

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Cincinnati Insurance Company, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 Atrium Builders, Inc.; Linden Construction )  
 of South Carolina, Inc.; Atrium Builders, )  
 Inc./Linden Construction of South Carolina, )  
 Inc. Joint Venture; Ecovest Charleston, LLC; )  
 Ecovest Development, LLC; Ecovest S&S )  
 Shelmore Development, LLC; Meeting )  
 Street at Shelmore Property Owners )  
 Association, Inc. d/b/a Shelmore Village )  
 POA; and Julian Smith, individually and on )  
 behalf of all others similarly situated, )  
 )  
 Defendants. )

**DECLARATORY JUDGMENT**  
**COMPLAINT**

**(Non-Jury)**

C.A. No. 2:16-cv-03603-DCN

Plaintiff Cincinnati Insurance Company (“Plaintiff” or “Cincinnati”), complaining of Defendants, would respectfully show this Court:

**JURISDICTIONAL ALLEGATIONS AND PARTIES**

1. This is a declaratory judgment action brought pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 to determine the rights of the parties under a policy of insurance issued by Cincinnati to Atrium Builders, Inc.

2. Plaintiff is a Delaware corporation with its principal place of business in Cincinnati, Ohio.

3. Upon information and belief, Defendant Atrium Builders, Inc. (“Atrium”) is a South Carolina corporation with its principal place of business in Dorchester County, South Carolina.

4. Upon information and belief, Defendant Linden Construction of South Carolina, Inc. (“Linden”) is a South Carolina corporation with its principal place of business in Charleston County, South Carolina.

5. Upon information and belief Defendant Atrium Builders, Inc./Linden Construction of South Carolina, Inc. Joint Venture (“Atrium/Linden Joint Venture”) is a South Carolina joint venture with its principal place of business in Charleston County, South Carolina.

6. Upon information and belief, Defendant Ecovest Charleston, LLC (“Ecovest Charleston”) is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

7. Upon information and belief, Defendant Ecovest Development, LLC (“Ecovest Development”) is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

8. Upon information and belief, Defendant Ecovest S&S Shelmore Development, LLC (“Ecovest S&S”) is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina.

9. Upon information and belief, Defendant Meeting Street at Shelmore Property Owners Association, Inc. d/b/a Shelmore Village POA (“Shelmore Village POA”) is a South Carolina corporation with its principal place of business in Charleston County, South Carolina.

10. Upon information and belief, Defendant Julian Smith, individually and on behalf of all others similarly situated (“Smith”), is an individual who resides in Mount Pleasant, South Carolina.

11. This Court has subject matter jurisdiction because there is complete diversity between Plaintiff and Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

12. Venue in this Division is proper, pursuant to 28 U.S.C. § 1391, 28 U.S.C. § 121, and Local Civil Rule 3.01, because a substantial part of the events or omissions giving rise to the claim occurred in this Division.

### **FACTUAL ALLEGATIONS**

#### **The Insurance Policy**

13. Cincinnati issued to Atrium policy ENP 017 65 43, which was effective from January 17, 2013 to January 17, 2016 (“Policy”). A true and accurate copy of the Policy is attached hereto as **Exhibit A**. Cincinnati incorporates the entire Policy herein by reference, and reserves the right to raise any Policy provision whether expressly set forth herein or not.

14. The Policy contains and includes Commercial General Liability Coverage Form GA 101 12 04, which provides, in part:

Throughout this Coverage Part 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 Coverage Part. 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. . . .**

#### **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

##### **1. Insuring Agreement**

**a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty

to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. . . .

- b.** This insurance applies to “bodily injury” and “property damage” only if:
- (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
  - (2) The “bodily injury” or “property damage” occurs during the policy period; and
  - (3) Prior to the “coverage term” in which “bodily injury” or “property damage” occurs, you did not know, per Paragraph **1.d** below, that the “bodily injury” or “property damage” had occurred or had begun to occur, in whole or in part.
- c.** “Bodily injury” or “property damage” which:
- (1) Occurs during the “coverage term”; and
  - (2) Was not, prior to the “coverage term”, known by you, per Paragraph **1.d** below, to have occurred;
- includes any continuation, change or resumption of that “bodily injury” or “property damage” after the end of the “coverage term” in which it first became known by you.
- d.** You will be deemed to know that “bodily injury” or “property damage” has occurred at the earliest time when any “authorized representative”:
- (1) Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the “bodily injury” or “property damage”;
  - (3) First observes, or reasonably should have first observed, the “bodily injury” or “property damage”;
  - (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that “bodily injury” or “property damage” had occurred or had begun to occur; or
  - (5) Becomes aware, or reasonably should have become aware, of a condition from which “bodily injury” or “property damage” is substantially certain to occur.

