

## FIRST ADDENDUM TO LICENSE AGREEMENT

THIS FIRST ADDENDUM is to that License Agreement entered into on July 1, 2014, by and between the County of Siskiyou (“Licensor”) and Plass Communications sole proprietorship (“Licensee”) and is entered into on the date when it has been both approved by the Board and signed by all other parties to it.

WHEREAS, the License Agreement expired on June 30<sup>th</sup>, 2024, and the parties desire to continue the Agreement after that date; and

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

Section 10 of the License Agreement shall be amended to extend the term of the Agreement through June 30<sup>th</sup>, 2029. Licensee shall have the option to renew this license for a period for five (5) additional years upon the same terms and conditions except for the amount of rental to be paid, which shall be as agreed upon by the parties to this License.

Section 11 of the License Agreement shall be amended to increase the license fee from the sum of seventy five dollars (\$75.00) to one hundred and three dollars and eighty-three cents (\$103.83) and payment shall be mailed to 1312 Fairlane Road Suite 4 Yreka, CA 96097

**In Process**

All other terms and conditions of the License Agreement shall remain the same.  
SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, Licensor and Licensee have executed this First addendum on the dates set forth below, each signatory represents that he/she has the authority to execute this agreement and to bind the Party on whose behalf his/her execution is made.

Licensor: COUNTY OF SISKIYOU

Date: \_\_\_\_\_

\_\_\_\_\_  
RAY A. HAUPT, CHAIR  
Board of Supervisors  
County of Siskiyou  
State of California

ATTEST:  
LAURA BYNUM  
Clerk, Board of Supervisors

By: \_\_\_\_\_  
Deputy

LICENSEE: Plass Communications,  
Sole Proprietor

Date: 3/5/2026

Signed by:  
*Stephen M. Plass*  
\_\_\_\_\_  
3205143C832443D  
Stephen M. Plass, Owner

In Process

ACCOUNTING:

Fund	Organization	Account	Activity Code (if applicable)
6103	106020	531100	

FY 25/26 = \$103.83  
 FY 26/27 = \$106.94  
 FY 27/28 = \$110.15  
 FY 28/29 = \$113.45  
 FY 29/30 = \$116.85

**LICENSE AGREEMENT**

(Harvey Jones Butte Site, Plass Communications)

THIS LICENSE AGREEMENT is entered into on the 1<sup>st</sup> day of July, 2014 by and between **COUNTY OF SISKIYOU**, hereinafter referred to as "Licensor," and **PLASS COMMUNICATIONS**, hereinafter referred to as "Licensee."

WHEREAS, Licensor operates a communications facility and has a United States Forest Service Use Permit for a site twenty two (22) miles, more or less, south east of Tulelake, California, commonly known as Harvey Jones Butte Site, a map of which is attached hereto as Exhibit "A"; and

WHEREAS, Licensor has a legal right to allow use of said facilities by others, and

WHEREAS, Licensee maintains, and desires to continue to maintain, one (1) VHF antenna, one (1) UHF antenna and one translator,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Licensor is the owner of certain real property commonly known as Harvey Jones Butte, situated twenty two miles, more or less, south east of Tulelake, Siskiyou County, California, as depicted on the attached Exhibit "A."
2. Licensor grants to Licensee the right to use said site as follows:
  - A. Licensee may maintain two UHF antennas, one UHF repeater, and one 18 inch diameter 5.8 GHz Ubiquity Nanobridge network dish.
  - B. Licensee shall ensure that the antenna, transmission wires and transmitter do not cause interference with the radio/electronic operations of existing users of the transmission site. Should Licensee's equipment cause technical degradation or interference with Licensor's operation, Licensee will resolve the problem promptly.
  - C. Licensee shall have the right to access the building housing the support equipment in order to carry out repair and maintenance. Licensee shall also have the right to enter Licensor's property for the purpose of testing and performing other related and necessary acts to service the equipment.
  - D. Licensee shall have the right to connect whatever utilities are necessary to its operation including, but not limited, electrical power. Licensee shall be responsible for any annual fees that may occur from the Modoc National Forest under Licensor's lease authorization number DOU0033.
3. All radio equipment shall be properly licensed by the Federal Communications Commission and a copy of the license shall be posted on the equipment.
4. Licensee shall not in any way interfere with the use of said property by others including, but not limited to, Licensor, its agents, employees, independent contractors, subcontractors and permittees.
5. Licensee shall take all reasonable precautions to prevent and suppress fires in and about said property.
6. Licensee may not use the property for any other purpose or business.
7. This License is personal to the Licensee and shall not be assigned. Any attempt to assign the License shall automatically terminate it. No legal title or leasehold interest in the

property is created or vested in Licensee by the grant of this License.

8. Licensee agrees to hold Licensor exempt and harmless for and on account of any damage or injury to any person, or personal property of any person, arising from (a) Licensee's use of the property, or (b) Licensee's failure to keep the property and surrounding areas clean and in good condition. Licensee shall not be liable to Licensor for any damage by or from any act or negligence of any other occupant of the property or any occupant of adjoining or contiguous property. Licensee agrees to pay for all damages to the property, as well as all damages to occupants of the property and to the property of those occupants caused by Licensee's misuse or neglect of the property.
9. Licensee shall obtain and maintain for the term of this license and any extension thereof commercial liability insurance in the amount of \$550,000.00. Insurance shall be with a company authorized to do business in the State of California and possess a Best A:XL rating, or as otherwise may be acceptable to Licensor shall be named as an additional insured on said policy and evidence of such shall be provided to Licensor at the time of execution of this License.
10. The term of this license shall be for ten (10) years commencing July 1, 2014, and continuing through June 30, 2024. Licensee shall have the option to renew this license for a period of five (5) additional years upon the same terms and conditions except for the amount of rental to be paid, which shall be as agreed upon by the parties to this License. Either party may terminate this License by giving written notice to the other at least thirty (30) days prior to the effective date of termination.
11. In consideration for Licensor's granting this License, Licensee agrees to pay Licensor the sum of Seventy Five Dollars (\$75.00) monthly, payable in advance. Payment shall be mailed to County of Siskiyou, PO Box 1127, Yreka, CA 96097.
12. Beginning July 1, 2015 and on July 1 of each year thereafter, the monthly fee shall be increased by a percentage equal to the Consumer Price Index, all urban consumers, U.S. City average, as measured in the month of March, not to exceed three percent (3%) per annum. If the Index is discontinued or revised during the Agreement, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.
13. The terms hereof shall constitute a license coupled with an interest and shall be binding on, and shall inure to the benefit of, the heirs, successors, and assigns.
14. All notices and correspondence herein provided to be given, or which may be given to either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, certified and postage prepaid and addressed as follows:

