the following:

- D.** "Covered pollution cost or expense" means any cost or expense arising out of:
1. Any 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. Any 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".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraphs a. and b. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

BUILDER'S RISK COVERAGE FORM 212

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. The words "we", "us" and "our" refer to the company providing this insurance.

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

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2.** Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

Building Under Construction, meaning the building or structure described in the Declarations while in the course of construction, including:

a. Foundations;

b. The following property:

- (1) Fixtures and machinery;
- (2) Equipment used to service the building; and
- (3) Your building materials and supplies used for construction;

provided such property is intended to be permanently located in or on the building or structure described in the Declarations or within 100 feet of its premises;

c. If not covered by other insurance, **temporary structures** built or assembled on site, including cribbing, scaffolding and construction forms.

2. Property Not Covered

Covered Property does not include:

- a. Land (including land on which the property is located) or water;
- b. The following property when outside of buildings:
 - (1) Lawns, trees, shrubs or plants (other than lawns, trees, shrubs or plants which are part of a vegetated roof);

(2) Radio or television **antennas** (including satellite dishes) and their lead-in wiring, masts or towers; or

(3) **Signs** (other than signs attached to buildings).

3. Covered Causes of Loss

See applicable **Causes Of Loss Form** as shown in the Declarations. 213

4. Additional Coverages

a. Debris Removal

(1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.

(2) Debris Removal does not apply to costs to:

- (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
- (b) Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
- (c) Remove any property that is Property Not Covered, including property addressed under the Sod, Trees, Shrubs And Plants Coverage Extension;
- (d) Remove property of others of a type that would not be Covered Property under this Coverage Form;

- (e) Remove deposits of mud or earth from the grounds of the described premises;
 - (f) *Extract "pollutants" from land or water; or*
 - (g) *Remove, restore or replace polluted land or water.*
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
- (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to *25%* of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.
- (4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
 - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.00.

(5) Examples

The following examples assume that there is no Coinsurance penalty

Example 1

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 50,000
Amount of Loss Payable:	\$ 49,500
	(\$50,000 – \$500)
Debris Removal Expense:	\$ 10,000
Debris Removal Expense Payable	\$ 10,000

(\$10,000 is 20% of \$50,000.)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

Example 2

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500
	(\$80,000 – \$500)
Debris Removal Expense:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000, capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$35,500; \$4,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for service at each premises described in the Declarations, unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean-up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is **\$10,000** for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

5. Coverage Extensions

a. Building Materials And Supplies Of Others

- (1) You may extend the insurance provided by this Coverage Form to apply to building materials and supplies that are:

- (a) Owned by others;
- (b) In your care, custody or control;
- (c) Located in or on the building described in the Declarations, or within 100 feet of its premises; and
- (d) Intended to become a permanent part of the building.

- (2) The most we will pay for loss or damage under this Extension is \$5,000 at each described premises, unless a higher Limit of Insurance is specified in the Declarations. Our payment for loss of or damage to property of others will only be for the account of the owner of the property.

b. Sod, Trees, Shrubs And Plants

You may extend the insurance provided by this Coverage Form to apply to loss or damage to sod, trees, shrubs and plants outside of buildings on the described premises, if the loss or damage is caused by or results from any of the following causes of loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

B. Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$2,500 per sign in any one occurrence.

The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean-up And Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Additional Condition, Need For Adequate Insurance. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

Example 1

(This example assumes there is no penalty for underinsurance.)

Deductible:	\$ 1,000
Limit of Insurance – Building 1:	\$ 60,000
Limit of Insurance – Building 2:	\$ 80,000
Loss to Building 1:	\$ 60,100
Loss to Building 2:	\$ 90,000

The amount of loss to Building 1 (\$60,100) is less than the sum (\$61,000) of the Limit of Insurance applicable to Building 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building 1:

\$ 60,100
<u>– 1,000</u>
\$ 59,100 Loss Payable – Building 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building 2. Loss payable for Building 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable: \$59,100 + \$80,000 = \$139,100.

Example 2

(This example, too, assumes there is no penalty for underinsurance.)

The Deductible and Limits of Insurance are the same as those in Example 1.

Loss to Building 1:	\$ 70,000
(Exceeds Limit of Insurance plus Deductible)	
Loss to Building 2:	\$ 90,000
(Exceeds Limit of Insurance plus Deductible)	
Loss Payable – Building 1:	\$ 60,000
(Limit of Insurance)	
Loss Payable – Building 2:	\$ 80,000
(Limit of Insurance)	
Total amount of loss payable:	\$ 140,000

E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

3. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:
 - (1) Notify the police if a law may have been broken.
 - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
 - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
 - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
 - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.

- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:

- (1) Pay the value of lost or damaged property;
- (2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
- (3) Take all or any part of the property at an agreed or appraised value; or
- (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.

- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.
- h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any *right of subrogation* we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Valuation

We will determine the value of Covered Property at *actual cash value* as of the time of loss or damage.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
 - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give notice to the mortgageholder at least:
- (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

2. Need For Adequate Insurance

We will not pay a greater share of any loss than *the proportion that the Limit of Insurance bears to the value on the date of completion of the building described in the Declarations.*

Example 1 (Underinsurance)

When: The value of the building on the date of completion is: \$ 200,000
 The Limit of Insurance for it is: \$ 100,000
 The Deductible is: \$ 500
 The amount of loss is: \$ 80,000

Step (1): $\$100,000 \div \$200,000 = .50$

Step (2): $\$80,000 \times .50 = \$40,000$

Step (3): $\$40,000 - \$500 = \$39,500$

We will pay no more than \$39,500. The remaining \$40,500 is not covered.

Example 2 (Adequate Insurance)

When: The value of the building on the date of completion is: \$ 200,000
 The Limit of Insurance for it is: \$200,000
 The Deductible is: \$ 1,000
 The amount of loss is: \$ 80,000

The Limit of Insurance in this example is adequate and therefore no penalty applies. We will pay no more than \$79,000 (\$80,000 amount of loss minus the Deductible of \$1,000).

3. Restriction Of Additional Coverage – Collapse

If the *Causes Of Loss – Broad Form* is applicable to this Coverage Form, Paragraph C.2.f. of the Additional Coverage, Collapse, does not apply to this Coverage Form.

If the *Causes Of Loss – Special Form* is applicable to this Coverage Form, Paragraphs D.2.c. and D.2.d. of the Additional Coverage, Collapse, do not apply to this Coverage Form.

4. When Coverage Ceases

The insurance provided by this Coverage Form will end when one of the following first occurs:

- a. This policy expires or is cancelled;
- b. The property is accepted by the purchaser;
- c. Your interest in the property ceases;
- d. You abandon the construction with no intention to complete it;
- e. Unless we specify otherwise in writing:
 - (1) 90 days after construction is complete; or
 - (2) 60 days after any building described in the Declarations is:
 - (a) Occupied in whole or in part; or
 - (b) Put to its intended use.

G. Definitions

"Pollutants" means 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT
CAREFULLY.

CAUSES OF LOSS - SPECIAL FORM ²¹⁴

Words and phrases that appear in quotation marks have special meaning. Refer to Section G. Definitions.

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law ²¹⁵

The enforcement of or compliance with any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; or
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b.(1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

With respect to coverage for Volcanic Action as set forth in (5)(a), (5)(b) and (5)(c), all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

This exclusion applies regardless of whether any of the above, in Paragraphs (1) through (5), is caused by an act of nature or is otherwise caused.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the

described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

f. War And Military Action

- (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.

g. Water ²¹⁶

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;

(4) Water under the ground surface pressing on, or flowing or seeping through:

- (a) Foundations, walls, floors or paved surfaces;
- (b) Basements, whether paved or not; or
- (c) Doors, windows or other openings; or

(5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph (1), (3) or (4), or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs (1) through (5), is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs (1) through (5), results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

h. **"Fungus", Wet Rot, Dry Rot And Bacteria**

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria result in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungus", wet or dry rot or bacteria result from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage, Limited Coverage For "Fungus", Wet Rot, Dry Rot And

Bacteria, with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.h. apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from any of the following:

a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:

- (1) Electrical or electronic wire, device, appliance, system or network; or
- (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or microwaves.

But if fire results, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;

(5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

But if an excluded cause of loss that is listed in 2.d.(1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

e. Explosion of steam boilers, 217

steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems)

caused by or resulting from freezing, unless:

(1) You do your best to maintain heat in the building or structure; or

(2) You drain the equipment and shut off the supply if the heat is not maintained.

h. Dishonest or criminal act (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion:

(1) Applies whether or not an act occurs during your normal hours of operation;

(2) Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.

i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

j. Rain, snow, ice or sleet to personal property in the open.

k. Collapse, including any of the following conditions of property or any part of the property:

(1) An abrupt falling down or caving in;

(2) Loss of structural integrity, including separation of parts of the property or property in

danger of falling down or caving in; or

- (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, k., does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage, Collapse; or
- (b) To collapse caused by one or more of the following:
 - (i) The "specified causes of loss"
 - (ii) Breakage of building glass;
 - (iii) Weight of rain that collects on a roof; or
 - (iv) Weight of people or personal property.

- I. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, I., does not apply to damage to glass caused by chemicals applied to the glass.

- m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered

Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.
- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
- c. Faulty, inadequate or defective:
 - (1) Planning, zoning, development, surveying, siting;
 - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) Materials used in repair, construction, renovation or remodeling; or
 - (4) Maintenance; of part or all of any property on or off the described premises.

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms:

- a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused by or resulting from:
 - (a) Damage or destruction of "finished stock" or
 - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.

(3) Any increase of loss caused by or resulting from:

(a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

(4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

(5) Any other consequential loss.

b. Leasehold Interest Coverage Form

(1) Paragraph B.1.a., Ordinance Or Law, does not apply to insurance under this Coverage Form.

(2) We will not pay for any loss caused by:

(a) Your cancelling the lease;

(b) The suspension, lapse or cancellation of any license; or

(c) Any other consequential loss.

c. Legal Liability Coverage Form

(1) The following exclusions do not apply to insurance under this Coverage Form:

(a) Paragraph B.1.a. Ordinance Or Law;

(b) Paragraph B.1.c. Governmental Action;

(c) Paragraph B.1.d. Nuclear Hazard;

(d) Paragraph B.1.e. Utility Services; and

(e) Paragraph B.1.f. War And Military Action.

(2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your **assumption of liability** in a contract or agreement. ²¹⁸ But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

(i) Your assumption of liability was executed prior to the accident; and

(ii) The building is Covered Property under this Coverage Form.

(b) Nuclear Hazard

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

5. Additional Exclusion

The following provisions apply only to the specified property:

Loss Or Damage To Products

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession

under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated:

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
 - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
 - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
 - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
 - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
 - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
- d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

 - (1) Building materials and supplies held for sale by you, unless they are insured under the Builder's Risk Coverage Form; or
 - (2) Business Income Coverage or Extra Expense Coverage.
- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
- g. Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:
 - (1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
 - (2) Changes in or extremes of temperature;
 - (3) Disease;
 - (4) Frost or hail; or
 - (5) Rain, snow, ice or sleet.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
 - a. Animals, and then only if they are killed or their destruction is made necessary.
 - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
 - (1) Glass; or
 - (2) Containers of property held for sale.
 - c. Builder's' machinery, tools and equipment owned by you or

entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

- (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builder's Risk Coverage Form; or
 - (2) To Business Income Coverage or to Extra Expense Coverage.
3. The special limit shown for each category, a. through d., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are (unless a higher limit is shown in the Declarations):
 - a. \$2,500 for furs, fur garments and garments trimmed with fur.
 - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - c. \$2,500 for patterns, dies, molds and forms.
 - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, **C.3.**, does not apply to Business Income Coverage or to Extra Expense Coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:
 - a. Results in discharge of any substance from an automatic fire protection system; or
 - b. Is directly caused by freezing.

However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

D. Additional Coverage - Collapse

The coverage provided under this Additional Coverage, Collapse, applies only to an abrupt collapse as described and limited in **D.1.** through **D.7.**

1. For the purpose of this Additional Coverage, Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.
2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:
 - a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
 - b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
 - c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
 - d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
 - (1) A cause of loss listed in **2.a.** or **2.b.**;
 - (2) One or more of the "specified causes of loss"
 - (3) Breakage of building glass;
 - (4) Weight of people or personal property; or

- (5) Weight of rain that collects on a roof.
3. This Additional Coverage - Collapse does not apply to:
- a. A building or any part of a building that is in danger of falling down or caving in;
 - b. A part of a building that is standing, even if it has separated from another part of the building; or
 - c. A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
4. With respect to the following property:
- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
 - b. Awnings, gutters and downspouts;
 - c. Yard fixtures;
 - d. Outdoor swimming pools;
 - e. Fences;
 - f. Piers, wharves and docks;
 - g. Beach or diving platforms or appurtenances;
 - h. Retaining walls; and
 - i. Walks, roadways and other paved surfaces;

if an abrupt collapse is caused by a cause of loss listed in 2.a. through 2.d., we will pay for loss or damage to that property only if:

- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
 - (2) The property is Covered Property under this Coverage Form.
5. If personal property abruptly falls down or caves in and such collapse is not the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a. The collapse of personal property was caused by a cause of loss listed in 2.a. through 2.d.;

- b. The personal property which collapses is inside a building; and
- c. The property which collapses is not of a kind listed in 4., regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph 5. does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

- 6. This Additional Coverage, Collapse, does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- 7. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.
- 8. The term Covered Cause of Loss includes the Additional Coverage, Collapse, as described and limited in D.1. through D.7.

E. Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in E.2. and E.6. only applies when the "fungus", wet or dry rot or bacteria are the result of one or more of the following causes that occur during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence:
- a. A "specified cause of loss" other than fire or lightning; or
 - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

This Additional Coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
- a. Direct physical loss or damage to Covered Property caused by

- "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
- b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
 - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.
3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continue to be present or active, or recur, in a later policy period.
 4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria cause an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.
 5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water

Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss form or under the Additional Coverage, Collapse.

6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form:
 - a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
 - b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

F. Additional Coverage Extensions

1. Property In Transit

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or

operate while between points in the coverage territory.

- b. Loss or damage must be caused by or result from one of the following causes of loss:

(1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.

(2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.

(3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.

- c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

3. Glass

a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.

b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension **F.3.** does not increase the Limit of Insurance.

G. Definitions

1. **"Fungus"** means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

2. **"Specified causes of loss"** means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

(1) The cost of filling sinkholes; or

(2) Sinking or collapse of land into man-made underground cavities.

b. Falling objects does not include loss or damage to:

(1) Personal property in the open; or

(2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

c. **Water damage** means:

(1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam; and

(2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is

located off the described premises and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear.

But water damage does not include loss or damage otherwise excluded under the terms of the Water Exclusion. Therefore, for example, there is no coverage under this policy in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe which was caused by or related to weather-induced flooding, even if wear

and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the Water Exclusion, there is no coverage for loss or damage caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear.

To the extent that accidental discharge or leakage of water falls within the criteria set forth in **c.(1)** or **c.(2)** of this definition of "specified causes of loss," such water is not subject to the provisions of the Water Exclusion which preclude coverage for surface water or water under the surface of the ground.

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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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. The words "we", "us" and "our" refer to the company providing this insurance.

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

Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2.** Property Not Covered, if a Limit Of Insurance is shown in the Declarations for that type of property.

- a. Building, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery; and
 - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire-extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

- (5) If not covered by other insurance:

- (a) Additions under construction, alterations and repairs to the building or structure;

- (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

- b. Your Business Personal Property consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock"
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments.

Improvements and betterments are fixtures, alterations, installations or additions:

(a) Made a part of the building or structure you occupy but do not own; and

(b) You acquired or made at your expense but cannot legally remove;

(7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

c. Personal Property Of Others that is:

(1) In your care, custody or control; and

(2) Located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

2. **Property Not Covered**

Covered Property does not include:

a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;

b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;

c. Automobiles held for sale;

d. Bridges, roadways, walks, patios or other paved surfaces;

e. Contraband, or property in the course of illegal transportation or trade;

f. The cost of excavations, grading, backfilling or filling;

g. Foundations of buildings, structures, machinery or boilers if their foundations are below:

(1) The lowest basement floor; or

(2) The surface of the ground, if there is no basement;

h. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);

i. Personal property while airborne or waterborne;

j. Bulkheads, pilings, piers, wharves or docks;

k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;

l. Retaining walls that are not part of a building;

m. Underground pipes, flues or drains;

n. Electronic data, except as provided under the Additional Coverage ²²⁰, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the

building's elevator, lighting, heating, ventilation, air conditioning or security system;

- o.** The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
- p.** Vehicles or self-propelled machines (including aircraft or watercraft) that:

 - (1)** Are licensed for use on public roads; or
 - (2)** Are operated principally away from the described premises.

This paragraph does not apply to:

- (a)** Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (b)** Vehicles or self-propelled machines, other than autos, you hold for sale;
- (c)** Rowboats or canoes out of water at the described premises; or
- (d)** Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers; or
- q.** The following property while outside of buildings:

 - (1)** Grain, hay, straw or other crops;
 - (2)** Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), all

except as provided in the Coverage Extensions.

3. Covered Causes Of Loss 221

See applicable Causes Of Loss form as shown in the Declarations.

4. Additional Coverages

a. Debris Removal 222

- (1)** Subject to Paragraphs **(2)**, **(3)** and **(4)**, we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.

- (2)** Debris Removal does not apply to costs to:

- (a)** Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
- (b)** Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
- (c)** Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;
- (d)** Remove property of others of a type that would not be Covered Property under this Coverage Form;
- (e)** Remove deposits of mud or earth from the grounds of the described premises;

- (f) Extract "pollutants" from land or water; or
 - (g) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
- (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.
- (4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
 - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or

damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

(5) Examples

The following examples assume that there is no Coinsurance penalty.

EXAMPLE 1

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 50,000
Amount of Loss Payable:	\$ 49,500 (\$50,000 - \$500)
Debris Removal Expense:	\$ 10,000
Debris Removal Expense Payable:	\$ 10,000 (\$10,000 is 20% of \$50,000.)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

EXAMPLE 2

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500 (\$80,000 - \$500)
Debris Removal Expense:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000, capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph (4). Thus, the total payable for debris removal expense in this example is \$35,500; \$4,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for service at each premises described in the Declarations, unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed. This Additional Coverage applies to your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean-up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs. This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water. The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

e. Increased Cost Of Construction ²²³

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with the minimum standards of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.
- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises and is in force at the time of loss.

(4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:

(a) You were required to comply with before the loss, even when the building was undamaged; and

(b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

(a) The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or

(b) Any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

(a) We will not pay for the Increased Cost of Construction:

(i) Until the property is actually repaired or replaced at the same or another premises; and

(ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

(b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the same premises.

(c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the new premises.

(8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

(9) The costs addressed in the Loss Payment and Valuation Conditions and the Replacement

Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of or compliance with an ordinance or law. The amount payable under this Additional Coverage, as stated in **e.(6)** of this Additional Coverage, is not subject to such limitation.

f. Electronic Data ²²⁴

- (1)** Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
- (2)** Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3)** The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
 - (a)** If the Causes Of Loss - Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
 - (b)** If the Causes Of Loss - Broad Form applies, coverage under this Additional Coverage,

Electronic Data, includes Collapse as set forth in that form.

- (c)** If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
- (d)** The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.
- (4)** The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or

results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises. If a Coinsurance percentage of 80% or more, or a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

a. Newly Acquired Or Constructed Property

(1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
 - (i) Similar use as the building described in the Declarations; or
 - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

(2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
 - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at

fairs, trade shows or exhibitions; or

- (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations. The most we will pay for loss or damage under this Extension is \$100,000 at each building.

- (b) This Extension does not apply to:

- (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

(3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

- b. Personal Effects And Property Of Others

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control. The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

c. Valuable Papers And Records (Other Than Electronic Data)

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) If the *Causes Of Loss - Special Form* applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
- (3) If the Causes Of Loss - Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank

material for reproducing the records (whether or not duplicates exist) and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and, therefore, coverage of such costs is not additional insurance.

d. Property Off-premises

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
 - (a) Temporarily at a location you do not own, lease or operate;
 - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
 - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
 - (a) In or on a vehicle; or
 - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

e. Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), including debris removal expense, caused by or resulting from any of the following causes

of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence. Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

f. Non-owned Detached Trailers

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
 - (a) The trailer is used in your business;
 - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
 - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
 - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
 - (b) During hitching or unhitching operations, or when a trailer becomes accidentally

unhitched from a motor vehicle or motorized conveyance.

- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

g. Business Personal Property Temporarily In Portable Storage Units

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the building or structure described in the Declarations or within 100 feet of the premises described in the Declarations, whichever distance is greater.
- (2) If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
 - (a) Will end 90 days after the business personal property has been placed in the storage unit;
 - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.

(4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.

(5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself. Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

B. Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit Of Insurance shown in the Declarations. The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is \$2,500 per sign in any one occurrence. The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage:

1. Fire Department Service Charge;
2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss and will pay the resulting amount or the Limit of Insurance, whichever is less. When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

EXAMPLE 1

(This example assumes there is no Coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance - Building 1:	\$ 60,000
Limit of Insurance - Building 2:	\$ 80,000
Loss to Building 1:	\$ 60,100
Loss to Building 2:	\$ 90,000

The amount of loss to Building 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Building 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building 1:

$$\begin{array}{r} \$ 60,100 \\ - \quad 250 \\ \hline \$ 59,850 \text{ Loss Payable - Building 1} \end{array}$$

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building 2. Loss payable for Building 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable:

$$\$59,850 + \$80,000 = \$139,850$$

EXAMPLE 2

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example 1.

Loss to Building 1:	\$ 70,000
(Exceeds Limit of Insurance plus Deductible)	
Loss to Building 2:	\$ 90,000
(Exceeds Limit of Insurance plus Deductible)	
Loss Payable - Building 1:	\$ 60,000
(Limit of Insurance)	
Loss Payable - Building 2:	\$ 80,000
(Limit of Insurance)	
Total amount of loss payable:	\$ 140,000

E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

3. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.

- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.

- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.

- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.

- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also, permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

- (8) Cooperate with us in the investigation or settlement of the claim.

- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as

may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Loss Payment

a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:

- (1) Pay the value of lost or damaged property;
- (2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
- (3) Take all or any part of the property at an agreed or appraised value; or
- (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below. We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.

d. We will not pay you more than your financial interest in the Covered Property.

e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:

- (1) We have reached agreement with you on the amount of loss; or
- (2) An appraisal award has been made.

h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Vacancy

a. Description Of Terms

(1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

(i) Rented to a lessee or sublessee and used by the lessee or sublessee to conduct its customary operations; and/or

(ii) Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant. ²²⁵

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

(1) We will not pay for any loss or damage caused by any of the following, even if they are Covered Causes of Loss:

(a) Vandalism;

(b) Sprinkler leakage, unless you have protected the system against freezing;

(c) Building glass breakage;

(d) Water damage;

(e) Theft; or

(f) Attempted theft.

(2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.

b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement. The cost of building repairs or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at the actual cash value, even when attached to the building:

(1) Awnings or floor coverings;

(2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or

(3) Outdoor equipment or furniture.

c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

d. Glass at the cost of replacement with safety-glazing material if required by law.

e. Tenants' Improvements and Betterments at:

(1) Actual cash value of the lost or damaged property if you make repairs promptly.

(2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:

- (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
- (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

(3) Nothing if others pay for repairs or replacement.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies:

a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property. Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and
- (4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the Limit of Insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

EXAMPLE 1 (UNDERINSURANCE)

When: The value of the property is: \$ 250,000
The Coinsurance percentage for it is: 80%
The Limit of Insurance for it is: \$ 100,000
The amount of loss is: \$ 40,000

Step (1): $\$250,000 \times 80\% = \$200,000$

(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$100,000 \div \$200,000 = .50$

Step (3): $\$40,000 \times .50 = \$20,000$

Step (4): $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

EXAMPLE 2 (ADEQUATE INSURANCE)

When: The value of the property is: \$ 250,000
The Coinsurance percentage for it is: 80%
The Limit of Insurance for it is: \$ 200,000
The Deductible is: \$ 250
The amount of loss is: \$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 (\$250,000 x 80%). Therefore, the Limit of Insurance in this example is adequate, and no penalty applies. We will pay no more than \$39,750 (\$40,000 amount of loss minus the deductible of \$250).

b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

EXAMPLE 3

When: The value of the property is:
Building at Location 1: \$ 75,000
Building at Location 2: \$ 100,000
Personal Property
at Location 2: \$ 75,000
\$ 250,000

The Coinsurance percentage for it is: 90%
The Limit of Insurance for Buildings and Personal Property at Locations 1 and 2 is: \$ 180,000
The Deductible is: \$ 1,000

The amount of loss is:	
Building at Location 2:	\$ 30,000
Personal Property at Location 2:	<u>\$ 20,000</u>
	\$ 50,000

Step (1): $\$250,000 \times 90\% = \$225,000$

(the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2): $\$180,000 \div \$225,000 = .80$

Step (3): $\$50,000 \times .80 = \$40,000$

Step (4): $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

2. Mortgageholders 226

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder. All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
 - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired. At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
 - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item:

1. Agreed Value 227

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
 - (1) On or after the effective date of this Optional Coverage; and
 - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard ²²⁸

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
 - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
 - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
 - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

EXAMPLE

If: The applicable Limit of Insurance is: \$100,000

The annual percentage increase is: 8%

The number of days since the beginning of the policy year (or last policy change) is: 146

The amount of increase is: $\$100,000 \times .08 \times 146 \div 365 = \$3,200$

3. Replacement Cost ²²⁹

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
 - (1) Personal property of others;
 - (2) Contents of a residence;
 - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
 - (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
 - (1) Until the lost or damaged property is actually repaired or replaced; and
 - (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage. With respect to tenants' improvements and betterments, the following also apply:
 - (3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original

cost, as set forth in the Valuation Loss Condition of this Coverage Form; and

- (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
 - e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
 - (1) The Limit of Insurance applicable to the lost or damaged property;
 - (2) The cost to replace the lost or damaged property with other property:
 - (a) Of comparable material and quality; and
 - (b) Used for the same purpose; or
 - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property. If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.
 - f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
- 4. Extension Of Replacement Cost To Personal Property Of Others**

- a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph 3.b.(1) of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.
- b. With respect to replacement cost on the personal property of others, the following limitation applies: If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

H. Definitions

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Pollutants" means 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.
- 3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.



CERTIFICATE OF LIABILITY INSURANCE ²³⁰

DATE
(MM/DD/YYYY
Y)

THIS CERTIFICATE IS ISSUED AS A **MATTER OF INFORMATION ONLY** AND **CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER**. THIS CERTIFICATE **DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW**. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. ²³¹

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

PRODUCER ²³²	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A :	
	INSURER B :	
INSURED ²³³	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

I N	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea. occurrence)	\$	
	<input type="checkbox"/> CLAIMS- <input type="checkbox"/> OCCUR						MED EXP (Any one person)	\$	
							PERSONAL & ADV INJURY ²³⁴	\$	
							GENERAL AGGREGATE ²³⁵	\$	
							PRODUCTS - COMP/OP AGG ²³⁶	\$	
								\$	
	GEN'L AGGREGATE LIMIT APPLIES PER:								
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT ²³⁷ <input type="checkbox"/> LOC								
	<input type="checkbox"/> OTHER								
	AUTOMOBILE LIABILITY ²³⁸						<input type="checkbox"/> SCHEDULED AUTOS	COMBINED SINGLE LIMIT (Ea. accident)	\$
	<input type="checkbox"/> ANY AUTO ²³⁹						<input type="checkbox"/> NON-OWNED AUTOS	BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						<input type="checkbox"/> HIRED AUTOS	BODILY INJURY (Per accident)	\$
	UMBRELLA LIAB						EACH OCCURRENCE	\$	
	EXCESS LIAB						CLAIMS-MADE	AGGREGATE	\$
	DED						RETENTION \$ ²⁴⁰		\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						Y / N		
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/>	E.I. EACH ACCIDENT	\$						
If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	E.I. DISEASE - EA EMPLOYEE	\$						
		E.I. DISEASE - POLICY LIMIT	\$						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) ²⁴¹CERTIFICATE HOLDER ²⁴²

CANCELLATION

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. ²⁴³
	AUTHORIZED REPRESENTATIVE ²⁴⁴

DRAFT

AIA® Document G715™ – 2017

Supplemental Attachment for ACORD Certificate of Insurance
25

PROJECT: <i>(name and address)</i>	CONTRACT INFORMATION:	CERTIFICATE INFORMATION:
	Contract For:	Producer:
	Date:	Insured: Date:
OWNER: <i>(name and address)</i>	ARCHITECT: <i>(name and address)</i>	CONTRACTOR: <i>(name and address)</i>

A. General Liability

Yes No N/A

1. Does this policy include coverage for:

- a** Damages because of bodily injury, sickness, or disease, including occupational sickness or disease, and death of any person? ☐ ☐ ☐
- b** Personal injury and advertising injury? ☐ ☐ ☐
- c** Damages because of physical damage to or destruction of tangible property, including the loss of use of such property? ☐ ☐ ☐
- d** Bodily injury or property damage arising out of completed operations? ☐ ☐ ☐
- e** The Contractor's indemnity obligations included in the Contract Documents? ☐ ☐ ☐

2. Does this policy contain an exclusion or restriction of coverage for:

- a** Claims by one insured against another insured, where the exclusion or restrictions is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim? ☐ ☐ ☐
- b** Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor? ☐ ☐ ☐
- c** Claims for bodily injury other than to employees of the insured? ☐ ☐ ☐
- d** Claims for the Contractor's indemnity obligations included in the Contract Documents arising out of injury to employees of the insured? ☐ ☐ ☐
- e** Claims for loss excluded under a prior work endorsement or other similar exclusionary language? ☐ ☐ ☐
- f** Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language? ☐ ☐ ☐
- g** Claims related to residential, multi-family, or other habitational projects? ☐ ☐ ☐
- h** Claims related to roofing? ☐ ☐ ☐
- i** Claims related to exterior insulation finish systems, synthetic stucco, or similar exterior coatings or surfaces? ☐ ☐ ☐
- j** Claims related to earth subsistence or movement? ☐ ☐ ☐
- k** Claims related to explosion, collapse, and underground hazards? ☐ ☐ ☐

B. Other Insurance Coverage

Yes No N/A

1. Indicate whether the Contractor has the following insurance coverages and, if so, indicate the coverage limits for each.