**2. Exclusions**

This insurance does not apply to:

**b. Contractual Liability**

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

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. When a claim for such “bodily injury” or “property damage” is made, we will defend that claim provided the insured has assumed the obligation to defend such claim in the “insured contract”. Such defense payments will not reduce the limits of insurance.

**k. Damage to Your Product**

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

**l. Damage to Your Work**

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

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

**m. Damage to Impaired Property or Property Not Physically Injured**

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

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

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

**n. Recall of Products, Work or Impaired Property**

Any liability or 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. . . .

**SECTION II – WHO IS AN INSURED**

**1.** If you are designated in the Declarations as . . .

- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers and directors. Your stockholders are also insured, but only with respect to their liability as stockholders. . . .

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations. . . .

**SECTION V – DEFINITIONS**

**11.** “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.
  - 12.** “Insured contract” means . . .
    - f.** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury”, “property damage” or “personal and advertising injury” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
  - 16.** “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
  - 19.** “Products-completed operations hazard”:
    - a.** Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:
      - (1)** Products that are still in your physical possession; or
      - (2)** Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:
        - (a)** When all of the work called for in your contract has been completed; or
        - (b)** When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
        - (c)** When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b.** Does not include “bodily injury” or “property damage” arising out of:
  - (1)** The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured;
  - (2)** The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3)** Products or operations for which the classification, listed in the Declarations or in a schedule, states that products-completed operations are included.

**20.** “Property damage” means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the “occurrence” that caused it. . . .

**25.** “Your product”:

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



(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your product”; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

26. “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 representation 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.

15. The Policy contains and includes Commercial Umbrella Liability Coverage Form

US 101 UM 12 04, which provides, in part:

Throughout this Coverage Part 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 Coverage Part. 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**. . . .

## **SECTION I - COVERAGE**

### **A. Insuring Agreement**

1. We will pay on behalf of the insured the “ultimate net loss” which the insured is legally obligated to pay as damages for “bodily injury”, “personal and advertising injury” or “property damage” to which this insurance applies:
  - a. Which is in excess of the “underlying insurance”; or
  - b. Which is either excluded or not insured by “underlying insurance”.
2. This insurance applies to “bodily injury”, “personal and advertising injury” or “property damage” only if:
  - a. The “bodily injury”, “personal and advertising injury” or property damage” is caused by an “occurrence” that takes place in the “coverage territory”; and
  - b. The “bodily injury” or “property damage” occurs during the policy period shown in the Declarations; or . . .
3. “Bodily injury” or “property damage” which . . .
  - b. Was not, prior to the “coverage term”, known by you, per Paragraph 5. below . . .

**B. Exclusions**

This insurance does not apply to:

**3. Contractual Liability**

Any liability for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for “bodily injury”, “personal and advertising injury” or “property damage”:

- a. That the insured would have in the absence of the contract or agreement; or
  - b. Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury”, “personal and advertising injury” or “property damage” occurs subsequent to the execution of the contract or agreement.
- 4. Damage to Impaired Property or Property Not Physically Injured**

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

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

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

**6. Damage to Your Product**

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

**7. Damage to Your Work**

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

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

**18. Recall of Products, Work or Impaired Property**

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

- a. “Your product”;
- b. “Your work”; or
- c. “Impaired Property”;

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

## SECTION II – WHO IS AN INSURED

- a. If you are designated in the Declarations as: . . .
- (4) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers and directors. Your stockholders are also insured, but only with respect to their liability as stockholders. . . .

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations. . . .

### The Underlying Action

16. On October 13, 2015, Shelmore Village POA and Smith (“Underlying Plaintiffs” individually and collectively”) filed suit against Atrium, Linden, Ecovest Charleston, Ecovest Development, and Ecovest S&S, among others, in the Charleston County Court of Common Pleas, Case No. 2014-CP-10-7812 (“Underlying Action”). A true and accurate copy of the Underlying Action is attached hereto as **Exhibit B**.