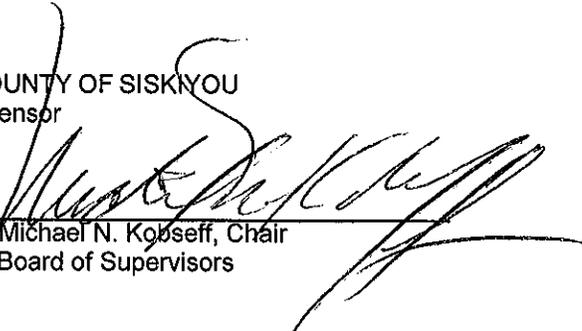
LICENSOR: County of Siskiyou  
PO Box 1127  
Yreka, CA 96097

LICENSEE: Plass Communications  
20416 Zlabek Road  
Tulelake, CA 96134

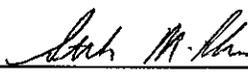
Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

- 15. This License constitutes the entire agreement between Licensor and Licensee relating to this License. Any prior agreements, promises, negotiations, or representations not expressly set forth in this License are of no force and effect. Any amendment to this License shall be of no force and effect unless it is in writing and signed by Licensor and Licensee.
  
- 16. Upon termination of this license agreement, the Licensee will peacefully surrender to the Licensor the premises in as good order and condition as when received, except for reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which Licensee has no control or which Licensor is responsible pursuant to this license agreement. It is agreed that Licensee shall remove all equipment placed on the leased premises upon the termination of this license agreement unless the parties mutually agree otherwise.

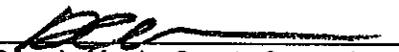
COUNTY OF SISKIYOU  
Licensor

By   
Michael N. Kofseff, Chair  
Board of Supervisors

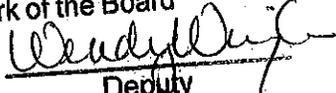
PLASS COMMUNICATIONS  
Licensee

By 

APPROVED AS TO LEGAL FORM:

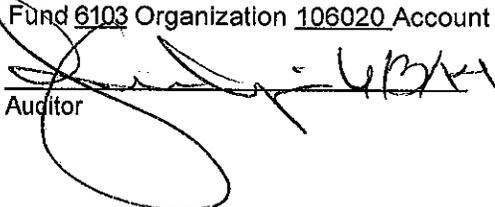
  
Brian L. Morris, County Counsel

**ATTEST:**  
**COLLEEN SETZER**  
County Clerk & Ex-Officio  
Clerk of the Board

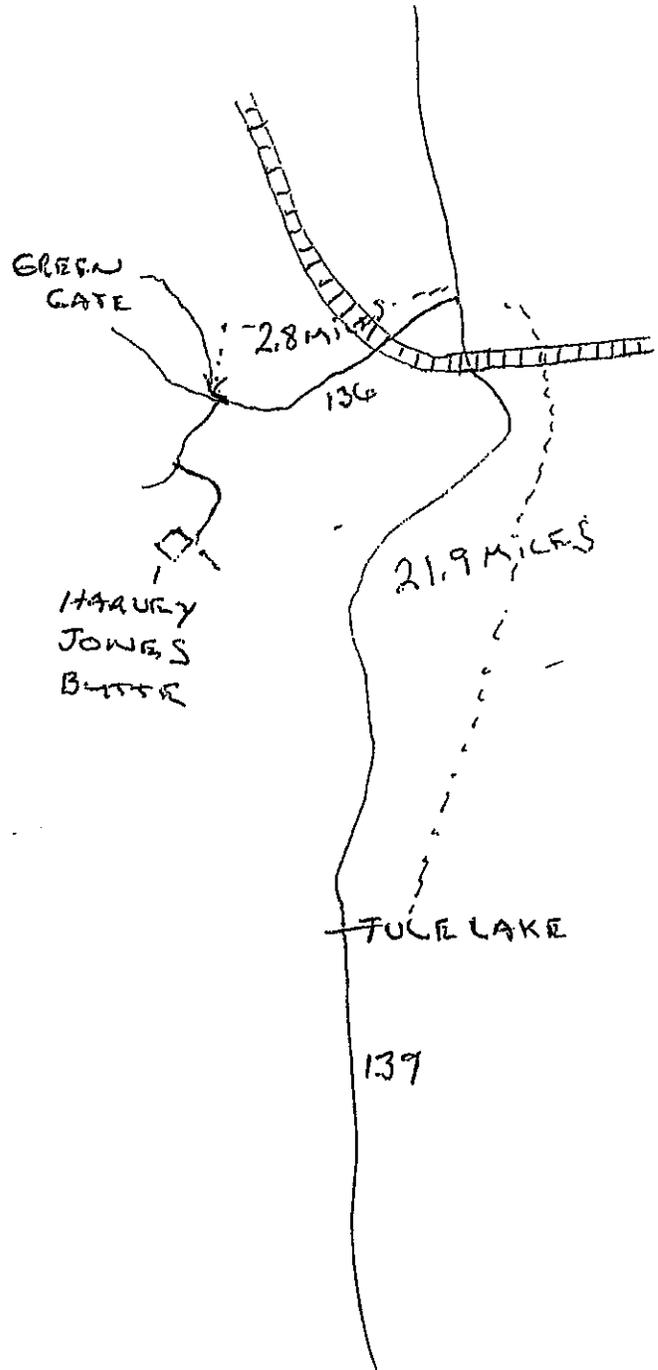
By:   
Deputy

APPROVED AS TO ACCOUNTING FORM:

Fund 6103 Organization 106020 Account 531100

  
Auditor

# "Exhibit A"





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
02/02/2026

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

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or 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).**

<b>PRODUCER</b> Midland Empire Insurance Agency Of Oregon Llc 527 Main St  Klamath Falls OR 976016031	<b>CONTACT NAME:</b> LESUEUR, LAWTON <b>PHONE (A/C, No, Ext):</b> _____ <b>FAX (A/C, No):</b> _____ <b>E-MAIL ADDRESS:</b> _____  <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : Ohio Security Insurance Company</td> <td style="text-align: center;">24082</td> </tr> <tr> <td>INSURER B : General Insurance Company of America</td> <td style="text-align: center;">24732</td> </tr> <tr> <td>INSURER C : American Fire and Casualty Company</td> <td style="text-align: center;">24066</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Ohio Security Insurance Company	24082	INSURER B : General Insurance Company of America	24732	INSURER C : American Fire and Casualty Company	24066	INSURER D :		INSURER E :		INSURER F :	
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<b>INSURED</b> Stephen M. Plass DbA Plass Communications 20416 Zlabek Rd  Tulelake CA 96134															