- a** Professional liability insurance ☐ ☐ ☐
Coverage limits:
- b** Pollution liability insurance ☐ ☐ ☐
Coverage limits:
- c** Insurance for maritime liability risks associated with the operation of a vessel ☐ ☐ ☐

- Coverage limits:
- d** Insurance for the use or operation of manned or unmanned aircraft ☐ ☐ ☐
- Coverage limits:
- e** Property insurance ☐ ☐ ☐
- Coverage limits:
- f** Railroad protective liability insurance ☐ ☐ ☐
- Coverage limits:
- g** Asbestos abatement liability insurance ☐ ☐ ☐
- Coverage limits:
- h** Insurance for physical damage to property while it is in storage and in transit to the construction site ☐ ☐ ☐
- Coverage limits:
- i** Other: ☐ ☐ ☐

(Authorized Representative)

(Date of Issue)



EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE
(MM/DD/YYYY)

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A **MATTER OF INFORMATION ONLY** AND **CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW**. THIS EVIDENCE **DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND** OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE **DOES NOT CONSTITUTE A CONTRACT** BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.²⁴⁵

PRODUCER NAME, ²⁴⁶ CONTACT PERSON AND ADDRESS		PHONE (A/C, No, Ext):	COMPANY NAME AND ADDRESS		NAIC NO:
FAX (A/C, No):		E-MAIL ADDRESS:	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH		
CODE: AGENCY CUSTOMER ID #:		SUB CODE:	POLICY TYPE		
NAMED INSURED AND ADDRESS			LOAN NUMBER	POLICY NUMBER	
			EFFECTIVE DATE	EXPIRATION DATE	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
ADDITIONAL NAMED INSURED(S) ²⁴⁷			THIS REPLACES PRIOR EVIDENCE DATED:		

PROPERTY INFORMATION (Use REMARKS on page 2, if more space is required) ☐ BUILDING OR ☐ BUSINESS PERSONAL PROPERTY

LOCATION/DESCRIPTION
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 EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

PERILS INSURED

☐ BASIC ²⁴⁸ ☐ BROAD ²⁴⁹ ☐ SPECIAL ²⁵⁰

COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$	DED:		
<input type="checkbox"/> BUSINESS INCOME ²⁵¹ <input type="checkbox"/> RENTAL	YES	NO	N/A
BLANKET COVERAGE			If YES, LIMIT: Actual Loss Sustained; # of
TERRORISM COVERAGE			If YES, indicate value(s) reported on property identified above: \$
IS THERE A TERRORISM-SPECIFIC EXCLUSION?			Attach Disclosure Notice / DEC
IS DOMESTIC TERRORISM EXCLUDED?			
LIMITED FUNGUS COVERAGE			If YES, LIMIT: DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)			
REPLACEMENT COST ²⁵²			
AGREED VALUE ²⁵³			
COINSURANCE ²⁵⁴			If YES, %
EQUIPMENT BREAKDOWN (If Applicable)			If YES, LIMIT: DED:
ORDINANCE OR LAW ²⁵⁵ - Coverage for loss to undamaged portion of			
- Demolition Costs			If YES, LIMIT: DED:
- Incr. Cost of Construction			If YES, LIMIT: DED:
EARTH MOVEMENT (If Applicable)			If YES, LIMIT: DED:
FLOOD (If Applicable) ²⁵⁶			If YES, LIMIT: DED:
WIND / HAIL INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different			If YES, LIMIT: DED:
NAMED STORM INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different			If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS			

CANCELLATION ²⁵⁷

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

MORTGAGEE ²⁵⁸	CONTRACT OF SALE	LENDER SERVICING AGENT NAME AND ADDRESS
LENDERS LOSS PAYABLE ²⁵⁹		
NAME AND ADDRESS	AUTHORIZED REPRESENTATIVE ²⁶⁰	



INSURANCE BINDER

DATE (MM/DD/YYYY)

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

AGENCY		COMPANY		BINDER #	
		EFFECTIVE TIME		EXPIRATION	
		DATE	TIME	DATE	TIME
PHONE (A/C, No, Ext):		FAX (A/C, No):		AM	12:01
CODE:		SUB CODE:		PM	AM
AGENCY CUSTOMER ID:					NOO
INSURED AND MAILING ADDRESS		<input type="checkbox"/> THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #:			
		DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)			

TYPE OF INSURANCE	COVERAGE/FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY CAUSES OF				
<input type="checkbox"/> BASIC ²⁶² <input type="checkbox"/> BROAD ²⁶³ <input type="checkbox"/> SPEC ²⁶⁴				
GENERAL LIABILITY				
<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY ²⁶⁵		EACH OCCURRENCE		\$
<input type="checkbox"/> CLAIMS MADE ²⁶⁶ <input type="checkbox"/> OCCUR ²⁶⁷		DAMAGE TO RENTED PREMISES		\$
		MED EXP (Any one person)		\$
		PERSONAL & ADV INJURY ²⁶⁸		\$
		GENERAL AGGREGATE ²⁶⁹		\$
		PRODUCTS - COMP/OP AGG ²⁷⁰		\$
	RETRO DATE FOR CLAIMS MADE:	COMBINED SINGLE LIMIT		\$
VEHICLE LIABILITY ²⁷¹		BODILY INJURY (Per person)		\$
ANY AUTO ²⁷²		BODILY INJURY (Per accident)		\$
ALL OWNED AUTOS		PROPERTY DAMAGE		\$
SCHEDULED AUTOS		MEDICAL PAYMENTS		\$
HIRED AUTOS		PERSONAL INJURY PROT		\$
NON-OWNED AUTOS		UNINSURED MOTORIST		\$
VEHICLE PHYSICAL DAMAGE DED				\$
COLLISION:	<input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES	ACTUAL CASH VALUE		
OTHER THAN COL:		STATED AMOUNT		\$
GARAGE LIABILITY				
<input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT		\$
<input type="checkbox"/>		OTHER THAN AUTO ONLY:		
		EACH ACCIDENT		\$
		AGGREGATE		\$
EXCESS LIABILITY		EACH OCCURRENCE		\$
<input type="checkbox"/> UMBRELLA FORM		AGGREGATE		\$
<input type="checkbox"/> OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	SELF-INSURED RETENTION ²⁷³		\$
WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY ²⁷⁴		WC STATUTORY LIMITS		
		E.L. EACH ACCIDENT		\$
		E.L. DISEASE - EA EMPLOYEE		\$
		E.L. DISEASE - POLICY LIMIT		\$
SPECIAL CONDITIONS / OTHER COVERAGES		FEES		\$
		TAXES		\$
		ESTIMATED TOTAL PREMIUM		

NAME & ADDRESS

	MORTGAGEE LOSS PAYEE ²⁷⁵	ADDITIONAL INSURED ²⁷⁶
	LOAN #	
	AUTHORIZED REPRESENTATIVE ²⁷⁷	

CONDITIONS

This Company binds the kind(s) of insurance stipulated on the reverse side. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

Applicable in California

When this form is used to provide insurance in the amount of one million dollars (\$1,000,000) or more, the title of the form is changed from "Insurance Binder" to "Cover Note".

Applicable in Colorado

With respect to binders issued to renters of residential premises, home owners, condo unit owners and mobile home owners, the insurer has thirty (30) business days, commencing from the effective date of coverage, to evaluate the issuance of the insurance policy.

Applicable in Delaware

The mortgagee or Obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent if the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of insurance coverage.

Chapter 21 Title 25 Paragraph 2119

Applicable in Florida

Except for Auto Insurance coverage, no notice of cancellation or nonrenewal of a binder is required unless the duration of the binder exceeds 60 days. For auto insurance, the insurer must give 5 days prior notice, unless the binder is replaced by a policy or another binder in the same company.

Applicable in Maryland

The insurer has 45 business days, commencing from the effective date of coverage to confirm eligibility for coverage under the insurance policy.

Applicable in Michigan

The policy may be cancelled at any time at the request of the insured.

Applicable in Nevada

Any person who refuses to accept a binder which provides coverage of less than \$1,000,000.00 when proof is required: (A) Shall be fined not more than \$500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained therefrom.

Applicable in the Virgin Islands

This binder is effective for only ninety (90) days. Within thirty (30) days of receipt of this binder, you should request an insurance policy or certificate (if applicable) from your agent and/or insurance company.

ENDNOTES

AIA 201 - 2017 Insurance and Risk Management Provisions

ARTICLE 3. CONTRACTOR

¹ **Professional Services.** AIA 201 – 2017 **§3.12.10 Professional Services** and **§ 3.12.10.1 If Contract Documents Specifically Require of Contractor Professional Design Services or Certification Related to Systems, Materials, or Equipment** recognize that there are circumstances under which the Work performed by the Contractor includes it providing services that are *professional services*, excluded from coverage by a Commercial General Liability policy and necessitating coverage under a Professional Liability Insurance policy if the parties wish for coverage. The **2017 Insurance Exhibit** at **§ 3.2.8** and the **Modified Insurance Exhibit** at its corresponding **Mod. § 3.2.8 Professional Liability** recognize this prospect and specify that the Contractor will carry professional liability insurance and set out additional specifications as to that coverage.

² **§ 3.18.1 Indemnification – Anti-Indemnity Acts.** Most state anti-indemnity statutes apply in the construction context. Some states, have adopted statutes voiding as against public policy any indemnity by one person of another person's negligence in the context of construction and additionally voiding any insured coverage to the extent it provides insurance coverage the scope of which is prohibited for an indemnity agreement. Care should be taken in drafting insurance specifications applicable to parties and their contractors to avoid violating such prohibitions and to require additional insured endorsements in states that have adopted anti-indemnity or anti-additional insured endorsement law.

The "**Texas Anti-Indemnity Act**", Chapter 151 of the Texas Insurance Code provides as to indemnification:

§ 151.102 Agreement Void and Unenforceable. Except as provided by Section 151.103, a provision in a construction contract ... is void and unenforceable as against public policy to the extent that it requires an indemnitor to indemnify, hold harmless, or defend a party, including a third party, against a claim *caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of the indemnitee*, its agent or employee, or any third party under the control or supervision of the indemnitee, *other than the indemnitor* or its agent, employee, or subcontractor of any tier.

§ 151.103 Exception for Employee Claim. Section 151.102 *does not apply to* a provision in a construction contract that requires a person to indemnify, hold harmless, or defend another party to the construction contract or a third party against a claim for the bodily injury or death of an *employee of the indemnitor, its agent, or its subcontractor of any tier*.

Also note that Chapter 151 of the Texas Insurance Code provides as to additional insured coverage:

§ 151.104 Unenforceable Additional Insurance Provision.

(a) Except as provided in Subsection (b), a provision in a construction contract that requires the purchase of *additional insured coverage*, or any coverage endorsement, or provision within in an insurance policy providing additional insured coverage, is *void and unenforceable to the extent* that it requires or provides coverage the scope of which is prohibited under this subchapter for an indemnity agreement to indemnify, hold harmless, or defend.

(b) This section does not apply to a provision in an insurance policy, or an endorsement to an insurance policy, issued under a *consolidated insurance program* to the extent that the provision or endorsement lists, adds, or deletes named insureds to the policy.

³ **§ 3.18.1 Indemnification – Indemnified Liabilities – Intermediate vs Broad.** The AIA indemnity is an "*intermediate*" indemnity in that Contractor's scope of indemnity does not indemnify the Owner for the Owner's sole negligence as would a "*broad*" form indemnity.

⁴ **§ 3.18.2 Workers' Compensation and Indemnities.** This provision is included in the AIA A201 provision to avoid the contention that an indemnifying party's (e.g., Contractor's) indemnity is limited by the amounts paid or

payable pursuant to Workers' compensation acts. The indemnity by the Contractor in **§ 3.18** is crafted to pass back to the Contractor liability incurred by the indemnified person (the Owner) caused in whole or part by the negligence of the Contractor and is recognized in state's not barring indemnity of an indemnified party by an indemnifying party for injuries caused by the indemnifying party or caused in part by the contributory negligence of both the indemnifying party and the indemnified party, and thus permitting third party over actions to be passed back to the employer/contractor-subcontractors. See discussion of *Anti-Indemnity and Anti-Additional Insured Acts* at **Endnote 2**.

ARTICLE 10. PROTECTION OF PERSONS OR PROPERTY

5 A201 Allocation of Uninsured Damage to Contractor. Note **A201 Section 10.2.5** allocates to the Contractor the **entire loss** if the Contractor, the Subcontractors or others for whom they are liable if the loss or damage is *caused in whole or in part by the Contractor....* Thus, the Contractor and its Subcontractors of all tiers have a keen interest in assuring that such potential losses and damages to the Work and the Project are properly insured and that they are insureds under the property insurance policies. See the discussion in this Article as to the Contractor and its Subcontractors seeking to be insureds on Owner's property insurance, which hopefully is builder's risk insurance. Note that in the absence of a provision in a construction contract allocating the risk of loss during construction have consistently held that the person who contracts to erect a structure or complete construction work **bears the loss** resulting from accidental damage or destruction of the work prior to its completion and acceptance.

6 A201 Limited Recourse by Contractor. The **A201** gives the Contractor a limited recourse against the Owner if the loss or damage that is not insured is *"attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor."* Note though this recourse does not lie if the loss or damage is "attributable to the fault or negligence of the Contractor".

7 § 11.1.1 Contractor's Insurance. *"As described in this Agreement"* includes the 2017 introduced insurance specifications set out in A101 Exhibit A *Insurance and Bonds* (the **2017 Insurance Exhibit**). See the **2017 Insurance Exhibit** in the **Appendix of Forms** and as addressed in this Article.

8 § 11.1.1 Contractor's Required Insurance – Claims Insured – Authorized Insurers. See **2017 Insurance Exhibit** at **§ A.3.2.1 Contractor's Required Insurance Coverage** and the **Modified Insurance Exhibit** at **Mod. § A.3.2.1.1 Contractor's Required Insurance Coverage – Contractor's Insurance – Types; Limits**.

9 § 11.1.1 Contractor's Insurance – Claims Insured – Named as Additional Insureds. See **2017 Insurance Exhibit** at **§ A.3.1.3 Contractor's Insurance and Bonds – Additional Insured Obligations** and the **Modified Insurance Exhibit** at **Mod. § A.3.1.3 Contractor's Insurance and Bonds – Additional Insured Obligations**, **Mod. § A.3.1.3.1 Contractor's Insurance and Bonds – Additional Insured Obligations – Additional Insureds**, and **Mod. § A.3.1.3.3 Contractor's Insurance and Bonds – Additional Insured Obligations – ISO Forms**.

10 § 11.2.1 Owner's Insurance – Claims Insured – Authorized Insurers. See **Endnote 68** AIA A101 Exhibit A *Insurance and Bonds* - § A.3.2.1 *Contractor's Required Insurance Coverage – Contractor's Insurance Issued by "Authorized" Insurer*.

11 11.3.1 Waiver of Recovery. See **Mod. § A.4.2.9 Special Terms and Conditions – General Insurance Requirements – Miscellaneous – Waiver of Recovery and Waiver of Subrogation**.

12 Builder's Risk Form "or equivalent". See **Endnote 25**.

AIA A101 – 2017 Exhibit A Insurance and Bonds (Unmodified) – 2017 Insurance Exhibit

13 Prior Format. Every 10 years (or so), AIA reviews and revises the AIA forms. **AIA A101-2017 Exhibit A Insurance and Bonds** is a "new" form promulgated in 2017. Prior to 2017, the AIA forms system relied on the parties to craft insurance specifications. The prior AIA approach of generally referring to the types of claims to be insured by the parties many times resulted in parties giving little thought to the choices and many choices not being made. The prior AIA approach was a narrative approach that relied upon further insurance specifications which also tended to be narrative. Sometimes a result of the prior practice was to use terms that were the subject of many choices without specification of the details of coverage (e.g., *"additional insured"*) and references to terminology no longer used in the insurance industry (e.g., *"comprehensive general liability insurance"*, *"fire and extended coverage insurance"*). See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr. at *Liability Insurance - Antiquated, Problematic and Just Plain Wrong* **205**

Terminology at page 3 and Property Insurance - Antiquated, Problematic and Just Plain Wrong Terminology at page 36.

ARTICLE A.1 GENERAL

14 § A.1 General - New Format – A Choice Format Provided by AIA to Specify Required Insurance. The AIA A101-2017 Exhibit A approach establishes a choice format as to the most common insurance decisions between owners and contractors to assure that a decision is made. The 2017 approach is in the nature of a checklist or decision tree *versus* the prior approach which was a narrative approach. The resultant 2017 Insurance Exhibit, although better than the prior practice, includes some specifications and language that is problematic, and does not contain all changes that would have been beneficial. See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr. at *Drafting: Specific Specifications Are Better than General* at page 41. Charles Comiskey was an advisor to the AIA committee drafting insurance specifications to accompany the 2017 forms. He was instrumental in steering their choice to “specific” insurance specifications and being more of a checklist or decision tree approach than a purely narrative approach.

15 § A.1 General - Common Errors – Bonds. AIA A101 Exhibit A § A.3.4 Performance and Payment Bond calls for use of the AIA payment and performance bond forms (AIA). Some states (e.g., Texas) have a statutorily required payment bond form; and the AIA payment bond is not used in those states. Some states (e.g., Texas) afford the statutorily required payment bond special status protecting the Project from statutory mechanics and materialmen’s liens filed by unpaid subcontractors and suppliers (lifting their liens from the Project and relegating them to a claim on the payment bond). The form of each bond needs to be preapproved for use by the Project’s construction loan lender.

16 § A.2.1 General - Common Errors - Timing of Review of Insurance. The builder’s risk insurance policy may not, and likely will not, be issued or available prior to commencement of construction. The actual policy in many cases is not issued and delivered for weeks or months after work has begun. The policy itself is the contract of insurance and contains extensive terms and conditions that should be reviewed and approved prior to commencement of work. A great level of “distress” can occur, if an assumed coverage in fact is not included in the policy, despite the best written insurance specifications, when a loss occurs before issuance of the policy. If construction will commence before delivery of the policy, one avenue may be to have the insurer deliver a specimen policy and specimen endorsements.

17 § A.1 General - AIA A201-2017. The AIA A201-2017 and other AIA forms contain general risk management provisions (e.g., indemnity and general insurance specifications). Accompanying this Article is an extract of the risk management provisions contained in the AIA A201-2017.

ISO. Reference is made in the 2017 Insurance Exhibit and in the Modified Insurance Exhibit attached to this Article to forms issued by the Insurance Service Office (“ISO”), a major provider of insurance forms and whose liability insurance forms are considered to be The Standard in the industry. These referenced forms are industry standard and are used by many insurers. As a result, they are a reasonable benchmark as to the coverage specified. There exists substantial case law throughout the states interpreting ISO forms. These cases provide a generally accepted understanding of the coverage reflected by ISO forms. ISO frequently issues new forms and issues updated editions of its forms. The Modified Insurance Exhibit identifies particular ISO forms to be prohibited and identifies other common deleterious forms as prohibited.

ISO “Equivalents”. The practice of some insurers is to state on their forms that they “Include Copyrighted Material of ISO with Its Permission”. This gives an impression (possibly false) that the form provides the insureds equivalent or better protection than afforded by an unmodified ISO form. This type of alternate form is a manuscripted form. There tends to be little to no case law as to such modified forms. This circumstance leads to conflicts in interpretation and litigation. If a manuscripted form is proposed in lieu of the forms specified in this Article, further review is required.

Modified Insurance Exhibit. Accompanying this presentation is a Modified Insurance Exhibit. The Modified Insurance Exhibit is the authors’ attempt to fill gaps still existing in the new approach-AIA 2017 Insurance Exhibit insurance specifications. The approach taken in the Modified Insurance Exhibit is to reference specific industry forms and detailed terminology as to coverages required. This approach prompts discussion of insurance requirements while the parties are still in contract negotiation. It permits review of alternate coverages. Note that most insurers’ forms provide third party coverage only “*where required by written contract*”. Many insurer’s forms and some of the **ISO** promulgated forms limit coverage to “*not be broader than that which [the Named Insured] is required by contract to provide*” and “*Insurer will not pay more than the amount required by the contract*”. These circumstances emphasize the need to be specific in the written contract as to what is required.

ARTICLE A.2 OWNER'S INSURANCE

18 § A.2.1 Owner's Insurance – General – Owner Provides Evidence of Insurance and Copy of Policies. Owner is required by the AIA form to provide Contractor with a copy of Owner's insurance policies, if requested by Contractor. This requirement should be considered by Owner prior to entering into the construction contract and this provision adjusted to address what information Owner is willing to provide the Contractor.

19 § A.2.2 Owner's Insurance – Liability Insurance – Owner's "Usual" Liability Insurance. The AIA form system assumes that the Owner's existing ("usual") liability insurance program is not to be further addressed in the construction contract. However, specifications for the Owner's insurance program should be set out in separate insurance specifications to be reviewed and approved by the Owner and Development Manager prior to negotiation of the construction contract with the Contractor.

20 § A.2.3.1 Owner's Insurance – Builder's Risk Insurance Option: Either Owner or Contractor. Reference is made to § A.3.3.2.1 Contractor's Other Insurance - Builder's Risk Insurance for the optional selection of the Contractor to purchase the builder's risk insurance (see discussion of this section below). Note that the AIA form does not specify the details of coverage in § A.2.3.1 Builder's Risk Insurance ("Owner-Procured Builder's Risk Insurance") like it sets forth in the specifications for Contractor Procured Builder's Risk Insurance at § A.3.3.2.1 (Builder's Risk Insurance) ("Contractor-Procured Builder's Risk Insurance"). The AIA Exhibit A form relies on an incorporation by reference in § A.2.3.1(a) to the Contractor Procured Builder's Risk Insurance section to set out specifications for the builder's risk insurance if procured by the Owner. See the additional discussion of builder's risk insurance in the discussion of Contractor Procured Builder's Risk Insurance at § A.3.3.2.1 Builder's Risk Insurance ("Contractor Procured Builder's Risk Insurance").

21 § A.2.3.1 Owner's Insurance - Required Property Insurance – Defaults to Owner Carrying Builder's Risk. The default position under this section is that the Owner purchases the builder's risk insurance. Reference is made to § A.3.3.2.1 Contractor's Other Insurance - Builder's Risk Insurance for the optional selection of the Contractor to purchase the builder's risk insurance (see discussion of this section below). § A.2.3.1 is set out in less detail than if the parties have elected for the Contractor to purchase the builder's risk. In part, this allows the Owner to determine outside of the construction contract requirements, what requirements are to apply to the builder's risk insurance requirement and perhaps limiting the discussion of specifications with the Contractor.

22 § A.2.3.1 Owner's Insurance - Required Property Insurance – "Authorized" Insurer. See [Endnote 68](#) § A.3.2.1 Contractor's Required Insurance Coverage – Contractor's Insurance Issued by "Authorized" Insurer.

23 § A.2.3.1 - "All Risks". Section A.2.3.1 identifies the property insurance to be maintained by Owner during construction as a builder's risk and as an "all-risks" policy. An "all-risks" policy does not however cover "all risks". "All risks" does not necessarily include the following causes of loss: theft, flood, earthquake, collapse, "green" exposures, or terrorism. There is no standard builder's risk policy, unlike liability insurance where there is a commonly recognized standard ISO CGL policy. Builder's risk policies are Inland Marine policies and there is a wide divergence in builder's risk coverages insurer to insurer. "Inland Marine" policies are policies that are customized to the loss sought to be insured and are designed to provide coverage for special exposures typically associated with the type property at which they are directed, and the special valuation methods needed to address the exposure. See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr. at *Not All Builder's Risk Policies are the Same* at page 37, and *Builder's Risk Insurance* at pages 229-232.

24 § A.2.3.1– "Completed Value" and "Non-Reporting Form". Builder's risk insurance is most issued on a "completed value" form (also called a "non-reporting form") as opposed to a "reporting" form. A completed value form policy is issued for a specific construction project with the coverage limits and premium based on the expected value of the project as completed. The insured under a completed value basis form does not run the risk of under or misreporting and the associated contractual penalties that are involved with a reporting form basis policy. A completed value basis policy limit is based on the anticipated completed value of the project. Its premium is roughly 50% of the normal builder's risk rate in recognition of the fact that the average value exposed to loss during the project is approximately one-half of the completed value of the project. Under a completed value form coverage is automatically increased as construction occurs.

25 § A.2.3.1 - Builder's Risk Insurance – “or equivalent policy form”. Curiously, after identifying the Required Owner-Procured Property Insurance in a some-what generic fashion as “builder's risk ‘all risks’ property insurance” the **2017 Insurance Specifications** then state that the form of insurance can be an “equivalent policy form”. The following can be the result:

- **Disagreement.** Disagreements between the parties as to what constitutes “equivalency”.
- **Uninsured Losses.** Uninsured losses result.
- **No New Builder's Risk Policy.** Owner does not purchase a separate policy to cover the Project and relies on its existing property insurance covering its existing facilities, which policy may
 - (1) not adequately address property risks arising out of construction, and
 - (2) not include the Contractor and its subcontractors of every tier as insureds.
- **Contractor Parties Interests Not Insured.** The Contractor may not be an insured or a third party beneficiary of the Owner-Procured Property Insurance.

See advice for the Contractor and the Owner in the Article at **II.A.4.c** and **.4.d** *Owner's Insurance – Article A.2 – AIA A201 General Conditions – Owner-Procured Property Insurance – Or Equivalent Policy Form* at [page 10](#).

26 § A.2.3.1 - “Sufficient to cover entire value of the Project on a replacement cost basis”. Builder's risk insurance can be provided on either an *actual cash value* (“**ACV**”) basis or a *replacement cost basis*. Normally, there is little to no difference between ACV and replacement cost on a newly constructed structure, but the potential exists that an adjuster could allege physical depreciation, especially when covering long-term construction projects. Replacement cost is the preferred valuation method. Note that the scope of coverage is the “**Project**”. Since the Owner under this provision is to provide the builder's risk insurance, the Owner may approach “Project” in a sense different than the contractor would choose. Should the parties elect to have the contractor provide the builder's risk insurance (by check marking the box at **§A.3.3.2.1 Contractor's Insurance**), the owner and the contractor will be faced with the same divergent views as to the “Project” property and risks to be insured. Whether the policy is a “Replacement Cost” policy or an “Actual Cash Value” policy, the loss paid will be limited to the policy limits.

“**Replacement Cost**” is the cost of repairing or replacing insured property at time of the occurrence of the loss, without reduction for loss of value through depreciation or age. Recovery is limited to the lesser of (a) the policy limit, (b) the cost to replace the lost or damaged property with other property of comparable material and quality and used for the same purpose, or (c) the amount actually spent to repair or replace the damaged or lost property. The policy proceeds are not paid until the property is actually repaired or replaced, and only if replacement occurs as soon as reasonably possible after the loss or damage. Notice of intent to replace must be given to the insurer within 180 days of loss. Replacement cost coverage does not prohibit recovery if the insured rebuilds at a new location, but the coverage is limited to what it would have cost to replace the improvements at the original premises. Replacement cost coverage does not cover the added costs of construction due to changes in laws and ordinances except if the policy is endorsed with an Ordinance or Law Coverage Endorsement. In the past replacement cost coverage was an option provided by endorsement. Now it is an optional coverage built into the **ISO** form policy. The option coverage is selected by notation on the Policy's **Declarations Page**. See **ISO CP DS 10 00** *Declarations Page at Optional Coverages*.

“**Actual Cash Value**” or “**ACV**”. The **ISO** policy does not define “*actual cash value*”. The definition of this term is left up to case law. The term has generally been defined by cases to mean replacement cost of the covered property at the time of loss with like-kind and quality less physical depreciation. Depreciation may be determined by consideration of age, condition at time of loss, obsolescence and other factors causing deterioration. The term is seldom defined in the policy, but is used in property and automobile physical damage insurance and is generally considered in the industry to be the cost to repair or replace the damaged property with materials of like kind and quality, less depreciation of the damaged property. In other words, the sum of money required to pay for damages or lost property, computed on the basis of replacement value less its depreciation by obsolescence or general wear and tear (*i.e.*, physical depreciation). This is one of several possible methods of establishing the value of insured property in order to calculate the premium and determine the amount the insurer will pay in the event of a loss. ACV coverage applies if Replacement Cost coverage is not affirmatively selected on the Declarations Page of the policy.

“Inflation Guard” is an optional endorsement designed to offset potential inflation by specifying a percentage in the **Declarations Page** by which the coverage will increase annually as to the portion of the covered property specified.

27 **§ A.2.3.1 Owner’s Insurance - Required Property Insurance – Common Error: “No Less than the Contract Sum”.** **§ A.2.3.1** can be the source of unanticipated loss to an unsuspecting owner. This AIA form language provides for the builder’s risk insurance “*shall be no less than the amount of the initial Contract Sum*” under the construction contract. This provision is then coupled with the AIA form language in **§ A.2.3.3 Insurance for Existing Structures**, which provides that, if the Work involves remodeling an existing structure or construction of an addition to an existing structure, the Owner is to obtain “all risks” property insurance on a replacement cost basis protecting the existing structure and provides that the Owner shall be responsible for all co-insurance penalties. This opens the project to the following **common error**: failure of the policy amount to reflect the full loss exposure. The contractor’s contract sum is a guide in setting the coverage amount. In projects involving remodeling (especially if the structure is a historic structure) or improvement to an existing building, limiting the coverage amount to the Contractor’s Contract Sum will lead to a significant uninsured loss. Builder’s risk policies will not insure the building envelope unless specifically added. Some builder’s risk policies insure the envelope only on an Actual Cash Value, or depreciated, basis (“**ACV**”). See **§ A.3.3.2.1.6 Insurance for Existing Structures** addressing addition of builder’s risk coverage as to the building envelope on contractor-purchased builder’s risk insurance. **§ A.2.3.3 Insurance for Existing Structures** has been revised in the **Modified Insurance Exhibit** to provide that it applies only “if” this risk has not been shifted to the builder’s risk insurance obtained by the contractor.

28 **§ A.2.3.1 Owner’s Insurance - Required Property Insurance – Duration.** Builder’s risk policy coverage generally begins at a stated inception date, and generally ends on the earlier to occur of the following: (1) the interest of the insured in the property ends, (2) the ultimate user accepts the property, (3) the property is put to its intended use or occupancy of any portion of the property by the ultimate user, (4) a fixed number of days after the project is completed, (5) the expiration date of the policy, (6) cancellation of the policy, or (7) abandonment of construction. A phased project will require an endorsement to permit a certain level of occupancy before the entire project is completed.

29 **§ A.2.3.1 Owner’s Insurance - Required Property Insurance – “Unless Otherwise Agree to by the Parties”.** Note, this provision is not applicable except if Owner is procuring the builder’s risk insurance. This qualifying language recognizes that other provisions in the contract documents for the Project may provide for a different result than as provided in these sections, **§ A.2.3.1(c) Duration of Coverage** and **§ A.2.3.1.3 Insured Amount; Duration of Coverage**. The language of this Section has not been revised to state the different result as agreed to in a particular Project, and this format is left unchanged but serves as an alert that consideration should be given to the point as addressed to determine if an exception is to be added in the contract documents.

30 **§ A.2.3.1 Owner’s Insurance - Required Property Insurance – Owner as Insured and Loss Payee.** **AIA A201 § 11.5.1 Adjustment and Settlement of Insured Loss - Owner as Adjuster** [see the **AIA A201** extract in the **Appendix of Forms** for this provision] provides for property loss to be adjusted by the Owner and paid to Owner as a fiduciary for the insureds (which in the case of the builder’s risk policy are the Owner, Contractor, Subcontractors as stipulated in this Section’s list of insureds). Designation of Owner as the loss payee facilitates Owner to be the recipient of the property insurance proceeds. Delivery to the parties of the loss payee endorsement is a part of the documentation that should be provided by Owner to Contractor in the “**evidence of coverage**” to be provided by Owner to Contractor required by **§ A.2.1 Owner’s Insurance - General**.

31 **§ A.2.3.1 Owner’s Insurance - Required Property Insurance – the Owner, Contractor and Subcontractors as Insureds.** The owner and all contractors and major subcontractors should be named as named insureds under a builder’s risk policy because at any given point of construction prior to completion all of these parties could have ownership of or an investment in the completed portion of the building and the materials, supplies, and other property installed or intended to be installed in the improvements under construction. Some owners or general contractors decline to do so in order to protect their construction insurance program from loss that could be passed back onto the subcontractor. This stance contradicts the fundamental purposes of builder’s risk insurance, which is first-party coverage and therefore not fault based.

Waivers of Subrogation. Subrogation can impact coverage and frustrate the objective of avoiding liability disputes and litigation between contractors, subcontractors, and the owner, potentially slowing down or stopping the project. Builder’s risk policies generally include a provision entitled “*Transfer of Rights of Recovery Against Others to Us*” or similar wording. The most common language is:

“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 the loss to impair them. At our request, the insured will bring suit or transfer those rights to us.”

Note that in this example, the insured is prohibited from relinquishing its rights after a loss.

Beware: Some builder’s risk policies prohibit the insured from relinquishing its rights at any time. An endorsement to the builder’s risk policy may be necessary to delete a pre-loss prohibition on the waiver of subrogation in the construction contract.