17. In the Underlying Action, the Underlying Plaintiffs allege:
- (a) That the subject project is located in Mount Pleasant, South Carolina, and consists of nine buildings containing forty-one condominium units (“Project”);
- (b) That the Project was originally built by Meeting Street Builders, LLC, and/or related affiliates (“Original Builders”);
- (c) That Ecovest Charleston, Ecovest Development, and/or Ecovest S&S are amalgamated entities “such that the actions and liabilities of one should apply to the other” (“Ecovest” shall hereinafter refer to Ecovest Charleston, Ecovest Development, and Ecovest S&S individually and collectively);
- (d) That in December 2012, Ecovest acquired the Project from the Original Builders;

- (e) That sometime after the acquisition of the Project in December 2012, Ecovest undertook the “investigation, repair, renovation and/or reconstruction” of the Project (the “Renovation Work”);
- (f) That Linden acted as the general contractor for the Renovation Work;
- (g) That Atrium acted as a subcontractor to Linden for the Renovation Work;
- (h) That at the time the Certificates of Occupancy were issued, the Project contained latent defects;
- (i) That in March 2014, Ecovest turned over control of the property owners association to the property owners;
- (j) That sometime after the Renovation Work was completed “an architect and professional engineers inspected [the Project] and discovered numerous construction deficiencies, building code violations, deviations from manufacturer’s specifications and substantial resulting damage”; and
- (k) That the “latent design and construction defects causes substantial consequential and resulting damage to various non-defective components of [the Project’s] common elements, limited common elements, and the individual condominium units, in the form of, *inter alia*, water intrusion, water damage, rusted/failing fasteners and framing members, damage to decks and balconies, damage to insulation, wood components, interior trim, interior drywall, and non-defective elements of the brick, siding, deck, balconies, windows, doors, roof, soffit, and water management systems.”

18. In the Underlying Action, the Underlying Plaintiffs assert causes of action against Atrium for negligence and breach of the implied warranty of workmanlike service.

19. On November 24, 2015, Ecovest Development and Ecovest S&S filed a cross-claim against Atrium for equitable indemnification, negligence, and breach of the implied warranty of workmanlike service (“Underlying Cross-Claim”). A true and accurate copy of the Underlying Cross-Claim is attached hereto as **Exhibit C**.

20. On February 8, 2013, prior to the commencement of the Renovation Work, Atrium and Linden entered into a Joint Venture Agreement wherein they agreed to form the Atrium/Linden Joint Venture for the purpose of performing the Renovation Work (the “Joint

Venture Agreement”). A true and accurate copy of the Joint Venture Agreement is attached hereto as **Exhibit D**.

21. The Atrium/Linden Joint Venture performed the Renovation Work.

22. The Atrium/Linden Joint Venture began the Renovation Work sometime in February 2013 and completed the Renovation Work by the end of December 2013.

23. The Underlying Action was tendered to Cincinnati, and Cincinnati agreed to defend Atrium under a reservation of rights.

### **The Coverage Issues**

24. Generally, under the Policy, Cincinnati agreed to defend and indemnify the named insured, Atrium, for damages it becomes legally obligated to pay because of “property damage” caused by an “occurrence” during the Policy period, subject to various Policy exclusions, endorsements, and other provisions.

25. Cincinnati is not obligated to defend or indemnify Atrium because Atrium entered into the Atrium/Linden Joint Venture to perform the Renovation Work, and the Atrium/Linden Joint Venture is not an insured under the Policy.

26. Cincinnati is not obligated to defend or indemnify Atrium if it is developed or determined that Atrium knew “property damage” occurred or had begun to occur, in whole or in part, prior to the coverage term.

27. Even assuming Cincinnati is obligated to defend or indemnify Atrium, Cincinnati is not obligated to indemnify Atrium for damage to Atrium’s work itself.

### **FOR A FIRST CAUSE OF ACTION** **(Declaratory Judgment—No Coverage for Joint Venture)**

28. The foregoing allegations are incorporated herein and made a part hereof by reference as if fully set forth.

29. The Policy does not provide coverage for a joint venture that is not shown as a named insured in the Policy declarations.

30. The Renovation Work was performed by the Atrium/Linden Joint Venture, and not performed by Atrium itself.

31. The Atrium/Linden Joint Venture is not shown as a named insured in the Policy declarations.

32. Therefore, the Atrium/Linden Joint Venture is not an insured under the Policy.

33. Accordingly, Cincinnati is not obligated to defend or indemnify Atrium under the Policy, and Cincinnati seeks a declaration from this Court to this effect.

