

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

VARIOUS PROVISIONS IN THIS POLICY MAY BE MORE RESTRICTIVE THAN YOU ARE FAMILIAR WITH OR HAVE PREVIOUSLY PURCHASED. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED.

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

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

Other words and phrases that appear in bold face have special meanings as set forth in Section V - Definitions or as elsewhere defined in this policy.

SECTION I - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

INSURING AGREEMENT

a. **We** will pay those sums that an **insured** becomes legally obligated to pay as **tort** damages for **bodily injury** or **property damage** to which this insurance applies. **We** will have the right and duty to defend an **insured** as defined in paragraphs (1) and (2) of Section II - Who Is An **Insured**, against any **suit** seeking those damages. However, **we** will have no duty or obligation to defend any **insured** in any **suit** where another insurer is providing a defense to the **insured**, regardless of the number of **claims** or claimants joined in the **suit** and regardless of when the damage or injury occurred or is alleged to have occurred, and **we** will have no duty to contribute to or participate in the defense provided by any other such insurer, and **we** will also have no duty or obligation to defend any **insured** who qualifies as an additional insured by way of an endorsement to this policy under any circumstance.

We may at **our** discretion investigate any **occurrence** and settle any **claim** or **suit** that may result. But:

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

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

- (1) The **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**; and
 - (2) The **bodily injury** or **property damage** is caused by an **occurrence** which takes place during the **policy period** regardless of whether or not such **occurrence** is known or apparent to anyone; and
 - (3) The **bodily injury** or **property damage** resulting from such **occurrence** first takes place during the **policy period**, regardless of when the **bodily injury** or **property damage** becomes known or apparent to anyone.
- c. All **bodily injury** or **property damage** arising from an **occurrence**, or series of related **occurrences**, will be deemed to first take place at the time of the first such **bodily injury** or **property damage**, even though the **occurrence** giving rise to such **bodily injury** or **property damage** may be continuous or repeated exposure to the same generally harmful conditions, and even though the nature, type or extent of such **bodily injury** or **property damage** may be continuous, progressive, cumulative, changing or evolving, regardless of when the **bodily injury** or **property damage** becomes known or apparent to anyone. If the date the **bodily injury** or **property damage** first took place cannot be determined, then the date the **bodily injury** or **property damage** first took place will be deemed to be the earliest date of exposure to, or creation of, the condition, circumstance or process that led to the **bodily injury** or **property damage**.
- d. **Our** duty to defend is further limited as provided in paragraphs (1), (2), (3) and (4) below.
- (1) **We** will have no duty to defend any **suit** for **bodily injury** or **property damage** that was first made or filed before the **policy period**, regardless of whether the **insured** was a party to, or any **insured** knew or was aware of, such **suit** at the time it was filed. This provision applies to all **suits** that are re-filed, amended or consolidated among all or some of the parties, and the initial filing date of the first such **suit** will be determinative of whether the **suit** was filed before the **policy period**.
 - (2) When **we** have no duty to defend, **we** retain the right at **our** sole election and discretion, to **defend** an **insured** or to intervene in any **suit** which may involve liability covered by this policy.

- (3) **We** will have no duty to defend any **insured** against any **suit** seeking damages to which this insurance does not apply.
- (4) **We** will have no obligation or duty to defend any **suit** where it is alleged, in whole or in part, that any portion of the **bodily injury** or **property damage** first took place prior to the **policy period**.

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

COVERAGE B. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY

INSURING AGREEMENT

- a. **We** will pay those sums that an **insured** becomes legally obligated to pay as **tort** damages because of **personal injury** or **advertising injury** to which this insurance applies. **We** will have the right and duty to defend an **insured** as defined in paragraphs (1) and (2) of Section II – Who Is An **Insured**, against any **suit** seeking those damages. However, **we** will have no duty or obligation to defend any **insured** in any **suit** where another insurer is providing a defense to the **insured**, regardless of the number of **claims** or claimants joined in the **suit** and regardless of when the damage or injury occurred or is alleged to have occurred, and **we** will have no duty to contribute to or participate in the defense provided by any other such insurer, and **we** will also have no duty or obligation to defend any **insured** who qualifies as an additional insured by way of an endorsement to this policy under any circumstance.

We may at **our** discretion investigate any offense and settle any **claim** or **suit** that may result. But:

- (1) The amount **we** will pay for damages is limited as described in Section III - Limits Of Insurance.
 - (2) **Our** right and duty to defend end when **we** have used up the applicable limit of insurance by payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.
- b. This insurance only applies to:
 - (1) **Personal injury** caused by an offense arising out of **your** business, excluding advertising, publishing, broadcasting or telecasting done by or for **you**, but only if the offense was committed in the **coverage territory** during the **policy period**;
 - (2) **Advertising injury** caused by an offense committed in the course of advertising **your** goods, **products** or services, but only if the offense was committed in the **coverage territory** during the **policy period**.

All **personal injury** or **advertising injury** to the same person or organization arising out of a series of related or continuing offenses will be deemed to first take place at the time the first such offense is committed, regardless when the **personal injury** or **advertising injury** becomes known or apparent to anyone.

- c. **Our** duty to defend is further limited as provided in paragraphs (1), (2) and (3) below.
 - (1) **We** will have no duty to defend any **suit** for **personal injury** or **advertising injury** that was first filed before the **policy period**, regardless of whether the **insured** was a party to, or any **insured** knew or was aware of, such **suit** at the time it was filed. This provision applies to all **suits** that are re-filed, amended or consolidated among all or some of the parties, and the initial filing date of the first such **suit** will be determinative of whether the **suit** was filed before the **policy period**.
 - (2) When **we** have no duty to defend, **we** retain the right at **our** sole election and discretion, to **defend** an **insured** or to intervene in any **suit** which may involve liability covered by this policy.
 - (3) **We** will have no duty to defend any **insured** against any **suit** seeking damages for **personal injury** or **advertising injury** to which this insurance does not apply.

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

EXCLUSIONS: COVERAGES A AND B

The following exclusions apply regardless of whether any other cause or causes contributed, in whole or in part, directly or indirectly or concurrently or in any sequence, with the excluded matters to cause **bodily injury**, **property damage**, **personal injury** or **advertising injury**, and regardless of whether any other contributing or concurrent cause or causes of the **bodily injury**, **property damage**, **personal injury** or **advertising injury** are covered by this policy. This insurance does not apply to:

- A. EXPECTED OR INTENDED INJURY OR CRIMINAL OR FRAUDULENT ACT

Bodily injury or **property damage**

 - (1) Expected or intended from the standpoint of any **insured**.
 - (2) Arising out of a criminal or fraudulent act committed by or at the direction of anyone.
- B. CONTRACTUAL LIABILITY

Bodily injury or **property damage** for which an **insured** is obligated to pay damages by reason of the assumption of liability in a contract or

agreement. This exclusion does not apply to liability for **bodily injury** or **property damage**:

- (1) That **you** would have in the absence of a contract or agreement; or
- (2) That **you** assumed in a contract or agreement that is an **insured contract**, provided the **bodily injury** or **property damage** occurs subsequent to the execution of the **insured contract** and the **bodily injury** or **property damage** arises from **your work** performed during the **policy period**.