ATIMA. Phrases like “*as their interests may appear*” (“**ATIMA**”) should not be included either in contractual specifications, insurance certificates or the policy, as this qualification has been the source of subrogation claims by insurers against an insured under builder’s risk policies in cases where there has not been an express waiver of subrogation.

32 § A.2.3.1 Owner’s Insurance - Required Property Insurance – Mortgagee as Loss Payee. The builder’s risk insurer will have its own form to designate a mortgagee as loss payee.

33 Flood. See next **Endnote 34 § A.2.3.1.1 - Causes of Loss** as to the typical exclusion from Causes of Loss of Water by the *Water Exclusion*. Flood losses are commonly excluded from property insurance policies. Flood losses are losses caused by rising waters, back up of storm sewers and storm surges. The Flood Disaster Protection Act of 1973 mandated that federally regulated lending institutions could not “make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified ... as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 without flood insurance in an amount equal to the lesser of the loan amount or the available coverage. The National Flood Insurance Program (“**NFIP**”) created by the 1968 act was amended by the Biggert-Waters Flood Insurance Reform Act of 2012, and extended by the Homeowner Flood Insurance Affordability Act of 2014, Pub. L. No. 112-89, 128 Stat. 1020. NFIP is codified at 42 U.S.C.A. § 4012a *et seq.* Coverage can be obtained for these losses through *flood insurance*, a *difference in conditions policy*, or as an *endorsement to a property policy*.

34 § A.2.3.1.1 - Causes of Loss. Outdated terminology requiring that the policy provide “***all risks***” or “***fire and extended coverage***” is often used in contracts. “***All risks***” denoted property insurance covering losses arising from any fortuitous cause except those that are specifically excluded and is currently called “***Special Form***” or “***Special Causes of Loss Form***.” “***Extended coverage***” refers to an endorsement that was once added to a standard fire policy to cover the perils now insured under ISO’s Basic Causes of Loss Form. Since the extended coverage endorsement is no longer used, a better approach to requiring this coverage is to refer to the ISO “***Basic***,” “***Broad***,” or “***Special***” Causes of Loss Form. Prior property insurance forms used the terms “***risk***” and “***perils***.” Pre-“causes of loss” property insurance was written either on a “***named peril***” basis which insured property against loss or damage from causes of loss expressly enumerated in the policy or an “***all risks***” basis, which insured property against loss or damage from all causes of loss except those which were expressly excluded. “Fire and extended coverage” insurance was a named peril property insurance.

ISO Special Causes of Loss. The most comprehensive ISO property policy is called “***Special Form***” or “***Special Causes of Loss Form***.” This is in contrast to “***Named Perils Coverage***” which applies only to loss arising out of causes that are listed as covered.

Exclusion from Causes of Loss. The following are excluded perils from Causes of Loss coverage, **including from Special Causes of Loss:**

- **Law and Ordinance;**
- **Earth Movement;**
- Governmental Action;
- Nuclear Hazard;
- Utility Service;
- War and Military Action;
- **Water (see below);**
- Fungus, Wet Rot, Dry Rot, and Bacteria, Boiler and Machinery Failure;
- Wear and Tear or Lack of Maintenance;

- Continuous Seepage or Leakage Over a Period of 154 Days or More;
- Dishonest Acts;
- **Pollutants**; and
- **Faulty Design or Workmanship**.

Also, **in special hazard areas** certain causes of loss **may be excluded from coverage by endorsement** with **specialty insurance being required** to cover the hazard (e.g., **windstorm**).

Water Exclusion. The Water exclusion excludes damage caused by: (1) flood, surface water, waves, tides; (2) mudslide or mudflow; (3) water that backs up or overflows from a sewer, drain, or sump; and (4) water underground pressing on, or flowing or seeping through foundations, walls, floors, or paved surfaces, basements, doors, windows, or other openings. See above **Endnote 33 - Flood** for a discussion of flood insurance.

Windstorm. For an interesting example of how a windstorm exclusion may come into play is illustrated by *Great American Ins. Co. of N.Y. v. Lowry Dev., LLC*, 576 F.3d 251 (5th Cir. 2009). This case involved a builder's risk policy. Although the policy as originally issued did not exclude wind damage, subsequent to its issuance the issuer endorsed the policy with a windstorm exclusion and notified the developer's broker that the original policy was to have excluded wind damage. The developer's broker did not respond and did not notify the developer. The policy was reissued the next policy year and excluded wind damage. Of course, Hurricane Katrina demolished the project. The Fifth Circuit held that the developer's broker was the developer's agent with authority to handle the developer's insurance matters and therefore notice to the broker was notice to the developer.

Difference in Conditions Insurance. "**Difference in Conditions Insurance**" is the industry term for **property policies purchased in addition to the Causes of Loss policy** to cover **perils not covered by the property policy** (usually, flood, wind and earthquake).

Coverage under Each Causes of Loss. The following are the perils covered by each of the "**Causes of Loss**" Forms:

PERILS COVERED UNDER ISO CAUSES OF LOSS FORMS	
Basic Causes of loss Form (CP 10 10) <ul style="list-style-type: none"> • Fire • Lightning • Explosion • Windstorm or hail • Smoke • Aircraft or vehicles • Riot or civil commotion • Vandalism • Sprinkler leakage • Sinkhole collapse • Volcanic action 	Broad Causes of Loss Form (CP 10 20) <p>Basic causes of loss form perils, plus:</p> <ul style="list-style-type: none"> • Breakage of glass • Falling objects • Weight of snow, ice, or sleet • Water damage from leaking appliances • Collapse from specified causes
	Special Causes of Loss Form (CP 10 30) <ul style="list-style-type: none"> • All perils except as excluded • Collapse from specified causes

Specifies Certain Causes as Not to be Excluded: **§ A.2.3.1** provides that losses from the risks of "**fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm**" **are not to be excluded** from the builder's risk insurance coverage. It is important to review the builder's risk policy to confirm that none of these perils are excluded.

Collapse: Many policies exclude "**collapse**" and require a *Collapses Additional Coverage Endorsement* to extend coverage to this cause of loss. Collapse coverage can be written to covers the damage or loss from collapse of the structure caused by certain causes of loss, including weight of rain, defective materials, or methods of construction. Collapse coverage almost always excludes the cost of correcting defective workmanship or work which was faultily designed and settling, cracking, shrinking, or bulging of the structure.

³⁵ **§ A.2.3.1.1 Owner's Insurance - Required Property Insurance - Causes of Loss – Ensuing Loss from Errors, Omissions or Deficiency in Construction.** The exclusion of faulty work, workmanship, or materials is the exclusion relied on most by builder's risk insurers to deny coverage. The rationale for this exclusion is to keep the insurer from having to pay for rectifying faulty work, as this is considered a risk of doing business. The following are two samples of a Faulty Workmanship Exclusion:

This policy **does not cover**:

Cost of making good faulty or defective workmanship, material, construction, or design, but this exclusion shall not apply to damage resulting from such faulty or defective workmanship, material, construction, or design.

This policy **does not cover**:

Cost of making good faulty or defective workmanship or material, but this exclusion shall not apply to physical damage resulting from such faulty or defective workmanship or material;

Loss or damage directly or indirectly caused by fault, defect, error or omission in design, plan or specification.

This has been referred to as the "error or omission" exclusion or "**E & O Exclusion**". The following are examples of the addition of an "**ensuing loss**" coverage provision added as an exception to the E & O Exclusion:

But if an act, defect, error, or omission as described above results in a covered peril, "we" do cover the loss or damage caused by that covered peril.

But we will pay for "loss" to other Covered Property that results from such defective workmanship, materials or design, provided such loss or damage is not otherwise excluded in this policy.

³⁶ **§ A.2.3.1.1 Owner's Insurance - Required Property Insurance - Causes of Loss – Sublimits.** The coverage of a builder's risk policy may be extended to cover various risks with each risk carrying a "**sublimit**" (a limit less than the policy amount) or no sublimit. The insureds should consider eliminating as many sublimits as financially and practicably possible. See the Sublimits specified for certain of the Causes of Loss in **Mod. § A.3.3.2.1.1 Causes of Loss**.

³⁷ **§ A.2.3.1.2 Specific Required Coverages – Temporary Structures; Building Systems.** This short-hand statement in the AIA form omits the detailed list of items added at **Modified § A.3.3.2.1.3.1** where the Contractor is to purchase the builder's risk insurance. The extended list of covered property has been added to the list of covered property under the builder's risk policy as a means of notifying the Contractor of the items to be included in the builder's risk policy to be purchased by it. If the Owner is to purchase the builder's risk insurance, it should review the **Modified § A.3.3.2.1.3.1** list and direct its insurer to confirm to Owner that the builder's risk insurance being purchased includes these items, and to identify any of the items that are not included. Owner and its insurer can determine the risk of not including an item and the means of adding the item if desired.

³⁸ **§ A.2.3.1.2 Specific Required Coverages – Testing and Startup.** The AIA form states that **testing** and **startup damages** to building systems is a specific required coverage. An endorsement to the insurer's builder's risk policy may be needed to confirm that damage to building systems due to testing and startup is insured. "**Testing**" can be hot or cold. "**Hot testing**" is introduction of feed stock, catalyst or similar media for processing and handling or commencement of supply to a system. "**Cold testing**" is hydrostatic, pneumatic, electrical, hydraulic or mechanical commonly thought of as "**startup**".

³⁹ **§ A.2.3.1.2 Specific Required Coverages – Debris Removal “Including” ...** Most builder’s risk policies provide a basic level of dollar coverage for **debris removal costs**. The scope of coverage and coverage limits will need to be reviewed as to amount and items constituting insured costs. The dollar limits of coverage afforded by the policy need to be reviewed. Generally, the limits specified in the policy is inadequate and the scope of coverage and the limits likely need to be increased. Debris removal is commonly limited to a percentage (e.g., 25%) of the reconstruction limit provided, and erodes that limit. Additional debris removal coverage may be provided, but a low limit is commonly provided. The cost of debris removal is generally estimated to be approximately 13% of hard construction costs and is in addition to the reconstruction cost. Not specified and not included in “including” but which should be specified is coverage for loss to the undamaged portion of the building, and the increased cost of construction.

⁴⁰ **§ A.2.3.1.2 Specific Required Coverages – Reasonable Compensation for Architect and Contractor**. The AIA language specifies the following trigger to coverage: “*debris removal, including demolition occasioned by enforcement of applicable legal requirements*” and specifies the following as to covered costs “*reasonable compensation for the Architect’s and Contractor’s services*” and “*expenses required as a result of such insured loss, including claim preparation expense*”.

⁴¹ **§ A.2.3.1.3 Post-Completion Coverage – Owner to Continue Property Insurance Coverage “Unless the parties agree otherwise”**. This provision ties to the prior provision that assumes the Owner carries the builder’s risk insurance “*unless the parties agree otherwise*” in order to match the bearer of the pre-completion and post-completion property insurance.

⁴² **§ A.2.3.1.4 Deductibles**. Builder’s risk policies frequently include multiple deductibles. One may apply to most causes of loss, another to wind, yet another to flood, another to earthquake, and another to indirect (delayed completion) costs. A common requirement might be for a \$10,000 deductible, but a wind deductible of 1% of the value in place (or even worse, the total insurable value) at the covered property location at the time of loss applies subject to a \$100,000 minimum, a flood deductible equal to the maximum amount of coverage available from the national Flood Insurance Program, an earthquake deductible (depending on the location of the insured property) of 5% of the value in place at the covered property location at the time of loss applies subject to a \$500,000 minimum, and a delayed completion deductible of 15 days.

⁴³ **§ A.2.3.1.4 Self-Insured Retentions**. See **Footnote 15** *About Self-Insurance*. See **Endnote 59** § A.3.1.2 *Deductibles and Self-Insured Retentions*.

⁴⁴ **§ A.2.3.2 Occupancy or Use Prior to Substantial Completion**. Most projects have someone that occupies to some degree before substantial completion. Any degree of occupancy could invalidate the coverage if the policy is not properly worded or endorsed.

When Does Coverage Begin and End? Coverage should be purchased for more time than the construction is anticipated to take. It may be difficult and/or expensive to obtain an extension if coverage expires when the project is nearing completion. If, on the other hand, completion is accomplished prior to expiration, most builder’s risk policies permit a pro-rata cancellation. Most builder’s risk policies state that coverage ceases upon the first to occur of a variety of circumstances, including occupancy. A significant problem arises when one of those circumstances is occupancy. The typical builder’s risk policy does not include an occupancy loading. That said, no definition of “**occupancy**” is typically provided. Preferably, the provision governing when coverage ceases should not include a reference to occupancy or there should be a specific grant for occupancy.

Insurer’s Consent in Writing to Early Occupancy. Do not wait until the time that early occupancy is needed to have the conversation with the insurer.

⁴⁵ **Co-Insurance**. “**Co-Insurance**” is a property insurance provision that penalizes the insured’s loss recovery if the limit of insurance purchased by the insured is not at least equal to a specified percentage (commonly 80%) of the value of the insured property. A business income coverage coinsurance provision penalizes the insured’s loss recovery if the business income limit of insurance is not at least equal to a specified percentage of the business income that would have been earned during the 12-month policy period. The coinsurance provision specifies that the insured will recover no more than the following: the amount of the loss multiplied by the ratio of the amount of insurance purchased (the limit of insurance) to the amount of insurance required (the value of the property on the date of loss multiplied by the coinsurance percentage), less the deductible. Coinsurance requirements protect

the insurer against an insured's deliberate underinsurance of the Covered Property. To avoid the penalty of coinsurance, the insured is forced to insure at or above this minimum level of value and pay its premium on the insured value.

46 § A.2.4 Owner's Insurance - Required Property Insurance - Causes of Loss – Optional Extended Coverages. See *Insurance for Real Estate Lawyers*, ACREL Insurance Committee Spring, 2016 Meeting (San Diego), by Charles E. Comiskey and William H. Locke, Jr. at *Soft Costs Coverage Added to Builder's Risk Policy* at **pages 232 - 233**.

Common Events Only Covered by Added Endorsement. Many commonly expected coverages are available only through policy endorsement and are not part of the issuer's standard policy form, such as (1) coverage for the owner's additional architect's fees arising out of an insured loss; (2) coverage for owner supplied materials; (3) amending the Ordinance or Law exclusion to cover costs of demolition of the intact portion of a building when a law, ordinance or regulation requires that the entire structure be torn down; (4) endorsement to include full collapse coverage, including collapse resulting from design error; and (5) verification that sublimits (*e.g.*, sublimits for flood and earthquake coverage) are adequate or eliminated.

47 § A.2.4.2 - Ordinance or Law Coverage. *Ordinance or Law Coverage* is one of the "optional" extended coverages. It should be routinely obtained by the parties. *Ordinance or Law Coverage* is available by endorsement to an ISO Builder's Risk policy to insure against loss caused by enforcement of ordinances or laws regulating construction and repair of damaged buildings. Many communities have building ordinances that require that a building that has been damaged to a specified extent (typically, 50 percent) be demolished and rebuilt in accordance with current building codes rather than simply repaired. Unendorsed, standard property insurance forms do **not** cover the loss of the undamaged portion of the building, the cost of demolishing that undamaged portion of the building, or the increased cost of rebuilding the entire structure in accordance with current building codes. Ordinance or law coverage may be purchased using **ISO CP 04 05** to cover the cost above the limit available under the ISO property insurance for cost of construction incurred to comply with an ordinance or law. ISO property insurance form limits such coverage to the **lesser of \$10,000 or 5%** of the policy limits.

48 § A.2.4 Owner's Insurance - Required Property Insurance - Causes of Loss – Optional Extended Coverages – Soft Costs Insurance. Builder's risk policies typically do not cover damages caused by delays arising out of a covered loss. These "**soft costs**" can be covered by a soft cost endorsement. A **Soft Cost Endorsement** can be tailored to cover loss of (1) expected revenue, (2) additional interest expense, (3) loan fees, (4) property taxes, (5) design fees, (6) insurance premiums, (7) legal and accounting costs and (8) additional commissions arising from the renegotiation of leases.

49 § A.2.4 Owner's Insurance - Required Property Insurance - Causes of Loss – Optional Extended Coverages – Soft Costs Insurance – Delayed Completion. Another endorsement that may be available to insure against a financial distress risk is a **Delayed Completion And Force Majeure Endorsement**. This endorsement supplements the risk of covered loss to cover consequential damage losses due to completion delays and force majeure events not otherwise covered. The Delayed Completion And Force Majeure Endorsement extends coverage for losses due to strikes and labor disputes, changes in law (*e.g.*, building codes, emission standards), acts of God, adverse weather conditions and off-site physical damage to materials or equipment.

50 § A.2.4 Owner's Insurance - Required Property Insurance - Causes of Loss – Optional Extended Coverages – Soft Costs Insurance – Typical Exclusions. Typical **exclusions** contained in a soft cost endorsement are for cost to correct construction deficiencies, costs to comply with laws or ordinances, loss caused by adverse weather and loss caused by strikes.

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

51 § A.3.1.1 Certificates of Insurance. AIA's **2017 Insurance Exhibit** provides scant detail as to proving up to the owner the adequacy of the insurance carried by the contractor as opposed to the insurance required to be carried by the insurance specifications or as expected by the owner to be carried by the contractor other than to state that "the certificate of insurance is to be acceptable to the Owner." The **Modified Insurance Exhibit** sets out in detail what is to be provided in the certificate of insurance and what is to accompany the certificate for owner to make an informed judgment of the acceptability of the proffered insurance. See **Mod. § A.3.1.1.2** and accompanying **Endnotes**.

An **ACORD 25** *Certificate of Liability Insurance* and **ACORD 28** *Evidence of Commercial Property Insurance* should not be relied on as being accurate or as properly defining coverages, exclusions, and deductibles. W. Rodney Clement, Jr., *Is a Certificate of Commercial Property Insurance a Worthless Document?* PROBATE & PROPERTY 46 (May/June 2010); and Alfred S. Joseph III and Arthur E. Pape, *Certificates of Insurance: The Illusion of Protection*, PROBATE & PROPERTY 54 (Jan./Feb. 1995).

Sample of Cases Finding Reliance Unreasonable.

Alabama. *Alabama Elec. Co-Op Bailey*, 950 So.2d 280, 284 (Ala. 2006).

Illinois. *National Union Fire Ins. Co. v. Glenview Park Dist.*, 594 N.E.2d 1300 (1st Dist. 1992) and judgment aff'd in part, rev'd in part, 632 N.E.2d 1039 (1994) court held the fact that certificate of liability insurance did not contain notation that the additional insured endorsement did not cover the additional insured's negligence did not obligate the insurer to cover the additional insured's negligence; the certificate was issued "**for information only**"; *Lezak & Levy Wholesale Meats v. Illinois Employer's Ins. Co.*, 460 N.E.2d 475 (Ill. 1984) the certificate's disclaimer notice protected the insurer from claims by a meat packing company falling within the exclusion in the cold storage company's liability policy for loss caused by failure of refrigeration equipment.

New York. In *Greater NY Mut. Ins. Co. v. White Kansas*, 776 N.Y.S.2d 257, 258 (N.Y. 2004) the court held that a broker was under no duty to an owner and contractor to provide them with additional insured coverage as was stated in the certificates of insurance, as disclaimers in the certificate made it unreasonable to rely on the certificate.

Washington. *Postlewait Construction, Inc. v. Great American Ins. Co.*, 106 Wash.2d 96, 720 P.2d 805 (1986) finding that an erroneous certificate of insurance listing lessor and certificate holder as an insured did not create a cause of action by lessor against insurer for breach of an insurance contract. In *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), the client (Safety Lights) of a delivery service (U. S. Delivery) and the client's insurer (TIG) sued an insurance broker (Sedgwick James of Washington), alleging that the broker had misrepresented on an insurance certificate that Safety Lights was an additional insured on U.S. Delivery's liability insurance policy issued by Lumbermens Mutual Casualty Co. The suit arose after Wright, an independent contractor hired by U. S. Delivery, was injured delivering a steel plate to Safety Light's facility. TIG, Safety Light's liability insurer, defended the claim by Wright and sought reimbursement for the settlement and the costs of defending the suit after Lumbermens denied that Safety Lights was an additional insured on its liability policy. The certificate of insurance certified that Safety Lights was an additional insured on the Lumbermens CGL policy. The Fifth Circuit found that Sedgwick did not have authority, either actual or apparent, to make Safety Lights an additional insured on Lumbermens CGL policy. The court found that the disclaimer on the certificate of insurance (the first ACORD disclaimer discussed above) effectively negated reliance by Safety Lights on the express statement of additional insured coverage in the certificate of insurance, absent the existence of proof of Sedgwick's apparent authority to alter the terms of Lumbermens CGL policy to add Safety Lights as an additional insured. The district court held as a matter of law that Safety Lights could not have reasonably relied on the insurance certificate. The court made the following statements:

An insured has a duty to read the insurance policy and is charged with knowledge of its provisions.... The Court concludes that (the party to be protected), claiming to be an additional "insured" under (the policy) should be held to the same obligation as a named insured to review a policy of insurance on which it seeks to rely, and its reliance solely on the agent's certificate of insurance is not reasonable under the circumstances presented by the admissible evidence. [T]here is no admissible evidence to suggest that (the party to be protected), had it made the request, would have been unable to obtain and read the insurance policy in issue.... Moreover, (the party to be protected), the holder of a certificate of insurance, was warned it was not entitled to rely on the certificate itself for coverage. The certificate stated to the holder that the certificate did not create coverage.... The certificate issued by (the insurance broker) prominently stated that it was "issued as a matter of information only" and did not "amend, extend or alter" coverage provided by the listed policies. 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 (the party to be protected's) additional insured status was not reasonable. Accordingly, as a matter of law, Plaintiffs' claims for negligent and fraudulent misrepresentation fail.

184 F.Supp.2d at 603-04 (footnotes omitted).

52 § A.3.1.1 Certificates of Insurance – Specified Time Limit to Deliver. Evidence of insurance is often stated as being required to be provided within 30 days prior to the expiration of the current policy. So stating likely creates a **technical breach**, as coverage is rarely procurable 30 days in advance of a policy's term end.

53 § A.3.1.1 Contractor's Insurance and Bonds - Certificates of Insurance – Prior to Work. Initiating the process of obtaining proof of Contractor's insurance, both liability and property insurance, needs to be initiated sooner rather than later. Confirmation that the Contractor has in place the various coverages and limits required by the Owner is a detail oriented process. A certificate of insurance is only evidence of insurer's intent to provide insurance and is not a contract to insure.

In *Kermanshah Oriental Rugs v. GO*, 47 A.D.3d 438 (N.Y. 2008) the court held that a certificate of insurance was merely evidence of a carrier's intent to provide coverage, but not a contract to insure the designated party; nor was the certificate conclusive proof, standing alone, that a contract for insurance existed; the claim that insurance was never procured remained unchallenged. In *Griffin v. DaVinci Development, LLC*, 845 N.Y.S.2d 97 (N.Y. 2007) the court found no privity of contract with insurer or insurance broker and no right to claim third party beneficiary status by premises owner in a suit against an insurer and contractor's insurance broker for broker having issued multiple certificates of insurance showing owner as an additional insured when in fact no insurance was subsequently issued. Certificates and binders are on many occasions issued prior to the issuance of the policy. This can result in situations where a subsequently issued policy excludes coverages expected by an additional insured shown in the certificate. In *American Country Ins. v. Kraemer Bros., Inc.*, 699 N.E.2d 1056 (Ill. 1998) a general contractor, which as designated as an additional insured on subcontractor's insurance certificate, was bound by policy exclusions and conditions in a subsequently issued policy and additional insured endorsement limiting coverage to strict liability. The endorsement read: "This endorsement provides no coverage to the Additional Insured for liability arising out of the claimed negligence of the Additional Insured, other than which may be imputed to the Additional Insured by virtue of the conduct of the Named Insured". The court noted "Just because there are fewer strict liability claims than negligence claims does not make the coverage illusory". Even in the case of a renewal, additional insured status may be dropped and reliance on a certificate designating insured status may not be relied upon.

Benefits From Obtaining A Certificate. Even though it may not be reasonable to rely upon a certificate of insurance which contains disclaimers, there are benefits to having a certificate and potential detriments from a failure to obtain a certificate. Some courts have held that the party to be protected has waived the protecting party's obligation to procure contractually specified insurance by failing to insist upon being furnished the contractually required certificate. There are benefits arising from the standard certificate, even though it contains disclaimers, which will not obtain in the absence of a certificate. Some of the benefits are the following: (1) the standard certificate sets out important information, which in the event of a claim, may provide a quick means of resolution (*e.g.*, agent and insurer contact information, policy numbers); (2) under particular circumstances a court may be willing to disregard the certificate's disclaimers and find coverage for the party to be protected; (3) an erroneous certificate may provide a basis for recovery on the issuing agent's E & O policy or establish a contractual undertaking by the agent to provide the certificated coverage.

See the detailed list of coverages in **Mod. § A.3.1.1.2 Matters Certified** with the attachments to be provided.

54 § A.3.1.1 Contractor's Insurance and Bonds - Certificates of Insurance – At Construction Completion – Completed Operations. See **Endnote 75** *Completed Operations Coverage*.

55 § A.3.1.1 Contractor's Insurance and Bonds - Certificates of Insurance – At Construction Completion. Owner will need to confirm at Substantial Completion that Contractor's liability insurance will **continue** until the punch list items are completed and for the one-year work correction period is passed; additionally, Owner will need to assure that Contractor's Completed Operations coverage continues for the post-completion period specified in the construction documents (*e.g.*, until expiration of the statute of repose).

56 § A.3.1.1 Contractor's Insurance and Bonds – Additional Insured Status. An "**additional insured**" is a person or organization not automatically included as an insured under an insurance policy but for who insured status is arranged, usually by endorsement. A named insured's impetus for providing additional insured status to others may be a desire to protect the other party because of a close relationship with that party (*e.g.*, employees or members of an insured club) or to comply with a contractual agreement requiring the named insured to do so (*e.g.*, customers or owners of property leased by the named insured).

57 § A.3.1.1 Contractor's Insurance and Bonds – Additional Insured Status Specified Only on Contractor's CGL and Umbrella Policy. Note the **2017 Insurance Exhibit** only specifies that additional insured coverage of the Owner and other additional insureds is to be carried by the Contractor on the Contractor's commercial general liability insurance and the corresponding umbrella policy.

The **Modified Insurance Exhibit** designates that the additional insureds are to be additional insureds on the Contractor's automobile liability and Employer's liability policies and expands the scope of the persons to be additional insureds. See **Mod. § A.3.1.1.2.1.2** and its corresponding **Endnotes 93 § A.3.2.6 Contractor's Required Insurance Coverage – Employer's Liability Insurance Limits.**

58 § A.3.1.1 Contractor's Insurance and Bonds - Certificates of Insurance – Owner as Certificate Holder. Being designated as the Certificate Holder does not designate the Certificate Holder as an insured or additional insured. However, the Certificate form certifies the matters set out in the Certificate to the person designated as the Certificate Holder, subject to the disclaimers also set out in the Certificate.

Do not accept a Certificate with the Certificate Holder stated as “*for information only*” or “*parties required by written contract to be a Certificate Holder*”, but rather require the Owner to be specified as the Certificate Holder by specific entity name and proper address. Comfort and clarity results from this practice.

59 § A.3.1.2 Deductibles and Self-Insured Retentions.

“**Self-insurance**” is a system whereby a firm sets aside an amount of its monies to provide for any losses that occur - losses that could ordinarily be covered under an insurance program. The monies that would normally be used for premium payments are added to this special fund for payment of losses incurred. Self-insurance is a means of capturing the cash flow benefits of unpaid loss reserves and also offers the possibility of reducing expenses typically incorporated within a traditional insurance program. It involves a formal decision to retain risk rather than insure it and is distinguished from noninsurance, or retention of risks through deductibles, by a formalized plan or system to pay losses as they occur.

“**Self-Insured Retention**” (“**SIR**”) is defined as a dollar amount specified in an insurance policy (usually a liability insurance policy) that the insured elects to self-insure prior to the attachment of the limits of a liability insurance policy. An SIR is generally considerably larger than a deductible and may be utilized to moderate the costs of the purchase of insurance. SIRs generally create no obligation on the Insurer to respond to loss on the Insured's behalf until the SIR level has been paid. SIRs typically apply to both the amount of the loss and related costs (*e.g.*, defense costs), but some apply only to amounts payable in damages (*e.g.*, settlements, awards, and judgments). An SIR differs from a true deductible in at least two important ways. Most importantly, a liability policy's limit stacks on top of an SIR while the amount of a liability insurance deductible is subtracted from the policy's limit. As contrasted with its responsibility under a deductible, the insurer is not obligated to pay the SIR amount and then seek reimbursement from the insured; the insured pays the SIR directly to the claimant. While these are the theoretical differences between SIRs and deductibles, they are not well understood, and the actual policy provisions should be reviewed to ascertain the actual operation of specific provisions.

60 § A.3.1.1 Contractor's Insurance and Bonds – Additional Insured Obligations – State Law Limitations – “To the fullest extent permitted by law”. Many states have laws prohibiting contractual indemnities in a “construction contract” by a protecting person as to a protected person's negligence causing injuries and damage (except sometimes with a list of permitted exceptions). Some of these laws extend this prohibition to additional insured coverage (*e.g.*, Texas). The phrase “*to the fullest extent permitted by law*” is in the AIA insurance form to save the insurance protection to the fullest extent permitted.

61 § A.3.1.1 Contractor's Insurance and Bonds – Additional Insured Obligations – Primary and Noncontributory. All general liability policies state that they are “*primary*”, unless any other insurance (“*other insurance*”) covering the same loss is also primary, in which case the primary policies share in payment of that loss. That is usually contrary to the objective of the additional insured who wants the named insured's insurance to pay until it is exhausted without contribution from the additional insured's insurance. To achieve this result, ISO promulgated its **CG 20 01 12 19 Primary and Noncontributory – Other Insurance Condition** endorsement which states that the named insured's coverage

“is primary and will not seek contribution from any other insurance available to an additional insured under (the Named Insured’s) policy provided that (1) the additional insured is a Named Insured under such other insurance; and (2) the (Named Insured has) 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 **CG 20 01 04 13** *Primary and Noncontributory – Other Insurance Condition* form is found in [Appendix of Forms](#) page 120.

Warning: Note that requiring that the Named Insured’s insurance be “primary” is not sufficient. The endorsement requires that the named insured’s insurance also state that it “**will not seek contribution**”. The “*not seek contribution*” will need to be expressed in the contract to assure additional insured protection.

See the following: (1) **Section IV, Paragraph 4.a** *Other Insurance – Primary Insurance* and **Paragraph 4.b** – *Excess Insurance* to the **ISO CG 00 01 04 13** Commercial General Liability Coverage Form for provisions in the standard CGL policy establishing that coverage to the Named Insured under the CGL is provided on a primary basis and co-contributing with other insurance available to the Named Insured but is excess under specified circumstances, including if the Named Insured’s other insurance is an additional insured provided on a primary basis; and (2) **ISO CG 20 01 04 13** *Primary and Noncontributory – Other Insurance Condition*.

The use of additional insured status as a risk transfer device is aimed at procuring insurance protection under someone else’s policy rather than having to rely upon on one’s own policy. Additional insured indemnified persons must verify that any “**other insurance**” coverage to which they have access will not interfere with payment by the indemnifying person’s policy on a primary and noncontributing basis. This is the interplay of the indemnifying person’s CGL policy with the additional insured’s own CGL policy. Assuming both the indemnifying person’s CGL policy and the additional insured indemnified person’s policies are standard form policies, both will declare themselves to be primary insurance unless some modification is effected to eliminate this dual coverage. *Texas Employer’s Ins. v. Underwriting Members*, 836 F.Supp. 398, 404 (S. D. Tex. 1993). Note that endorsing the indemnifying person’s policy to provide that it is primary does not solve the problem. In fact, most CGL policies already provide that they are primary in virtually all cases in which the additional insured would bring a claim on that CGL policy. The standard ISO form policy also provides for **proration** when other insurance is available to the additional insured. *Hardware Dealers Mutual Fire Ins. Co. v. Farmers Ins. Exchange*, 444 S.W.2d 583 (Tex. 1969). Without more, in such cases the additional insured’s desire to have the named insured’s policy respond prior to the additional insured’s own policy is thwarted.