**COVERAGES** **CERTIFICATE NUMBER: 0363779213** **REVISION NUMBER: 2016-03**

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.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER: _____	X	X	BLS59282514	11/07/2025	11/07/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 _____ \$ _____
B	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY	X	X	AZG59282514	11/07/2025	11/07/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ _____ \$ _____
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X	X	USA59282514	11/07/2025	11/07/2026	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 _____ \$ _____
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ _____ E.L. DISEASE - EA EMPLOYEE \$ _____ E.L. DISEASE - POLICY LIMIT \$ _____

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 \*\*See Additional Remarks\*\*

<b>CERTIFICATE HOLDER</b> County of Siskiyou  1312 Fairlane Rd., Suite 4  Yreka CA 96097	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b> Curtis Luken
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### ADDITIONAL REMARKS SCHEDULE

AGENCY Liberty Mutual Insurance		NAMED INSURED Stephen M. Plass Dba Plass Communications 20416 Zlabek Rd Tulelake CA 96134	
POLICY NUMBER BLS59282514		EFFECTIVE DATE: 11/07/2025	
CARRIER Ohio Security Insurance Company	NAIC CODE 24082		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 0025      FORM TITLE: 2016-03**

Certificate Holder is Additional Insured if required by written contract or written agreement subject to General Liability Blanket Additional Insured Provision. Additional Insureds included on policies listed on the underlying schedule will also extend to the Umbrella policy. Waiver of Subrogation applies. This Policy is Primary, and we will not ask for contribution of the Policy issued to the Additional Insured. Ongoing operations Coverage applies. Per Location General Aggregate limit applies.

# In Process

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**COMMERCIAL GENERAL LIABILITY EXTENSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**INDEX**

<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
<b>NON-OWNED AIRCRAFT</b>	<b>2</b>
<b>NON-OWNED WATERCRAFT</b>	<b>2</b>
<b>PROPERTY DAMAGE LIABILITY – ELEVATORS</b>	<b>2</b>
<b>EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant’s Property Damage)</b>	<b>2</b>
<b>MEDICAL PAYMENTS EXTENSION</b>	<b>3</b>
<b>EXTENSION OF SUPPLEMENTARY PAYMENTS – COVERAGES A AND B</b>	<b>3</b>
<b>ADDITIONAL INSUREDS – BY CONTRACT, AGREEMENT OR PERMIT</b>	<b>3</b>
<b>PRIMARY AND NON-CONTRIBUTORY – ADDITIONAL INSURED EXTENSION</b>	<b>5</b>
<b>ADDITIONAL INSUREDS – EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"</b>	<b>6</b>
<b>WHO IS AN INSURED – INCIDENTAL MEDICAL ERRORS/MALPRACTICE AND WHO IS AN INSURED – FELLOW EMPLOYEE EXTENSION – MANAGEMENT EMPLOYEES</b>	<b>6</b>
<b>NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES</b>	<b>7</b>
<b>FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES</b>	<b>7</b>
<b>KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT</b>	<b>7</b>
<b>LIBERALIZATION CLAUSE</b>	<b>7</b>
<b>BODILY INJURY REDEFINED</b>	<b>7</b>
<b>EXTENDED PROPERTY DAMAGE</b>	<b>8</b>
<b>WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU</b>	<b>8</b>

In Process

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

**A. NON-OWNED AIRCRAFT**

Under Paragraph 2. **Exclusions of Section I – Coverage A - Bodily Injury And Property Damage Liability**, exclusion **g. Aircraft, Auto Or Watercraft** does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

**B. NON-OWNED WATERCRAFT**

Under Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability**, Subparagraph (2) of exclusion **g. Aircraft, Auto Or Watercraft** is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
  - (a) Less than 52 feet long; and
  - (b) Not being used to carry persons or property for a charge.

**C. PROPERTY DAMAGE LIABILITY – ELEVATORS**

1. Under Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability**, Subparagraphs (3), (4) and (6) of exclusion **j. Damage To Property** do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to **Section IV – Commercial General Liability Conditions**, Condition 4. **Other Insurance**, Paragraph **b. Excess Insurance**:  
The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

**D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)**

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. **Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability**:
  - a. The fourth from the last paragraph of exclusion **j. Damage To Property** is replaced by the following:  
Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:
    - (i) Premises rented to you for a period of 7 or fewer consecutive days; or
    - (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.
 Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.  
A separate limit of insurance applies to this coverage as described in **Section III – Limits of Insurance**.

- b. The last paragraph of subsection 2. **Exclusions** is replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance.**

2. Paragraph **6.** under **Section III – Limits Of Insurance** is replaced by the following:
  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:
    - a. Any one premise:
      - (1) While rented to you; or
      - (2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or
    - b. Contents that you rent or lease as part of a premises rental or lease agreement.
3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph **9.a.** of **Definitions** is replaced with the following:
  - 9.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, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

**E. MEDICAL PAYMENTS EXTENSION**

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph **1. Insuring Agreement** of **Section I – Coverage C – Medical Payments**, Subparagraph **(b)** of Paragraph **a.** is replaced by the following:

**(b)** The expenses are incurred and reported within three years of the date of the accident; and

**F. EXTENSION OF SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. Under **Supplementary Payments – Coverages A and B**, Paragraph **1.b.** is replaced by the following:
  - b. Up to **\$3,000** 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.
2. Paragraph **1.d.** is replaced by the following:
  - 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 **\$500** a day because of time off from work.

**G. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT**

1. Paragraph **2.** under **Section II – Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:
  - a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
  - (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
  - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
  - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
    - a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
    - b) The construction, erection, or removal of elevators; or
    - c) The ownership, maintenance, or use of any elevators covered by this insurance.

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.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (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.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit** under **Section IV – Commercial General Liability Conditions**.

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. **Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "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:
  - (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", 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.

- d. "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.
- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. 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:

- a. Required by the contract or agreement; or
  - b. 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.

#### H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. **Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

- a. The following is added to Paragraph a. **Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

**b.** The following is added to Paragraph **b. Excess Insurance**:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

**I. ADDITIONAL INSUREDS - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

**1.** The following is added to Condition **2. Duties In The Event Of Occurrence, Offense, Claim or Suit**:

An additional insured under this endorsement will as soon as practicable:

- a.** Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
  - b.** Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
  - c.** Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
  - d.** We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.
- 2.** The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III – Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

**J. WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE  
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES**

Paragraph **2.a.(1)** of **Section II - Who Is An Insured** is replaced with the following:

- (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 Paragraphs **(1) (a)** or **(b)** above; or
  - (d)** Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph **(d)**) does not apply.

"employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision **J.** is excess over any other valid and collectable insurance available to your "employee".

**K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES**

Paragraph **3.** of **Section II - Who Is An Insured** is replaced by the following:

- 3.** Any organization you newly acquire or form 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 expiration of the policy period in which the entity was acquired or formed by you;
  - 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.
  - d.** Records and descriptions of operations must be maintained by the first Named Insured.

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 or qualifies as an insured under this provision.

**L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES**

Under **Section IV – Commercial General Liability Conditions**, the following is added to Condition **6. Representations**:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

**M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT**

Under **Section IV – Commercial General Liability Conditions**, the following is added to Condition **2. Duties In The Event of Occurrence, Offense, Claim Or Suit**:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph **1.** of **Section II – Who Is An Insured** or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

**N. LIBERALIZATION CLAUSE**

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

**O. BODILY INJURY REDEFINED**

Under **Section V – Definitions**, Definition **3.** is replaced by the following:

- 3.** "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

**P. EXTENDED PROPERTY DAMAGE**

**Exclusion a. of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

**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" or "property damage" resulting from the use of reasonable force to protect persons or property.

**Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU**

Under **Section IV – Commercial General Liability Conditions**, the following is added to Condition **8. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against a person or organization 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" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

**In Process**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **EACH LOCATION GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by “occurrences” under **Section I – Coverage A - Bodily Injury And Property Damage Liability**, and for all medical expenses caused by accidents under **Section I – Coverage C Medical Payments**, which can be attributed only to operations at a single “location” owned by or rented to you:
1. A separate Each Location General Aggregate Limit applies to each “location”, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Each 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 Each Location General Aggregate Limit for that “location”. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Each Location General Aggregate Limit for any other “location”.
  4. The limits shown in the Declarations for Each Occurrence, Fire Damage 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 Each 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 - Bodily Injury And Property Damage Liability**, and for all medical expenses caused by accidents under **Section I – Coverage C Medical Payments**, which cannot be attributed only to operations at a single “location” owned by or rented to you:
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 Each 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 Each Location General Aggregate Limit.
- D.** For the purposes of this endorsement, the following definition is added to **Section V – Definitions**:
- “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.

# COMMERCIAL UMBRELLA COVERAGE FORM

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

Throughout this policy, the words "you" and "your" refer to the "named insured" as shown in the Commercial Umbrella Policy 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 as identified in the Declarations.

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 VII – Definitions**.

We, the company named in the Declarations, relying upon the statements made and information furnished to us and in return for the payment of premium and subject to the terms, conditions and limits of insurance of this policy, agree with you to provide coverage as follows:

## INSURING AGREEMENTS

### SECTION I – COVERAGES

1. We will pay on behalf of an insured those sums in excess of the "retained limit" that an insured becomes legally obligated to pay by reason of liability imposed by law or assumed by an insured under an "insured contract" as damages because of "bodily injury", "property damage", or "personal and advertising injury" to which this insurance applies.

The amount we will pay for damages is limited as described below in **Section III – Limits Of Insurance**. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Section IV – Defense**.

2. The insurance applies to:

- a. "Bodily injury" or "property damage" only if:

- (1) The "bodily injury" or "property damage" occurs during the "policy period";
- (2) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- (3) Prior to the "policy period", no insured listed under Paragraph 2. 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 insured listed or authorized "employee" knew, prior to the "policy period", that the "bodily injury" or "property damage" occurred, then the continuation, change or resumption of that "bodily injury" or "property damage" during or after the "policy period" will also be deemed to have been known prior to the "policy period".

- b. "Personal and advertising injury" only if:

- (1) The "personal and advertising injury" is caused by an "offense" arising out of your business;
- (2) The "offense" causing the "personal and advertising injury" was committed during the "policy period"; and
- (3) The "offense" takes place in the "coverage territory".

3. "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 2. of **Section II – Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
  - a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - b. Receives a written or verbal demand or claim for damages because of "bodily injury" or "property damage";  
or
  - c. Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

If such 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".

4. "Bodily injury" or "property damage" which occurs during the "policy period" and which was not, prior to the "policy period", known to have occurred or to have begun to occur by any insured listed under Paragraph 2. 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".
5. 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 "bodily injury".

## SECTION II – WHO IS AN INSURED

1. The "named insured" is an insured.
2. 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 and your "spouse" are insureds. The partners or members 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.
3. Each of the following is also an insured:
  - a. Your "volunteer workers" but only while performing duties related to the conduct of your business, your "employees", other than 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), or 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 to persons described in Paragraph **(1)(a)** or **(1)(b)** above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

However, Paragraphs **(1)(a)**, **(1)(b)**, and **(1)(c)** do not apply to the extent "underlying insurance" provides coverage for such person(s). Coverage for such persons under this policy, will be no broader than that provided by "underlying insurance".

Coverage provided by this policy for "bodily injury" to a co-"employee" or "volunteer worker" will not apply if the injured co-"employee's" or "volunteer worker's" remedy for such injury is provided under a workers' compensation law or any similar law.

**(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 or organization, other than the "named insured", who qualifies as an additional insured in the "underlying insurance". However, coverage under this policy will be no broader than that provided by "underlying insurance". The insurance afforded to such additional insured only applies to the extent permitted by law and the amount we will pay for damages is limited as described in **Section III – Limits Of Insurance**.
- c. Any person, other than your "employee" or "volunteer worker", or organization while acting as your real estate manager.
- d. 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.
- e. 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 policy.
- f. With respect to liability arising out of the maintenance, ownership, or use of an "auto", any person or organization qualifying as an insured in the "underlying insurance" which provides coverage for such "auto", but only to the extent provided in such "underlying insurance".

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 a "named insured".

**SECTION III – LIMITS OF INSURANCE**

- 1. The Limits of Insurance shown in **(Item 4)** of 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;
  - c. Persons or organizations making claims or bringing "suits"; or
  - d. Coverages provided under this policy.
2. The General Aggregate Limit is the most we will pay for all damages covered under **Section I – Coverages** except:
- a. Damages included in the "products-completed operations hazard"; and
  - b. Damages caused by an "occurrence" and resulting from the ownership, maintenance, or use of a covered "auto".
3. The Products-Completed Operations Aggregate Limit is the most we will pay for all damages included in the "products-completed operations hazard".
4. Subject to Paragraph 2. or 3. in **Section III – Limits Of Insurance**, whichever applies, the Each Occurrence Limit is the most we will pay for all damages covered under **Section I – Coverages** because of one "occurrence" or one "offense".