In the event that paragraph (2) above is satisfied, and subject to all other policy terms and conditions including exclusion GG. - Attorney Fees and Expert Fees of Others, **our** duty to indemnify **you** for any liability for **bodily injury**, **property damage**, attorney fees or the costs or expenses of litigation awarded against **you** in connection with an **insured contract** will be limited to **your** percentage of negligence or fault, as determined by the principles of comparative fault and will not exceed the amount derived by multiplying the percentage of fault allocated to **you** by the trier-of-fact to the total damage sum awarded against **you** to **your** indemnitee by the trier-of-fact. Under no circumstances will **we** pay more than this proportionate share of any damages awarded against **you** even if **your** liability under the **insured contract** is greater.

Coverage for liability **you** assume in an **insured contract** is subject to all of the other terms, conditions and exclusions of this policy.

Where pursuant to an **insured contract you** have assumed liability to another party for the cost of that party's defense, reasonable attorneys' fees and litigation expenses for which **you** are liable to that party are deemed damages because of **bodily injury** or **property damage** so long as those attorneys' fees and litigation expenses are for the defense of that party in a **suit** which seeks damages for **bodily injury** or **property damage** covered by this policy and such costs, fees and expenses would otherwise be covered by this policy. Payments made to **you** or on **your** behalf for such liability will reduce the applicable limits of insurance as set forth in Section III - Limits Of Insurance. Except as set forth in this exclusion, the costs incurred by **you** for the defense of another are not covered.

C. LIQUOR LIABILITY

Bodily injury, **property damage**, **personal injury** or **advertising injury** for which any **insured** may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This Exclusion applies only to an **insured** in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

D. WORKERS COMPENSATION AND SIMILAR LAWS

An obligation of any **insured** under a workers compensation, disability benefits, unemployment compensation law or any similar law regulation, ruling or the like.

E. LIABILITY TO EMPLOYEES

Bodily injury, **personal injury**, or **advertising injury** to:

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

This exclusion applies:

- (1) Whether an **insured** may be liable as an employer or in any other capacity;
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury;
- (3) To any **insured** against whom a **claim** is made or **suit** is brought for such **bodily injury**, **personal injury** or **advertising injury**, whether by or on behalf of an employee of that **insured** or any other **insured**; and
- (4) To liability assumed in an **insured contract**.

For the purpose of this exclusion the term "employee" includes loaned, rented, leased or temporary employees, as well as persons who qualify as borrowed servants or employees or persons who are or may be deemed employees of any **insured** under the doctrines of borrowed servant, borrowed employee, respondeat superior or any similar doctrine, or for whom any **insured** may be held liable as an employer.

F. POLLUTION

- (1) **Bodily injury** or **property damage** caused by, resulting from, attributable to, contributed to, or aggravated by the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**, or from the presence of, or exposure to, pollution of any form whatsoever, and regardless of the cause of the pollution or **pollutants** and

whether any other cause of the **bodily injury** or **property damage** acted jointly, concurrently or in any sequence with said **pollutants**. This Exclusion applies whether any other cause of the **bodily injury** or **property damage** would otherwise be covered under this insurance.

- (2) This exclusion applies not only to traditional environmental contamination or **pollutants**, but also to **bodily injury** or **property damage** arising out of **pollutants** in common and everyday situations or involving ordinary acts of negligence.
- (3) This exclusion applies to any loss, cost or expense arising out of:
 - (a) Any request, demand, order or requirement by anyone that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
 - (b) Any **claim** or **suit** by anyone for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in Section 1 – Coverages A and B of this policy, where a **suit** is based in whole or in part upon **bodily injury** or **property damage**, liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend an **insured** in such **suit**, **we** will reimburse such **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15. of Section IV - Commercial General Liability Conditions.

G. AIRCRAFT, **AUTO** OR WATERCRAFT

Bodily injury or **property damage** arising out of the ownership, maintenance, use or entrustment to others of any aircraft, **auto** or watercraft. 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 any **insured**, if the **occurrence** which caused the **bodily injury** or **property damage** involved the maintenance, use or entrustment to others of any aircraft, **auto** or watercraft.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises **you** own or rent;
- (2) A watercraft **you** do not own that is:

- (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an **auto** on, or on the ways next to, premises **you** own or rent, provided the **auto** is not owned by, rented or loaned to any **insured**;
 - (4) Liability assumed under an **insured contract** for the ownership, maintenance or use of aircraft or watercraft; or
 - (5) The operation of any of the machinery or equipment listed in paragraph f.(2) or f.(3) of the definition of **mobile equipment**.

H. **MOBILE EQUIPMENT**

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

- (1) The transportation of **mobile equipment** by an **auto** owned or operated by or rented or loaned to any **insured**; or
- (2) The use of **mobile equipment** in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity; or
- (3) The transportation, movement, use, presence, employment or existence of **mobile equipment** on any public street or highway, except this subparagraph does not apply to liability arising out of the transportation or movement of **mobile equipment** from one part of a job site to another part of a job site on any public street or highway immediately adjoining a job site at which **your work** is being performed.

I. **WAR**

Bodily injury, property damage, personal injury or **advertising injury** arising out of or due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion, act of terrorism, or revolution, whether any other cause or causes of said **bodily injury, property damage, personal injury, or advertising injury** including the negligence or misconduct of any **insured**, caused or contributed to such **bodily injury, property damage, personal injury** or **advertising injury**.

J. **DAMAGE TO PROPERTY**

Property damage to:

- (1) Property any **insured** owns, rents, or occupies, including any costs or expenses incurred by any **insured**, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises an **insured** sells, gives away or

abandons, if the **property damage** arises out of any part of those premises;

- (3) Property, real or personal, loaned to any **insured**;
- (4) Personal property in the care, custody or control of any **insured**, whether or not such care, custody or control was exclusive at the time of such **property damage**;
- (5) That particular part of real property on which **you** or any contractors or subcontractors working directly or indirectly on **your** behalf are performing operations, if the **property damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

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

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

For purposes of paragraphs (5) and (6) of this exclusion, if **you** are a general contractor, construction supervisor, construction manager or developer, the entire construction project or job site at which **your work** is being performed or services provided will be considered "that particular part" of real or other property.

For purposes of paragraph (5), **you** or any contractors or subcontractors working directly or indirectly on **your** behalf will be deemed to be "performing operations" from the time **you** or the contractors or subcontractors begin work until such operations are complete as set forth in the definition of **products-completed operations hazard**.

K. DAMAGE TO **YOUR PRODUCT**

Property damage to **your product**.

L. DAMAGE TO **YOUR WORK**

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

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

M. DAMAGE TO **IMPAIRED PROPERTY** OR PROPERTY NOT PHYSICALLY INJURED

Property damage to **impaired property** or property which has not been physically injured arising out of:

- (1) A delay or failure by **you** or anyone acting on **your** behalf to perform a contract or

agreement in accordance with its terms; or

- (2) A defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**.

This exclusion applies to property which is otherwise not physically injured or damaged but which must be demolished, removed, repaired, replaced, altered or damaged in order to remove, repair or replace **your work** or **your product**.

N. RECALL OF PRODUCTS, WORK OR **IMPAIRED PROPERTY**

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

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

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

This exclusion applies to property which is otherwise not physically injured or damaged but which must be demolished, removed, repaired, replaced, altered or damaged in order to remove, repair or replace **your work** or **your product**.