Whether the limits of the Named Insured’s umbrella or excess policy contribute prior to calling upon the additional insured’s “**other insurance**”, is a question addressed by case law in each jurisdiction. The so-called “**Horizontal Exhaustion**” rule applies in some jurisdictions and declares a party’s excess coverage to be excess over all “primary” coverages. See *e.g., Kajima Constr. Servs. V. St. Paul Fire & Marine Ins. Co.*, 856 N.E.2d 452 (Ill. App. 2006) – court held that Illinois’ horizontal exhaustion rule required the additional insured’s (general contractor) CGL policy pay prior to the subcontractor’s umbrella policy. Also, the courts of some jurisdictions (Alaska, Arizona, Delaware, Idaho, Indiana, Louisiana, Maine, Michigan, Missouri, Nevada, Oregon, Tennessee, Rhode Island and West Virginia) follow the so-called *Lamb-Weston* rule (named after the first case in which the rule was applied) and hold that all “other insurance” clauses are repugnant to each other. When more than one policy is triggered by a loss, all policies automatically share the loss on a pro rata basis.

The following are **common means employed** to avoid the Protected Persons’ own policies contributing to the loss covered to the extent of the additional insurance coverage afforded on the Protecting Party’s policy:

(1) **Endorse the protecting party’s policy to be primary.** The above stated approach of endorsing the protecting party’s CGL policy to state that it is primary with respect to other insurance maintained by the additional insured (as noted above most standard CGL policies state they are primary).

(2) **Endorse the protecting party’s policy to be primary and noncontributory.** In addition to requiring that the protecting party’s insurance be endorsed to state that it is primary, also requiring that the protecting party’s policy be endorsed to state that it is “noncontributory” (an example of this approach is to endorse the protecting party’s policy with an endorsement reading “Coverage as provided by this endorsement shall apply on a primary and noncontributory basis with any other insurance available to the insured named above.”) The meaning of the word “noncontributory” in this insurance context is not intuitive. “**Noncontributory**” does not mean that the coverage afforded by protecting

party's CGL policy will not contribute to cover the additional insured's liability, but it means that the protecting party's CGL carrier will not seek contribution from any other "applicable" insurance (e.g., the additional insured's own CGL policy). What is being said is that the protecting party's CGL coverage is primary but contributory—it will respond on a primary basis to pay a covered claim, but will seek contribution from any other insurance structured to respond on a similar primary basis. Unfortunately, the phrase "primary and noncontributory" does not have an established legal meaning in many jurisdictions.

Reliance on this approach opens the Protected Persons to litigation with the Protecting Party's carrier as to what was meant by this endorsement. A Protecting Party's carrier may balk at endorsing its named insured's policy to be "primary and noncontributory" due to concerns not that it is waiving contribution from the protected party's CGL policy but that it might inadvertently be eliminating contribution by other carriers that have issued additional insurance coverage to additional insured on the Protecting Party's policy (for example, a general contractor with additional insured status under multiple subcontractors' policies or a building owner that is an additional insured under each of its tenants' policies).

ISO CG 20 01 04 13 *Primary and Noncontributory – Other Insurance Condition* has been introduced in 2013 by ISO to address this approach of endorsing the protecting parties policy to reiterate that it provides "primary" coverage and "will not seek contribution from any other insurance available to an additional insured"; but Provision (2) of this endorsement requires that the written agreement of the Additional Insured (the Protected Person) and the Named Insured (the Protecting Party) must provide that the Named Insured's insurance is primary and will not seek contribution from the additional insured's other insurance.

Requiring in the written agreement between the Named Insured and the Additional Insured that **ISO CG 20 01** endorsement be added to the Named Insured's policy may not achieve the Additional Insured's objective if the written agreement itself does not specify that the additional insured coverage on the Named Insured's policy is "primary and noncontributory" plus contain language defining what is meant by primary and noncontributory.

(3) **Endorse the protected party's policy to be excess.** The third approach is for the protected party (the additional insured) to have its own carrier endorse the protected party's CGL policy to state that coverage under the protected party's policy is excess to coverage available to the protected party as an additional insured on another person's policy. This works unless the additional insured endorsement has also been issued on a excess liability basis. Because of this possibility, option (3) is not recommended.

In April 1997 ISO revised its "other insurance" clause in its standard CGL policy form to do just that. ISO added in **Paragraph 4.b(2)** an exception to the declared primary coverage in **Paragraph 4.a** for additional insurance coverage of the named insured. Thus, ISO revised its standard policy to provide that in a case where the protected party has both its own CGL policy and is an additional insured on the protecting party's CGL policy, then the protected party's CGL insurance states that its coverage is excess to the coverage available through being covered under the additional insured endorsement on the protecting party's insurance.

4. Other Insurance

b. Excess Insurance. This insurance is excess over: ...

- (2) 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 by attachment of an endorsement.

Note, however, the 1997 language does not apply where additional insured status is not obtained by an endorsement to the protecting party's CGL policy. This provision is not triggered if the additional insured is automatically an additional insured on another insured's CGL policy. In 2013 the "by attachment of an endorsement" language was deleted. The 2013 revision thus ends concern under the standard CGL policy as to whether an additional insured's own CGL policy would be primary and co-contributing with automatic additional insured coverages. Note that the protected party's policy may not contain the 1997 language. If this is the case then the protected party's policy should be endorsed to make it excess over all other coverage available to the protected party in order to achieve the elimination of overlapping coverage and contribution.

The following are **traps to be avoided** by the party seeking protection:

(1) **Do not assume that the protecting party's insurance contains standard wording.** It might not contain the standard wording that the policy affords primary coverage over other insurance available to the additional insured. In such case reliance on the 1997 ISO language or other endorsement to the additional insured's own policy to state that it is excess over other coverage available to the additional insured may be misplaced. A policy maintained by a protecting party may provide that its coverage of the additional insured is not primary but on an excess basis. In such case, endorsing the protected party's policy to provide that it is excess coverage creates a case where both policies declare them to be excess.

Also, if the protected party's own insurance does not provide (*e.g.*, the pre-1997 ISO policies) for an exception to its contributing with all other policies available to the protected party, nonstandard language in the protecting party's to the effect that it provides excess coverage to an additional insured in cases where the additional insured has available insurance will result in the protected party's insurance being primary and the protecting party's coverage of the protected party as an additional insured being excess. If this is the situation, then the protecting party should insist on the protecting party's policy being endorsed to provide that it affords primary and noncontributory coverage with respect to the additional insured's own policy coverage.

(2) **Do not assume that the protecting party's additional insured endorsement does not have a provision in it stating that the additional insured's coverage is on excess or contributory basis.** Even though the protecting party's policy may have standard language to the effect that coverage for insureds is primary and noncontributory for other insurance coverage available to the insured, the additional insured endorsement may have overriding language. The protected party should require in the contract with the protected party that the additional insured coverage to be provided to the protected party will be on a primary, noncontributory basis. Failure of the protecting party to provide such coverage will be a breach of this insurance covenant. Note, some CGL policies provide that they automatically provide primary coverage when required by the contract between the parties (a "**primary-when-required**" provision). For example the following is a "primary-when-required" provision contained in some CGL policies:

The insurance provided to the additional insured is excess over any other insurance naming the additional insured as an insured, whether primary, excess, contingent, or on any other basis; unless you have agreed in a written contract that such coverage will apply on a primary basis.

(3) **Do not forget that umbrella insurance is not primary insurance and that to avoid the protected party's insurance becoming contributing with umbrella coverage or becoming primary to the umbrella policy some additional action is required.** In order to ensure that the Protected Person's own CGL policy is excess and noncontributory to the protecting party's umbrella policy, the Protected Person should consider

(a) having its own CGL policy endorsed to provide that it is not only excess to other primary coverage available to it as an additional insured but also excess over umbrella insurance provided by the Protecting Party (excess over any insurance available to it as an additional insured, whether primary, excess, contingent, or on any other basis) or

(b) striking from the "other insurance" provision in the Protected Party's CGL policy the word "primary" from the **4.b(2)** exception to primary coverage of the Protected Person's own policy, or

(c) having the Protecting party's umbrella insurance endorsed to state that it affords primary and noncontributory coverage to the additional insured.

⁶² **§ A.3.1.1 Additional Insured Obligations – "To the extent commercially available".** The most current ISO edition and many prior ISO editions for additional insured coverage are "***commercially available***", but the difficulty is that many insurers do not use ISO forms unamended or use manuscripted forms. Surplus lines carriers typically do not issue on ISO forms. There are hundreds of manuscript additional insured endorsements currently in use. These may

- (1) limit the parties covered,
- (2) limit the scope of coverage,

(3) limit the operations coverage,

(4) add new exclusions; or

(5) do all of the foregoing (the “five gotchas”). If other than an ISO (unamended) form is used, it needs to be examined to determine if any of the five gothas exist and to determine the issue presented.

63 § A.3.1.1 Additional Insured Obligations – “No Less than that provided by ISO”. Without being identical how is another form of policy “no less than that provided by ISO”? Sometimes this wording is written as “ISO or equivalent”. If requiring a specific ISO form, specification drafters sometimes provide “or equivalent”. What does that mean? What it does not mean is “identical.” Make the insurance provider declare what in fact they do have. Get a copy and read it. Make sure it complies with your requirements.

64 § A.3.1.1 Additional Insured Obligations. This reference is the first reference in the AIA forms to ISO and the ISO forms. “ISO” refers to Insurance Service Office, Inc., a public company that acts as a source of information about property/casualty insurance risk. ISO provides statistical, actuarial, underwriting, and claims information; policy language; information about specific locations; fraud-identification tools; and technical services for a broad spectrum of commercial and personal lines of insurance. The form policies and endorsements ISO produces are used in whole or in part by many insurers when preparing their form policies. ISO’s forms are considered the standard form for most insurance forms and its liability policy and property policy and the endorsements thereto are referred to herein as the “standard form”. Number designations for ISO’s standard endorsements follow a pattern that classifies the endorsement according to the kind of change it effects and the edition date that differentiates earlier versions of an endorsement from later, revised versions. ISO introduced its commercial general liability policy in 1985 to replace its earlier policy form, the comprehensive general liability policy. ISO also introduced beginning in 1986 endorsement forms for use in connection with its commercial general liability policy. Endorsement is the term given to forms, either ISO or manuscripted forms, used to modify or add to the provisions of the policy to which they are attached. An endorsement supersedes a conflicting provision in the basic policy in most cases. Endorsements are identified under the ISO system, by four components, one of which is the endorsement’s promulgation date. Since the ISO forms are intended for national use, the promulgation date is not the date the form was adopted in a particular jurisdiction. Each ISO designation is composed of four elements. The following is an example for the additional insured endorsement form appearing in the Appendices as **ISO CG 20 26 04 13** *Additional Insured–Designated Person or Organization* (See Appendix of Forms at page 128 for this form):

CG	20	26	04 13
The “ CG ” prefix in the endorsement’s designation identifies it as part of the ISO commercial general liability form series, introduced in 1986. Prior to this time, ISO designated this series as “ GL ” in connection with its <i>comprehensive</i> general liability forms.	The <u>first set of numbers</u> identifies the “ <u>group</u> ” to which the endorsement form belongs. ISO endorsements are grouped according to their function. In this case the number “ 20 ” refers to group 20 which are all of the ISO endorsements that confer additional insured status on particular persons or organizations.	The <u>second set of numbers</u> identifies this endorsement within its group—in this case it indicates which additional insured endorsement is being dealt with. Endorsement 26 within Group 20 adds as additional insureds to the CGL policy a designated person or organization. For this reason, this Endorsement is titled “ <i>Additional Insured–Designated Person or Organization.</i> ”	The <u>final four numbers</u> in the endorsement designation identify the endorsement’s edition date. ISO has revised most of its standard endorsements at one time or another. Endorsements with the same function and numerical designation may go through several editions. In the referenced endorsement, the edition date is “ 04 13 ” or April 2013. November 1985 is the initial date of all ISO forms for the “CG” system. The <i>coverage</i> forms have been revised a number of times since then and currently bear an edition date of 12 19 (or 04 13). Many of the <i>endorsement</i> forms were revised at the same time as the coverage forms and also bear a 04 13 edition date.

65 § A.3.1.1 Contractor’s Insurance – Additional Insureds - CG 20 10 07 04. So, the **ISO CG 20 10 07 04** *Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization* was promulgated by ISO in **July 2004**. The first four numbers indicate the type of ISO endorsement, with “**20**” being an additional insured endorsement, and “**10**” being the additional insured endorsement form scheduling a named owner (or named contractor) as the additional insured on an ISO CGL policy of the contractor or subcontractor, as the case may be, for

the Named Insured's (contractor's or subcontractor's, as the case may be) ongoing operations. There have been a number of **CG 20 10** editions, each progressively more restricted as to coverage.

- **ISO CG 20 10 10 85.**

- **ISO CG 20 10 10 01.** The **10 01** edition broadens the additional insured coverage to include the sole negligence of the additional insured. Availability should be confirmed, and, if available, this specification should be revised to specify the **10 01** edition. (See **Appendix of Forms** at page 123 for this form.)

- **ISO CG 20 10 07 04 excludes** coverage for the additional insured's sole negligence. It provides additional insured status for liabilities

“caused, in whole or in part, by the acts or omissions of the Named Insured (e.g., the Contractor) or of those acting on the Named Insured's behalf, in performance of ongoing operations”

(thus, excluding the additional insured's sole negligence). See the **Appendix of Forms** at page 124 for an annotated copy of the **ISO CG 20 10 07 04**.

- **ISO CG 20 10 04 13 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization.** See the **Appendix of Forms** at page 125 for a copy of the **ISO CG 20 10 04 13**. The 5th Edition and the 6th Edition, exclude coverage for the additional insured's sole negligence, but introduces three additional restrictions:

- (1) additional insured coverage applies only to the extent permitted by law;
- (2) coverage will not be broader than that which (the Named Insured is) required by contract to provide; and
- (3) coverage will not pay any more than the amount required by contract

(these three restrictions are sometimes referred to as the **“whether conditions”** – “whether” or not the contract's insurance specifications are adequately drafted determines to extent of coverage, even if the issued insurance would otherwise provide for more coverage to the additional insured.

- **ISO CG 20 10 12 19 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization** is the latest ongoing operations additional insured endorsement; it is in effect identical to its predecessor, the 5th Edition.

The **Modified Insurance Exhibit** at **Mod. § A.3.1.3.3 ISO Forms** in the **Appendix of Forms** provides the drafter with a **choice** of either the **10 01** edition or the **07 04** edition of the **CG 20 10**.

The **10 01** edition of both the **ISO CG 20 10 Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization** and **ISO CG 20 37 Additional Insured – Owners, Lessees or Contractors – Completed Operations** are still available from many insurers. (See **Appendix of Forms** at pages 123 and 132 for these forms.)

66 § A.3.1.1 Contractor's Insurance – Additional Insureds – Completed Operations CG 20 37 07 04. **ISO CG 20 37 Additional Insured – Owners, Lessees or Contractors – Completed Operations** provides additional insured status regarding completed operations. This endorsement is subject to the same editions and issues pertinent to the six edition dates of the **ISO CG 20 10 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization**. See **Appendix of Forms** at page 123 for an annotated copy of the **ISO CG 20 32 07 04**.

67 § A.3.1.1 Contractor's Insurance – Additional Insureds – Architects and Architects' Consultants CG 20 32 07 04. See **Appendix of Forms** at page 129 for an annotated copy of the **ISO CG 20 32 07 04**.

68 § A.3.2.1 Contractor's Required Insurance Coverage – Contractor's Insurance Issued by “Authorized” Insurer. Authorized issuers are generally issuers that are not surplus line insurers. Surplus lines insurer's policies generally are not issued on industry standard forms but on forms designed to reduce premium costs by eliminating many of the coverages of a standard policy. Many good insurer choices are **“authorized”** to do business but are not **“admitted”** in the state of the project's location. Also, not every state requires an insurer to be licensed (**admitted**) in that state.

69 § A.3.2.1 Contractor's Required Insurance Coverage – Contractor's Insurance Issued by "Authorized" Insurer. Authorized issuers are generally issuers that are not surplus line insurers. Surplus lines insurer's policies generally are not issued on industry standard forms but on forms designed to reduce premium costs by eliminating many of the coverages of a standard policy. Many good insurer choices are "*authorized*" to do business but are not "*admitted*" in the state of the project's location. Also, not every state requires an insurer to be licensed (*admitted*) in that state.

70 Commercial General Liability Insurance (CGL). CGL insurance is termed "*third party coverage*" insurance as it covers liabilities incurred by the named insured to third parties and excludes injuries and damage to the insured (*e.g.*, it excludes coverage for damage to property "owned, occupied or controlled by the named insured." Covered liabilities or damages arise from an "*occurrence*" during the policy period which is not excluded by the Exclusions of the policy. CGL Insurance provides protection to the insured for amounts the insured is legally obligated to pay that are caused by physical injury, personal injury (libel or slander), advertising injury and property damage as a result of the insured's products, premises, or operations, and can be offered as a package policy with other coverages. CGL policies also provide coverage for the cost to defend and settle claims. Commercial general liability policies typically and the ISO general liability policy form, which is the industry standard, is divided into Sections, Coverages, Exclusions, Definitions and Endorsements. The **ISO CG policy** is set up in the following parts:

Declarations.

Section I - Coverages

Coverage A. Bodily Injury and Property Damage Liability. (Note "Bodily Injury" and "Personal Injury" are different terms)

1. Insuring Agreement

2. Exclusions

Coverage B. Personal and Advertising Injury Liability

1. Insuring Agreement

2. Exclusions

Coverage C. Medical Payments

1. Insuring Agreement

2. Exclusions

Supplementary Payments - Coverages A and B

Section II - Who Is An Insured

Section III - Limits of Insurance

Section IV - Commercial General Liability Conditions

Section V - Definitions

Endorsements

The ISO commercial general liability policy categorizes liabilities into three categories:

Coverage A for "*Bodily Injury*" and "*Property Damage*",

Coverage B for "*Personal and Advertising Injury Liability*" and

Coverage C for "*Medical Payments*".

ISO defines each of these terms in the policy as follows:

"*Bodily Injury*" is "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time."

"*Property Damage*" is "physical injury to tangible property, including all resulting loss of use of that property ... or loss of use of tangible property that is not physically injured."

"*Personal and Advertising Injury*" is injury, including consequential bodily injury, arising out of one or more of the following offenses: false arrest, detention or imprisonment; malicious prosecution; 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; 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; oral or written publication, in any manner, of material that violates a person's right of privacy; the use of

another's advertising idea in the insured's advertisement; infringing upon another's copyright, trade dress or slogan in the insured's advertisement.

"Medical Payments" is coverage for medical expenses for bodily injury caused by an accident (a) on the premises owned or rented by the insured, (b) on the ways next to the owned or rented premises, or (c) because of the insured's operations.

71 **Occurrence Policy vs. Claims Made Policy.** An **"occurrence policy"** provides liability coverage only for injury or damage that occurs during the policy term, regardless of when a claim is actually made. A claim made in the current policy year could be charged against a prior policy period, or may not be covered, if it arises from an Occurrence prior to the effective date of the policy. A policy written on a **"claims made"** basis covers claims made while the policy is in effect, rather than at the time the event causing the injury or damage occurred. Thus, once a policy period has passed without a claim, if the policy is not renewed or a new policy is not issued, the insured will have no coverage for a claim filed after the policy period even if it arose prior to the end of the policy period unless **"tail"** coverage is purchased to cover claims made after the policy expires and within a specified number of years after the policy expires.

72 **§ A.3.2.1 Limits.** Note that the blanks provided for limits for the commercial general liability insurance and later as to the automobile liability insurance include the limits of the primary coverage and the umbrella coverage. This allows the limits to be split between the primary and the umbrella policies as coincides with the contractor's liability insurance. Thus, the blanks are to be filled in with the combined number not with the lower amount of the primary coverage. This approach is different from the common approach of specifying the limit of the primary and then in the specifications for the umbrella coverage specifying a limit on top of the primary limit.

73 **General Aggregate.** See ISO **CG 25 04 05 09 Designated Location(s) General Aggregate Limit.** **"General Aggregate"** is the maximum limit of insurance payable during any given annual policy period for all losses other than those arising under the products and completed operations hazard. **"Aggregate"** is a limit in an insurance policy stipulating the most it will pay for all covered losses sustained during a specified period of time, usually a year. Aggregates are commonly included in liability policies.

74 **CGL – Personal Injury and Advertising Injury Coverage.** See **Endnote 70** *Commercial General Liability Insurance (CGL)* for a definition of **"personal and advertising injury"** coverage.

75 **Completed Operations Coverage.** **"Completed Operations"** coverage is a major general liability sub-line. Claims are covered only after operations have been completed or abandoned by the Named Insured (Contractor). The coverage applies only to claims for bodily injury and/or property damage and not for the Insured's failure to complete a job or operation on time.

Post-Completion Coverage. Contractor should be required to maintain the required CGL policy in effect for up to the maximum time limit as to which a cause of action could be maintained against contractor and the landlord parties for risks covered by the required form of CGL policy. **"Completed Operations"** coverage only covers occurrences during the policy term. Thus, on an occurrence policy, for "completed operations" coverage to continue, the Contractor must obtain a **"completed operations extension endorsement"** purchasing continuation of completed operations coverage after the original policy term. The 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 extension endorsement. The length of time the contractor should be required to maintain Post-Completion Coverage can be, depending on the risk tolerance of the landlord, between two years (a typical state's tort statute of limitations) and ten years (a typical state's statute of repose).

The following is an endorsement to a contractor controlled insurance program on a recently completed office tower that provided post-completion coverage to the contractor:

This endorsement, effective 12:01 A.M. 03/31/20__

Forms a part of Policy GL ____

Issued to (____)

By AMERICAN HOME ASSURANCE COMPANY

**COMPLETED OPERATIONS EXTENSION
CONTROLLED INSURANCE PROGRAM (MULTIPLE PROJECTS)**

This Endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE:

All (____) Projects with construction values \$15,000,000 and above.

Coverage of the “products-completed operations hazard” is extended for the Projects described in the above Schedule for a period of TEN (10) years or the Statute of Repose, whichever is less (“Extended Completed Operations Period”). The Extended Completed Operations Period will commence when that portion of the project is put to its intended use, or a temporary or permanent certificate of occupancy is issued. The Extended Completed Operations limit of insurance is \$4,000,000 per project and in the aggregate for all projects listed above, which includes the term of the Extended Completed Operations Period.

All terms and conditions remain unchanged.

76 § A.3.2.1 “Insured Contracts Coverage”. AIA A201 Section 3.18 is AIA’s indemnity language as to the Contractor’s indemnity of the Owner and other persons specified in the AIA printed form AIA A201. See the AIA A201 provisions accompanying this Article. The AIA language is usually modified by negotiations of the parties. The standard form ISO CGL policy provides insurance to the named insured (Contractor) for its “Insured Contracts,” as that term is defined and limited in the ISO CGL policy. The scope of the Contractor’s indemnity as set out in the AIA printed form A201 is many times broadened by negotiations between the Owner and the Contractor. CGL “Insured Contract” coverage is generally responsive to allegations of “*bodily injury*” and “*physical injury to tangible property*”, subject to the limits of liability and limits imposed by applicable state’s anti-indemnity statutes, and nothing else (many liabilities do not fall within the insurance terms “bodily injury” and “physical injury” to “tangible property” and thus are not insured even though indemnified by the Contractor.

CGL insurance “applies to” but does not “cover” a broad form indemnification requirement as the policy’s exclusions apply to indemnified liabilities to the extent they exceed the exception to the exclusion. Enforceability of the Contractor’s indemnity as written in an unamended A201 or as modified by the parties is subject to and limited by state laws. Many states have anti-indemnity laws applicable to indemnities in construction contracts which affect the scope of an enforceable indemnity. These laws have exceptions that permit certain indemnities which statutorily permitted indemnities are not expressly permitted by the AIA’s wording. For instance, AIA A201 § 3.18 does not provide for indemnity by the Contractor for injuries caused by the sole negligence of the Owner, although some states anti-indemnity statutes permit a Contractor to indemnify an Owner for injuries to the Contractor’s and Subcontractor’s employees caused by the sole negligence of the indemnified person. That case is the typical third-party over action brought by an injured employee of a contractor or subcontractor against the owner alleging the injury is caused by the negligence of the owner.

See Appendix of Forms at **page 98 ISO CG 00 01 04 13** *Commercial General Liability Coverage Form*, Section I – Coverages, Coverage A, Par. 2 Exclusions, Par. 2.b Contractual Liability. “Contractual Liability Coverage” (referred to by author (Locke) as “indemnity insurance”) is contained in the CGL policy as an exception to an exclusion from coverage. The exclusion provides:

2. Exclusions. This insurance does not apply to:

b. Contractual Liability

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption 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 attorney 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 attorney 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.

An “*Insured Contract*” is defined in the standard CGL policy as:

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 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.

See ISO **CG 24 26 04 13** *Amendment of Insured Contract Definition*, which when added to the standard CGL policy amends definition “**F**” to add the following qualifier at the end of the first clause:

, provided the “bodily injury” or “property damage” is *caused, in whole or in part, by you or by those acting on your behalf.*

Also see ISO **CG 21 39** *Contractual Liability Limitation* (form in the [Appendix of Forms](#) at page 135), which when added to the standard CGL policy by endorsement deletes “F” altogether from the definition of an insured contract; and discussion in the article at Item A.11 *Exclusions May Be Invisible*.

Coverage For Named Insured As Indemnifying Party. Contractual liability coverage does not make the indemnified person an insured under the policy. *Alex Robertson Co. v. Imperial Casualty & Indemnity Co.*, 8 Cal. App. 4th 338, 10 Cal. Rptr. 2d 165 (1992); *Jefferson v. Sinclair Ref.g Co.*, 10 N.Y.2d 422, 223 N.Y.S.2d 863, 179 N.E.2d 706 (1961); *Davis Constructors & Engineers, Inc. v. Hartford Accident & Indemnity Co.*, 308 F. Supp. 792 (M.D. Ala. 1968); and *Hartford Ins. Group v. Royal - Globe Co.*, 21 Ariz. App. 224, 517 P.2d 1117 (1974). Instead, it expands coverage for the named insured. See e.g., *Gibson & Associates, Inc. v. Home Ins. Co.*, 966 F.Supp. 468, 475-77 (N. D. Tex. 1997).

Named Insured Not Insured For All Contractually Assumed Liabilities. CGL policies place conditions precedent that must be satisfied by an indemnified person prior to providing it defense under the indemnifying person's CGL policy. For example, the ISO CGL standard policy form provides

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".

The insured contract provisions of ISO's **CG 00 01** requires as a condition to providing the indemnified person a defense under the contractually assumed liability coverage that the indemnified person and the named insured - indemnifying person are parties to the same suit. An example of a common suit in which this is not the case is suit by an injured employee of the indemnifying party against the indemnified party.

Under the 1996 and later editions of the standard ISO form CGL policy, the cost to defend an indemnified person under the indemnifying person's CGL policy will be provided within the limit of the proceeds available under the policy as opposed to being on top of the limits as a supplementary payment, unless the indemnified person complies with a lengthy list of conditions precedent.

Named Insured Not Insured For All Contractually Assumed Liabilities. Indemnity insurance does not expand the scope of the liability policy beyond the coverage provided, nor does it extend the limits of liability. Coverage is limited by the policy's other exclusions (e.g., pollution liability, insured's breach of contract, and breach of product warranty). Indemnity insurance does not insure the performance of the business aspects of the contract. *Musgrove v. Southland Corp.*, 898 F.2d 1041 (5th Cir. 1990). The court held

Contractual liability has a definite meaning. It is coverage of the insured's contractual assumption of the liability of another party. It typically is in the form of an indemnity agreement.... The assumption by contract of the liability of another is distinct conceptually from the breach of one's contract with another.... Liability on the part of the insured for the former is triggered by contractual performance; for the latter liability is triggered by contractual breach.... CITGO (the owner) concedes that LCE (the contractor) made no indemnification agreement applicable to the loss herein; rather, it complains of LCE's breach of contract. LCE's contractual liability insurance is thus not applicable. LCE did not insure its commitment to secure insurance coverage for CITGO. *Id.* at 1044.

Contractually assumed liability coverage under the standard policy covers "**bodily injury**" and "**property damage**" but does not cover "**personal injury or advertising injury**" liability, unless such coverage is endorsed as additional coverage on to the insured's CGL policy. "Personal and Advertising Injury" is defined in Coverage B to standard CGL policies as "injury, including consequential bodily injury, arising out of one or more of the following offenses:

- (i) false arrest, detention or imprisonment; (ii) malicious prosecution; (iii) 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; (iv) oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; (v) oral or written publication of material that violates a person's right of privacy; (vi) the use of another's advertising idea in your "advertisement"; or (vii) infringing upon another's copyright, trade dress or slogan in your "advertisement."

For example, guard service contracts typically contain a provision requiring the owner to indemnify the guard service from liability for the types of liabilities that are embraced by the term "**Personal Injury**" (libel, slander, defamation of character, false arrest, wrongful eviction, and invasion of privacy). In such case unless the owner has its CGL policy endorsed to cover this indemnity, the owner is uninsured for this contractually assumed liability. Alternatively, the owner could require that it be listed as an additional insured on the guard service's CGL policy.

No Coverage for Indemnified Person's Sole Negligence. Until 2004, the standard CGL policy form published by ISO insured its named insured for its contractually assumption of liability for the indemnified person's sole negligence. ISO issued in 2004 an endorsement, CG 24 26 06 04 Amendment of Insured Contract Definition. Thus, an indemnifying person should review its CGL policy to determine whether it will extend to protect it should it decide to indemnify the other party to its contract for the other party's sole negligence. Attached to this Article in the Appendix of Forms at page 146) is the current version of this Amendment, which modifies the definition of "insured contract" to eliminate coverage for the sole negligence of an indemnified person. The Amendment limits the definition of "insured contract" to provide that the ".f" exception to the exclusion from coverage is for "tort liability of another party ... caused, in whole or in part, by you or by those acting on your behalf", thus limiting the indemnity insurance to indemnified liabilities at least partly caused by the named insured ("you"), which would not include a liability caused by the sole negligence of the indemnified person.

77 § A.3.2.2.2 Specification of Unacceptable Coverage Exclusions. There are a large number of coverage exclusions or restrictions added to the standard CGL policy by endorsement unless prohibited by the insurance specifications of the parties and by the vigilance of the party to be protected. These exclusions or restrictions do not show up on most certificates of insurance. A few of the most egregious have been listed in Exhibit A and additional prohibited exclusions are listed in the Modified Insurance Exhibit as being prohibited. See additional prohibitions added to the Modified Insurance Exhibit as Mod. § A.3.2.2.2.12, Mod. § A.3.2.2.2.13, Mod. § A.3.2.2.2.14, Mod. § A.3.2.2.2.15, Mod. § A.3.2.2.2.16, Mod. § A.3.2.2.2.17, and Mod. § A.3.2.2.2.18. This list only scratches the surface of manuscripted exclusions and restrictions.