Non-Cumulation of Liability – Same Occurrence – if one "occurrence" causes "bodily injury" and/or "property damage" or one "offense" causes "personal and advertising injury", during the "policy period" and during the "policy period" of one or more prior, and/or future, commercial umbrella or excess liability policy(ies) issued to you by us and any affiliated insurance company, then this policy's Each Occurrence Limit will be reduced by the amount of each payment made by us and any affiliated insurance company under the other policy(ies) because of such "occurrence" or "offense". This paragraph will not apply to insurance specifically written as excess over this policy.

5. If the applicable Limits of Insurance of "underlying insurance" or of "other insurance" providing coverage to the insured are reduced or exhausted by actual payment of damages, we will, subject to the terms and condition of this policy:
- a. In the event of reduction, pay in excess of the reduced Limits of Insurance of "underlying insurance" and any applicable "other insurance"; or
  - b. In the event of exhaustion, continue in force as "underlying insurance", but for no broader coverage than is available under this policy.

The "retained limit" will not be reduced or exhausted by defense costs, loss adjustment expenses, supplementary payments or similar amounts that reduce or exhaust the policy limits of "underlying insurance" or "other insurance".

6. If there is applicable "underlying insurance" with a "policy period" that is non-concurrent with the "policy period" of this policy, the "retained limit" with respect to any coverage provided by this policy excess of such "underlying insurance" will only be reduced or exhausted by payments for:
- a. "Bodily injury" or "property damage" that occurs during the "policy period" of this policy; or
  - b. "Personal and advertising injury" for "offenses" that are committed during the "policy period" of this policy.

However, if any "underlying insurance" is written on a claims-made basis, the "retained limit" will only be reduced or exhausted by claims for that insurance that are made during the "policy period", or any Extended Reporting Period, applicable to this policy.

7. The Limits of Insurance of this policy 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", 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.
8. We will be liable only for that portion of damages, subject to the Each Occurrence Limit stated in the Declarations, in excess of the "retained limit", and then up to an amount not exceeding the Each Occurrence Limit as stated in the Declarations. Once the Self-Insured Retention has been exhausted by actual payment of claims in full by the insured, the Self-Insured Retention will not be reapplied or again payable by the insured for said "policy period".
9. If coverage provided to an additional insured is required by a contract or agreement, we will pay on behalf of the additional insured the lesser of:
  - a. The amount of insurance required by the contract or agreement less any amounts payable by any "underlying insurance" or otherwise retained; or
  - b. The available applicable Limits of Insurance of this policy.

The Limits of Insurance applicable to such additional insureds are included within, and are not in addition to, the Limits of Insurance shown in the Declarations of this policy.

#### **SECTION IV – DEFENSE**

1. We will have the right and duty to defend the insured against any claim or "suit" seeking damages covered by the terms and conditions of this policy, by counsel of our choice, when:
  - a. The applicable limits of the "underlying insurance" and "other insurance" providing coverage to the insured have been exhausted by actual payment of damages to which this policy applies; or
  - b. Damages are sought for any "occurrence" or "offense" which is covered by this policy but not covered by the "underlying insurance" or "other insurance" providing coverage to the insured.
2. When we assume the defense of any claim or "suit":
  - a. We have the right to investigate, defend, and settle the claim or "suit" as we deem appropriate.
  - b. We will pay the following as expenses, to the extent that they are not included in the "underlying insurance" or any applicable "other insurance":
    - (1) All expenses we incur.
    - (2) Premiums on bonds to release attachments, which bond amounts will not exceed our applicable Limits of Insurance, but we are not obligated to apply for or furnish any such bond.
    - (3) Premiums on appeal bonds, which bond amounts will not exceed our applicable Limits of Insurance, required by law to appeal any claim or "suit" we defend, but we are not obligated to apply for or furnish any such bond.
    - (4) All costs taxed against the insured in any claim or "suit" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
    - (5) Pre-judgment interest awarded against the insured on that part of the judgment we pay that is within our applicable Limits of Insurance. However, if we make an offer to pay the applicable Limits of Insurance, we will not pay any pre-judgment interest based on the period of time that accrues after the offer.
    - (6) All interest that accrues after entry of judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within our applicable Limit of Insurance.

- (7) The insured's actual and reasonable expenses incurred at our request including actual loss of earnings up to \$500 a day because of time off from work.

These expenses are payable in addition to our Limits of Insurance.

3. Our duty to defend any claim or "suit" or pay any expenses as outlined in Paragraph 2.b. above, will end when our applicable Limits of Insurance have been exhausted by payment of judgments or settlements.
4. Except as provided in Paragraph 1. in **Section IV – Defense**, we will not be obligated to participate or assume charge of the settlement or defense of any claim or "suit" against the insured. We will, however, have the right and will be given the opportunity to participate in the settlement, defense and trial of any claim or "suit" which, in our opinion, may create liability on our part under the terms of this policy. If we exercise such right, we will do so at our own expense.
5. If we have a duty to defend but are prevented by law or statute from performing that duty, you agree to take up such defense and investigation. We will reimburse you for our share of the reasonable costs incurred for such investigation or defense.

## SECTION V – EXCLUSIONS

This insurance does not apply to:

### 1. Aircraft

Any liability arising out of the ownership, maintenance, use or entrustment to others of any aircraft, if such aircraft is 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. However, this exclusion does not apply to the extent "underlying insurance" provides such coverage. Coverage under this policy will be no broader than that provided by "underlying insurance".

### 2. Asbestos

Any liability, loss, cost or expense arising or allegedly arising out of or related in any way, either directly or indirectly, to:

- a. Asbestos, asbestos products, asbestos-containing materials or products, asbestos fibers or asbestos dust, including, but not limited to, manufacture, mining, use, sale, installation, removal, or distribution activities;
- b. Exposure to, testing for, monitoring of, cleaning up, removing, containing or treating of asbestos, asbestos products, asbestos-containing materials or products, asbestos fibers or asbestos dust, regardless if such testing monitoring, cleaning containing or treating is requested, ordered or mandated by any regulatory or governmental entity; or
- c. Any obligation to investigate, settle or defend, or indemnify any person against any claim or "suit" arising out of, or related in any way, either directly or indirectly, to asbestos, asbestos products, asbestos-containing materials or products, asbestos fibers or asbestos dust, regardless if such claim or "suit" is brought by or on behalf of any regulatory or governmental entity.

### 3. Auto Coverages

- a. Any loss, cost or expense payable under first-party "auto" physical damage, "auto" no-fault law, uninsured motorist or underinsured motorist law, "auto" medical payments coverage, personal injury protection or under any similar law, regulation or ordinance.
- b. Any liability arising out of the ownership, maintenance, use or entrustment to others of any "auto". 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.