O. ASBESTOS

Bodily injury, property damage or **personal injury** arising out of exposure to or the manufacture, mining, use, sales, installation, distribution, removal, or encapsulation of asbestos products, asbestos fibers or asbestos dust. This exclusion will apply without regard to the source or sources of such asbestos, or the basis of the **insured's** liability. This exclusion includes defects or negligence in design, construction or materials, or any other event, conduct or misconduct, which may have or is claimed to have precipitated, caused or acted jointly, concurrently, or in any sequence with asbestos in causing the **bodily injury, property damage** or **personal injury**. This Exclusion includes any **bodily injury, property damage** or **personal injury** caused by the presence of asbestos and **bodily injury, property damage** or **personal injury** caused by the removal, eradication, detoxification, remediation or decontamination of asbestos or property containing asbestos, and further includes any liability, cost or expense to remediate or prevent **property damage, bodily injury** or **personal injury** from asbestos.

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in Section 1 – Coverages A and B of this policy, where a **suit** is based in whole or in part

upon **bodily injury, property damage or personal injury**, liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend an **insured** in such **suit**, **we** will reimburse an **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15. of Section IV - Commercial General Liability Conditions.

P. PUNITIVE DAMAGES, EXEMPLARY DAMAGES, MULTIPLICATION OF DAMAGES, FINES OR PENALTIES

Claims or **suits** for punitive or exemplary damages, fines or penalties of any nature whether or not imposed by or under any law, statute, or ordinance of any federal, state or municipal government agency including multiplication of compensatory damages or multiplication of attorney fees.

Q. AIRCRAFT PRODUCTS

Bodily injury or property damage included within the **products-completed operations hazard** relating to aircraft, including missiles or spacecraft, any ground support or control equipment and any article installed in aircraft, or used in connection with aircraft, or for spare parts for aircraft, or tooling used for the manufacture thereof, including ground handling tools and equipment, training aids, instruction manuals, blueprints, engineering or other data, advice and services and labor relating to such aircraft or articles, or to any liability arising out of the grounding of any aircraft.

For the purpose of this exclusion "grounding" means the withdrawal of one or more aircraft from flight operations or the imposition of speed, passenger or load restrictions on such aircraft, by reason of the existence of or alleged or suspected existence of any defect, fault, or condition in such aircraft or any part thereof sold, handled or distributed by any **insured**, or manufactured, assembled or processed by any other person or organization according to specifications, plans, suggestions, orders or drawings of any **insured**, or with tools, machinery or other equipment furnished to such persons or organizations by any **insured**, whether such aircraft so withdrawn are owned or operated by the same or different persons or organizations.

R. EARTH MOVEMENT

Bodily injury, property damage or personal injury arising from, aggravated by, or as a consequence of earth movement, whether the earth movement is combined with any other cause. As used in this exclusion the term earth movement includes, but is not limited to, loss of lateral support, avalanche, earthquake, tremors, aftershocks landslide, subsidence, mud flows,

sink holes, erosion or any change in the level of soil or earth by any cause including contracting, sinking, shifting, expanding, heaving, rising, removal of topsoil or any other movement of soil or earth.

This exclusion applies regardless of the cause or causes of the earth movement and includes defects or negligence in design, construction or materials, or any other event, conduct or misconduct which may have or is claimed to have aggravated, precipitated, caused or acted jointly, concurrently, or in any sequence with earth movement in causing the **bodily injury, property damage or personal injury**. This exclusion further applies to **bodily injury, property damage or personal injury** arising out of the mitigation, repair or avoidance of earth movement.

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in Section 1 – Coverages A and B of this policy, where a **suit** is based in whole or in part upon **bodily injury, property damage or personal injury** liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend an **insured** in such **suit**, **we** will reimburse such **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15. of Section IV - Commercial General Liability Conditions.

S. NUCLEAR ENERGY

Bodily injury, property damage or personal injury:

Arising from, aggravated by, or as a consequence of the hazardous properties of nuclear material, whether any other cause or causes acted jointly, concurrently or in any sequence to result in such **bodily injury, property damage or personal injury** and without regard to whether any other such cause or causes of the **bodily injury, property damage or personal injury** would be covered under this policy

The following definitions apply only to this exclusion:

- (1) "Hazardous properties" include radioactive, toxic or explosive properties.
- (2) "Nuclear material" means source material, special nuclear material or by-product material.
- (3) "Source material," "special nuclear material," and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

For purposes of this exclusion, **property damage** includes all forms of radioactive contamination of property. This exclusion includes any injury or

damage caused or alleged to have been caused by the removal, eradication, detoxification, remediation or decontamination of nuclear material or property containing nuclear material, and further includes any liability, cost or expense to remediate or prevent **bodily injury, property damage** or **personal injury** from nuclear material.

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in Section 1 – Coverages A and B of this policy, where a **suit** is based in whole or in part upon **bodily injury, property damage** or **personal injury**, liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend an **insured** in such **suit**, **we** will reimburse such **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15. of Section IV - Commercial General Liability Conditions.

T. ELECTROMAGNETIC RADIATION

Bodily injury, property damage or **personal injury** arising from or caused by exposure to or the existence of harmful levels or frequencies of electromagnetic radiation, whether such electromagnetic radiation is naturally occurring or artificially created, and whether such electromagnetic radiation acted or is said to have acted in any sequence or combination with any other cause or causes of damage or injury. This Exclusion will apply without regard to the source or sources of such electromagnetic radiation, or the allegations against an **insured** or basis of an **insured's** liability.

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in SECTION 1 – COVERAGES A and B of this policy, where a **suit** is based in whole or in part upon **bodily injury, property damage** or **personal injury** liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend an **insured** in such **suit**, **we** will reimburse such **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15 of Section IV -Commercial General Liability Conditions.

U. EMPLOYMENT PRACTICES

Bodily injury or **property damage** or **personal injury** arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, defamation, demotion, evaluation, reassignment, humiliation, harassment, discipline, discrimination or other

employment-related practices, policies, acts or omissions; or

- (4) Consequential injury as a result of any of the above.
- (5) **Claim** or **suit** by a spouse, domestic partner, child, parent, brother or sister of any employee or **insured** arising out of, or as a consequence of any activities or circumstances described in paragraphs (1), (2), (3), or (4) above.

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

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in Section 1 – Coverages A and B of this policy, where a **suit** is based in whole or in part upon **bodily injury, property damage** or **personal injury** liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend an **insured** in such **suit**, **we** will reimburse such **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15. of Section IV - Commercial General Liability Conditions.

V. MOLD, BACTERIA AND OTHER ORGANICALLY-CAUSED

Bodily injury, property damage or **personal injury** arising, directly or indirectly, out of:

- (1) Any actual, alleged or threatened inhalation, ingestion, existence, presence, growth, spread, dispersal, release or escape of, or contact with or exposure to, any fungi, mold, lichen, organic or inorganic pathogens, pollen, bacteria or other living or dead organisms, including any by-products that have toxic, hazardous, noxious, pathogenic, irritating or allergenic qualities or characteristics.
- (2) Any toxic, hazardous, noxious, irritating, pathogenic or allergen qualities or characteristics of indoor air regardless of cause; or
- (3) Any substance, material, mineral, or other product that is either alleged or deemed to be hazardous, toxic, irritating, pathogenic or noxious in any way, or contributes in any way to an allergic reaction.