78 Prohibited Exclusionary Endorsement – Insured v. Insured. This prohibition appears in the AIA 2017 Insurance Exhibit insurance specifications. An insured vs. insured exclusion excludes coverage if an additional insured brings suit against a named insured when both are covered by the same policy. This type of exclusion if added to the policy would prohibit coverage of an additional insured on the named insured's CGL policy for one of the most typical reasons for seeking additional insured coverage, suit by an injured person on a construction project that has sued both the owner (the additional insured) and the contractor (the named insured) and the owner has sued the contractor on the contractor's indemnity of the owner.

79 Prohibited Exclusionary Endorsement – Property Damage Arising Out of Work Performed by Subcontractors. If this prohibited endorsement is added to the CGL policy, it results in the loss of insured protection available to the Contractor (in most jurisdictions). Most jurisdictions have interpreted the standard CGL policy as insuring the Contractor against construction defects caused by the Work of its subcontractors. The standard CGL policy contains an "exception to an exclusion". The CGL policy "excludes" insurance for damages to property caused by the Work of the Contractor, but then "excepts" from this exclusion damage to the project property if the damage is caused by the negligence of the subcontractor effectuating the construction, but in a defective manner. These jurisdictions generally hold that the subcontractor's construction in a defective manner is an "occurrence" under the policy and is an insured "accident".

80 Prohibited Exclusionary Endorsement – Prohibition of Limitations on Bodily Injury Coverage. § A.3.2.2.2.3 prohibits the addition of exclusions to coverage of "bodily injuries" except for bodily injuries to employees of the insured. This specification is designed to flush out (prohibit) provisions in the Contractor's policy that limit coverage for this category of bodily injury. As to injuries to employees of the Contractor and injuries to employees of subcontractors see the explanation of the purposes of Section A.3.2.2.2.4, Mod. Section A.3.2.2.2.12, and Mod. Section A.3.2.2.2.13 below.

81 Prohibited Exclusionary Endorsement – Exclusion of Coverage for Insured's Indemnity for Injuries to Employees of the Insured. Section A.3.2.2.2.4 prohibits any exclusion or restriction of coverage for "*claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees the insured.*" This prohibition is to protect the upstream party (e.g., Owner) against the Contractor's insurer endorsing out of the Contractor's policy insurance of the Contractor for Contractor's indemnity of the Owner against "third party over claims" by injured employees of the Contractor's subcontractors. If the Contractor's insurer has not endorsed out this coverage of the Contractor on its indemnity of the Owner, then the Contractor will have insurance to fund its indemnity of the Owner for claims by injured employees of subcontractors.

It is equally advisable that the Contractor's subcontracts prohibit subcontractor's liability insurers from endorsing out of the subcontractor's insurer's liability coverage indemnities by the subcontractor of its general contractor for injuries to the subcontractor's employees. Upon claim by an injured subcontractor's employee against the Contractor or the Owner, or both, the Owner will seek indemnity from its Contractor; the Contractor will seek protection from its insurer and seek indemnity from its subcontractor; and the subcontractor will seek insurance coverage from its insurer.

The standard ISO CGL policy states:

“This insurance does not apply to (e) Employer’s Liability, “bodily injury” to an employee of the insured arising out of or in the course of employment by the insured”.

The standard policy goes on to state:

“This exclusion does not apply (aka the “exception to the exclusion”) to liability assumed by the insured under an “insured contract”.

Thus, the insured - employer (the subcontractor who employees the worker that is bringing the claim against the Contractor or the Owner, or both, has insurance under its CGL policy insuring its indemnity of the upstream party(ies). When this coverage is triggered by a claim, the subcontractor’s Workers’ compensation coverage has already made payment, and now the subcontractor’s general liability coverage is making further payment for that same claim.

Note that the exclusion in the standard ISO CGL policy excludes coverage for insurance of “the insured”, this exclusion excludes from the CGL insurance by the insurer of “the” insured, not “any insured”, and so does not extend as an exclusion to coverage of additional insureds. Thus, the exclusion is an exclusion from insuring the insured contractor (subcontractor) for injuries to its employees. The injured employee is to look to the Workers’ compensation coverage of her employer, but that does not prohibit claim by the injured employee against third parties in cases where the injured employee is dissatisfied with the limits of the statutory benefits provided by the Workers’ compensation system and insurance, *e.g.*, suit against the Owner as to injuries to the Contractor’s employees and the Owner and Contractor as to injuries to employees of the subcontractor.

The injured employee is prohibited by the Workers’ compensation system from suing the employer, so that employee sues the upstream parties, *e.g.*, on the basis that the upstream party provided an unsafe workplace. As the lawsuits are against the upstream party only, this is an allegation of sole negligence. Generally, an additional insured is not insured for its sole negligence. This prohibition is aimed at the practice of many insurers of simply adding an endorsement deleting the “exception to the exclusion”.

⁸² **Prohibited Exclusionary Endorsement – Roofing.** See **Endnote 139** *Prohibited Specific Classification of Business Exclusion – Roofing.*

⁸³ **Prohibited Exclusionary Endorsement – Earth Subsidence or Movement Exclusion.** See **Endnote 140** *Prohibited Exclusionary Endorsement - Earth Subsidence or Movement*

⁸⁴ **Prohibited Exclusionary Endorsement – Explosion, Collapse and Underground Hazards Exclusion.**

⁸⁵ **Mod. § A.3.2.3 Automobile Liability Insurance for “Hired Autos”.** The **2017 Insurance Exhibit** does not address liability coverage for “*hired* autos”. This coverage has been added in the **Modified Insurance Exhibit** as **Mod. § A.3.2.3.**

⁸⁶ **§ A.3.2.3 Automobile Liability Insurance - Limits.** **2017 Insurance Exhibit** does not call for automobile liability limits that are split between a primary policy and the umbrella policy.

⁸⁷ **§ A.3.2.3 Automobile Liability Insurance – Additional Specifications - Additional Insureds:** The **2017 Insurance Exhibit** does not specify that the Owner and the other Protected Persons are to be insured as additional insureds on the Contractor’s automobile liability insurance. This specification is modified in the **Modified Insurance Exhibit** **Mod. § A.3.2.3** *Business Auto Liability* to add additional insured protection for the Owner and the other Protected Persons.

Waiver of Subrogation: **2017 Insurance Exhibit** does not provide for a waiver of subrogation by the Contractor. **229**

automobile liability insurer as to claims against the Owner and the other Protected Persons. This specification is modified in the **Modified Insurance Exhibit** to provide for the Contractor's automobile liability insurer to waive its right of subrogation as to claims against the Owner and the other Protected Persons.

Primary and Noncontributory Status: **2017 Insurance Exhibit** does not specify that the Owner and the other Protected Persons are to be insured as additional insureds on the Contractor's automobile liability insurance. The **Modified Insurance Exhibit** revises **2017 Insurance Exhibit** to add the requirement that the Contractor's business auto liability insurance is primary and noncontributory as to other insurance held by the additional insureds. The standard ISO business auto endorsement form is prescribed.

Advanced Notice of Cancellation or Material Change: The **Modified Insurance Exhibit** revises **2017 Insurance Exhibit** to add a requirement that the insurers provide the Protected Persons with advanced notice of cancellation or nonrenewal.

88 Allocation of Limits Between Primary and Excess/Umbrella Policy. Permitting both primary and umbrella policies to satisfy the liability limits affords the insurance purchaser the opportunity to choose the most cost-effective combination of policies.

89 Umbrella and Excess Policies. The following definitions are found in the on-line IRMI Glossary of Insurance and Management Terms <http://www.irmi.com/online/insurance-glossary/default.aspx>.

"Umbrella policy": "A policy designed to provide protection against catastrophic losses. It generally is written over various primary liability policies, such as the business auto policy (BAP), commercial general liability (CGL) policy, watercraft and aircraft liability policies, and Employer's liability coverage. The umbrella policy serves three purposes: it provides excess limits when the limits of underlying liability policies are exhausted by the payment of claims; it drops down and picks up where the underlying policy leaves off when the aggregate limit of the underlying policy in question is exhausted by the payment of claims; and it provides protection against some claims not covered by the underlying policies, subject to the assumption by the named insured of a self-insured retention (SIR)."

"Excess policy": "A policy issued to provide limits in excess of an underlying liability policy. The underlying liability policy can be, and often is, an umbrella liability policy. An excess liability policy is no broader than the underlying liability policy; its sole purpose is to provide additional limits of insurance."

An "**excess policy**" is an insurance policy covering the insured against certain liabilities or hazards and applying only to loss or damage in excess of a stated amount or specified primary or self-insurance. This specification permits the required minimum limit of liability to be insured either by a single policy or by a combination of a primary (first level) policy and an excess policy or policies. This leaves to the insured the opportunity to negotiate an efficient means of policy limit allocation. Sometimes specifications are written specifying that the primary policy shall be of a stated amount with the balance covered by the excess policy. That approach unduly limits the insured's flexibility.

The **Modified Insurance Exhibit** revises **2017 Insurance Exhibit** to add additional specifications for the umbrella liability coverage, including the following:

Contractor's Employer's Liability Limits: The **Modified Insurance Exhibit** revises **2017 Insurance Exhibit** to provide that the umbrella/excess liability policy will provide excess coverage for liabilities insured by the Contractor's Employer's Liability insurance.

Primary and Noncontributory Status: **2017 Insurance Exhibit** is modified by the **Modified Insurance Exhibit** to provide that the umbrella/excess liability insurance is primary and noncontributory as regards to the "**other insurance**" of the additional insureds.

90 § A.3.2.4 – Concurrency. **2017 Insurance Exhibit** provides for "concurrency" of the primary and the umbrella coverage. "**Concurrency**" means there are no gaps in coverage, terms, and conditions.

91 § A.3.2.4 – Exhaustion of Horizontal Limits. This specification is in the AIA form. It is to counter the requirement in some states that in the absence of a contract to the contrary all insurance including additional insured's liability insurance is to be primary and exhausted (horizontal exhaustion) to pay the named insured's insured claim.

prior to triggering coverage by the named insured's umbrella/excess liability insurance.

92 Workers' Compensation Limits Required by Law. Leases and construction contracts frequently require that a party "maintain Workers' Compensation and Employer's Liability coverage *as required by law*." Does this verbiage really require coverage? With few exceptions, Texas does not require an insured to carry Workers' Compensation insurance. A statement that coverage shall be provided "as required by law" does not require that the coverage be provided.

"**Workers' Compensation**" insurance is the system by which no-fault statutory benefits prescribed by state law are provided by an employer to an employee (or the employee's family) due to a job-related injury (including death) resulting from an accident or occupational disease. The standard Workers' compensation and Employer's liability policy used in most states was substantially revised in 1984 and again to a lesser extent in 1992. As compared to the previous 1954 policy, these revisions included some slight changes in terminology and coverage approaches that should be reflected in contract insurance requirements. One of these was a change in the name from "workmen's compensation" to "**Workers' Compensation**." Another more important change was the inclusion of "other states coverage" in the basic Form and the elimination of the "broad Form all states" endorsement, which was previously

used to provide this coverage. Workers' compensation coverage is usually written in tandem with an Employer's liability coverage policy. A "**Workers's Compensation and Employer's Liability Policy**" is an insurance policy that provides coverage for an Employer's two key exposures arising out of injuries sustained by employees. Part One of the policy covers the Employer's statutory liabilities under Workers' compensation laws, and Part Two of the policy covers liability arising out of employees' work-related injuries that do not fall under the Workers' compensation statute. In most states, the standard Workers' Compensation and Employer's Liability Policy published by the National Council on Compensation Insurance ("**NCCI**") is the required policy form.

Employer's Liability Coverage. "**Employer's Liability Coverage**" provides coverage against common law liability of an employer for accidents to employees, as distinguished from liability imposed by a Workers' compensation law. This is provided by **Part 2** of the basic Workers' compensation policy and pays on behalf of the insured (employer) all sums the insured becomes legally obligated to pay as damages because of bodily injury by accident or disease sustained by any employee of the insured arising out of and in the course of his employment by the insured. Typically triggered by a third party after the insured's employee (who is barred by Workers' compensation laws from suing his or her employer) sues a third party for bodily injury suffered while performing duties of his or her employment (*e.g.*, contractor's employee injured on the premises of that third party).

93 § A.3.2.6 Contractor's Required Insurance Coverage – Employer's Liability Insurance Limits. Note **2017 Insurance Exhibit** omits employer's liability insurance from the types of liability insurance to be insured by the limits of the umbrella policy. The **Modified Insurance Exhibit** provides for the Employer's liability insurance and the corresponding liability umbrella policy to be the higher amount arising by including the employer liability insurance in the primary and umbrella coverage. This approach results in the blank in **Section A.3.2.6** to be an amount higher than the amount of the primary insurance.

94 Bodily Injury by Accident Limit (Employer's Liability). The specified amount is the limit the insurer will pay under **Part Two**, Employer's Liability, for all claims arising out of any one accident, regardless of how many employee claims or how many related claims (such as a loss of consortium suit brought by the injured Workers' spouse) arise out of the accident.

95 USL&H. The United States Longshore and Harbor Workers' Compensation Act (USL&H) of 1927 is a federal law that provides no-fault Workers' compensation benefits to employees other than masters or crew members of a vessel injured in maritime employment—generally, in loading, unloading, repairing, or building a vessel. Employers can obtain coverage under a standard Workers' compensation policy by purchasing a USL&H coverage endorsement. The USL&H law applies to persons working on, over, or adjacent to a navigable waterway. The term "adjacent to" has been ruled to have widely variant definitions.

96 § A.3.2.8 Professional Liability Insurance. Contractors have professional liability exposures from shop drawings, samples, "value engineering", construction management, "green" construction, and design-build. See **AIA A201 Section 3.12 Shop Drawings, Product Data and Samples** of the General Conditions in the AIA Risk Management Provisions in the **Appendix of Forms** at **page 46** to this Article.

97 § A.3.2.9 Pollution Liability Insurance. **2017 Insurance Exhibit** is not specific as to coverage and prohibited provisions. Specifications for this insurance will need to be crafted on a project by project basis in connection with the negotiation of the construction contract (*e.g.*, a broader description of the scope of coverage, term for which

coverage must be maintained beyond course of construction).

98 § A.3.2.12 Unmanned Aircraft. General Liability insurance excludes coverage for operations of drones. This coverage can be added to a CGL policy by endorsement and usually for a nominal premium.

99 § A.3.3.2.1 Contractor's Insurance – Contractor-Procured Builder's Risk Insurance - Extensions to the Scope of Coverage to Consider. The Modified Insurance Exhibit at Mod. § A.3.3.2.1 Builder's Risk Insurance sets out additional types of coverage not addressed in § A.2.3 specifying coverages of Owner-Procured Builder's Risk Insurance.

100 § A.3.3.2.1 Contractor's Insurance – Contractor-Procured Builder's Risk Insurance. Many commonly expected coverages are available only through policy endorsement and are not part of the issuer's standard policy form, such as (1) coverage for the owner's additional architect's fees arising out of an insured loss; (2) coverage for owner supplied materials; (3) amending the Ordinance or Law exclusion to cover costs of demolition of the intact portion of a building when a law, ordinance or regulation requires that the entire structure be torn down; (4) endorsement to include full collapse coverage, including collapse resulting from design error; and (5) verification that sublimits (e.g., sublimits for flood and earthquake coverage) are adequate or eliminated.

101 § A.3.3.2.1 Contractor's Insurance – Contractor-Procured Builder's Risk Insurance – Exclusion of Specified Coverage Required of Owner under § A.2.3.1.3. See Endnote 41 Post-Completion Coverage – Owner to Continue Property Insurance Coverage “Unless the parties agree otherwise” as to § A.2.3.1.3 Insured Amount; Duration of Coverage.

102 § A.3.3.2.1 Contractor's Insurance – Contractor-Procured Builder's Risk Insurance – Exclusion for Specified Coverage Required of Owner under § A.2.3.3. See § A.2.3.3 Insurance for Existing Structures. Note § A.2.3.3 provides the Owner “*shall*” maintain property insurance on the existing structure when an addition is undertaken as opposed to including its coverage under a builder's risk policy purchased by the Contractor.

Mod. § A.2.3.3 Insurance for Existing Structures has been revised to state that it applies only “*if*” this risk has not been shifted to the builder's risk insurance obtained by the Contractor. As noted above, there are circumstances involving renovation of historic structures and remodeling existing buildings, where it may be prudent to insure the existing structure and the Contractor's Work in a combined policy obtained either by the Owner or the Contractor with a single insurer. This can avoid finger pointing between insurers and will avoid the risk of a catastrophic uninsured loss referenced above.

See the following provisions revised from the AIA approach, **Mod. § A.3.3.2.1.3.3 Contractor's Other Insurance Coverage - Builder's Risk - Specific Required Coverages – Additional Properties** and **Mod. § A.3.3.2.1.6 Insurance for Existing Structures** of the Modified Insurance Exhibit, for the addition of existing structure coverage as an item to be insured in a Contractor-purchased builder's risk policy, if the parties have elected for the Contractor to carry the builder's risk insurance.

103 § A.3.3.2.1 Contractor's Insurance – Contractor-Procured Builder's Risk Insurance – Copy of Policy on Request. § A.3.3.2.1 Contractor's Other Insurance Coverage provides for Contractor to provide Owner with a copy of the property policy upon request. **Mod. § A.3.1.1.1 Proof of Insurance – Times Provided** and **Mod. § A.3.1.1.2.2 Proof of Insurance - Matters Certified - Proof of Property Insurance;** *Copy of Policies* modify the General requirements applicable to the Contractor to require *evidence of property insurance* be provided prior to commencement of the Contractor's Work, and not rely upon the Owner to request a copy of the property policy. Evidence of Contractor-procured builder's risk insurance should be obtained as early as possible prior to commencement of the Work. Although the property policy likely will be delayed to even after commencement of the Work, evidence of property insurance in the form of a properly completed ACORD 28 Certificate of Commercial Property Insurance, and preferably an ACORD 75 Insurance Binder, be obtained in advance of Work.

104 § A.3.3.2.1 Contractor's Insurance – Contractor-Procured Builder's Risk Insurance – Owner to Settle Claims as Trustee per AIA A201 General Conditions Article 11 , “unless otherwise set forth below”. The following direction to the drafter is provided at this point in the AIA form as follows:

“(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)”

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

¹⁰⁵ **§ A.4 Special Terms and Conditions.** 2017 Insurance Exhibit provides a blank for the parties to address special terms and conditions “if any”, not otherwise addressed in 2017 Insurance Exhibit. See the extensive Special Terms and Conditions set out in the Modified Insurance Exhibit.

AIA A101 – 2017 Exhibit A Insurance and Bonds (Modified) – Modified Insurance Exhibit

¹⁰⁶ **The Modified Insurance Exhibit.** The Modified Insurance Exhibit is the authors’ attempt to fill gaps still existing in AIA’s new approach. The approach taken in the Modified Insurance Exhibit is to reference specific industry forms and detailed terminology as to coverages required. This approach prompts discussion of insurance requirements while the parties are still in contract negotiation. It permits review of alternate coverages. Note that most insurers’ forms provide third party coverage only “*where required by written contract*”. Many insurer’s forms and some of the ISO promulgated forms limit coverage to “*not be broader than that which [the Named Insured] is required by contract to provide*” and “*Insurer will not pay more than the amount required by the contract*”. These circumstances emphasize the need to be specific in the written contract as to what is required.

MOD. ARTICLE A.2 OWNER’S INSURANCE

¹⁰⁷ **Owner’s Liability Insurance.** Added to the Modified Insurance Exhibit is this requirement that upon request of Contractor, Owner is to provide Contractor with a copy of Owner’s liability insurance policies. Contractor has a vested interest in knowing the scope of Owner’s liability insurance.

¹⁰⁸ **Owner’s Insurance – Special Causes of Loss.** See Appendix of Forms at **page 166** for the ISO CP 10 30 10 12 Causes of Loss Special Form.

¹⁰⁹ **Owner’s Insurance for Existing Structures Only If Not Shifted to Contractor.** § A.2.3.3 Insurance for Existing Structures has been revised in the Modified Insurance Exhibit to provide that it applies only “if” this risk has not been shifted to the builder’s risk insurance obtained by the Contractor.

¹¹⁰ **Optional Extended Property Insurance.** See **Endnote 46** § A.2.4 Owner’s Insurance - Required Property Insurance - Causes of Loss – Optional Extended Coverages for a discussion of optional coverages.

¹¹¹ **Optional Extended Property Insurance – Ordinance or Law Coverage.** See **Endnote 47** Ordinance or Law Coverage for a discussion of this optional extended coverage.

¹¹² **Optional Extended Property Insurance – Soft Costs Insurance.** See **Endnote 48** Soft Costs for a discussion of this optional extended coverage.

¹¹³ **Optional Extended Property Insurance – Soft Costs Insurance – Delayed Completion.** See **Endnote 49** Soft Costs Insurance – Delayed Completion for a discussion of this optional extended coverage.

¹¹⁴ **Optional Extended Property Insurance – Soft Costs – Carrying Costs.** See **Endnote 50** Soft Costs – Typical Exclusions for a discussion of this optional extended coverage.

MOD. ARTICLE A.3 CONTRACTOR’S INSURANCE AND BONDS

¹¹⁵ **Expanded Listing of What is to be Addressed In Certificate (Proof) of Insurance.** The Modified Insurance Exhibit at Mod. § A.3.1.1.2.1 Contractor’s Insurance – Proof of Insurance – Insurance Binders; Proof of Liability Insurance sets out in detail what is to be provided as Proof of Liability Insurance and what is to accompany the proof of insurance for Owner to make an informed judgment of the acceptability of the proffered insurance.

¹¹⁶ **Expanded Certificate to Address Additional Insureds Status to Include Business Auto Policy and Employer’s Liability Policies.** The Modified Insurance Exhibit at § A.3.1.1.2.1.2 Contractor’s Insurance – Proof of Insurance – Insurance Binders; Proof of Liability Insurance – Certifying – Additional Insureds designates that the additional insureds are to be additional insureds on the Contractor’s business automobile liability policy and Employer’s Liability policy and expands the scope of the persons to be additional insureds.

¹¹⁷ **Expanded Certificate to Address Additional Insured Status on Pollution Liability Insurance (if any).** The Modified Insurance Exhibit at § A.3.1.1.2.1.2 Contractor’s Insurance – Proof of Insurance – Insurance Binders

Proof of Liability Insurance – Certifying – Additional Insureds designates that the additional insureds are to be additional insureds on the Contractor’s **Pollution Liability** policies if pollution liability insurance is required.

118 Amendment of Cancellation Provisions or Coverage Change. Insurers are now resisting giving notice of cancellation or material modification to persons other than the first Named Insured. Insurers sometimes put off issuing such endorsements through intentional delaying tactics or other approaches, such as directing other insureds to seek such notices from the first Named Insured. The very purpose of getting the insurer to give this notice to persons other than the first Named Insured is to avoid having to rely on notice from the first Named Insured, the person whose covenant with the other insureds is violated by cancellation or possibly material change of the policy. Not all states have state-approved material change endorsement forms for use by state-approved insurers.

119 ISO CG 25 04 05 09 General Aggregate Designated to Project. See ISO **CG 25 04 05 09 Designated Locations General Aggregate Limit** in the **Appendix of Forms** at page 147.

120 ISO CG 25 45 12 19 Designated Project(s) Products - Completed Operations Aggregate Limit. See ISO **CG 25 45 12 19 Designated Project(s) Products - Completed Operations Aggregate Limit** in the **Appendix of Forms** at page 124.

121 Loss Payee - Owner. The Loss Payee Endorsement is specified in **Modified Insurance Exhibit § A.3.1.1.2.2.2 Contractor’s Insurance and Bonds – Proof of Property Insurance**, as being an item to be delivered to the Owner by the Contractor if the Contractor is the purchaser of the builder’s risk insurance.

122 Completed Operations; and Products and Completed Operations Hazard. See above **Endnote 75 – Completed Operations Coverage**.

123 Additional Insured – Owner’s Lender. See ISO **CG 20 18 12 19 Additional Insured - Mortgagee, Assignee or Receiver as to Owner’s Lender** attached in the **Appendix of Forms** to this Article at page 127.

124 General Aggregate Limits. See **Appendix of Forms** at page 124 for the ISO **CG 25 04 05 09 Designated Location(s) General Aggregate Limit**.

125 Aggregate for Products-Completed Operations Hazard. See **Appendix of Forms** at page 124 for the ISO **CG 25 46 12 19 Designated Project(s) Products-Completed Operations Aggregate Limit**.

126 ISO CGL Form. See **Appendix of Forms** at page 98 for ISO **CG 00 01 Commercial General Liability Coverage Form**.

127 “Or Equivalent”. This language has been substituted for the “or equivalent” wording in the **2017 Insurance Exhibit**.

128 “Bodily Injury”. “Bodily injury” is a defined term in the standard CGL policy, but it is somewhat circular. See **Appendix of Forms, ISO CG 00 01 Commercial Liability Coverage Form Section 5.3 Definitions** “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.”

129 “Personal and Advertising Injury”. “*Personal and advertising injury*” is a defined term in the standard CGL policy. See **Appendix of Forms, ISO CG 00 01 Commercial Liability Coverage Form Section 5.14 Definitions**.

130 “Damage or Destruction of Tangible Property”. “*Property damage*” is a defined term in the standard CGL policy. See **Appendix of Forms, ISO CG 00 01 Commercial Liability Coverage Form Section 5.17 Definitions**.

131 “Completed Operations”. See **Endnote 75 Completed Operations** as to this coverage for the Contractor’s CGL policy set out in **§ A.3.2.2.1.4** of the **2017 Insurance Exhibit**. At Substantial Completion Owner will need to confirm that Contractor’s liability insurance will continue until the punch list items are completed and for the **one-year warranty period** has passed; additionally, Owner will need to assure that Contractor’s Completed Operations coverage continues for the post-completion period specified in the construction documents (e.g., until expiration of the **statute of repose**). The **2017 Insurance Exhibit** does **not** provide for continuation of completed operations coverage until expiration of the statute of repose. **§ A.3.2.1 Contractor’s Required Insurance Coverage** provides a placeholder for the parties to specify a longer duration:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for **234**

correction of Work, state the duration.)

Mod. § A.3.2.1.2 *Contractor's Required Insurance Coverage* modifies this provision as follows:

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 the Date of Substantial Completion of the Work by Contractor.

132 **"Or Equivalent"**. This language has been substituted for the "or equivalent" wording in the **2017 Insurance Exhibit**.

133 **Waiver of Subrogation**. See **Appendix of Forms** at page 120 for ISO **CG 24 04 12 19** *Waiver of Transfer of Rights of Recovery Against Others Endorsement*.

134 **Advanced Notice**. See ISO **CG 02 15 12 04** *Texas Changes – Amendment of Cancellation Provisions or Coverage Change* in the **Appendix of Forms** at page 116.

135 **Post-Completion Coverage**. See **Endnote 131** *Completed Operations* as to this coverage for the Contractor's CGL policy set out in **§ A.3.2.2.4**.

136 **"Insured vs. Insured" Exclusions other than Named Insured vs. Named Insured**. 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.

137 **Prohibited Exclusionary Endorsement – Bodily Injury other than to Employees of the Insured**. The standard CGL policy contains **Exclusion 2.e(1)** which 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.

138 **Prohibited Exclusionary Endorsement - Indemnity as to Injuries to Employees of Insured**. As noted in italics in **Exclusion 2.e(1)** above, the employee liability exclusion to coverage under the standard CGL policy does not exclude coverage via an "insured contract", *i.e.*, indemnity by the Contractor of the Protected Persons as to injuries to employees of the Contractor. This listed prohibition is to prohibit coverage of a Contractor's indemnity for injuries to its employees.

139 **Prohibited Specific Classification of Business Exclusion – Roofing**. 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!

140 **Prohibited Exclusionary Endorsement - Earth Subsidence or Movement**. 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.

141 Prohibited Exclusionary Endorsements – XCU. 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 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)**.

142 Prohibited Exclusionary Endorsement – ISO CG 21 39 Contractual Liability Limitation. See **Appendix of Forms** for **ISO CG 21 39 Contractual Liability Limitation** (form attached at **page 135**), which when added to the standard CGL policy by endorsement deletes paragraph “**F**” (assumption of tort liability of another) altogether from the definition of an insured contract.

143 Amendment of Insured Contract Definition. See the **ISO CG 24 26 Amendment of Insured Contract Definition** (form attached at **page 123**) amending the definition of “**insured contract**” in the CGL Policy to limit Contractual Liability Coverage to tort liability assumed by the Named Insured to bodily injury and property damage caused in whole or in part by the Named Insured.

144 Limitation of Coverage to Designated Premises or Project. See the **ISO CG 21 44 Limitation of Coverage to Designated Premises or Project** (form attached at **page 139**).

145 Punitive, Exemplary or Multiplied Damages Exclusion.

146 Classification or Business Description Exclusion. See discussion in **Endnote 139** above as to “Roofing”.

147 Continuous or Progressive Injury and Damage Exclusion. 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.

148 Damage to Work Performed by Subcontractors. The standard CGL policy (**ISO CG 00 01 Commercial General Liability Coverage Form**) has the following as one of its coverage exclusions:

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

1. 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. (emphasis added.)

The exclusion is limited to damages to “your work”. Damage to other property (*i.e.*, others’ non-defective work or personal property) is not encompassed by this exclusion. This exclusion is the “**heart**” of the “**business risk**” doctrine. It is most often asserted by insurers in claims against contractors for latent defective work. It is oft said that “CGL insurance does not insure against faulty workmanship.” The policy arguments supporting this exclusion are the concerns that substituting CGL insurance for the contractor’s workmanship obligation is tantamount to providing a performance bond; expanding CGL insurance to cover performance promises will encourage poor workmanship; shifting the economic loss to the insurer for the contractor’s faulty performance affords little incentive for the insured to exercise the necessary care and workmanship to operate in a sound business manner; and to do otherwise would encourage the contractor to underestimate the cost of performing the job, and thus shift the cost of doing business from the insured to the insurer. Note that that Exclusion 2.I does not apply if the “damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.”

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.

149 Prohibited Exclusions - Work Height Exclusions. Some CGL policies contain exclusions of coverage for matters occurring above a designated height. Depending on the Project such an exclusion could be problematic.

150 Prohibited Exclusions - Incidental Design Liability. The list of prohibited endorsements includes the **ISO CG 22 34 04 13 Exclusion – Construction Management Errors and Omissions** at **page 140** and the **ISO CG 22 79 04 13 Exclusion – Contractors – Professional Liability** at **page 142**. These endorsements are designed to deflect from the CGL policy liabilities perhaps more properly covered by a professional liability policy. However, a contractor’s service likely includes an element of professional services, including incidental design services. Before accepting

additions of these exclusions, consideration should be given to requiring the contractor to carry professional liability insurance or tailoring the exclusions to exclude known professional liability services being provided by the contractor in its scope of its work. The **ISO CG 22 79 04 13** states that scope of “professional services” excluded by the endorsement “do not include services within construction means, methods, techniques, sequences and procedures employed by (the contractor) in connection with (its) operations in (its) capacity as a construction contractor.” Even though the ISO endorsement sets out this understanding of what is and is not excluded by the endorsement, the bounds of the exception are not bright lines. The limits of a CGL policy are generally greater than a professional liability policy and the time to submit claims is longer because CGL policies are generally occurrence-based, unlike professional liability policies.

151 Prohibited Exclusions – Construction Defects. 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’s left? Only bodily injury and on-going operations.