However, this exclusion does not apply to the extent "underlying insurance" provides such coverage. Coverage under this policy will be no broader than that provided by "underlying insurance".

#### 4. Contractual Liability

Any liability assumed by any insured under any contract or agreement.

This exclusion does not apply:

- a. To liability that the insured would have in the absence of the contract or agreement;
- b. To "bodily injury" or "property damage" assumed in an "insured contract", provided that the "bodily injury" or "property damage" occurs subsequent to the execution of the "insured contract"; or
- c. To the extent that coverage is provided by "underlying insurance". Coverage under this policy will be no broader than that provided by "underlying insurance".

Solely for 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 liability, provided:

- (1) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insurance contract"; and
- (2) 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;

#### 5. 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:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. 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.

#### 6. Damage To Property

"Property damage" to:

- a. 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;
- b. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of an insured;
- e. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operation, if the "property damage" arises out of those operations; or
- f. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph **6.b.** of this exclusion does not apply if the premises are "your work" and were never occupied, rented, or held for rental by you.

Paragraphs **6.c.**, **6.d.**, **6.e.** and **6.f.** of this exclusion do not apply to liability assumed under a railroad sidetrack agreement.

Paragraphs **6.c.** and **6.d.** of this exclusion do not apply to liability assumed under a written Trailer Interchange Agreement.

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

## **7. Damage To Your Product**

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

## **8. 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.

## **9. Employer's Liability**

"Bodily injury" to:

- a.** An "employee" of any insured arising out of and in the course of:
- (1)** Employment by the insured; or
  - (2)** Performing duties related to the conduct of any insured's business; or
- b.** The "spouse", child, parent, brother or sister of that "employee" as a consequence of Paragraph **9.a.** above.

This exclusion applies:

- a.** Whether any insured may be liable as an employer or in any other capacity; and
- b.** To any obligation to share damages with or repay someone else who must pay damages because of the injury.

However, this exclusion does not apply to the extent "underlying insurance" provides such coverage. Coverage under this policy will be no broader than that provided by "underlying insurance".

## **10. Employment-related Practices**

Any liability arising or allegedly arising out of any:

- a.** Refusal to employ or promote a person;
- b.** Termination of a person's employment;
- c.** Employment-related practices, policies, acts or omissions, including, but not limited to, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at a person, or any other employment-related practices, policies, acts or omissions; or

- d. Consequential liability, damage, loss, cost or expense as a result of Paragraphs **10.a.**, **10.b.**, and **10.c.**, above.

This exclusion applies:

- a. Whether the injury-causing event described in Paragraphs **10.a.**, **10.b.**, **10.c.**, and **10.d.**, occurs before employment, during employment or after employment of that person;
- b. Whether an insured may be liable as an employer or in any other capacity; and
- c. To any obligation to share damages with or to repay someone else who must pay damages because of the injury.

#### **11. ERISA**

Any obligation of an insured under the Employee Retirement Income Security Act of 1974 or any amendments to that act, or under any similar law, regulation or ordinance.

#### **12. Expected Or Intended Injury**

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

#### **13. Fungi Or Bacteria**

- a. Any liability which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

#### **14. Liquor Liability**

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

- a. Causing or contributing to the intoxication of any person;
- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. 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 the supervision, hiring, employment, training or monitoring of others by that insured or 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 **14.a.**, **14.b.** or **14.c.** above.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. We will follow "underlying insurance" with respect to whether or not 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 considered the business of selling, serving or furnishing alcoholic beverages.

However, this exclusion does not apply to the extent "underlying insurance" provides such coverage. Coverage under this policy will be no broader than that provided by "underlying insurance".

## 15. Mobile Equipment

Any liability for or arising out of the ownership, maintenance, use or entrustment to others of any "mobile equipment". 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.

However, this exclusion does not apply to the extent "underlying insurance" provides such coverage. Coverage under this policy will be no broader than that provided by "underlying insurance".

## 16. Nuclear Material, Hazard Or Incident

a. Any liability, injury or damage:

(1) With respect to which any insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its Limits of Insurance; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) a person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) any insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

b. Any liability, injury or damage resulting from the "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, any insured or (b) has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "nuclear waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of any insured; or

(3) The injury or damage arises out of the furnishing by any insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Paragraph b.(3) applies only to "property damage" to such "nuclear facility" and any property therein.

As used in this exclusion, injury or damage includes all forms of radioactive contamination of property.

## 17. Personal And Advertising Injury

"Personal and advertising injury":

a. 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. 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. 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. Arising out of a criminal act committed by or at the direction of the insured;
- e. 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. Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- g. Arising out of the failure of goods, products, or services to conform with any statement of quality or performance made in your "advertisement";
- h. Arising out of the wrong description of the price of goods, products, or services stated in your "advertisement";
- i. 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", copyright, trade dress, or slogan;

- j. Committed by an insured whose business is:

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

However, this exclusion does not apply to Paragraphs **23.a.**, **23.b.**, or **23.c.** of the definition of "personal and advertising injury" under **Section VII – Definitions**.

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. Arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control; or
- l. 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.

## 18. Pollution

Any liability arising out of or in any way related to:

- a. The actual, alleged or threatened presence, discharge, dispersal, seepage, migration, release, or escape of "pollutants", anywhere at any time, however caused.
- b. 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, 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 assessing the effects of "pollutants".

This exclusion will also apply regardless of whether such discharge, dispersal, seepage, migration, release, or escape of such "pollutant" is covered by "underlying insurance".

#### **19. 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:

- a. "Your product";
- b. "Your work"; or
- c. "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.

#### **20. Recording And Distribution Of Material Or Information In Violation Of Law**

Any liability arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- d. Any federal, state or local statute, ordinance or regulation, other than 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.

#### **21. War**

Any liability, however caused, arising, directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. 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
- c. Insurrection, rebellion, revolution usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### **22. Watercraft**

Any liability arising out of the ownership, maintenance, use, or entrustment to others of any watercraft owned, 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. However, this exclusion does not apply to the extent "underlying insurance" provides such coverage. Coverage under this policy will be no broader than that provided by "underlying insurance".

#### **23. Workers' Compensation And Similar Laws**

Any obligation of an insured under a Workers Compensation, Unemployment Compensation or Disability Benefits Law, or under any similar law, regulation or ordinance.

## SECTION VI – CONDITIONS

### 1. Appeals

If the insured or "underlying insurers" do not appeal a judgment in excess of the "retained limit", we have the right to make such an appeal. If we elect to appeal, we will be liable for all court costs, expenses incurred and interest incidental to the appeal, in addition to the Limits of Insurance of this policy. However, our liability on such an award or judgment will not exceed our Limits of Insurance as stated in **(Item 4)** of the Declarations.