This exclusion applies to any loss, cost or expense arising out of any:

- (a) Request, demand, order or requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or

neutralize, or in any way respond to or assess the effects of the matters addressed in paragraphs (1), (2) or (3) above; or

- (b) **Claim or suit** for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of the matters addressed in paragraphs (1), (2) or (3) above.

This exclusion applies regardless of the origin or cause of the fungi, mold, lichen, organic or inorganic pathogens, pollen, bacteria or other living or dead organisms, including any by-products that have toxic, hazardous, noxious, pathogenic, irritating or allergenic qualities or characteristics, and whether any other cause of the **bodily injury, property damage or personal injury** acted jointly, concurrently or in any sequence with fungi, mold, lichen, organic or inorganic pathogens, pollen, bacteria or other living or dead organisms, including any by-products that have toxic, hazardous, noxious, pathogenic, irritating or allergenic qualities or characteristics.

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in Section 1 – Coverages A and B of this policy, where a **suit** is based in whole or in part upon **bodily injury, property damage or personal injury** liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend an **insured** in such **suit**, **we** will reimburse such **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15. of Section IV - Commercial General Liability Conditions.

W. PAST PROJECTS

Property damage included within the **products-completed operations hazard** arising from, or in any way related to, **your work** or **your product**, if **your work** was performed on or in connection with, or **your product** was supplied or incorporated into or upon, any real property improvement or project of construction including all associated common areas, before the **policy period**. This exclusion does not apply if the project of construction is specifically endorsed on this policy and a premium is charged therefor.

X. LEAD

Bodily injury, property damage or personal injury arising from or caused by the existence of or exposure to lead, whether such lead is in pure form or is or was combined with any other chemical or material, and whether the existence of or exposure to lead is or is alleged to have caused damage in any sequence or combination with, or contributed to or was contributed to by

any other cause or causes of injury or damage. This exclusion will apply without regard to the allegations or basis of the **insured's** liability. This exclusion includes any injury or damage caused or alleged to have been caused by the removal, eradication, detoxification, remediation or decontamination of lead or property containing lead, and further includes any liability, cost or expense to remediate or prevent **property damage, bodily injury or personal injury** from lead.

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in Section 1 – Coverages A and B of this policy, where a **suit** is based in whole or in part upon **bodily injury, property damage, or personal injury** liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend **insured** in such **suit**, **we** will reimburse such an **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15 of Section IV - Commercial General Liability Conditions.

Y. CONDOMINIUM OR TOWNHOUSE LIABILITY

Property damage or bodily injury included within the **products-completed operations hazard** arising from, related to or in any way connected with **your work** or the work of any **insured** that is performed on or in connection with, or **your product** supplied or incorporated into or upon, a common ownership condominium, townhouse or similar project including the common areas of such projects. This exclusion applies to **personal injury or advertising injury** arising or resulting from any **insured's** operations performed upon, at or for such a project.

This exclusion also applies to **property damage, bodily injury, personal injury, or advertising injury** arising from, related to or connected with **your work** or the work of any **insured** that is performed on or in connection with, or **your product** supplied or incorporated into or upon, an apartment project or structure which, at the time a claim for such **property damage, bodily injury, personal injury, or advertising injury** is first made, has been or is being converted into a common ownership condominium, townhouse or similar project, whether **your** operations, including **your work** or **your product**, were performed, incorporated or supplied before or after the apartment was converted to a condominium, townhouse or similar project or structure.

A project or development of condominiums, townhomes or similar projects includes such projects or developments where any or all of the units are held for rental or lease.

Z. FORMALDEHYDE

Bodily injury, property damage or personal injury arising from the manufacture, handling, distribution, sale, application, consumption, use or exposure to any product known as formaldehyde or which has the same chemical formula or which is a formaldehyde derivative or which is generally known in the trade in which it is used as having a like formulation, structure or function by whatever name manufactured, sold or distributed and whether the existence of or exposure to formaldehyde caused or is alleged to have caused damage in any sequence or combination with, or contributed to or was contributed to by any other cause or causes of injury or damage. This exclusion will apply without regard to the basis of an **insured's** liability. This exclusion applies to any injury or damage caused by the removal, eradication, detoxification, remediation or decontamination of formaldehyde or property containing formaldehyde, and further includes any liability, cost or expense to remediate or prevent **bodily injury, property damage or personal injury** from formaldehyde.

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in Section 1 – Coverages A and B of this policy, where a **suit** is based in whole or in part upon **bodily injury, property damage or personal injury**, liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend an **insured** in such **suit**, **we** will reimburse such **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15. of Section IV - Commercial General Liability Conditions.

AA. PROFESSIONAL LIABILITY

Bodily injury, property damage, personal injury or advertising injury arising out of the performance of professional services by anyone.

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in Section 1 – Coverages A and B of this policy, where a **suit** is based in whole or in part upon **bodily injury, property damage, personal injury or advertising injury** liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend an **insured** in such **suit**, **we** will reimburse such **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15. of Section IV - Commercial General Liability Conditions.

BB. FINANCIAL SERVICES

Bodily injury, property damage, personal injury or advertising injury arising out of the

rendering or failure to render **financial services**.

CC. BLASTING OPERATIONS

Bodily injury, property damage, personal injury or advertising injury arising out of blasting or explosion operations.

DD. EXTERIOR INSULATION AND FINISH SYSTEMS

Property damage arising out of:

- (1) The design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair including remodeling, service, correction or replacement of an "exterior insulation and finish system" (EFIS), commonly referred to as synthetic stucco, or any part thereof or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or
- (2) Any work or operations with respect to any exterior component, fixture or feature of any structure if EIFS is used in or on any part of that structure.

"Exterior insulation and finish system" includes an exterior cladding or finish system used on any part of any structure, and consisting of:

- (1) A rigid or semi-rigid insulation board made of expanded polystyrene or other materials;
- (2) The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
- (3) A reinforced base coat;
- (4) A finish coat providing surface texture and color; and
- (5) Any flashing, caulking or sealant used with the system for any purpose.

EE. CONCRETE SULFATES

Bodily injury or Property damage arising out of or resulting from exposure of concrete to, or the absorption by concrete products of, sulfates, acids or sulfides in any form whatsoever, whether such sulfates are in pure form or are or were combined with any other chemical or material. This exclusion applies regardless of any other cause or causes of the **bodily injury or property damage** and includes defects or negligence in design, construction, inspection or materials, or any other event, conduct or misconduct which may have or is claimed to have precipitated, caused or acted jointly, concurrently, or in any sequence with the exposure of concrete to sulfates, sulfides or acids in causing the **bodily injury or property damage**. This exclusion will apply without regard to the allegations or basis of the **insured's** liability.

Notwithstanding the provisions of this policy regarding the duty to defend an **insured** as described in Section 1 – Coverages A and B of this policy, where a **suit** is based in whole or in part upon **bodily injury** or **property damage**, liability for which is excluded by this exclusion, **we** will have the right, but not the obligation, to defend said **suit**. When **we** do not elect to defend an **insured** in such **suit**, **we** will reimburse such **insured** for the reasonable attorneys' fees and litigation expenses incurred by the **insured**, in accordance with paragraph 15. of Section IV - Commercial General Liability Conditions.

FF. BREACH OF CONTRACT

Bodily injury, property damage, personal injury or **advertising injury** arising directly or indirectly, out of the actual or alleged breach of any express or implied contract, agreement or warranty.