152 Business Auto Liability. A “business auto policy” or “BAP” is a commercial auto policy that includes auto liability and auto physical damage coverages arising from “covered autos”; other coverages are available by endorsement. Except for auto-related businesses and motor carrier or trucking firms, the business auto policy (BAP) addresses the needs of most commercial entities as respects auto insurance. What autos are “covered autos” is identified by a designation on the BAP’s Declaration page called a “symbol”. There are the following 10 symbols:

Symbol 1	Any Auto
Symbol 2	Owned Autos Only
Symbol 3	Owned Private Passenger Autos Only
Symbol 4	Owned Autos Other Than Private Passenger Autos Only
Symbol 5	Owned Autos Subject to No Fault
Symbol 6	Owned Autos Subject to Compulsory UM Law
Symbol 7	Specifically Described Autos
Symbol 8	Hired Autos Only
Symbol 9	Non-owned Autos Only
Symbol 19	Mobile Equipment Subject to Motor Vehicle Insurance Law Only

153 Business Auto – Pollution Liability.

154 Umbrella Liability Policy. The **Modified Insurance Exhibit Mod. § A.3.2.4 Combination of Policies; Umbrella Liability** revises **2017 Insurance Exhibit** to add additional specifications for the umbrella liability coverage, including the following:

(1) **Contractor’s Employer’s Liability Limits:** The revises **Mod. § A.3.2.4.1 Combination of Policies; Umbrella Liability - Equivalent Coverage 2017 Insurance Exhibit** to provide that the umbrella/excess liability policy will provide excess coverage for liabilities insured by the Contractor’s Employer’s Liability insurance.

(2) **Waiver of Subrogation.** **Mod. § A.3.2.4.5 Combination of Policies; Umbrella Liability - Waiver of Subrogation.**

(3) **Primary and Noncontributory Status:** **2017 Insurance Exhibit** is modified by **Mod. § A.3.2.4.4 Combination of Policies; Umbrella Liability – Primary and Noncontributory** to provide that the umbrella/excess liability insurance is primary and noncontributory as regards to the “**other insurance**” of the additional insureds.

(4) **Advanced Notices.** **2017 Insurance Exhibit** is modified by **Mod. § A.3.2.4.6 Combination of Policies; Umbrella Liability – Advance Notice** to provide for the insurer to provide advance notice of termination or material change to the Protected Persons.

155 Agreed Value Endorsement. An “agreed value endorsement” is an optional endorsement used where the named insured and the insurer agree upon the actual cash value or the replacement cost of the covered property before

the policy is written and agree that co-insurance will not apply.

156 **Co-Insurance.** See **Endnote 45** *Co-Insurance*.

157 **Optional Extended Property Insurance.** See **Endnote 46** **§ A.2.4** *Owner's Insurance - Required Property Insurance - Causes of Loss – Optional Extended Coverages* for a discussion of optional coverages.

158 **Optional Extended Property Insurance – Ordinance or Law Coverage.** See **Endnote 47** *Ordinance or Law Coverage* for a discussion of this optional extended coverage.

159 **Optional Extended Property Insurance – Soft Costs Insurance.** See **Endnote 48** *Soft Costs* for a discussion of this optional extended coverage.

160 **Optional Extended Property Insurance – Soft Costs Insurance – Delayed Completion.** See **Endnote 49** *Soft Costs Insurance – Delayed Completion* for a discussion of this optional extended coverage.

161 **Optional Extended Property Insurance – Soft Costs Insurance – Carrying Costs.** See **Endnote 50** *Soft Costs – Typical Exclusions* for a discussion of this optional extended coverage.

MOD. ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

162 **Section A.4.2 General Insurance Requirements – Insurer's Ratings.** BEST'S KEY RATING GUIDE published by A.M. Best Company assigns to insurance companies one of three types of rating opinions, a "Best's Rating," a "Financial Performance Rating" or a "Qualified Rating." In addition, Best's assigns all companies to "Financial Size Categories." More information concerning Best's and its ratings is available at Best's website, <http://www.ambest.com>. Insurance specifications in real estate documents will typically specify both the minimum acceptable Best Rating and minimum Financial Size Category for the insurance issuer. For example, "the insurer will be at least a Best's A: VIII."

163 **Contractor's Liability Insurance.** See discussion of Contractor's liability insurance in the commentary **C. Commercial General Liability § A.3.2.2** beginning at [page 27](#).

APPENDIX OF FORMS

ISO CG 00 01 04 13 Commercial General Liability Coverage Form

164 **ISO Commercial General Liability Insurance.** The **Modified Insurance Exhibit** at **Mod. § A 3.2.2.1** *Commercial General Liability – Occurrence Form Limits; Coverage* specifies that Contractor's commercial general liability insurance is to be issued on an unmodified ISO **CG 00 01** form or a substitute providing coverage more beneficial to the Protected Persons. The AIA **2017 Insurance Exhibit** does not call for the CGL insurance to be on an ISO form, but does make general specifications as to coverage.

165 **ISO CG 00 01 04 13 CGL – Contractual Liability Coverage.** See **Endnote 76** **§ A.3.2.1** *"Insured Contracts Coverage"*.

166 **ISO CG 00 01 04 13 Commercial General Liability – Workers' Compensation and Employer's Liability Exclusion.** The standard CGL Policy, **CG 00 01 04 13** at **Section I, Par. 2.d** and **2.e** excludes from coverage the insured's obligation under Workers' compensation, disability benefits or unemployment compensation law or any similar law and "bodily injury" to its employees and consequential damages to an employee's spouse, child, parent, brother or sister as a consequence of bodily injuries to the employee. The insured may protect itself for liabilities arising out of injuries to its employees by becoming a subscriber under its state's Workers' compensation system. It can also obtain Employer's Liability Insurance.

167 **ISO CG 00 01 04 13 Commercial General Liability – Pollution Exclusion.** **ISO CG 00 01 04 13** *Commercial General Liability Coverage Form, Section I, Coverage A, Par. 2.f – Exclusions – Pollution*. **Par. 2.f** is known as the "**absolute pollution exclusion**" and excludes environmental pollution claims from the CGL policy's coverage. See *Porterfield v. Audubon Indem. Co.*, 856 So.2d 789, 793 (Ala. 2002) for a discussion of the history of CGL policy's absolute pollution exclusion.

168 **ISO CG 00 01 04 13 Commercial General Liability – "Exclusion j" Damage To Property You Own, Rent Or Occupy.** This portion of the "damage to property" exclusion, **Par. 2.j. ("Exclusion j")** does not apply to premises

rented to the Named Insured for 7 or fewer consecutive days, or to the contents of such premises, *e.g.*, damages to a hotel room or its furnishings or to a conference room or special events facility rented to the Named Insured for this short period. See the Fire Damage Legal Liability Exception to exclusion language at the end of **Paragraph 2 Exclusions** reading as follows (the “**Fire Damage Legal Liability Exception**”):

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.

The Fire Damage Legal Liability Exception creates coverage for fire damage to premises rented to the Named Insured when the damage is caused by the Named Insured’s negligence, sometimes called “**fire damage legal liability**”. A separate limit of liability applies to this coverage and typically ranges \$50,000 - \$100,000. This limit can be increased by endorsement to the CGL policy or written for higher limits, but as limits increase they can approximate a property policy’s premium.

169 ISO CG 00 01 04 13 Commercial General Liability – Damage To "Your Work" Exclusion – "Subcontractor Exception" for Subcontractor’s Work - Construction Defects Coverage. Liability insurers have sought to exclude from the coverage of CGL policies so-called “**business risks**”, those risks thought generally to be under the control of the insured (contractor or subcontractor) and which are not regarded as fortuitous in nature. In crafting policy language (coverage and exclusions) insurers have struggled for decades to draft policy language that clearly and unambiguously covers “**accidental**” property damage but does not cover uninsurable business risks. The insurance industry has resisted insuring contractor’s for property damage caused by “business risks” within the contractor’s control. This issue has been the subject of considerable litigation. Although the vast majority of cases involve interpretation of the same CGL policy language, there is a marked split of authority. As reviewed below, the recent focus has been on the “property damage” and “occurrence” requirements of the CGL policy, with some courts applying the legal theories of “business risk” and “economic loss” as a means to exclude coverage. In 2007 courts in Texas, Florida and Tennessee courts rejected negligence, foreseeability of damage and natural and probable consequences as grounds to exclude finding that damage to property arising out of a contractor’s performance of work was an “**occurrence**” possibly triggering coverage under its CGL policy. See *Lamar Homes, Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1 (Tex. 2007); *U.S. Fire Ins. Co. v. J.S.U.B., Inc.* 979 So.2d 871 (Fla. 2007); and *Travelers Indem. Co. of America v. Moore & Associates, Inc.*, 216 S.W.3d 302, 308-09 (Tenn. 2007). Having held that property damage arising out of faulty workmanship may be an occurrence, courts willing to follow this lead are able to interpret **Par. 2.i Exclusions – Damage To Your Work** to **Section I, Coverage A**, aka the “**subcontractor exception**”, as providing coverage if the work is performed by the contractor’s subcontractor. See the following cases and their progeny: *Wilshire Ins. Co. v. RJT Constr. Co.*, 581 F.3d 222 (5th Cir. [Tex.] 2009); *Lamar Homes, Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1 (Tex. 2007), answer to certified question conformed to, 501 F.3d 434 (5th Cir. 2007); *O’Shaughnessy v. Smuckler Corp.*, 543 N.W.2d 99 (Minn. Ct. App. 1996); and *Mid-Continent Cas. Co. v. Titan Const. Corp.*, 2008 WL 2340493 (9th Cir. 2008).

170 Electronic Data Liability Exclusion to CGL Coverage – 2013 Revision - CG 00 01 – Coverage A, Exclusion 2.p. **Exclusion 2.p** excludes from the standard CGL policy damages that “arise out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data”. The standard CGL policy was revised in 2013 to broaden coverage by adding an exception to this exclusion for “bodily injury” (the “However, this exclusion does not apply ...”). Coverage is readily available to cover this gap through an **Electronic Data Liability Endorsement**, the ISO **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). See the Electronic Data Liability endorsement.

171 Recording and Distribution of Material or Information in Violation of Law Exclusions – 2013 Revision - CG 00 01 – Coverage A, Exclusion 2.q. The standard CGL policy was amended in 2013 to incorporate into the exclusions, this exclusion previously handled by a mandatory endorsement, the **CG 00 68**, excluding coverage for injuries and damages arising out of acts or omissions that violate certain consumer protection laws.

172 “Who Is An Insured” under the CGL Policy - CG 00 01 – Section II, Par. 1 - Entities. **Paragraph 1, Section II** enumerates a number of persons and entities in addition to the Named Insured as insureds under the CGL policy with respect to the conduct of the Named Insured’s business, *e.g.*, partners and their spouses of a partnership; members and managers of a limited liability company; “executive officers,” directors and shareholders of a corporation; and trustees of a trust.

¹⁷³ **Conditions to Coverage under the CGL Policy – “Other Insurance” - CG 00 01 – Section IV, Par. 4.** See **Endnote 61** § A.3.1.1 *Contractor’s Insurance and Bonds – Additional Insured Obligations – Primary and Noncontributory*. See the following:

(1) **Section IV, Paragraph 4.a** *Other Insurance – Primary Insurance* and **4.b – Excess Insurance** to **CG 00 01 04 13** *Commercial General Liability Coverage Form* for provisions in the standard CGL policy establishing that coverage to the Named Insured under the CGL is provided on a primary basis and co-contributing with other insurance available to the Named Insured but is excess under specified circumstances, including if the Named Insured’s other insurance is an additional insured provided on a primary basis;

(2) **Endnote 174** - 2013 Revision to “Other Insurance” Provision; and

(3) **CG 20 01 04 13** *Primary and Noncontributory - Other Insurance*.

¹⁷⁴ **2013 Revision to “Other Insurance” Provision - CG 00 01 – Section IV, Par. 4(b)(1)(b).** Prior to the 2013 revision, the standard policy provided that the CGL coverage was excess over any primary insurance for which the named insured had been added as an additional insured “by attachment of an endorsement”. However, some insurers provide additional insured status directly in their policy as opposed to by endorsement. This raised concerns among commentators that the additional insured’s own insurance was primary and co-contributing with the additional insured coverage if the additional insured coverage was not provided by an endorsement. The 2013 revisions deleted “by attachment of an endorsement”. By this revision the additional insured’s own insurance (its “*other insurance*”) is revised to state that the additional insured’s own insurance is excess insurance over the additional insurance coverage provided to the additional insured whether by endorsement or other means.

¹⁷⁵ **Separation of Insureds – CG 00 01 – Section IV, Par. 7.** See insurance specifications at **Mod. § A.3.2.2.2.5** *Coverage and Form – Insured Contracts* and **Mod. § A.3.2.2.2.10** *Coverage and Form – Additional Insureds*.

¹⁷⁶ **CGL Insurer’s Contractual Right of Subrogation - CG 00 01 – Section IV, Par. 8.** The standard CGL policy contains a contractual transfer to the insurer of the Named Insured’s right of recovery against third parties for payments made by the insurer. See in the **Appendix of Forms** the ISO **CG 24 04 05 09** *Waiver of Transfer of Rights of Recovery Against Others To Us*.

¹⁷⁷ **ISO CG 00 01 04 13 Commercial General Liability – Notice of Nonrenewal.** Notice that the notice is sent by the insurer to the “first Named Insured” as opposed to “all insureds”.

¹⁷⁸ **“Occurrence”.**

Decisions Finding Faulty Workmanship Not a Basis for an “Occurrence”:

Ark. *Nabohlz Const., Corp. St. Paul Fire and Marine Ins. Co.*, 354 F.Supp. 2d 917 (E. D. Ark. 2005) – Suit to recover cost to repair faulty roof did not allege an “occurrence”.

Illinois. *Viking Const. Management, Inc. v. Liberty Mut. Ins. Co.*, 358 Ill. App. 3d 34, 294, Ill. Dec. 478, 831 N.E.2d 1 (1st Dist. 2005) - wall collapse caused by defective construction not covered as complaint did not allege property damage caused by an occurrence; collapse of wall under natural and ordinary circumstances did not constitute “occurrence” within the meaning of CGL policy.

Indiana. *Amerisure, Inc. v. Wurster Const. Co., Inc.*, 181 N.E.2d 998 (Ind. Ct. App. 2004), decision clarified on reh’g, 822 N.E.2d 1115 (Ind. Ct. App. 2005) - defective exterior insulation finish system was not an “occurrence”.

Ill. *Stoneridge Development Co., Inc. v. Essex Ins. Co.*, 888 N.E.2d 633 (Ill. 2d Dist.), app. denied 897 N.E.2d 264 (Ill. 2008) - cracks that developed in home “were not an unforeseen occurrence that would qualify as an ‘accident’ because they were the natural and ordinary consequences of defective workmanship”; *Cincinnati Ins. Co. v. Taylor-Morely, Inc.* 556 F. Supp.2d 908 (S.D. Ill. 2008) - developer’s allegedly faulty construction of homes did not constitute an “accident” or “occurrence”.

Md. *OneBeacon Ins. v. Metro Ready-Mix, Inc.*, 427 F. Supp. 2d 574 (D. Md. 2006) - concrete manufacturer’s provision of defective grout that was insufficient to support pile caps did not involve an accident within the policy definition of “occurrence”.

Mo. *Hartford Ins. Co. of the Midwest v. Wyllie*, 396 F. Supp. 2d 1033 (E. D. Mo. 2005) - suit against seller **246**

condominium alleging intentional misrepresentation for failing to disclose problems and defects with roof and heating systems did not allege an "occurrence"; *Charles Hampton's A-1 Signs, Inc. v. American States Ins. Co.*, 225 S.W.3d 482 (Tenn. Ct. App. 2006 app. denied 2007) – applying Missouri law; *J. E. Jones Const. Co. v. Chubb & Sons, Inc.*, 486 F.3d 337 (8th Cir. 2007) – applying Missouri law; *St. Paul Fire and Marine Ins. Co. v. Building Const. Enterprises, Inc.*, 484 F. Supp.2d (W.D. Mo. 2007).

N.D. *Century Sur. Co. v. Demolition & Dev., Ltd.*, 2006 WL 163174 (N. D. Ill. 2006) - misidentifying building for demolition was not an "occurrence".

Oh. *Westfield Cos. v. Gibbs*, 2005 WL 1940305 (Oh. Ct. App. – 11th Dist. 2005) – property owner's action against contractor alleging fraud and trespass did not satisfy occurrence element; and later case at 2006 WL 120041 – damages resulting from contractor's delay was not an "accident" and therefore did not arise for an "occurrence".

Or. *Oak Crest Const. Co. v. Austin Mutual Ins. Co.*, 998 P.2d 1254 (Or. 2006).

Pa. *Millers Capital Ins. Co. v. Gambone Bros. Development Co., Inc.* 941 A.2d 706 (Pa. 2007), app. denied. 963 A.2d 471 (Pa. 2008) - defective drywall resulting in delamination, peeling and disfigurement, which compromised structural integrity, was not caused by an accident and, thus, the policy provided no coverage as there was no "occurrence" ; *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 589 Pa. 317, 908 A.2d 888 (Pa. 2006) - failure to construct coke oven battery properly such that oven walls spalled, rod housings bowed, and ovens cracked paver bricks was not an accident and, therefore, was not an "occurrence".

S.C. *L-J, Inc. v. Bituminous Fire and Marine Ins. Co.*, 366 S.C. 117, 621 S.E.2d 33 (S. C. 2005) – poor workmanship resulting in roads that deteriorated much more quickly than normal did not amount to an "occurrence".

Wash. *Mid-Continent Cas. Co. v. Williamsburg Condominium Ass'n*, 2006 WL 2927664 (W. D. Wash. 2006) - property damage to condominiums caused by builder's breach of contract and/or breach of warranty could not be regarded as an "occurrence".

W. Va. *Webster County Solid Waste Authority v. Brackenrich & Associates, Inc.* 217 W.Va. 304, 617 S.E.2d 851 (W. Va. 2005) - defective workmanship by engineering firm hired to design and supervise the construction of upgrades to a county land fill was not an "occurrence".

Decisions Finding Faulty Work a Basis for an "Occurrence":

Ariz. *Lennar Corp. v. Auto-Owners Ins. Co.*, 151 P.3d 538 (Ariz. Ct. App. Div. 1 2007).

Ark. *U.S. Fidelity & Guar. Co. v. Continental Cas. Co.*, 120 S.W.3d 556 (Ark. 2003) - "First, we must consider whether there was an occurrence. Appellants argue that the 'occurrence' that gave rise to the property damage was Ray's defective workmanship on the Wal-Mart projects. The policy defines an 'occurrence' as 'an accident.' We have defined an 'accident' as 'an event that takes place without one's foresight or expectation—an event that proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected.' Because the policy has defined 'occurrence,' and because we have defined 'accident,' we conclude that the remaining fact question which must be resolved in this case before coverage can be determined is whether Ray's workmanship on the Wal-Mart projects constituted an 'accident.'" The court noted that there is a split of authority on whether defective workmanship is an accident and therefore an "occurrence" under a general liability policy.

Cal. *McGranahan v. insurance Corp. of NY*, 544 F. Supp.2d 1052 (E.D. Cal. 2008) - "occurrence" alleged where complaint was neutral regarding whether insured intended to install moldy drywall, as it only asserted it installed moldy drywall.

Colo. *Hoang v. Monterra Homes (Powderhorn) LLC*, 129 P.3d 1028 (Colo. Ct. App. 2005), as modified on denial of reh'g and cert. granted - claim that homebuilder was negligent in constructing homes on unsuitable site containing expansive soils alleged an "occurrence".

Fla. *U. S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So.2d 871 (Fla. 2007). See discussion in this Article.

Ga. *SawHorse, Inc. v. Southern Guar. Ins. Co. of Georgia*, 269 Ga. App. 493, 604 S.E.2d 541 (Ga. 2004) - "Southern Guaranty has cited no Georgia authority supporting its apparent claim that faulty workmanship cannot constitute an 'occurrence' under a general commercial liability policy. And this claim runs counter to case law finding that policies with similar 'occurrence' language provide coverage for 'the risk that. . . defective or faulty workmanship will cause

injury to people or damage to other property.' Furthermore, Southern Guaranty has pointed to no evidence that SawHorse intended for the faulty workmanship to occur. Under these circumstances, Southern Guaranty is not entitled to summary judgment based on the "occurrence" language in the policy."

Ind. *Indiana Ins. Co. v. Alloyd Insulation Co.*, 2002 WL 1770491 (Ohio Ct. App. 2d Dist. Montgomery County 2002) - corrosion and consequential property damage from faulty roof due to defective workmanship constituted an "accident" and thus an "occurrence".

Kan. *Lee Builder's, Inc. v. Farm Bureau Mut. Ins. Co.*, 33 Kan. App.2d 504, 104 P.3d 997 (Kan. 2005) - damage that occurs over time as a result of defective materials or workmanship in the construction of a home and leads to structural damage is an "occurrence"; 281 Kan. 844, 137 P.3d 486 (Kan. 2006) - homeowners' claim for property damage from window leaks against general contractor constituted an "occurrence" as there is nothing in the basic coverage language of the CGL policy to support any definitive tort/contract line of demarcation for purposes of determining coverage.

Ky. *Bituminous Cas. Corp. v. Kenway Contracting, Inc.*, 240 S.W.3d 633 (Ky. 2007) - intentional act of contractor's employee in demolishing part of home, allegedly because contractor had not communicated to employee that the project was limited to demolishing the home's carport, constituted an "accident" and therefore was an "occurrence," within the meaning of CGL policy.

La. *Broadmoor Anderson v. National Union Fire Ins. Co. of Louisiana*, 912 So.2d 400 (La. Ct. App.2d Cir. 2005) - defective ceramic tile and stone work resulting in water infiltration constituted an "occurrence"; *North American Treatment Systems, Inc. v. Scottsdale Ins. Co.*, 943 So.2d 429 (La. Ct. App. [1st Cir.] 2006), writ denied, 2007 WL 781850 and 2007 WL 781854 - claims of negligent work resulting in a collapse at a wastewater treatment plant clearly claimed damages by reason of an "occurrence".

Minn. *O'Shaughnessy v. Smuckler Corp.*, 543 N.W.2d 99 (Minn. Ct. App. 1996) abrogated on other grounds by *Gordon v. Microsoft Corp.*, 645 N.W.2d 393 (Minn. 2002).

Mo. *Columbia Mut. Ins. Co. v. Epstein*, 239 S.W.3d 667 (Mo. Ct. App. E.D. 2007) - defect in concrete purchased for house foundation was "accident" and, thus, "occurrence"; *American States Ins. Co. v. Herman C. Kempker Const. Co., Inc.*, 71 S.W.3d 232 (Mo. Ct. App. W.D. 2002) - developer's claim that insured contractor negligently misrepresented construction of street in development potentially was an "occurrence" and therefore, insurer had a duty to defend.

Oh. *Dublin Bldg. Sys. v. Selective Ins. Co. of South Carolina*, 874 N.E.2d 788 (Ohio Ct. App. 10th Dist. Franklin County 2007) - property damage, including mold contamination, caused by exterior stucco subcontractor, who failed to properly seal office building's exterior walls, constituted an insurable "occurrence"; *Erie Ins. Exchange v. Colony Dev. Corp.* 736 N.E.2d 941 (Ohio Ct. App. 10th Dist. Franklin County 2006); *Victoria's Secret Stores, Inc. v. Epstein Contracting, Inc.*, 2002 WL 723215 (Ohio Ct. App. 10th Dist. Franklin County 2002) - collapse of store's ceiling was an "accident" and, therefore, an "occurrence" within the meaning of contractor's CGL policy, but express contractual liability exclusion applied to shield insurers from liability.

Pa. *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 2003 Pa Super 149, 825 A.2d 641, 654 (Pa. 2003) - "In the instant case, the damage at issue is not the absence of the grout or the size of the grout spaces but the deformation and deflection of the brick work, tie rods and roof of the battery which occurred after the battery was placed in use. Whether that damage was caused in whole or in part by the torrential rains of October 31st and November 1st, or by some other event during the heat up of the battery, we are not hesitant to conclude that the physical damage to the battery constituted an occurrence for which the policies provide coverage *UNLESS* otherwise precluded by one of the exclusions set forth in the policy."

N.D. *ACUITY v. Burd & Smith Const., Inc.*, 721 N.W.2d 33, 39-40 (N.D. 2006) - "We agree with the rationale of those courts holding that faulty workmanship causing damage to property other than the work product is an accidental occurrence for purposes of the CGL policy. . . . Here, the Kailliers allege damage to the interior of the apartment building. We conclude that claim is the type of risk covered by a CGL policy and constitutes an 'occurrence' under Acuity's policy."

Neb. *Auto-Owners Ins. Co. v. Home Pride Companies, Inc.*, 268 Neb. 528, 684 N.W.2d 571, 577-78 (Neb. 2004) - "Although it is clear that faulty workmanship, standing alone, is not covered under a standard CGL policy, it is important to realize that there are two different justifications for this rule. On the one hand, the rule has been justified on public policy grounds, primarily on the long-founded notion that the cost to repair and replace the damages caused by faulty workmanship is a business risk not covered under a CGL policy. Today, the business risk rule is part of standard CGL policies in the form of "your work" exceptions to coverage. Therefore, the business risk rule does ~~not~~

serve as an initial bar to coverage, but, rather, as a potential exclusion, via the "your work" exclusions, if an initial grant of coverage is founded. . . . Important here, although faulty workmanship, standing alone is not an occurrence under a CGL policy, an accident caused by faulty workmanship is a covered occurrence. . . . In the instant case, [insureds' subcontractors] negligently installed shingles on a number of apartments, which caused the shingles to fall off. Additionally, the amended petition alleged that as a consequence of the faulty work, the roof structures and buildings have experienced substantial damage. This latter allegation represents an unintended and unexpected consequence of the contractors' faulty workmanship and goes beyond damages to the contractors' own work product. Therefore, the amended petition properly alleged an occurrence within the meaning of the insurance policy."

S.C. *Auto Owners Ins. Co., Inc. v. Newman*, 2008 WL 648546 (S.C. 2008) - water intrusion and resulting damage was an "occurrence" covered under the policy; *L-J, Inc. v. Bituminous Fire and Marine Ins. Co.* 350 S.C. 549, 567 S.E.2d 489 (S. C. Ct. App. 2002) - deterioration and failure of roads from repeated water runoff was an "accident" and, therefore, an "occurrence" and subcontractor exception to policy's business risk exclusion restored coverage otherwise excluded under the policy.

S.D. *Corner Const. Co. v. U. S. Fidelity and Guar. Co.*, 2002 S.D. 5, 638 N.W.2d 887 (S.D. 2002) - failure to fill voids between studs with insulation and to securely attach the vapor barrier was an "accident" resulting in property damage.

Tenn. *Travelers Indem. Co. of America v. Moore & Associates, Inc.*, 216 S.W.3d 302, 308-09 (Tenn. 2007) – see discussion in this Article; and *State Farm Fire and Cas. Co. v. McGowan*, 421 F.3d 433, 2005 FED App. 0374P (6th Cir. 2005) - holding that an insured's negligence was an "occurrence" under an insurance policy because it was unintended and unforeseen.

Tex. *Lamar Homes, Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1 (Tex. 2007), answer to certified question conformed to, 501 F.3d 435 (5th Cir. 2007) – see discussion in this Article; and *CU Lloyd's of Texas v. Main Street Homes, Inc.*, 79 S.W.3d 687 (Tex. App.—Austin 2002) - homeowners' allegations that general contractor built homes after learning that foundation designs were inadequate for soil conditions and failed to disclose that knowledge to purchasers stated an "accident" and thus an "occurrence". *King v. Dallas Fire Ins. Co.* 45 Tex. Sup. Ct. J. 715, 2002 WL 1118438 (Tex. 2002), op. withdrawn and superseded on reh'g on other grounds, 85 S.W.3d 185 (Tex. 2002) - liability insurer owed

duty to defend employer accused of negligently hiring and supervising employee accused of battery, because the Employer's negligent hiring constituted an "occurrence"; *Lennar Corp. v. Great American Ins. Co.*, 2005 WL 1324833 (Tex. App.—Hou. [14th Dist.] 2005) - suit to recover costs paid to repair water damage and replace defective exterior insulation and finish systems on hundreds of homes built in the Houston area in the late 1990s alleged an "occurrence", and 200 S.W.3d 651 (Tex. App. Hou. [14th Dist.] 2006, writ granted) - homebuilder's negligent construction of homes using defective exterior insulation and finish system constituted an "occurrence" within scope of CGL and commercial umbrella liability policies; *Mid-Continent Cas. Co. v. JHP Dev., Inc.*, 2009 WL 189886 (5th Cir. [Tex.] 2009) - faulty workmanship allegations against contractor in the construction of five condominiums that resulted in water leakage was an occurrence; *Pine Oak Builder's, Inc. v. Great American Lloyds Ins. Co.*, 2006 WL 1892669 (Tex. App.—Hou. [14th Dist.] 2006) - property damage caused by defective construction may constitute an "occurrence" if it is inadvertent and results in damage to the insured's own work, the result of which is unintended and unexpected, *rev'd on other grounds Pine Oak Builder's Inc. v. Great American Lloyds Ins. Co.*, 279 S.W.3d 650 (Tex. 2009).

Utah. *Great American Ins. Co. v. Woodside Homes Corp.*, 448 F. Supp.2d 1275 (D. Utah 2006) - subcontractor's faulty work causing cracks in building foundation, basement floor, and driveway involved an occurrence such that breach of warranty claim and breach of contract claim were potentially covered.

Wash. *Mid-Continent Cas. Co. v. Titan Const. Corp.* 281 Fed. Appx. 766 (9th Cir. 2008) - negligent construction of condominium that resulted in breach of contract and breach of warranty claims constituted "occurrence" under CGL policy.

Wis. *American Family Mut. Ins. Co. v. American Girl, Inc.*, 673 N.W.2d 65, 76 (Wis. 2004) - "American Family argues that because Pleasant's claim is for breach of contract/breach of warranty it cannot be an "occurrence," because the CGL is not intended to cover contract claims arising out of the insured's defective work or product, but this is by operation of the CGL's business risk exclusions, not because a loss actionable only in contract can never be the result of an "occurrence" within the meaning of the CGL's initial grant of coverage. This distinction is sometimes overlooked and has resulted in some regrettably overbroad generalizations about CGL policies in our case law."; *1325 North Van Buren, LLC v. T-3 Group, Ltd.*, 284 Wis.2d 387, 2005 WI. App. 121, 701 N.W.2d 13 (Ct. App. 2005), review granted 2005 WI. 150, 286 Wis.2d 97, 705 N.W.2d 659 (Wis. 2005) - CM-at-risk failures that result in property damage and delays were an occurrence; *Glendenning's Limestone & Ready-Mix Co., Inc. v. Reimer*, 721 N.W.2d 704 (Wis. 2006).

App. 2006) - concluding, after a detailed discussion, that "occurrence" is not equivalent to faulty workmanship, but rather faulty workmanship may result in an "occurrence" and, in this case, where pleading alleges that the rubber mats that subcontractor improperly installed were damaged by a scraper that cleans manure from them is a claim for property damage caused by an occurrence in that the damage was not intended or anticipated and that it was also not intended or anticipated that using the scraper to clean the manure off the mats would damage the mats; *Stuart v. Weisflog's Showroom Gallery, Inc.*, 722 N.W.2d 766 (Wis. Ct. App. 2006, review granted), 727 N.W.2d 34 (Wis. 2006) - insured's misrepresentations that it was a licensed architect and familiar with building code requirements qualified as "occurrences" per its insurance policy because intent to deceive is not a necessary element of homeowners' cause of action.

Endorsements

Texas Changes – Amendment Of Cancellation Provisions Or Coverage Change

179 **Amendment of Cancellation Provisions or Coverage Change.** This ISO **CG 02 05 12 04** *Texas Changes – Amendment of Cancellation Provisions or Coverage Change* is a sample of a notice of cancellation or material change endorsement issuable in Texas. Note that this form may be used with multiple liability policy forms (e.g., Commercial General Liability, Pollution Liability products/Completed Operations Liability) and schedules a particular person (e.g., an owner on a contractor's liability policy) and designates an address to which notice is to be sent. This form specifies a "number of days advance notice" is to be given. Similar forms are approved by the Department of Insurance or other state agency in the other states.