### 2. Audit

We may audit and examine your books and records as they relate to this policy at any time during the period of this policy and for up to three years after the expiration or termination of this policy.

### 3. Bankruptcy Or Insolvency

The bankruptcy, insolvency or inability to pay of any insured or the bankruptcy, insolvency or inability to pay of any of the "underlying insurers" will not relieve us from the payment of any claim or "suit" covered by this policy. Under no circumstances will such bankruptcy, insolvency or inability to pay require us to drop down and replace the "retained limit" or assume any obligation with the "retained limit". This insurance will apply as if the "underlying insurance" were in full effect.

### 4. Cancellation

- a. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
- b. We may cancel this policy. If we cancel because of nonpayment of premium, we must mail or deliver to you not less than 10 days advance written notice stating when the cancellation is to take effect. If we cancel for any other reason, we must mail or deliver to you not less than 30 days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in **(Item 1)** of the Declarations will be sufficient to prove notice.
- c. The "policy period" will end on the day and hour stated in the cancellation notice.
- d. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the Minimum Premium as shown in **(Item 3)** of the Declarations.
- e. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force and increased by our short rate cancellation table and procedure. Final premium will not be less than the Minimum Premium as shown in **(Item 3)** of the Declarations.
- f. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter but the cancellation will be effective even if we have not made or offered any refund due you. Our check or our representative's check, mailed or delivered, will be sufficient tender of any refund due you.
- g. The first "named insured" designated in **(Item 1)** of the Declarations will act on behalf of all other insureds with respect to the giving and receiving of notice of cancellation and the receipt of any refund that may become payable under this policy.
- h. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.
- i. If notice is mailed, proof of mailing will be sufficient proof of notice under this section.

### 5. Changes

This policy may only be changed by a written endorsement issued by us.

## 6. Concealment, Misrepresentation Or Fraud

We may void this policy or deny a claim at any time if, before or after a loss, you:

- a. Concealed or misrepresented any material fact or circumstance;
  - b. Made incorrect statements or representations to us with regard to any material fact or circumstance; or
  - c. Engaged in fraudulent conduct;
- at the time of application or any time during the "policy period".

## 7. Duties In The Event Of An Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or "offense" which may result in a claim or "suit" under this policy. To the extent possible, notice will include:
  - (1) How, when and where the "occurrence" or "offense" took place;
  - (2) The names and addresses of any injured person and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or "offense".
- b. If a claim or "suit" against any insured is reasonably likely to involve this policy you must notify us in writing 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, settlement or defense of the claim or "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. The insureds will not, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

## 8. Economic Or Trade Sanctions

If coverage for a claim or "suit" under this policy would violate any United States of America economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), then coverage for that claim or "suit" will be null and void.

## 9. Inspection

We have the right, but are not obligated, to inspect the premises and operations of any insured at any time. You acknowledge that our inspections are not safety inspections. They relate only to the insurability of the premises and operations of any insured and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person or organization to provide for the health or safety of any "employees", invitees or the public. We do not warrant that the premises or operations of any insured are safe or healthful or that they comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization, which makes insurance inspections, surveys, reports or recommendations for us.

## 10. Legal Actions Against Us

There will be no right of action against us under this insurance unless:

- a. You have complied with all the terms of this policy; and
- b. The amount you owe has been determined by settlement with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to join us as a party or otherwise bring us into a "suit" asking for damages from an insured.

We will not be liable for damages that are not payable under the terms of this policy or are in excess of the applicable limit of insurance provided by this policy.

## 11. Maintenance Of Underlying Insurance

During the "policy period", you agree:

- a. To keep all "underlying insurance" in full force and effect;
- b. That any renewals or replacements of any "underlying insurance" will not be more restrictive in coverage;
- c. That the total applicable limits of all "underlying insurance" will not decrease except for any reduction or exhaustion of aggregate limits by payment of judgments or settlements to which this policy applies; and
- d. That the terms, definitions, conditions, exclusions and endorsements of all "underlying insurance" will not change during the "policy period" such as to increase the coverage afforded under this policy.

If you fail to comply with these requirements, we will only be liable to the same extent that we would have been had you fully complied with these requirements.

## 12. Other Insurance

If "other insurance" applies to a loss that is also covered by this policy, this policy will apply excess, and in no event as contributing insurance with respect to the "other insurance". Nothing herein shall be construed to make this policy subject to the terms, conditions and limitations of such "other insurance". However, this provision will not apply if the "other insurance" is specifically written to be excess of this policy.

## 13. Premium

The first "named insured" designated in **(Item 1)** of the Declarations will be responsible for payment of all premiums when due.

The premium for this policy will be computed on the basis set forth in **(Item 3)** of the Declarations. At the beginning of the "policy period", you must pay us the Advance Premium shown in **(Item 3)** of the Declarations. When this policy expires or if it is canceled, we will compute the earned premium for the time this policy was in force. If this policy is subject to audit adjustment, the actual exposure basis will be used to compute the earned premium. If the earned premium is greater than the Advance Premium, you will promptly pay us the difference. If the earned premium is less than the Advance Premium, we will return the difference to you. But in any event we will retain the Minimum Premium as shown in **(Item 3)** of the Declarations for each twelve months of our "policy period".

#### 14. Separation Of Insureds

Except with respect to our Limits of Insurance and any rights or duties specifically assigned to the first "named insured" designated in **(Item 1)** of the Declarations, 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" brought.

This condition will not increase our limit of liability for any one "occurrence" or "offense". This condition also has no effect on the applicability of exclusions that exclude coverage for all insureds for injury or damage arising from the specified conduct of an or any insured.

#### 15. Terms Conformed To Statute

The terms of this policy which are in conflict with the statutes of the state where this policy is issued are amended to conform to such statutes.

If we are prevented by law or statute from paying on behalf of an insured, then we will, where permitted by law or statute, indemnify the insured for those sums in excess of the "retained limit".

#### 16. Transfer Of Rights Of Recovery Against Others To Us

If any insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair those rights and must help us enforce them.

Any recoveries will be applied as follows:

- a. Any interests, including the insured, that have paid an amount in excess of our payment under this policy will be reimbursed first;
- b. We then will be reimbursed up to the amount we have paid; and
- c. Lastly, any interests, including the insured, over which our insurance is excess, are entitled to claim the residue.

Expenses incurred in the exercise of rights of recovery will be apportioned between the interests including the insured, in the ratio of their respective recoveries as finally settled.

#### 17. Transfer Of Your Rights And Duties

Your rights and duties under this policy may not be transferred without our written consent.