GG. ATTORNEY FEES AND EXPERT FEES OF OTHERS

Any **claim, suit, demand, request** or award against any **insured** comprised, in whole or in part, of any attorney fees and costs, expert fees and costs, sanctions or any other cost or expense incurred by any other party to any **claim** or **suit**, including any other **insured** under this policy. This exclusion applies regardless of whether any of the expenses or costs described above were awarded in a **suit** as damages or costs.

This exclusion does not apply to **our** obligations under an **insured contract**.

HH. CONSOLIDATED INSURANCE PROGRAM (WRAP-UP, OWNER CONTROLLED OR CONTRACTOR CONTROLLED)

Bodily injury or **property damage** included within the **products-completed operations hazard** arising out of, resulting from, occurring at or connected with any location or premises which is or was at any time covered under any Consolidated Insurance Program (CIP), Owner Controlled Insurance Program (OCIP), Contractor Controlled Insurance Program (CCIP), Wrap-Up or similar insurance program.

This exclusion applies regardless of whether the CIP, OCIP, CCIP, Wrap-Up or similar insurance program provides coverage that is more restrictive than or identical to this policy, actually applies to the **bodily injury** or **property damage**, has limits adequate to cover all **claims** or remains in effect or is cancelled.

II. PERSONAL INJURY AND ADVERTISING INJURY

Personal injury or **advertising injury**:

- (1) Arising out of oral or written publication of material, if done by or at the direction of an **insured** with knowledge of its falsity;
- (2) Arising out of oral or written publication of the same or similar material, whose first publication took place before the beginning of

the **policy period**, even if the publication continued after the inception date of the policy;

- (3) Arising out of a criminal or fraudulent act committed by or with the consent of any **insured** or done at any **insured's** direction;
- (4) For which an **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 a contract or an agreement;
- (5) Arising out of infringement of copyright, title, trademark, trade dress, trade secret, patent, or advertising slogans or other intellectual property rights including, but not limited to infringement of another's architectural plans, drawings, or similar designs;
- (6) Arising out of the negligent or tortious interference with contract or prospective economic advantage;
- (7) Caused by or at the direction of any **insured** with the knowledge that the act would violate the rights of another and would inflict **personal injury** or **advertising injury**;
- (8) Arising out of directly or indirectly out of any unsolicited advertising or communication, including but not limited to, telephone, telefax, or e-mail, or 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; or
 - (c) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information;
- (9) Arising out of the unauthorized use of another's name or product in any way, including but not limited to use in any e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers. Use of another's product includes but is not limited to use of architectural plans, drawings, or similar designs;
- (10) Arising out of an electronic chat room or bulletin board any **insured** hosts, owns, or over which any **insured** exercises control.

JJ. ADVERTISING INJURY

Advertising injury arising out of:

- (1) The failure of goods, products or services to conform to any statement of quality or performance made in any **advertisement** by

an **insured**;

- (2) The wrong description of the price of goods, products or services or any wrong description of the goods, products or services stated in an **advertisement** by an **insured**;
- (3) The misappropriation of advertising ideas or style of doing business; or
- (4) The oral or written publication of material that disparages a person's or organization's goods, products or services.

COVERAGE C. MEDICAL PAYMENTS

1. INSURING AGREEMENT

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

- (1) On premises **you** own or rent; or
- (2) On ways next to premises **you** own or rent;

provided that:

- (1) The accident takes place in the **coverage territory**, during the **policy period**;
- (2) The expenses are incurred and reported to **us** within the **policy period**; and
- (3) The injured person submits to examination, at **our** expense, by physicians of **our** choice when and as often as **we** reasonably require.

- b. **We** will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance as described in Section III – Limits Of Insurance. Subject to the foregoing and the exclusions in paragraph (2) below, **we** will pay reasonable expenses for:

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

2. EXCLUSIONS

We will not pay expenses for **bodily injury**:

A. ANY **INSURED**

To any **insured**.

B. HIRED PERSON

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

C. INJURY ON NORMALLY OCCUPIED PREMISES

To a person injured on that part of premises any **insured** owns or rents that such person

normally occupies.

D. WORKERS COMPENSATION AND SIMILAR LAWS

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

E. ATHLETIC ACTIVITIES

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

F. EXCLUSIONS: COVERAGES A AND B

Excluded under Exclusions: Coverages A and B.

G. **PRODUCTS-COMPLETED OPERATIONS HAZARD.**

Included within the **products-completed operations** hazard.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. **We** will pay, with respect to any **claim**, or any **suit we** defend:

- a. All expenses **we** incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the **Bodily Injury** Liability Coverage applies. **We** do not have to furnish these bonds or provide security, collateral or financial guarantee for them.
- c. The cost of bonds to release attachments or to stay a judgment on appeal, but only for bond amounts within the applicable limit of insurance. **We** do not have to furnish these bonds or provide security, collateral or financial guarantee for them.
- d. All reasonable expenses **you** incur at **our** request to assist **us** in the investigation or defense of the **claim** or **suit**, including actual loss of earnings up to \$250 a day because of time off from work.
- e. Costs awarded against **you** in the **suit** for damages, if awarded on a cause or causes of action covered by this insurance. However, **we** will not pay costs which are awarded as attorney fees or expert fees to any party by reason of statute, court rule, decisional authority, regulation or a contractual obligation, except as set forth in paragraph b. of exclusions, Coverages A and B.
- f. Prejudgment interest awarded against **you** on that part of the judgment **we** pay. If **we** make an offer to pay the applicable limit of insurance,

we will not pay any prejudgment interest based on the period of time after the offer.

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

SECTION II - WHO IS AN **INSURED**

- 1. If the **named insured** is designated in the declarations as:

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

- 2. Each of the following is also an **insured**:

- a. **Your** general or direct employees, but not including **your executive officers** (if you are an organization other than a partnership, joint venture or limited liability company, **your** managers (if **you** are a limited liability company), or leased employees, special employees, temporary employees or volunteer workers. However, **your** general or direct employees are **insureds** only for acts within the scope of their employment by **you** or while performing duties related to the conduct of **your** business, and no employee is an **insured** for:

- (1) **Bodily injury, personal injury or 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 **your executive officers**, directors or stockholders, leased employees,

temporary employees, volunteer workers, special employees or to a co-employee while in the course of his or her employment or performing duties related to the conduct of **your** business;

- (b) To the spouse, child, parent, brother or sister of anyone included in 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 (1)(b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

- (2) **Property damage** to property:

- (a) Owned or occupied or used by,
- (b) Rented or loaned to, in the care, custody or control of, or over which physical control of any extent is being exercised for any purpose by;

You, or any of **your** employees, leased employees, temporary employees, volunteer workers, special employees, any partners or members (if **you** are a partnership or joint venture) or any member (if **you** are a limited liability company).

- b. Any person (other than **your** employee) or any organization while acting as **your** real estate manager.
- c. Any person or organization having proper temporary custody of **your** property if **you** die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until **your** legal representative has been appointed.
- d. **Your** legal representative if **you** die, but only with respect to duties as such. That representative will have all **your** rights and duties under this Coverage Part.