The **ACORD 24** *Certificate of Property Insurance*, **ACORD 25** *Certificate of Liability Insurance* and **ACORD 28** *Evidence of Commercial Property Insurance* were revised in late 2009 and early 2010 to change the Cancellation notice language to read as follows:

should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

The prior version of these certificates and evidence contained the following statement concerning advance notice to be given by the Insurer to the Additional Interest holder:

should any of the above described policies be canceled before the expiration date thereof, the issuing insurer will endeavor to mail ____ days written notice to the [certificate holder named to the left/additional interest named below], but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

Similar language appeared in the **ACORD** *Certificate of Property Insurance*. A New York appeals court has held that the presence of an ACORD "endeavor"-type notice of cancellation provision in the certificate does not impose on the insurer a contractual obligation to give the certificate holder notice of cancellation of the policy for the insured's premium non-payment. The court held that the insurer satisfied its contract obligations by complying with the contract's requirement of giving notice to the "first named insured" (the insurer's customer). The court pointed to a New York statute which required notice to the first named insured but did not also specify that notice be given to additional insureds. The court dismissed the additional insured/certificate holder's arguments as follows:

Charlew contends that it reasonably relied, to its detriment, upon the certificate of insurance which named it as an additional insured and, therefore, under our decision in [citation omitted], Merchants Mutual was equitably estopped from denying coverage. Notably, however, the situation presented herein is distinguishable because the Merchants Mutual insurance policy was not in existence at the time of (the employee's) accident. "Where there is no coverage under an insurance policy because the policy was not in existence at the time of the accident, estoppel cannot be used to create coverage." (citations omitted). Furthermore, Charlew argues that the policy was not properly cancelled because it was not notified of such action, as an additional insured.... Even assuming that Merchants Mutual received the policy change request from Weller-Marcil, we disagree with that argument. Since Merchants Mutual strictly complied with the notice of cancellation provisions set forth in ... (reference to NY statute omitted) by mailing a timely notice of cancellation to the "first-named insured" (Regels) and "such insured's authorized agent or broker" (Weller-Mercil), the

policy was effectively cancelled ... (citation omitted), irrespective of its failure to comply with its “courtesy” policy of notifying additional insureds of a cancellation. Charlew’s (the additional insured’s) argument is further belied by the unambiguous disclaimer contained in the certificate of insurance ... (quotation of the ACORD language is omitted.). *Wainwright v. Charlew Construction Co. Inc.*, 755 N.Y.S.2d 751, 753-54 (NY [3rd Dept.] 2003).

for a discussion of the “notice” of cancellation disclosure in the **ACORD Certificate of Insurance**. ISO **CG 02 05 12 04 Texas Changes - Amendment of Cancellation Provisions or Coverage Change** provides for the insurer to give the designated person advance notice of cancellation or material change to the First Named Insured’s CGL policy. Many but not all states have a similar form approved by the state’s insurance commissioner for use in their state.

ISO CG 20 10 04 13 Primary and Noncontributory – Other Insurance Condition

180 **ISO CG 20 10 04 13 Primary and Noncontributory – The “Other Insurance” Condition**, Mod. § **A.3.1.3.2** *Primary and Noncontributory* specifies that an **ISO CG 20 01 04 13 – Primary and Noncontributory - Other Insurance Condition** endorsement is to be issued by Contractor’s CGL insurer in connection with the insurer’s issuing the additional insured coverage to the Protected Persons for liabilities arising out of Contractor’s ongoing and completed operations. Mod. § **A.3.1.3.2** *Primary and Noncontributory* calls for the Contractor’s insurer to agree that the additional insured coverage shall be primary and noncontributory to the Protected Person’s *other insurance*.

ISO CG 20 01 04 13 Primary and Noncontributory – Other Insurance Condition was introduced in 2013 by ISO to provide an endorsement form to be added to the Named Insured’s policy (the Protecting Party’s policy) to reiterate that it provides “primary” coverage and that its issuer “will not seek contribution from any *other insurance* available to an additional insured”.

Note, however, that **Provision (2)** of this endorsement requires that the written agreement of the additional insured (the Protected Person) and the Named Insured (the Protecting Party) must provide that the Named Insured’s insurance is primary and will not seek contribution from the additional insured’s other insurance. Requiring in the written agreement between the Named Insured and the Additional Insured that an **ISO CG 20 10** endorsement be added to the Named Insured’s policy may not achieve the Additional Insured’s objectives, **if** the written agreement itself does not also specify that the additional insured coverage on the Named Insured’s policy is “primary and noncontributory” plus contain language defining what is meant by primary and noncontributory.

Note that this new endorsement is worded to apply only where the additional insured is a Named Insured. Many of the parties that require additional insured protection are not named insureds under a CGL policy, *e.g.*, officers, directors, and employees of a primary additional insured. Also note that this new endorsement provides that it applies only if the person or entity is named as an additional insured by an endorsement.

Also, note this endorsement endorses the Named Insured’s Commercial General Liability Policy and is **not** an endorsement to the Named Insured’s umbrella or excess policy. This result might be avoided if the umbrella or excess policy provides that it is primary and does not require the additional insured’s policy to contribute, and the additional insured’s policy does not provide that it contributes along with other insurance above the primary contributing policies.

This desired result of an additional insured is exacerbated by the standard policy’s “other insurance” language that provides the policy is “Excess over: ... (b) Any other primary insurance available to you covering liability ... for which you have been added as an additional insured.” The additional insured’s policy does not state it is excess over umbrella policies of the Named Insured on which it has been added as an additional insured.

ISO CG 20 10 10 01 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization

181 **ISO CG 20 10 10 01 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization**. This endorsement **ISO CG 20 10 10 01** is one of three editions of the **ISO CG 20 10** appearing in the **Appendix of Forms**. It is listed in the **Modified Insurance Exhibit** in § **A.3.1.3.3** *ISO Forms - Ongoing Operations – Owner* as the “**1st choice**” for the additional insured endorsement form to schedule the Owner as an additional insured.

ISO CG 20 10 07 04 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization

182 **ISO CG 20 10 07 04 Additional Insured – Owners, Lessees or Contractors – Scheduled Person****295**

Organization. This endorsement **ISO CG 20 10 07 04** is one of three editions of the **ISO CG 20 10** appearing in the **Appendix of Forms**. It is listed in the **Modified Insurance Exhibit** in **§ A.3.1.3.3 ISO Forms-Ongoing Operations – Owner** as the “**2nd choice**” for the additional insured endorsement form to schedule the Owner as an additional insured. It is listed as the only choice in the **2017 Insurance Exhibit** in **§ A.3.1.3 Additional Insured Obligations**.

**ISO CG 20 10 04 13 Additional Insured – Owners, Lessees or Contractors –
Scheduled Person or Organization**

183 ISO CG 20 10 04 13 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization. The **ISO CG 20 10 04 13 Additional Insured Endorsement** is used to schedule a person (e.g., an owner, a landlord, a lessee or a contractor) on a named insured’s CGL policy. For example, it is used to schedule an owner or a contractor’s CGL policy; a landlord on the tenant’s CGL policy; a landlord on a tenant’s contractor’s CGL policy.

184 ISO CG 20 10 – “Caused by Your Acts or Omissions”. This endorsement provides coverage to the additional insured (e.g., landlord and tenant) on the contractor’s CGL policy for “liability” “**caused, in whole or in part, by**” the acts or omissions or the acts of the CGL policy’s insured (the contractor) and the acts or omissions on its behalf (those of its subcontractors, etc.). (This form is also used to provide additional insured coverage for a contractor on a subcontractor’s CGL policy). The “caused in whole or in part” language was added by ISO to this endorsement form in **2004** replacing the prior endorsement language that triggered coverage for the additional insured when the liability “**arose out of your** (the named insured’s) **ongoing operations performed for that insured** (the additional insured).” The pre-2004 endorsement language triggered numerous cases over the meaning of “**arising out of**” and “**operations**” and whether such terms meant that the additional insured would be insured against its liability in cases where the liability was the result of the additional insured’s sole negligence or in cases where the named insured was not negligent and the additional insured and others were the negligent parties.

The **2004** revision to this additional insured endorsement was in part a response to holdings, such as *McCarthy v. Cont. Lloyds*, 7 S.W.3d 725 (Tex. App. – Austin [3rd Dist.] 1999, no writ), *Admiral Ins. Co. v. Trident NGL, Inc.*, 988 S.W.2d 451 (Tex. App. [1st Dist.] 1999, writ denied) and *Mid-Continent Casualty Co. v. Swift Energy Co.*, 206 F.3d 487 (5th Cir. 2000) holding that the “**arising out of**” language was ambiguous and should be broadly interpreted as providing coverage for liabilities arising out of the concurrent and even the sole negligence of the additional insured. Texas courts have been inclined to interpret insurance language broadly against the insurer and interpreted the “arising out of” language broadly against the insurer in favor of coverage for the additional insured, even in cases where the named insured was not negligent and the additional insured was the solely negligent party, but there was a causal connection between the liability and the operations of the named insured contractor. Prior to the 2004 revision to the **CG 20 10**, the **CG 20 10** underwent various revisions seeking to limit the broad scope of the “arising out of” language, including a revision changing coverage for the additional insured from liability “**arising out of the** (named insured’s) **work**” (**CG 20 10 11 85**) to “arising out of the (named insured’s) operations.” This type of language is still found in some non-ISO form endorsements and still gives rise to the same issue - is the additional insured covered for liabilities where the named insured is not negligent, but the additional insured is either concurrently negligent with person other than the named insured or is solely negligent?

The **2004** language triggers coverage for the additional insured for liabilities “caused by” an “act or omission” of the named insured (contractor) or by an entity acting on the named insured’s behalf. This language, unlike prior ISO language, requires that the acts or omissions of the named insured be at least a partial cause of the liability. Thus, it is arguable that this endorsement language does not cover the additional insured either for its sole negligence or cases where the additional insured is concurrently negligent with others, but the named insured is not negligent. However, it remains for courts to interpret this language and to determine the meaning of “**caused by**”. This language as written is not qualified by typical Texas tort law concepts of “**proximately caused by**” or “**directly caused by**.” Additionally, in cases where the liability is for injury to the named insured’s employee, the “caused by” language may present coverage issues for an additional insured, as in such cases the named insured’s employee is barred by the Workers’ comp bar from suing its employer and is suing the additional insured without any allegations being raised by the injured employee as to acts or omissions of the named insured, employer. In *W & W Glass Sys., Inc. v. Admiral Ins. Co.*, 937 N.Y.S.2d 28 (N.Y. 2012) the New York court held that “caused by your ongoing operations performed for that insured” did not materially differ from “arising out of” and “the additional insured endorsement granting coverage does not require a negligence trigger”. The court found that the fact that an employee of a subcontractor was injured while performing the named insured’s work was sufficient to demonstrate that the injuries were “caused by” the named insured’s operations.

185 ISO CG 20 10 – “Ongoing Operations”. This Additional Insured endorsement form was revised in **2001** by ISO to limit the time of the “acts or omissions” triggering liability to those occurring “**in the performance of the ongoing operations**” of the Named Insured. Previously, this Additional Insured endorsement applied to liabilities

arising out of “your work” (language which did not address the time of the occurrence).

A companion endorsement, ISO **CG 20 37 04 13** *Additional Insured – Owners, Lessees or Contractors – Completed Operations* was introduced in 2001 (as subsequently modified) to cover liabilities caused, in whole or in part, by “your work” “at the location described in the Schedule” “performed for that additional insured” and “included in the ‘products-completed operations hazard’”. Restricting the endorsement to locations and operations described in the ISO **CG 20 37** permits insurers the opportunity to underwrite the coverage risk.

186 2013 Revisions – Additional Limitations to the Additional Insured Endorsements. ISO revised the Additional Insurance forms to add the following three additional limitations to their additional insured coverage:

(1) **Only to the Extent Provided by Law.** Coverage of the additional insured is provided “*only to the extent provided by law*”. This limitation has been added to avoid violation of state anti-indemnification and anti-additional insured laws. Many states have “anti-indemnification” laws declaring void indemnity and additional insurance requirements requiring a party to indemnify and provide additional insurance protecting another party from the other party’s negligence.

(2) **Limited by the Contract.** Coverage of the additional insured is not broader than that which the Named Insured is required to provide the additional insured under their written agreement. This limitation thus imposes a limit on coverage otherwise provided in the policy.

(3) **Limited by the Lesser of the Contract or the Policy.** The limit of coverage is limited to the lesser of the coverage limit required in the parties’ agreement or by the policy.

ISO CG 20 18 12 19 Additional Insured – Mortgagee, Assignee or Receiver

187 ISO CG 20 18 12 19 Additional Insured – Mortgagee, Assignee or Receiver. The ISO **CG 20 18 12 19** *Additional Insured – Mortgagee, Assignee or Receiver* is specified in the **Modified Insurance Exhibit** in **Mod. § A.3.1.3.3.2 ISO Forms – Owner’s Lender** as the form of additional insured endorsement to be provided by the Contractor to Owner’s Lender.

ISO CG 20 26 04 13 Additional Insured – Designated Person or Organization

188 ISO CG 20 26 04 13 Additional Insured – Designated Person or Organization. This endorsement may be used when no other ISO form exists for the purpose or when the parties designate this Form as the form to be used. This form is suitable for use to designate a tenant as an additional insured on Landlord’s CGL policy. In a landlord-tenant context, it may be used to provide additional insured coverage to an owner on a tenant’s CGL policy and *vice versa* to provide additional insured coverage to a tenant on a landlord’s CGL policy. In cases where the landlord is to be included as an additional insured on the tenant’s CGL policy and the tenant is to be included on a landlord’s CGL policy, the insurance specifications and the additional insured endorsements must be drafted to allocate on a geographic basis the areas where the landlord’s insurance is to afford primary and noncontributory coverage to the landlord and the tenant (for example, the common areas) and the areas where the tenant’s insurance is to afford primary and noncontributory coverage to the landlord and the tenant (for example, inside the suite or demised premises leased to the tenant, exclusive of common areas). This endorsement is the broadest of the ISO Additional Insured Endorsements. This endorsement provides additional insured coverage for liability bodily injury, property damage and personal and advertising injury ***caused, in whole or in part, by the named insured’s*** (in this case the Landlord) ***acts or omissions “in connection with your premises owned by ... you”***. This endorsement form does not contain any carve outs from coverage like other ISO additional insured endorsement forms. However, by its express coverage terms it eliminates certain coverages. For example, the injury must be caused at least in part by the named insured. This eliminates coverage for the additional insured’s sole negligence. The injury must occur in connection with premises owned by the named insured. The term “***premises***” is not defined, but likely will be given a broad meaning by courts. In the context of a lease, courts will likely interpret this endorsement listing the tenant as an additional insured on the landlord’s CGL policy as covering more than merely the “Premises” leased to the tenant, but also the common areas.

189 ISO CG 20 26 04 13 – “Your Acts or Omissions”. This endorsement provides coverage to the additional insured (e.g., landlord and tenant) on the contractor’s CGL policy for “***liability***” “***caused, in whole or in part, by***” the acts or omissions or the acts of the CGL policy’s insured (the contractor) and the acts or omissions on its behalf (those of its subcontractors, etc.). (This form is also used to provide additional insured coverage for a contractor on a subcontractor’s CGL policy). The “***caused in whole or in part***” language was added by ISO to this endorsement form in **2004** replacing the prior endorsement language that triggered coverage for the additional insured when the

liability “*arose out of your* (the named insured’s) *ongoing operations performed for that insured* (the additional insured).” The pre-2004 endorsement language triggered numerous cases over the meaning of “arising out of” and “operations” and whether such terms meant that the additional insured would be insured against its liability in cases where the liability was the result of the additional insured’s sole negligence or in cases where the named insured was not negligent and the additional insured and others were the negligent parties.

The 2004 revision to this additional insured endorsement was in part a response to holdings, such as *McCarthy v. Cont. Lloyds*, 7 S.W.3d 725 (Tex. App. – Austin [3rd Dist.] 1999, no writ), *Admiral Ins. Co. v. Trident NGL, Inc.*, 988 S.W.2d 451 (Tex. App. [1st Dist.] 1999, writ denied) and *Mid-Continent Casualty Co. v. Swift Energy Co.*, 206 F.3d 487 (5th Cir. 2000) holding that the “arising out of” language was ambiguous and should be broadly interpreted as providing coverage for liabilities arising out of the concurrent and even the sole negligence of the additional insured. Texas courts have been inclined to interpret insurance language broadly against the insurer and interpreted the “arising out of” language broadly against the insurer in favor of coverage for the additional insured, even in cases where the named insured was not negligent and the additional insured was the solely negligent party, but there was a causal connection between the liability and the operations of the named insured contractor. Prior to the 2004 revision to the **CG 20 10**, the **CG 20 10** underwent various revisions seeking to limit the broad scope of the “arising out of” language, including a revision changing coverage for the additional insured from liability “arising out of the (named insured’s) work” (**CG 20 10 11 85**) to “*arising out of the* (named insured’s) *operations*.” This type of language is still found in some non-ISO form endorsements and still gives rise to the same issue - is the additional insured covered for liabilities where the named insured is not negligent, but the additional insured is either concurrently negligent with person other than the named insured or is solely negligent?

The 2004 language triggers coverage for the additional insured for liabilities “*caused by*” an “*act or omission*” of the named insured (contractor) or by an entity acting on the named insured’s behalf. This language, unlike prior **ISO** language, requires that the acts or omissions of the named insured be at least a partial cause of the liability. Thus, it is arguable that this new endorsement language does not cover the additional insured either for its sole negligence or cases where the additional insured is concurrently negligent with others, but the named insured is not negligent. However, it remains for courts to interpret this language and to determine the meaning of “caused by”. This language as written is not qualified by typical Texas tort law concepts of “*proximately caused by*” or “*directly caused by*.” Additionally, in cases where the liability is for injury to the named insured’s employee, the “caused by” language may present coverage issues for an additional insured, as in such cases the named insured’s employee is barred by the Workers’ comp bar from suing its employer and is suing the additional insured without any allegations being raised by the injured employee as to acts or omissions of the named insured, employer. In *W & W Glass Sys., Inc. v. Admiral Ins. Co.*, 937 N.Y.S.2d 28 (N.Y. 2012) the New York court held that “caused by your ongoing operations performed for that insured” did not materially differ from “arising out of” and “the additional insured endorsement granting coverage does not require a negligence trigger”. The court found that the fact that an employee of a subcontractor was injured while performing the named insured’s work was sufficient to demonstrate that the injuries were “caused by” the named insured’s operations.

190 ISO CG 20 26 04 13 – Ongoing Operations. This Additional Insured endorsement form was revised in 2001 by ISO to limit the time of the “acts or omissions” triggering liability to those occurring “in the performance of the ongoing operations” of the Named Insured. Previously, this Additional Insured endorsement applied to liabilities arising out of “your work” (language which did not address the time of the occurrence). A companion endorsement, **ISO CG 20 37 04 13** Additional Insured – Owners, Lessees or Contractors – Completed Operations was introduced in 2001 (as subsequently modified) to cover liabilities caused, in whole or in part, by “your work” “at the location described in the Schedule” “performed for that additional insured” and “included in the ‘products-completed operations hazard’”. Restricting the endorsement to locations and operations described in the **ISO CG 20 37** permits insurers the opportunity to underwrite the coverage risk.

191 2013 Revisions – Additional Limitations to the Additional Insured Endorsements. ISO revised the Additional Insurance forms, **ISO CG 20 10**, **CG 20 11**, **CG 20 24**, **CG 20 26**, **CG 20 33**, **CG 20 37**, and **CG 20 38** to add the following three additional limitations to their additional insured coverage:

(1) **Only to the Extent Provided by Law.** Coverage of the additional insured is provided “*only to the extent provided by law*”. This limitation has been added to avoid violation of state anti-indemnification and anti-additional insured laws. Many states have “anti-indemnification” laws declaring void indemnity and additional insurance requirements requiring a party to indemnify and provide additional insurance protecting another party from the other party’s negligence.

(2) **Limited by Contract.** Coverage of the additional insured is not broader than that which the Named Insured is required to provide the Additional Insured under their written agreement. This limitation thus imposes a limit

coverage otherwise provided in the policy.

(3) **Lesser of Contract or Policy.** The limit of coverage is limited to the lesser of the coverage limit required in the parties' agreement or by the policy.

**ISO CG 20 32 07 04 Additional Insured – Additional Insured –
Engineers, Architects or Surveyors Not Engaged by the Named Insured**

¹⁹² **ISO CG 20 32 07 04 Additional Insured – Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured.** The **ISO CG 20 32 07 04 Additional Insured – Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured** is specified in the **Modified Insurance Exhibit** in **Mod. § A.3.1.3.3.4 ISO Forms – Architect and Architect's Consultants** as the **2nd choice** of form of additional insured endorsement to be provided by the Contractor to Owner's Architect and the Architect's consultants. The Owner has engaged the Architect and not the Contractor. The **1st choice** specified is the **ISO CG 20 32 10 01**, which reflects the preferable wording of the **10 01** additional insured endorsements. Note though that the **ISO CG 20 32** provides additional insured coverage for only for claims arising out of the Contractor's *ongoing* operations. If the Architect intends for its additional insured coverage to extend to claims arising out of the Contractor's *completed* operations, it will need to include that specification in its Architect Agreement with the Owner, and then assure that the additional insured coverage provided by the Contractor so provides.

**ISO CG 20 33 04 13 Additional Insured – Owners, Lessees or Contractors – Automatic Status When
Required in Construction Agreement with You**

¹⁹³ **ISO CG 20 33 04 13 Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required in Construction Agreement with You.** **ISO CG 20 33** endorsement amends the "*Who Is An Insured*" provision of the Named Insured's policy to add as an additional insured "any person or organization for whom you are performing operations when you and such person organization have agreed in writing ... that such person ... be added as an additional insured on your policy." It is commonplace for the agreement between contractors and subcontractors and landlords and tenants to provide that persons other than the parties to the agreement be afforded additional insured status. Under **ISO CG 20 33** "*no agreement between the Named Insured and the Additional Insured, no additional insured coverage*". **ISO CG 20 33** at **Par. B.2** excludes coverage for liabilities arising out of the products and completed operations hazard. Also, at **Par. B.1** the 2013 revision to this endorsement added an exclusion for professional services, including the additional insured's hiring, training or monitoring of employees who perform professional services themselves. See **ISO CG 20 38**. It provides for coverage even when there is no direct agreement between the Named Insured and the Additional Insured.

¹⁹⁴ **ISO CG 20 33 04 13 – "Your Acts or Omissions".** See **Endnote 184** - **ISO CG 20 10 – "Caused by Your Acts or Omissions"** for a discussion of the meaning of "your acts or omissions".

¹⁹⁵ **2013 Revisions – Additional Limitations to Additional Insured Endorsements.** See **Endnote 185** **2013 Revisions – Additional Limitations to the Additional Insured Endorsements.**

ISO CG 20 37 10 01 Additional Insured – Owners, Lessees or Contractors – Completed Operations

¹⁹⁶ **ISO CG 20 37 10 01 Additional Insured – Owners, Lessees or Contractors – Completed Operations.** The **ISO CG 20 37 10 01 Additional Insured – Owners, Lessees or Contractors – Completed Operations** is specified in the **Modified Insurance Exhibit** at **Mod. § A.3.1.3.3.5 ISO Forms – ISO Forms – Completed Operations – Protected Persons** as the form of additional insured endorsement to be provided by the Contractor for coverage of the Protected Persons for injuries and property damage *arising out of* your (the Contractor's) *work* "at the location described in the Schedule" "performed for that additional insured" included in the "*products-completed operations hazard*". This endorsement, **ISO CG 20 37 Additional Insured – Owners, Lessees or Contractors – Completed Operations** was introduced in **2001**. Restricting the endorsement to locations and operations described in the **ISO CG 20 37** permits insurers the opportunity to underwrite the coverage risk. It was introduced in **2001** as a companion to **ISO CG 20 10 10 01 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization**, which in 2001 revised the **CG 20 10** to limit its coverage of the additional insured to "*ongoing operations*" of the Named Insured at the location designated in the Schedule in the face of the form and to expressly exclude at Paragraph B injury and damages "*occurring after work completion*".

This endorsement was subsequently modified in **2004 (07 04)** to limit coverage to liabilities "*caused, in whole or in part, by*" "your work" "at the location described in the Schedule" "performed for that additional insured" and "included in the products-completed operations hazard" and corresponds to the revision in **2004** to the **CG 20 10 07**

04 providing additional insured protection “caused, in whole or in part, by” “*your acts or omissions ...*” “in the performance of your ongoing operations”.

ISO CG 20 38 04 13 Additional Insured – Owners, Lessees or Contractors – Automatic Status For Other Parties When Required in Written Construction Agreement

¹⁹⁷ **ISO CG 20 38 04 13 Additional Insured – Owners, Lessees or Contractors – Automatic Status For Other Parties When Required in Written Construction Agreement.** This form was added by ISO in 2013 to its list of additional insured endorsement forms. **Paragraph .2** extends additional insured coverage to “*Any other person ... you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.*” **Paragraph .2** cures the malady referenced in the Article at *A Dozen Things You Wish You Had Known, Item 8. About Blanket Additional Insured Coverage*. Thus, make sure that, if automatic additional insured status is being afforded and there is not a direct contract between the Named Insured and the Additional Insured, **ISO CG 20 38** is the appropriate endorsement form to attach to the Named Insured’s policy. Many times the parties’ written agreement has a laundry list of Additional Insureds.

CG 20 38 at **Paragraph B.2** excludes coverage for liabilities arising out of the “*products-completed operations hazard*”.

Also, at **Paragraph B.1** the 2013 revision to this endorsement added an exclusion for *professional services*, including the additional insured’s hiring, training or monitoring of employees who perform professional services themselves.

¹⁹⁸ **ISO CG 20 38 04 13 Additional Insured – Owners, Lessees or Contractors – Automatic Status For Other Parties When Required in Written Construction Agreement – “Caused By Your Acts or Omissions”.** See **Endnote 189** - *ISO CG 20 26 04 13 – “Your Acts or Omissions”*. This endorsement provides coverage to the additional insured (e.g., landlord and tenant) on the contractor’s CGL policy for “*liability*” “*caused, in whole or in part, by*” the acts or omissions or the acts of the CGL policy’s insured (the contractor) and the acts or omissions on its behalf (those of its subcontractors, etc.). (This form is also used to provide additional insured coverage for a contractor on a subcontractor’s CGL policy).

¹⁹⁹ **2013 Revisions – Additional Limitations to ISO Forms CG 20 10, CG 20 11, CG 20 24, CG 20 26, CG 20 33, CG 20 37, and CG 20 38 Additional Insured Endorsements.** ISO revised the Additional Insurance forms, **CG 20 10, CG 20 11, CG 20 24, CG 20 26, CG 20 33, CG 20 37,** and **CG 20 38** to add the three additional limitations to their additional insured coverage listed at **Endnote 186** *2013 Revisions – Additional Limitations to the Additional Insured Endorsements*.

ISO CG 21 39 10 93 Contractual Liability Limitation

²⁰⁰ **ISO CG 21 39 10 93 Contractual Liability Limitation.** The **Modified Insurance Exhibit** at **§ A.3.2.2.2.12 – Prohibitions – Contractual Liability Limitation** lists the **ISO CG 21 39 Contractual Liability Limitation** as one of the ISO endorsements prohibited from being added to the Contractor’s CGL policy. In addition to additional insured coverage, *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. The provision of Contractual Liability Coverage includes a series of definitions of an “*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”. Anti-Indemnity Statutes in many states preclude enforcement of indemnities as to a third party’s negligence, sole or even concurrent, except in statutorily limited circumstances.

ISO CG 21 42 12 04 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations)

²⁰¹ **ISO CG 21 42 12 04 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations).** The **Modified Insurance Exhibit** at **§ A.3.2.2.2.11 – Prohibitions – XCU** list the **ISO CG 21 42 Explosion, Collapse and Underground Property Damage Hazard (Specified Operations)** as one of the ISO endorsements prohibited from being added to the Contractor’s CGL policy.

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

202 **ISO CG 21 43 12 04 Exclusion – Explosion, Collapse and Underground Property Damage Hazard (Specified Operations Excepted).** The **Modified Insurance Exhibit** at **§ A.3.2.2.2.11** – *Prohibitions – XCU* list the ISO **CG 21 42** *Explosion, Collapse and Underground Property Damage Hazard (Specified Operations Excepted)* as one of the ISO endorsements prohibited from being added to the Contractor's CGL policy.

ISO CG 21 44 07 98 Limitation of Coverage to Designated Premises or Project

203 **ISO CG 21 44 07 98 Limitation of Coverage to Designated Premises or Project.** The **Modified Insurance Exhibit** at **§ A.3.2.2.2.14** – *Prohibitions – Limitation of Coverage to Designated Premises or Project* list the ISO **CG 21 44** *Limitation of Coverage to Designated Premises or Project* as one of the ISO endorsements prohibited from being added to the Contractor's CGL policy. ISO **CG 21 44** is added as an endorsement to the CGL policy to confirm and limit coverage to the designated premises or project. The danger of this form is if it confirms and limits the CGL policy's coverage to a location other than a Landlord's or Owner's premises or project. For this reason, the Insurance Specifications list it as a prohibited endorsement. So listing it as a prohibited endorsement hopefully will bring its existence to light.

ISO CG 22 34 04 13 Exclusion – Construction Management Errors and Omissions

204 **ISO CG 22 34 04 13 Exclusion – Construction Management Errors and Omissions.** The **Modified Insurance Exhibit** at **§ A.3.2.2.2.22** – *Prohibitions – Exclusion – Incidental Design Liability* list the ISO **CG 22 34** *Exclusion – Construction Management Errors and Omissions* as one of the ISO endorsements prohibited from being added to the Contractor's CGL policy.

ISO CG 22 43 04 13 Exclusion – Engineers, Architects or Surveyors Professional Liability

205 **ISO CG 22 43 04 13 Exclusion – Engineers, Architects or Surveyors Professional Liability.** The **Modified Insurance Exhibit** at **§ A.3.2.2.2.22** – *Prohibitions – Exclusion – Incidental Design Liability* list the ISO **CG 22 43** *Exclusion – Engineers, Architects or Surveyors Professional Liability* as one of the ISO endorsements prohibited from being added to the Contractor's CGL policy.

ISO CG 22 79 04 13 Exclusion – Contractors – Professional Liability

206 **ISO CG 22 79 04 13 Exclusion – Contractors – Professional Liability.** The **Modified Insurance Exhibit** at **§ A.3.2.2.2.22** – *Prohibitions – Exclusion – Contractors – Incidental Design Liability* list the ISO **CG 22 79** *Exclusion – Exclusion – Contractors – Professional Liability* as one of the ISO endorsements prohibited from being added to the Contractor's CGL policy.

ISO CG 22 94 10 01 Exclusion – Damage to Work Performed by Subcontractors on Your Behalf

207 **ISO CG 22 94 10 01 Exclusion – Damage to Work Performed by Subcontractors on Your Behalf.** The **Modified Insurance Exhibit** at **§ A.3.2.2.2.19** – *Prohibitions – Exclusion – Damage to Work Performed by Subcontractors on Your Behalf* list the ISO **CG 22 94** *Exclusion – Contractors – Professional Liability* as one of the ISO endorsements prohibited from being added to the Contractor's CGL policy. Liability insurers have sought to exclude from the coverage of CGL policies so-called "business risks", those risks thought generally to be under the control of the insured (contractor or subcontractor) and which are not regarded as fortuitous in nature. In crafting policy language (coverage and exclusions) insurers have struggled for decades to draft policy language that clearly and unambiguously covers "accidental" property damage but does not cover uninsurable business risks. The insurance industry has resisted insuring contractors for property damage caused by "business risks" within the contractor's control. This issue has been the subject of considerable litigation. Although the vast majority of cases involve interpretation of the same CGL policy language, there is a marked split of authority. As reviewed below, the recent focus has been on the "property damage" and "occurrence" requirements of the CGL policy, with some courts applying the legal theories of "business risk" and "economic loss" as a means to exclude coverage. In 2007 courts in Texas, Florida and Tennessee courts rejected negligence, foreseeability of damage and natural and probable consequences as grounds to exclude finding that damage to property arising out of a contractor's performance of work was an "occurrence" possibly triggering coverage under its CGL policy. See *Lamar Homes, Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1 (Tex. 2007); *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So.2d 871 (Fla. 2007); and *Travelers Indem. Co. of America v. Moore & Associates, Inc.*, 216 S.W.3d 302, 308-09 (Tenn. 2007).