If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. However, notice of cancellation sent to the first "named insured" designated in **(Item 1)** of the Declarations and mailed to the address shown in this policy will be sufficient notice to effect cancellation of this policy.

#### 18. When Loss Is Payable

Coverage under this policy will not apply unless and until any insured or an insured's "underlying insurer" is obligated to pay the "retained limit". When the amount of loss has finally been determined, we will promptly pay on behalf of the insured the amount of loss falling within the terms of this policy.

You will promptly reimburse us for any amount within the Self-Insured Retention advanced by us at our discretion on behalf of any insured.

## SECTION VII – 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 websites, only that part of a website 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 physical injury, sickness, or disease sustained by a person. This includes mental injury, mental anguish, humiliation, shock or death if directly resulting from physical injury, sickness, or disease to that person.
4. "By-product material" has the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
5. "Coverage territory" means:
  - a. The United States of America, including its territories and possessions, Puerto Rico and Canada; and
  - b. If provided by "underlying insurance", anywhere in the world except any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"). The "coverage territory" of this policy will be no broader than that provided by "underlying insurance".
6. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
7. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws, or other similar governing document.
8. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by "fungi".
9. "Hazardous properties" includes radioactive, toxic or explosive properties.
10. "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:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

**11. "Insured contract" means:**

- a. A contract for 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 contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees"; or
- g. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraphs **11.f.** and **11.g.** above do 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 pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver;
- (3) That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that the person or organization is authorized to serve by public authority;
- (4) 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, 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
- (5) 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 Paragraph (4) above and supervisory, inspection, architectural or engineering activities.

**12.** "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".

**13.** "Loading or unloading" means the handling of property:

- a.** After it is removed 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.

However, "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".

**14.** "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 **14.a.**, **14.b.**, **14.c.**, or **14.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 property, equipment, or workers; and
- f.** Vehicles not described in **14.a.**, **14.b.**, **14.c.**, or **14.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 property, equipment, or 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 land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where such vehicles are licensed or principally garaged.

**15. "Named insured" means:**

- a. Any person or organization listed in **(Item 1)** of the Declarations;
- b. Any organization of which you maintain ownership or majority interest as of the effective date of this policy, provided that such organization was made known to us by the effective date of this policy and is included as an insured in "underlying insurance". However, coverage for this insured under this policy will be no broader than that provided by "underlying insurance".
- c. 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" under this policy if there is no other similar insurance available to that organization. However:
  - (1) Coverage under this provision is afforded only until the 180<sup>th</sup> day from the date you acquire or form the organization or the end of the "policy period", whichever is earlier. However, such coverage will be provided for no longer than that provided by "underlying insurance";
  - (2) Coverage does not apply to any liability that occurred or "offense" committed before you acquired or formed the organization; and
  - (3) Coverage applies only if the organization is included as an insured in "underlying insurance" and coverage for this insured will be no broader coverage than that provided by "underlying insurance".

**16. "Nuclear facility" means:**

- a. Any "nuclear reactor";
- b. Any equipment or device designed or used for:
  - (1) Separating the isotopes of uranium or plutonium;
  - (2) Processing or utilizing "spent fuel"; or
  - (3) Handling, processing or packaging "nuclear waste";
- c. Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of any insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of, "waste", and includes the site on which any of the foregoing is located, all operations considered on such site and all premises used for such operations.

**17. "Nuclear material" means "source material", "special nuclear material" or "by-product material".**

**18. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.**

**19. "Nuclear waste" means any waste material:**

- a. Containing "by-product material" other than the tailings of waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content; and

b. Resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

20. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. All such exposure to substantially the same general harmful conditions shall be considered as arising out of one "occurrence".

21. "Offense" means an "offense" included in the definition of "personal and advertising injury". All damages that arise from exposure to the same act, publication, infringement or general conditions are considered one "offense", regardless of the frequency or repetition thereof, the number or kind of media used or the number of claimants.

22. "Other insurance" means any valid and collectible policies of insurance providing coverage for damages covered in whole or in part by this policy.

"Other insurance", however, does not include "underlying insurance", any amount shown in the Declarations as a Self-Insured Retention or any insurance specifically written as excess over this policy.

23. "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 the 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".

24. "Policy period" means the time between the effective date of this policy shown in **(Item 2)** of the Declarations and the earlier of the expiration date shown in **(Item 2)** of the Declarations, termination date or cancellation date of this policy.

25. "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.

26. "Products-completed operations hazard":

a. Means 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. "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 site has been completed if your contract calls for work at more than one 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; or
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

27. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will 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 will 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, CDROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

28. "Retained limit" means, the greater of:

- a. The total applicable limits of the "underlying insurance" and any "other insurance" available to the insured; or
- b. The amount stated in the Declarations as the Self-Insured Retention as a result of any one "occurrence" or one "offense" not covered by "underlying insurance" nor by any "other insurance" providing coverage to the insured.

29. "Source material" has the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

30. "Special nuclear material" has the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

31. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

32. "Spouse" means any husband, wife or partner in a marriage or civil union or any person qualifying as a domestic partner under any federal, state or local laws.

33. "Suit" means a civil proceeding which seeks monetary damages because of any liability to which this insurance applies. "Suit" also includes:

- a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

- 34.** "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.
- 35.** "Underlying insurance" means the policy or policies of insurance or self-insurance and their limits of insurance listed in the Schedule of Underlying Insurance. It includes any renewal or replacement of those policies during the term of this insurance provided that:

- a. Policy limits are equal to or greater than the policy being renewed or replaced; and
- b. Insurance is provided for the same hazards, except as to any modifications which are agreed to by us in writing.

If however, a policy shown in the Schedule of Underlying Insurance has a limit of insurance:

- a. Greater than the amount shown in the Schedule of Underlying Insurance, this policy will apply in excess of the greater amount of valid and collectible insurance; or
- b. Less than the amount shown in the Schedule of Underlying Insurance, this policy will apply in excess of the amount shown in the Schedule of Underlying Insurance forming a part of this policy.

- 36.** "Underlying insurer" means any insurer who provides "underlying insurance".
- 37.** "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.

**38.** "Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (1) You;
  - (2) Others trading under your name; or
  - (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles) materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

**39.** "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

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

**In Process**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS – FOLLOWING FORM**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA COVERAGE FORM

The following is added to Condition **16. Transfer Of Rights Of Recovery Against Others To Us** under **Section VI – Conditions**:

We have the right to recover our payments from anyone liable for an injury or damage covered by this policy. To the extent that right has been waived in "underlying insurance", we will waive any right of recovery we may have against a person or organization because of payments we make under this policy. Any such waiver, however, will not be any broader than that provided by such "underlying insurance".

# In Process