- 3. Any other person or entity that qualifies as an additional insured by way of an endorsement to this policy is an **insured**, but only to the extent and with the limitations set forth in said endorsement.
- 4. No person or entity is an **insured** by virtue of the acquisition of all or any part of the assets of an **insured**.
- 5. No person, corporation or organization, including **you**, is an **insured** with respect to the conduct of any current or past corporation, organization, partnership, limited liability company, joint

venture or trust that is not shown as a **Named Insured** in the declarations. This applies regardless of whether there is an increase in risk or hazard to **us** as a result of the conduct of any such current or past unnamed corporation, organization, partnership, limited liability company, joint venture or trust.

SECTION III - LIMITS OF INSURANCE

1. The limits of insurance shown in the declarations and the rules below fix the most **we** will pay regardless of the number of:
 - a. **Insureds**;
 - b. **Claims** made or **suits** brought; or
 - c. Persons or organizations making **claims** or bringing **suits**.
2. The aggregate limit is the most **we** will pay for the sum of all:
 - a. Damages under Coverage A;
 - b. Damages under Coverage B; and
 - c. Medical expenses under Coverage C.
3. Subject to paragraph 2. above, the **personal injury** and **advertising Injury** limit is the most **we** will pay under Coverage B for the sum of all damages because of all **personal injury** and all **advertising injury** sustained by any one person or organization.
4. Subject to paragraph 2. above, the each **occurrence** limit is the most **we** will pay for the sum of all damages under Coverage A because of all **bodily injury** and **property damage** arising out of any one **occurrence**.
5. Subject to paragraph 2. above, The medical expense limit is the most **we** will pay under Coverage C for all medical expenses because of **bodily injury** sustained by any one person.
6. For purposes of paragraph 4., above, all **bodily injury** and **property damage** caused or alleged to have been caused by **your work** or **your product** that is incorporated into a project of construction, including a development of multiple distinct units, will be deemed to have been caused by a single **occurrence**.
7. If a single **occurrence** as defined in the policy or as modified for purposes of the application of this section in paragraph 6. above, causes **bodily injury** or **property damage** in more than one **policy period**, **we** will only be liable for a pro-rata share of the highest per **occurrence** limit purchased by an **insured** for any single policy year, even if purchased from another insurer. In calculating **our** pro rata share, only one policy issued by **us** may be utilized. Should more than one policy of insurance issued by **us** apply to a **claim** or **suit** for **bodily injury** or **property damage** then, regardless of the number of **claims** or claimants joined in the **suit**, and regardless of

when the damage or injury occurred, the most **we** will pay for all **bodily injury** or **property damage** alleged in the **claim** or **suit** is the amount of the highest limit of any one of the policies issued by **us**.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

We have no duty to provide coverage or defense under this insurance unless **you** and any other involved **insured** have fully complied with each and every one of the conditions contained in this policy.

1. BANKRUPTCY

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

2. CANCELLATION

a. The first **named insured** shown in the declarations may cancel this policy by mailing or delivering to **us** advance written notice of cancellation.

b. **We** may cancel this policy by mailing or delivering to the first **named insured** written notice of cancellation at least:

(1) Ten (10) days before the effective date of cancellation if **we** cancel for non-payment of premium; or

(2) Thirty (30) days before the effective date of cancellation if **we** cancel for any other reason.

c. **We** will mail or deliver **our** notice to the first **named insured's** address shown in the declarations.

d. Notice of cancellation will state the effective date of cancellation. The **policy period** will end on that date.

e. If this policy is cancelled, **we** will send the first **named insured** any premium refund due as follows:

(1) If **we** cancel, the refund will be pro rata; or

(2) If the first **named insured** cancels, the refund may be less than pro rata and will be computed by **us** using **our** customary short-rate procedure.

The cancellation will be effective even if **we** have not made or offered a refund. Notwithstanding the foregoing, if **we** have elected to audit the policy rate basis under the provisions of Section IV, paragraph 4., Examination Of **Your** Books And Records, the first **named insured** agrees to pay the higher of:

(1) The earned premium as computed by such audit; or

(2) The earned premium as computed by such customary short-rate procedure of the MINIMUM AND DEPOSIT PREMIUM if the first **named insured** cancels, or as computed pro rata if **we** cancel.

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

3. CHANGES

This policy contains all the agreements between **you** and **us** concerning the insurance afforded. The first **named insured** shown in the declarations is authorized to make changes in the terms of this policy with **our** written consent. This policy's terms can be amended or waived only by written endorsement issued by **us** and made a part of this policy.

4. EXAMINATION OF **YOUR** BOOKS AND RECORDS

We may examine and audit **your** books and records as they relate to this policy at any time during the **policy period** and up to three (3) years afterward.

5. INSPECTIONS AND SURVEYS

We have the right but are not obligated to:

- a. Make inspections and surveys at any time;
- b. Give **you** reports on the conditions **we** find; and
- c. Recommend changes.

Any recommendations, inspections, surveys, or reports relate only to insurability and the premiums to be charged. **We** do not make safety inspections. **We** do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. **We** do not warrant that conditions:

- a. Are safe or healthful; or
- b. Comply with laws, regulations, codes or standards.

6. **INSURED'S** DUTIES IN THE EVENT OF AN **OCCURRENCE**, OFFENSE, **CLAIM** OR **SUIT**.

a. **You** or any involved **insured** must see to it that **we** are notified as soon as possible of an **occurrence** or an offense which may result in a **claim** or **suit**, whether or not covered by this policy, but notification to **us** must be made within thirty (30) days from **your**, or any involved **insured's**, first notice of an **occurrence** or offense. To the extent possible, notice should include:

- (1) How, when and where the **occurrence** or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or

damage arising out of the **occurrence** or offense.

Notice of an **occurrence** or offense does not constitute notice of a **claim** or **suit**.

b. If a **claim** is made or **suit** is brought against any **insured**, **you** must, as a condition to recovery under this policy:

- (1) Immediately record the specifics of the **claim** or **suit** and the date received, and
- (2) Notify **us** as soon as practicable, but not more than fifteen (15) days following initial receipt of the **claim** or **suit**.
- (3) The requirement to notify **us** applies without regard to whether an **insured** believes, reasonably or otherwise, that the **claim** or **suit** is not covered by this policy.
- (4) The failure to provide the notice required above within the time specified without legal cause or justification will be presumed to materially prejudice **us**.

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. Irrespective of reasons, excuse, justification, or prejudice to **us**:

- (1) **We** will not be liable for any cost, payment, expense (including legal expense) or obligation assumed or incurred by an **insured** or anyone acting for or on behalf of an **insured**, without **our** express consent, other than first aid; and
- (2) **We** will have no liability for any default judgment entered against any **insured**, nor for any judgment, or settlement or determination of liability rendered or entered before notice to **us** giving **us** a reasonable time in which to protect **our** and the **insured's** interests.

Nothing in this paragraph d. will be construed to expand upon coverage nor

lengthen or expand the periods in which **claims or suits** are to be reported as set forth in paragraphs a. through c. above.

7. LEGAL ACTION AGAINST US

No person or organization has a right under this insurance:

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

Subject to paragraph 6. above, a person or organization may sue **us** to recover on an agreed settlement or on a final judgment against an **insured** obtained after an actual trial; but **we** will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by **us**, the **insured** and the claimant or the claimant's legal representative.