ISO CG 22 95 10 01 Exclusion – Damage to Work Performed by Subcontractors on Your Behalf – Designated Sites or Operations

208 **ISO CG 22 95 10 01 Exclusion – Damage to Work Performed by Subcontractors on Your Behalf – Designated Sites or Operations.** The **Modified Insurance Exhibit** at **§ A.3.2.2.2.19** –list the ISO **CG 21 95 Exclusion – Damage to Work Performed by Subcontractors on Your Behalf – Designated Sites or Operations** as one of the ISO endorsements prohibited from being added to the Contractor’s CGL policy.

ISO CG 24 04 05 09 Waiver of Transfer of Rights of Recovery Against Others To Us

209 **ISO CG 24 04 05 09 Waiver of Transfer of Rights of Recovery Against Others To Us.** ISO **CG 24 04** waives the CGL insurer’s right to step into the shoes of its insured to recover against a third party tortfeasor, that has been transferred by the insured to its insurer by **Paragraph 8 Transfer of Rights Of Recovery Against Others To Us**, to **Section IV** of the standard CGL Policy, ISO **00 01 04 13 Commercial General Liability Coverage Form**.

ISO CG 24 26 Amendment of Insured Contract Definition

210 **ISO CG 24 26 Amendment of Insured Contract Definition.** This endorsement amends the definition of “insured contract” to limit contractual liability coverage insuring the named insured’s indemnities for the indemnified person’s tort liability to bodily injury and property damage “**caused in whole or in part by**” the named insured (the indemnifying person). This causation language was added by ISO to eliminate from the Contractual Liability Coverage of “insured contracts” the sole negligence of the indemnified party. 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**.

CG 25 04 05 09 Designated Location(s) General Aggregate Limit

211 **CG 25 04 05 09 Designated Location(s) General Aggregate Limit.** The **Modified Insurance Exhibit** at **§ A.3.2.2.1** –list the ISO **CG 21 04 05 09 Designated Construction Project General Aggregate** as an endorsement to the Contractor’s CGL policy. This endorsement designates the general aggregate minimum limit as applying separately to the Contractor’s project for the Owner to avoid erosion of coverage from other projects.

2. Property Insurance During Construction

CP 00 20 10 12 Builder’s Risk Coverage Form

212 **ISO Builder’s Risk Policy.** The **Appendix of Forms** contains a copy of ISO’s **CP 00 20 10 12 Builder’s Risk Coverage Form**. Most insurer’s builder’s risk insurance is issued on customized forms, Inland Marine policies. The ISO builder’s risk form, although not considered the standard form like ISO’s CGL insurance form, is a useful tool to view coverages and other provisions contained in most builder’s risk policy forms.

213 **Causes of Loss Forms.** Attached in the **Appendix of Forms** is ISO’s **CP 10 30 10 12 Causes of Loss – Special Form**.

ISO CP 10 30 10 12 Causes of Loss – Special Form

214 **ISO CP 10 30 10 12 Causes of Loss – Special Form.** See **Endnote 34** **§ A.2.3.1.1 - Causes of Loss**.

215 **CP 10 30 10 12 Causes of Loss – Special Form – Exclusion - Ordinance or Law.** See **CP 04 05 10 12 Ordinance or Law Coverage** endorsement to add **ordinance or law coverage** excluded by **Par. B.1.a. Exclusion – Ordinance or Law** to the ISO **CP 10 30 10 12 Causes of Loss – Special Form**.

216 **CP 10 30 10 12 Causes of Loss – Special Form – Exclusion - Water.** **Par. B.1.g. Exclusion –Water** to the **Causes of Loss – Special Form** excludes certain water related causes of loss from coverage (e.g., flood) under the ISO **CP 10 30 10 12 Causes of Loss – Special Form**.

217 **CP 10 30 10 12 Causes of Loss – Special Form – Exclusion – Boiler Explosion.** **Par. B.2.e. Exclusion to the Causes of Loss – Special Form** excludes damages to the property from the explosion of steam boilers and other similar apparatus from coverage. Coverage for damage due to boiler explosion is a special insurance line which can

covered by boiler and machinery insurance.

218 **CP 10 30 10 12 Causes of Loss – Special Form – Special Exclusion – Contractual Liability.** The **Paragraph 4.c.(2)(a)** *Contractual Liability* exclusion is in the *Causes of Loss – Special Form* to exclude from the coverage of the Named Insured's property insurance liability for loss due to the Named Insured's indemnity except in the very limited circumstance that the indemnity is by the Named Insured under a written lease in which it has assumed the liability for building damage resulting from a robbery and provided the assumption was prior to the accident and the building is a Covered Property under the policy. This type of coverage is addressed as an insured contract under a CGL Policy.

ISO CP 00 10 10 12 Building and Personal Property Coverage Form

219 **ISO CP 00 10 10 12 Building and Personal Property Coverage Form.** One of the components comprising ISO's property policy is the *Building and Personal Property Coverage Form*. ISO's builder's risk policy is a combination of its **Declaration Page**, its **CP 00 10**, its **CP 10 30** *Causes of Loss – Special Form* and its **Endorsements**. (e.g., **CP 04 15 10 12** *Debris Removal Additional Limit of Insurance*). Among its provisions are provisions addressing the following topics:

A. Coverage: **Par. 1** – *Covered Property*; **Par. 2** – *Property Not Covered*; **Par. 3** – *Covered Causes of Loss* (incorporating by reference the Causes of Loss form as shown on the Declarations page);

E. Loss Conditions: **Par. 6** - *Vacancy*; **F. Additional Conditions:** **Par. 1** *Coinurance*; **Par. 2.** *Mortgageholders*; and

G. Optional Coverages: **Par. 1** - *Agreed Value*; **Par. 2.** - *Inflation Guard*; **Par. 3.** - *Replacement Cost*.

220 **ISO CP 00 10 10 12 Building and Personal Property Coverage Form – Exclusions – Electronic Data.** **Paragraph 4.f** *Building and Personal Property Coverage Form - Additional Coverages – Electronic Data* as an exception to **Paragraph 2.n** *Building and Personal Property Coverage Form - Property Not Covered* to **CP 00 10 10 12** *Building And Personal Property Coverage Form* provides coverage for the replacement or restoration of electronic data destroyed or corrupted by a Covered Cause of Loss, subject to the limitations set out in the Additional Coverage.

221 **ISO CP 00 10 10 12 Building and Personal Property Coverage Form – Causes of Loss.** The category of Causes of Loss for the policy is designated on the **Declarations Page** and incorporated by reference into the policy by this reference at **Paragraph A.3** *Coverage – Covered Causes of Loss* ISO **CP 00 10 10 12** *Building and Personal Property Coverage Form*.

222 **ISO CP 00 10 10 12 Building and Personal Property Coverage Form – Additional Coverages - Debris Removal.** See ISO **CP 00 10 10 12** *Building and Personal Property Coverage Form*, **Par. A.4.a** *Coverage – Additional Coverages – Debris Removal*. The ISO Commercial Property Policy provides coverage for **debris removal** as “**additional coverage**” and is limited to **25%** of the sum of the paid loss plus the deductible. An additional limit of \$10,000 is made available for debris removal if (1) the amount payable under the policy to reconstruct or repair plus the amount payable under the policy for debris removal exceeds the entire policy limit, or (2) the cost of debris removal exceeds 25% of the paid loss plus deductible. Higher limits for debris removal is provided by using the ISO **CP 04 15 10 12** *Debris Removal Additional Limit of Insurance* endorsement.

223 **ISO CP 00 10 10 12 Building and Personal Property Coverage Form – Additional Coverages - Increased Costs of Construction.** *Ordinance or Law Coverage* is available by endorsement to a standard property policy to insure against loss caused by enforcement of ordinances or laws regulating construction and repair of damaged buildings. Many communities have building ordinances that require that a building that has been damaged to a specified extent (typically, 50 percent) be demolished and rebuilt in accordance with current building codes rather than simply repaired. Unendorsed, standard property insurance forms do not cover the loss of the undamaged portion of the building, the cost of demolishing that undamaged portion of the building, or the increased cost of rebuilding the entire structure in accordance with current building codes. Ordinance or law coverage may be purchased using ISO **CP 04 05** to cover the cost above the limit available under the ISO property insurance for cost of construction incurred to comply with an ordinance or law.

The base form ISO property insurance limits such coverage to the lesser of \$10,000 or 5% of the policy limits.

224 **ISO CP 00 10 10 12 Building and Personal Property Coverage Form – Additional Coverages – Electronic Data.** **Par. 4.f** *Additional Coverages – Electronic Data* as an exception to **Par. 2.n** *Property Not Covered* to **CP 00 10 10 12** *Building And Personal Property Coverage Form* provides coverage for the replacement or restoration of

electronic data destroyed or corrupted by a Covered Cause of Loss, subject to the limitations set out in the Additional Coverage.

225 Vacancy Clause - ISO Form CP 00 10 – Building Under Construction. A building under construction or renovation is not considered vacant under the standard commercial property policy. The court in *Myers v. Merrimack Mut. Fire Ins.*, 601 F.Supp. 620, 621 (Il. 1985), judgment aff'd, 788 F.2d 468 (7th Cir. 1986) interpreted a fire policy that contained a construction exception to the vacancy clause as not excepting repairs or renovations but only the construction of something which did not previously exist or the creation of something new.

226 The Standard Mortgage Clause – ISO Form CP 00 10 – Section F.2 Additional Conditions – Mortgageholders. See insurance specifications Mod. § A 3.3.2.1(d) Builder's Risk Insurance – Mortgagees as Loss Payee.

227 ISO CP 00 10 10 12 - Building and Personal Property Coverage Form – Optional Coverages - Agreed Value. An “agreed value endorsement” is an optional endorsement used where the named insured and the insurer agree upon the actual cash value or the replacement cost of the covered property before the policy is written and agree that co-insurance will not apply.

228 ISO CP 00 10 10 12 - Building and Personal Property Coverage Form – Optional Coverages - Inflation Guard. “Inflation guard” is an optional endorsement designed to offset potential inflation by specifying a percentage in the declarations by which the coverage will increase annually as to the portion of the covered property specified.

229 ISO CP 00 10 10 12 - Building and Personal Property Coverage Form – Optional Coverages - Replacement Cost. See Endnote 26 § A.2.3.1 - “*Sufficient to cover entire value of the Project on a replacement cost basis*”. Whether the policy is a “Replacement Cost” policy or an “Actual Cash Value” policy, the loss paid will be limited to the policy limits.

ACORD 25 Certificate of Liability Insurance

230 ACORD 25 Certificate of Liability Insurance. 2017 Insurance Exhibit: The 2017 Insurance Exhibit provides for the following evidences of insurance:

(1) Owner:

(a) **Certificates:** The 2017 Insurance Exhibit does **not** call for the Owner to provide the Contractor with certificates of insurance, **either** for **liability** insurance or **property** insurance. § A.2.1 Owner's Insurance - General specifies that the Owner is to “provide evidence of the coverage, required under this Article A.2 (*Owner's Insurance*)....” It does **not** specify that the certificate or evidence is to be an **ACORD** form.

(b) **Policies - Property:** § A.2.1 Owner's Insurance - General specifies that the Owner is to “provide evidence of the coverage, required under this Article A.2 (*Owner's Insurance*) and, upon the Contractor's request, (the Owner is to) provide a copy of the **property** insurance policy or policies required by Section A.2.3 (*Required Property Insurance*).”

(2) Contractor:

(a) **Certificates:** § A.3.1.1 Contractor's Insurance and Bonds - General – Certificates of Insurance specifies that the Contractor is to “provide certificates of insurance acceptable to Owner evidencing compliance with the requirements in this Article A.3 (*Contractor's Insurance and Bonds*)” It does **not** specify that the certificate is to be an **ACORD** form.

(b) **Policies - Property:** § A.3.1.1 Contractor's Insurance and Bonds – Contractor's Other Insurance Coverage provides that, if the parties have chosen Contractor to provide the builder's risk insurance, “(u)pon request, the Contractor shall provide the Owner with a copy of the **property** insurance policy or policies required.”

Modified Insurance Exhibit: The Modified Insurance Exhibit modifies these provisions of the 2017 Insurance Exhibit as follows:

(1) **Owner:** The Modified Insurance Exhibit, like the 2017 Insurance Exhibit, does **not** call for the Owner to provide the Contractor with certificates of insurance; **but** it modifies the 2017 Insurance Exhibit to require the Owner, upon the request of the Contractor, to provide Contractor with a copy of its **liability** and **property** insurance. **254**

(2) **Contractor:**

(a) Policies, or Binders if Policies Not Yet Issued (Small Subcontractors – Liability Certificates/Property Evidence):

Mod. § A.3.1.1.2.1 *General –Proof of Liability Insurance – Matters Certified - Insurance Binders; Proof of Insurance* provides for the Contractor to provide an **ACORD 75 Insurance Binder** to Owner and Owner's Lender; provided, if the policies have been issued, and copies are available, Contractor is to deliver to Owner and Owner's Lender copies of the policies; and provided, however, as to Subcontractors the amount of whose work is agreed by

Owner and Contractor to be of small amount or other basis to defer obtaining copies of the Subcontractors' liability insurance ("**Small Subcontractors**"), proof of liability insurance, is to be by *certificates of liability insurance* issued on an **ACORD 25 Certificate of Liability Insurance**.

Mod. § A.3.1.1.2.2 *General –Proof of Property Insurance – Matters Certified - Insurance Binders; Proof of Insurance* provides for the Contractor to provide an **ACORD 75 Insurance Binder** to Owner and Owner's Lender; provided, if the policies have been issued, and copies are available, Contractor is to deliver to Owner and Owner's Lender copies of the policies; and provided, however, as to Subcontractors the amount of whose work is agreed by Owner and Contractor to be of small amount or other basis to defer obtaining copies of the Subcontractors' liability insurance ("**Small Subcontractors**"), proof of property insurance, is to be by an **ACORD 28 Evidence of Commercial Property Insurance**.

See **Appendix of Forms** for a copy of an **ACORD 75 Insurance Binder** and an **ACORD 28 Evidence of Commercial Property Insurance**.

231 **Disclaimers.** See **Endnote 51** § A.3.1.1 *Certificates of Insurance* for discussions of the effect of disclaimers in certificates of insurance.

232 **Producer.** The "**Producer**" of a certificate of insurance typically is the broker for the named insured of the policies described in the certificate.

233 **Insureds:** "**First Named Insured**"; "**Named Insured**"; "**An Insured**"; "**An Additional Insured**"; "**Additional Named Insured**". Different "**insured**" terminology is used to define the insured in liability policies and property policies.

(1) **Commercial General Liability Policies.** The following is terminology used in CGL Policies and their endorsements to describe various types of insured parties, each with varying rights and obligations under the CGL Policy:

Named Insureds. The Declarations Page of a liability policy names the person or organization who is the insured and such person or organization is the "**named insured**". If more than one person or organization is named in the Declarations Page as an insured, the first person or organization named is the "**first named insured**".

Automatic Insureds. Additionally, the liability policy may identify other persons or organizations who qualify as insureds on the basis of their relationship to the named insured. For example, a liability policy on which an organization is the named insured, may provide that the organization's employees are automatically covered and are "**automatic insureds**". The standard CGL policy designates the following persons as automatic insureds: the spouse of an individual named insured; partners and joint venturers in a named insured partnership or joint venture; members and managers of a named insured limited liability company; officers, directors, and stockholders of a named insured corporation or other named insured organization; trustees of a named insured trust; employees and volunteer Workers' of the named insured business; the named insured's real estate manager; any person having proper temporary custody of a deceased named insured's property; the deceased named insured's legal representative; and newly acquired or formed organizations.

Additional Insureds. An "**additional insured**" is a person other than the named insured who is protected under the terms of the contract. Usually, additional insureds are added by endorsement or referred to in the wording of the definition of "**insured**" in the policy itself. The reason for including another person might be to protect the other person because of the named insured's close relationship with that person or to comply with a contractual obligation that requires the named insured to do so (e.g., owners of property leased by the named insured -landlords). Under a CGL

policy many types of persons or organizations may be added by endorsement as an additional insured, upon approval of the insurer. Many liability insurers issue “**blanket endorsements**” specifying certain parties that are “**automatic additional insureds**” under their liability policies without the need for further endorsement to actually name the person or organization as an additional insured on the policies if the contract between the insured and the additional insured contractually obligates the insured to cause its insurer to add the person or organization as an additional insured on the insured’s liability policy. Persons or organizations are routinely added to a CGL policy as additional insureds by endorsement. There are standard additional insured endorsements to the standard liability policy. A common error in liability insurance specifications is to specify that a party is to be added to the named insured’s policy as an “additional named insured”.

(2) **Property Policies.** The following is terminology used in Property Policies and their endorsements to describe various types of insured parties, each with varying rights and obligations under the Property Policy:

Insured. In a property policy, the insured is the party identified on the Declarations Page as having an **insurable interest** in the covered property and to whom loss payments will be paid if the property is damaged or destroyed.

Additional Insured. Third parties may be designated by endorsement to the property policy as an **additional insured** to protect their “**additional interests**”.

Additional Named Insured. Unlike liability insurance policies, there may be “additional named insureds” on a property policy. The following definition of “**additional named insured**” is found in the on-line IRMI Glossary of Insurance and Management Terms <http://www.irmi.com/online/insurance-glossary/default.aspx>

(1) A person or organization, other than the first named insured, identified as an insured in the policy declarations or an addendum to the policy declarations. (2) A person or organization added to a policy after the policy is written with the status of named insured. This entity would have the same rights and responsibilities as an entity named as an insured in the policy declarations (other than those rights and responsibilities reserved to the first named insured). In this sense, the term can be contrasted with additional insured, a person or organization added to a policy as an insured but not as a named insured. The term has not acquired a uniformly agreed upon meaning within the insurance industry, and use of the term in the two different senses defined above often produces confusion in requests for additional insured status between contracting parties.

Mortgageholder. Similarly, the standard commercial property policy contains the standard mortgage clause providing that loss payments will be made to the insured and the “**mortgageholder**” as their interests may appear.

234 **Personal and Advertising Injury.** See **Endnote 70** *Commercial General Liability Insurance (CGL) - “Personal and Advertising Injury”*.

235 **General Aggregate.** See **Endnote 73** *General Aggregate*.

236 **Products – Completed Operations.** See **Endnote 75** *Completed Operations Coverage*.

237 **General Aggregate – Per Project.** See **ISO CG 25 03 03 97** *Designated Construction Project(s) General Aggregate Limit*. See **ISO CG 25 04** *Designated Location(s) General Aggregate Limit*.

238 **Auto Liability.** See **Endnote 152-** *Business Auto Liability*.

239 **Auto Liability – Any Auto.** See **Endnote 152** – *Business Auto Liability*.

240 **Retention.** See **Endnote 59** *Deductibles and Self-Insured Retentions* for a definition of “**Self-Insured Retention**”.

241 **Description of Operations/Locations/Vehicles.** This box and an attached schedule are typically used to identify at the request of the Certificate Holder endorsements to the listed policies and persons scheduled as protected parties, e.g., additional insureds and persons as to which subrogation has been waived.

242 **Certificate Holder.** As noted below in the review of the disclaimers contained in the **ACORD Certificate of Liability Insurance**, it “**confers no rights upon the certificate holder**” but is issued “**as a matter of information only**”. See for example the case, *Bender Square Partners v. Factory Mutual Insurance Co.*, 2012 WL 208347 (S. D. Tex. **256**

Hou. Div.) holding that the landlord was not entitled to its tenant's property insurance proceeds in a case where the lease did not provide that the landlord was an insured on the tenant's policy and did not provide for the landlord to be a loss payee. Prior to Hurricane Ike destroying the premises, a Big Lots retail store, tenant had provided its landlord with a certificate of insurance showing that the tenant had property insurance. The landlord was the certificate holder on the certificate of insurance, but was neither shown on the certificate of insurance as an insured or loss payee. The court rejected the landlord's argument that it was either an intended or implied third-party beneficiary of the policy. The court noted that the property policy contained the following seemingly positive provision:

Additional insured interests are automatically added to this Policy as their interest may appear when named as additional named insured, lender, mortgagee, and/or loss payee in the Certificates of Insurance on a schedule on file with the Company. Such interests become effective on the date shown in the Certificate of Insurance and will not amend, extend, or alter the terms, conditions, provisions, and limits of this Policy.

However, neither the policy nor the certificate of insurance named the landlord as an insured. Further, the court determined that the following interlineations following the liability insurance specification in the lease did not also apply to the property insurance specification:

[s]uch policies of insurance shall be issued in the name of tenant and landlord and for the mutual and joint benefit and protection of said parties; and such policies of insurance or copies thereof, shall be delivered to the landlord.

243 Notice - Cancellation. The **ACORD 25** *Certificate of Liability Insurance* and **ACORD 28** *Evidence of Commercial Property Insurance* were revised in late 2009 and early 2010 to change the Cancellation notice language to read as follows:

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

The prior version of these certificates and evidence contained the following statement concerning advance notice to be given by the Insurer to the Additional Interest holder:

Should any of the above described policies be canceled before the expiration date thereof, the issuing insurer will endeavor to mail ____ days written notice to the [certificate holder named to the left/additional interest named below], but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

Similar language appeared in the **ACORD** *Certificate of Property Insurance*. A New York appeals court held that the presence of an ACORD “*endeavor*”-type notice of cancellation provision in the certificate does not impose on the insurer a contractual obligation to give the certificate holder notice of cancellation of the policy for the insured's premium non-payment. The court held that the insurer satisfied its contract obligations by complying with the contract's requirement of giving notice to the “first Named Insured” (the insurer's customer). The court pointed to a New York statute which required notice to the first named insured but did not also specify that notice be given to additional insureds. The court dismissed the additional insured/certificate holder's arguments as follows:

Charlew contends that it reasonably relied, to its detriment, upon the certificate of insurance which named it as an additional insured and, therefore, under our decision in [citation omitted], Merchants Mutual was equitably estopped from denying coverage. Notably, however, the situation presented herein is distinguishable because the Merchants Mutual insurance policy was not in existence at the time of (the employee's) accident. “Where there is no coverage under an insurance policy because the policy was not in existence at the time of the accident, estoppel cannot be used to create coverage.” (Citations omitted.) Furthermore, Charlew argues that the policy was not properly cancelled because it was not notified of such action, as an additional insured.... Even assuming that Merchants Mutual received the policy change request from Weller-Marcil, we disagree with that argument. Since Merchants Mutual strictly complied with the notice of cancellation provisions set forth in ... (reference to NY statute omitted) by mailing a timely notice of cancellation to the “first-named insured” (Regels) and “such insured's authorized agent or broker” (Weller-Mercil), the

policy was effectively cancelled ... (citation omitted), irrespective of its failure to comply with its “courtesy” policy of notifying additional insureds of a cancellation. Charlew’s (the additional insured’s) argument is further belied by the unambiguous disclaimer contained in the certificate of insurance ... (quotation of the ACORD language is omitted.). *Id.* at 753-54.

244 Authorized Representative. ACORD *Certificates or Evidences of Insurance* are issued by a “**Producer**” and are signed by an “**Authorized Representative**”. Neither of these terms is defined on the face of the standard ACORD form. Except for the multiple disclaimers of authority and accuracy, the ACORD *Certificate of Insurance* and the *Evidence of Insurance* are silent on the authority of the Authorized Representative to bind the listed Insurers. The ACORD *Certificate of Insurance* and *Evidence of Insurance* do not identify whether the Producer is the agent for the Insured, the agent for the Insurer, or a dual agent for both the Insured and the Insurer. Some courts in determining whether an ACORD form may be relied on despite the disclaimers have drawn a distinction on whether the Authorized Representative is a “**broker**”; a “**soliciting agent**”; a “**recording agent**”; a “**dual agent**”; a “**special agent**”; or an “**insurer’s agent**”. Other courts have held that the insurer is estopped from denying the coverage stated in the certificate or evidence of insurance, if the insurer or a person with apparent authority from the issuer issued the certificate, especially if the certificate does not contain ACORD-type disclaimers. See discussion at 43 AM. JUR.2d *Insurance* §§ 128 *Brokers – Generally*; 129 *Brokers – Status While and After Procuring Policy*. 4 BRUNER AND O’CONNOR ON CONSTRUCTION LAW §11:171 *Certificates of Insurance – Generally*; COUCH ON INSURANCE §§ 27:20 *Act of Soliciting Agent – Insufficient to Justify Reformation*; 45:1 *Brokers Versus Agents; Definitions and Distinctions*; 48:61 *Soliciting and Collecting Agents*; 48:62 *Recording Agents*.

Certificate Issued by “Soliciting Agent”. In *TIG Ins. Co v. Sedgwick James of Washington*, 276 F.3d 754 (5th Cir. 2002) the Fifth Circuit agreed with the district court’s determination that the issuing agent (Sedgwick) was a “soliciting agent” as opposed to a “recording agent”, and thus did not have actual authority to amend the policy to add Safety Lights as an additional insured. The court noted that the agency agreement between Sedgwick and Lumbermens authorized Sedgwick to solicit insurance on behalf of Lumbermens but permitted Sedgwick to bind Lumbermens only “to the extent specific authority (was) granted in the schedule(s) attached”. Sedgwick had the authority to issue certificates of insurance and binders but lacked the authority to modify the policy itself. Also see for example, *Benjamin Shapiro Realty Co., LLC v. Kemper Nat’l Ins. Cos.*, 303 A.D.2d 245 (N.Y. – 1st Dept. 2003) where the court held that a tenant’s insurance broker, which issued certificate of insurance to a landlord which erroneously stated that the tenant’s insurance policy, naming landlord as an additional insured, contained rental coverage insurance for landlord’s benefit, had no liability to landlord on ground that the broker and the landlord had no contractual relationship, privity, requisite to the imposition of liability for negligent misrepresentation.

Certificate Issued by “Recording Agent”. The court in *United States Fidelity and Guaranty Co. v. Travis Eckert Agency, Inc.*, 824 S.W.2d 628 (Tex. App. – Austin 1991, writ denied) held that USF&G was bound by an additional insured endorsement issued by its recording agent even though the endorsement form was not an authorized form.

Certificate Issued by Insurer. Another court, *Horn v. Transcon Lines, Inc.*, 7 F.3d 1305 (7th Cir. 1993), faced with an insurer-issued certificate certifying to a certificate holder that the insured had business auto liability insurance, held that the certificate bound the insurer to cover an injury that occurred before the policy was issued, where the list of covered trucking companies did not include the certificate holder. The court concluded that as of the date of the accident, the certificate was the policy and the insurer could not rely on the policy’s disclaimer that “the insurance afforded by the listed policy(ies) is subject to all their terms, exclusions, conditions” as there was no policy at the time of the certificate’s issuance.

245 ACORD Certificates. See Endnotes for discussions of *Certificates of Insurance*.

246 Producer. The “**Producer**” of a certificate of insurance typically is the broker for the named insured of the policies described in the certificate.

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247 Additional Named Insured(s). See Endnote 233 *Insureds: “First Named Insured”; “Named Insured”; “An Insured”; “An Additional Insured”; “Additional Named Insured”*.

248 Causes of Loss - Basic. See Endnote 34 § A.2.3.1.1 - *Causes of Loss*.

249 Causes of Loss - Broad. See Endnote 34 § A.2.3.1.1 - *Causes of Loss*. “*Causes of Loss*”.

250 Causes of Loss - Special. See Endnote 34 § A.2.3.1.1 - *Causes of Loss*.

252 Replacement Cost. See **Endnote 26** § A.2.3.1 - “Sufficient to cover entire value of the Project on a replacement cost basis”.

253 Agreed Value. See **Endnote 44** Agreed Value Endorsement.

254 Coinsurance. See **Endnote 45** Coinsurance.

255 Ordinance or Law. See **Endnote 47** Ordinance or Law Coverage.

256 Flood. See **Endnote 33** Flood.

257 Cancellation. See **Endnote 242** - Notice - Cancellation.

258 Protections of Mortgagee. See ISO **CP 00 20 10 12** Par. F, Par. 1 Mortgageholders in **Appendix of Forms** at page 164. ISO **CP DS 00 10 00** Commercial Property Coverage Part - Declarations Page – Mortgageholders. See ISO **CP 12 18 06 07** Loss Payable Provisions, Paragraphs C Loss Payable Clause and D Lender’s Loss Payable Clause.

259 Lenders Loss Payable. See ISO **CP DS 00 10 00** Commercial Property Coverage Part - Declarations Page – Mortgage Holders. See ISO **CP 10 10 12** Standard Commercial Property Policy - **Section F.2** Additional Conditions – Mortgageholders. Also see ISO **CP 12 18 06 07** Loss Payable Provisions, Paragraph C Loss Payable Clause and Paragraph D Lender’s Loss Payable Clause.

260 Authorized Representative. See **Endnote 244** - “Authorized Representative”?

ACORD 75 Insurance Binder

261 Causes of Loss, Property Insurance – “Causes of Loss”. See **Endnote 34** § A.2.3.1.1 - Causes of Loss.

262 Causes of Loss - Basic. See **Endnote 34** § A.2.3.1.1 - Causes of Loss.

263 Causes of Loss - Broad. See **Endnote 34** § A.2.3.1.1 - Causes of Loss.

264 Causes of Loss - Special. See **Endnote 34** § A.2.3.1.1 - Causes of Loss.

265 Commercial General Liability Insurance (CGL). See **Endnote 70** - Commercial General Liability Insurance (CGL).

266 Commercial General Liability – Claims Made Policy. See **Endnote 71** - Occurrence Policy vs. Claims Made Policy.

267 Commercial General Liability – Occurrence Policy. See **Endnote 71** - Occurrence Policy vs. Claims Made Policy.

268 Commercial General Liability – Personal and Advertising Injury. See **Endnote 70** - Commercial General Liability Insurance (CGL).

269 Commercial General Liability – General Aggregate. See **Endnote 73** - General Aggregate.

270 Commercial General Liability – Products – Completed Operations. See **Endnote 75** Completed Operations Coverage.

271 Automobile Liability. See **Endnote 152** Business Auto Liability.

272 Automobile Liability – Any Auto. See **Endnote 152** Any Auto.

273 Self-Insured Retention. See **Endnote 59** - Self-Insurance.

274 Workers’ Compensation and Employer’s Liability. See **Endnote 92** Workers’ Compensation Limits Required by Law.

275 The Standard Mortgage Clause – ISO Form CP 00 10 10 12 – Building and Personal Property Coverage Form, Section F.2 Additional Conditions – Mortgageholders. See ISO CP 00 20 10 12 Par. F, Par. 1 Mortgageholders in Appendix of Forms at page 166. ISO CP DS 00 10 00 Commercial Property Coverage Part - Declarations Page – Mortgageholders. See ISO CP 12 18 06 07 Loss Payable Provisions, Paragraphs C Loss Payable Clause and D Lender's Loss Payable Clause.

276 Additional Insured. See Endnote 233 Insureds: "First Named Insured"; "Named Insured"; "An Insured"; "An Additional Insured"; "Additional Named Insured".

277 Signed By An "Authorized Representative"? See Endnote 244 Authorized Representative.