8. OTHER INSURANCE, DEDUCTIBLES AND SELF-INSURED RETENTIONS

If other insurance is available to indemnify an **insured** for a loss **we** cover under Coverage A or B of this policy, **our** indemnity obligations are limited as follows:

a. Excess Insurance

This insurance is excess over any other insurance, deductibles or self-insured amounts applicable to a loss, injury or damage which indemnifies an **insured** for a **claim** or **suit** whether the other insurance is stated to be primary, pro rata, contributory, excess, contingent, umbrella or on any other basis, and whether an **insured** is a **named insured** or additional insured, unless the other insurance is issued to the **named insured** and is specifically written to apply in excess of the limits of insurance of this policy.

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

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

We will share the remaining loss, if any, with any other insurance that is not described in paragraph 8.a. and was not bought specifically to apply in excess of the limits of insurance shown in the declarations.

b. Primary Insurance

Where no other insurance is available to an **insured**, this insurance is primary. When other insurance applicable to the loss, injury or damage on behalf of the **insured** also states that it is excess as set forth in paragraph 8.a. above, then **we** will share with all that other excess insurance by the method described in paragraph 8.c. below, except that this insurance will always be excess over any other insurance available to an **insured** who is not a **named insured** under this policy, and which is issued to such **insured** as a **named insured**.

c. Method of Sharing

Where the loss, **property damage** or **bodily injury** does not involve or arise from continuous or progressive **bodily injury** or **property damage**, or an exposure to conditions in more than one policy year, the following method of sharing will be followed, subject to the per **occurrence** limits of coverage:

- (1) If all of the other contributing insurance permits contribution by equal shares, **we** will follow this method also, subject to the policy limits, until the highest per **occurrence** limit of available insurance has been reached.
- (2) If any of the other insurance does not permit contribution by equal shares, **we** will contribute by limits, up to the applicable per **occurrence** policy limit as set forth in this policy.

The above methods of sharing will also apply where no primary insurance, as set forth in paragraph 8.b. above, is applicable to the loss. In such instance, all applicable deductibles and/or self-insured amounts must first be exhausted before this insurance will apply.

9. PREMIUM AUDIT

- a. **We** will compute all premiums for this policy in accordance with **our** rules and rates.
- b. If the premium for this policy is designated as a MINIMUM AND DEPOSIT PREMIUM, then **we** will be entitled to retain that premium in full, notwithstanding any subsequent audit showing an earned premium to be less than the amount designated as the MINIMUM AND DEPOSIT PREMIUM. Notwithstanding the foregoing, a MINIMUM AND DEPOSIT PREMIUM is subject to an upward adjustment if an audit shows that the total earned premium exceeds the MINIMUM AND DEPOSIT PREMIUM. In that case, the amount by which the total earned premium exceeds the MINIMUM AND DEPOSIT PREMIUM will be due and payable on notice

to the first **named insured**.

- c. The first **named insured** must keep records of the information **we** need for the premium computation, and send **us** copies at such times as **we** may request.
- d. If any **named insured** refuses to allow **us** access to its records sufficiently to conduct such audit, then **we** will, at **our** sole discretion, have the option to pursue either one of the following:
 - (1) To initiate all available legal and/or equitable remedies available in a court of proper jurisdiction to enforce and accomplish the subject audit; or
 - (2) To invoice the first **named insured** for an additional premium equal to the greater of twenty-five percent (25%) of the original MINIMUM AND DEPOSIT PREMIUM shown on the declarations page of this policy or five thousand dollars (\$5,000) for each **named insured**.
- e. Additional premiums invoiced under paragraph 9.d.(2) above are due and payable on such invoicing to the first **named insured**. Interest allowed by the first **named insured's** state laws, or if no such laws exist, then ten percent (10%) interest will begin to accrue thirty (30) days after such invoicing on all amounts due from the first **named insured** under paragraph 9.d.(2) above. The first **named insured** further agrees to pay, upon demand, all reasonable attorneys' fees, collection costs, and court costs incurred by **us** to enforce **our** rights and remedies under either option (1) or (2) as set forth in paragraph 9.d. above.
- f. Any single waiver by **us** of auditing this policy, including but not limited to waiving the audit upon a return premium, will not act as a continuing or permanent waiver, and **we** will still have the right to audit at any time, at **our** sole discretion, for a three (3) year period following the expiration date of this policy.

10. PREMIUMS

The first **named insured** shown in the declarations:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums **we** pay.

11. REPRESENTATIONS

By accepting this policy, **you** agree:

- a. The statements you made, or any person or organization made on **your** behalf, that appear in the declarations, application, audit(s), questionnaire(s) and inspection(s)

are accurate and complete in all respects;

- b. **We** issued this policy in reliance upon **your** representations; and
- c. Any false, misleading, inaccurate or incomplete statements or omissions made by **you**, or any person or organization made on **your** behalf will render this policy null and void as of the inception date of this policy.

12. SEPARATION OF INSUREDS

Except with respect to Section III - limits of insurance, and any rights or duties specifically assigned to the first **named insured**, including any deductible(s) by endorsement to this policy, this insurance applies:

- (a) As if each **insured** were the only **insured**; and
- (b) Separately to each **insured** against whom **claim** is made or **suit** is brought.

13. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any **insured** has the right to recover all or part of any payment **we** have made under this insurance, those rights are transferred to **us**. An **insured** must do nothing after loss to impair these rights. At **our** request, an **insured** will bring **suit** and help **us** enforce these rights.

14. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

Your rights and duties under this policy may not be transferred without **our** written consent except in the case of death of an individual **named insured**.

If **you** die, **your** rights and duties under this policy will be transferred to **your** legal representative, but only while acting within the scope of duties as **your** legal representative. Until **your** legal representative is appointed, anyone having proper temporary custody of **your** property will have **your** rights and duties, but only with respect to that property.

15. REIMBURSEMENT OF DEFENSE COSTS WHERE WE ELECT NOT TO DEFEND

Where pursuant to an exclusion giving **us** the right, but not the obligation to defend a **suit**, **we** do not elect to defend such **suit**, at the conclusion or resolution of the **suit** **we** will reimburse the **insured** for the **insured's** reasonable attorneys' fees and litigation costs incurred in defending such **suit** which would otherwise have been incurred by **us**, in accordance with the following:

- a. Upon a settlement or final judgment comprised of liability covered by this policy and liability excluded by an exclusion giving **us** the right but not the obligation to defend, **we** will reimburse said fees and costs in the proportion to which damages not excluded

therein bear to the entire amount of damages paid by the **insured** or on behalf of the **insured**.

- b. Where no damages are awarded against the **insured** in a final judgment and no settlement reached requiring payment by the **insured** or on behalf of the **insured**, or where no damages are paid for liability excluded by an exclusion giving **us** the right but not the obligation to defend the **insured**, **we** will agree to be bound with respect to reimbursement of fees and costs incurred by the **insured** by the decision of an impartial arbitrator who will review all invoices and work performed by the **insured's** attorneys.
- c. As a condition precedent to the **insured's** right to reimbursement, the **insured** and the **insured's** attorneys must keep **us** informed of the progress of the **suit** and provide **us** access to all information necessary or appropriate to evaluate the **claim, suit**, or settlement and the reasonableness, amount and allocation of attorneys' fees and litigation expense.
- d. In any proceeding to seek reimbursement of costs and expenses incurred in defending the **suit**, the **insured** will bear the burden of proving the amount of damages allocable to **claims** or allegations excluded by an exclusion giving **us** the right, but not the obligation to defend, the amount of damages allocable for **claims** or allegations not excluded by this exclusion, and the amount of reimbursement to which the **insured** is entitled.

SECTION V – DEFINITIONS

1. ADVERTISING INJURY

Advertising injury means injury other than **bodily injury** arising out of one or more of the following offenses committed in the course of and through the means of **your** advertising activities:

- a. Oral or written publication of material that slanders or libels a person, or
- b. Oral or written publication of material that violates a person's right of privacy.

2. ADVERTISEMENT

Advertisement means a notice that is broadcast or published to the general public or specific market segments about **your** goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about **your** goods, products or services for the purposes of attracting customers or supporters is considered an

advertisement.

3. AUTO

Auto means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. **Auto** does not include **mobile equipment**.

4. BODILY INJURY

Bodily injury means **bodily injury**, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily injury** does not include shock or emotional, mental or psychological distress, injury, trauma or anguish, or other similar condition, unless such condition results solely and directly from prior physical injury, physical sickness or physical disease otherwise covered under this policy.

5. CLAIM

Claim means a request or demand for money or services because of **bodily injury, property damage, personal injury** or **advertising injury**, received by **us** or an **insured**, including the service of **suit** or institution of arbitration or other proceedings against an **insured**. **Claim** does not include reports of accidents, acts, errors, **occurrences**, offenses or omissions which may give rise to a **claim** under this policy.

6. COVERAGE TERRITORY

Coverage territory means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
- c. All parts of the world if:
 - (1) The injury or damage arises out of:
 - (a) Goods or products made and sold by **you** in the territory described in paragraph 6.a. above; or
 - (b) The activities of a person whose home is in the territory described in paragraph 6.a. above, but is away for a period of less than thirty (30) days on **your** business; and
 - (2) **Your** responsibility to pay damages is determined in a **suit** on the merits, in the territory described in paragraph 6.a. above or in a settlement **we** agree to.

7. EXECUTIVE OFFICER

Executive officer means a person holding any of the officer positions created by **your** charter, constitution, by-laws or any other similar

governing document.

8. FINANCIAL SERVICES

Financial services means services related to or arising out of the following:

- a. Planning, administering or advising on:
 - (1) Any investment, pension, annuity, savings, checking or retirement plan, fund or account;
 - (2) The issuance or withdrawal of any bond, debenture, stock or other securities;
 - (3) The trading of securities, futures, commodities, or currencies;
- b. Acting as a dividend disbursing agent, exchange agent, redemption or subscription agent, warrant or script agent, fiscal or paying agent, tax withholding agent, escrow agent, clearing agent, or electronic funds transfer agent;
- c. Lending or arranging for the lending of money, including credit card, debit card, leasing or mortgage operations or activities, including securing financing, refinancing, or interbank transfers;
- c. Repossessing of real or personal property or acting as an assignee for the benefit of creditors;
- e. Checking, evaluating or reporting of credit;
- f. Maintaining of financial accounts or records;
- g. Compliance with local, State or Federal tax laws including but not limited to tax planning, tax advising or the preparation of tax returns;
- h. Selling or issuing travelers checks, letters of credit, certified checks, cashier checks, bank checks, money orders or advances on payroll checks.

9. IMPAIRED PROPERTY

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, even though such property may be damaged in the course of the repair, replacement, adjustment or removal of **your product** or **your work**.

10. INSURED

Insured means the **named insured** and any other person or organization qualifying as such under this policy.

11. INSURED CONTRACT

Insured contract means that part of any written contract or written 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, but only if such **bodily injury** or **property damage** is not otherwise excluded by this insurance.

An **insured contract** does not include that part of any contract or agreement:

- a. That indemnifies any person or organization for **bodily injury** or **property damage** arising out of construction or demolition operations, within fifty (50) feet of any railroad property;
- b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, field orders, change orders, or drawings, designs or specifications; or
 - (2) Giving directions or instructions, or failing to give them;
- c. Under which **you**, if an architect, engineer or surveyor, assume liability for an injury or damage arising out of **your** rendering or failure to render **professional services**;
- d. That indemnifies any person or organization for damage by fire to premises rented or loaned to **you**;
- e. That covers the lease of premises and indemnifies any person or organization for damage by fire to premises rented to **you** or temporarily occupied by **you**.

12. LOADING OR UNLOADING

Loading or **unloading** means the handling of property:

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

but **loading** or **unloading** does not include the movement of property by means of a mechanical

device, other than a hand truck, that is not attached to the aircraft, watercraft or **auto**.

13. **MOBILE EQUIPMENT**

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 paragraphs a. through d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building, cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers.
- f. Vehicles not described in paragraphs a. through d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

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

14. **NAMED INSURED**

Named insured means the person or organization named in item 1 of the declarations of this policy.

15. **OCCURRENCE**

Occurrence means an accident, including a continuous or repeated exposure to substantially the same generally harmful condition.

16. **PERSONAL INJURY**

Personal injury means injury, other than **bodily injury**, arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. Actual and complete physical eviction of a person from a dwelling;
- d. Oral or written publication of material that slanders or libels a person or organization; or
- e. Oral or written publication of material that violates a person's right of privacy.

17. **POLICY PERIOD**

Policy period means the term of this policy from its inception date to the earlier of its expiration date, shown in the declarations, or the date of any cancellation.

18. **POLLUTANT**

Pollutant means any solid, liquid, gaseous or thermal irritants or contaminants, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste, biological elements and agents, and intangibles such as noise, light and visual esthetics, the presence of any or all of which adversely affects human health or welfare, unfavorably alters ecological balances or degrades the vitality of the environment for esthetic, cultural or historical purposes, whether such substances would be or are deemed or thought to be toxic, and whether such substances are naturally occurring or otherwise.

Waste includes but is not limited to any material or substances to be recycled, reconditioned or reclaimed, and any substance or material produced as a by-product or side effect of any process.

Pollution as used herein means any form of **pollutant** which forms the basis for liability, whether the pollution is said to cause physical injury or not, which by volume or timing or any other factor is said to give rise to liability.

19. **PRODUCTS-COMPLETED OPERATIONS HAZARD**

Products-completed operations hazard:

- a. Includes all **bodily injury** and **property**

damage occurring away from premises **you** own or rent and arising out of **your product** or **your work** except:

- (1) Products that are still in **your** physical possession; or
- (2) Work that has not yet been completed or abandoned.

b. **Your work** will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in **your** contract has been completed.
- (2) When all of the work to be done at the job site has been completed if **your** contract calls for work at more than one job site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization.
- (4) When **you** have stopped performing **your work** for any reason at, or been terminated from, the project or job site.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed even though a contract requires such service, maintenance, correction, repair or replacement.

c. This hazard 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.

20. **PROPERTY DAMAGE**

Property damage means 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. Loss of use of tangible property unaccompanied by physical injury to that property is not **property damage**.

21. **SUIT**

Suit means a civil proceeding in which damage because of **bodily injury**, **property damage**, **personal injury** or **advertising injury** to which this insurance applies is alleged. **Suit** includes:

- a. An arbitration proceeding in which such damages are claimed and to which an **insured** must submit or does submit with **our** consent; or

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which an **insured** submits with **our** consent.

22. **TORT**

Tort means liability or damages that would be imposed by law in the absence of any contract or agreement.

23. **YOUR PRODUCT**

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.

24. **YOUR WORK**

a. Means:

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

b. Includes:

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