**FOR A SECOND CAUSE OF ACTION**  
**(Declaratory Judgment—No Coverage for Known “Property Damage”)**

34. The foregoing allegations are incorporated herein and made a part hereof by reference as if fully set forth.

35. The Policy does not provide coverage if the insured knew that the “property damage” occurred or had begun to occur, in whole or in part, prior to the coverage term.

36. If it is developed or determined that Atrium knew that the alleged “property damage” occurred or had begun to occur, in whole or in part, prior to the coverage term, then the Policy does not provide coverage to Atrium. If so, Cincinnati is not obligated to defend or indemnify Atrium under the Policy, and Cincinnati seeks a declaration from this Court to this effect.

**FOR A THIRD CAUSE OF ACTION**  
**(Declaratory Judgment—No Coverage for Atrium’s Work Itself)**

37. The foregoing allegations are incorporated herein and made a part hereof by reference as if fully set forth.

38. Even assuming Cincinnati is obligated to defend or indemnify Atrium, which is denied, Cincinnati is not obligated to indemnify Atrium for damage to Atrium's work itself.

39. If it is developed or determined that none of Atrium's alleged faulty work caused damage to other property on the Project during the Policy period, then there is no coverage under the Policy. If so, Cincinnati is not obligated to defend or indemnify Atrium under the Policy, and Cincinnati seeks a declaration from this Court to this effect.

40. Even assuming Atrium's allegedly faulty work caused damage to other property on the Project during the Policy period, there is no coverage for damage to Atrium's work itself, and Cincinnati seeks a declaration from this Court to this effect.

**FOR A FOURTH CAUSE OF ACTION**  
**(Declaratory Judgment—No Coverage for Cross-Claim)**

41. The foregoing allegations are incorporated herein and made a part hereof by reference as if fully set forth.

42. The Policy does not provide coverage to Atrium for the Cross-Claim for the reasons above and, additionally, because the claim for equitable indemnification does not trigger coverage and/or is excluded.

43. Accordingly, Cincinnati is not obligated to defend or indemnify Atrium under the Policy for the Cross-Claim, and Cincinnati seeks a declaration from this Court to this effect.

**WHEREFORE**, Cincinnati prays that this Court:

1. Declare that Cincinnati is not obligated to defend and/or indemnify Atrium for the claims brought against Atrium in the Underlying Action, including the claims of the Underlying Cross-Claim;

2. Award Cincinnati costs and any other amounts provided by the Federal Rules of Civil Produce or law for prosecuting this action; and



3. For such other and further relief as this Court deems just and proper.

s/ Jason D. Maertens

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Jason D. Maertens (#10144)  
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(864) 751-7800 (fax)  
jason.maertens@smithmoorelaw.com

Attorney for Plaintiff

November 10, 2016

# EXHIBIT A



# The Cincinnati Insurance Company

A Stock Insurance Company

Headquarters: 6200 S. Gilmore Road, Fairfield, OH 45014-5141  
Mailing address: P.O. Box 145496, Cincinnati, OH 45250-5496  
www.cinfin.com ■ 513-870-2000

## COMMON POLICY DECLARATIONS

Billing Method: DIRECT BILL

POLICY NUMBER ENP 017 65 43 / EBA 017 65 43

**NAMED INSURED** ATRIUM BUILDERS INC, J & B PARTNERSHIP LLC  
919 W RICHARDSON AVE

**ADDRESS**

(Number & Street, SUMMERVILLE, SC 29483-3737  
Town, County,  
State & Zip Code)

**Previous Policy Number:**

NEW

**Policy Period:** At 12:01 A.M., STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

**All coverages except Automobile and / or Garage**

Policy number: ENP 017 65 43 FROM: 01-17-2013 TO: 01-17-2016

**Automobile and / or Garage**

Policy number: EBA 017 65 43 FROM: 01-17-2013 TO: 01-17-2014

Agency KEENAN & SUGGS, INC. 39-026  
City COLUMBIA, SC

**Legal Entity / Business Description**

ORGANIZATION (ANY OTHER)

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

**FORMS APPLICABLE TO ALL COVERAGE PARTS:**

- IA4217SC 06/10 NOTICE TO POLICYHOLDERS WINDSTORM OR HAIL PERCENTAGE DEDUCTIBLE
- IA461 06/10 COINSURANCE CONTRACT
- IL0017 11/98 COMMON POLICY CONDITIONS
- IA102A 09/08 SUMMARY OF PREMIUMS CHARGED
- IA904 04/04 SCHEDULE OF LOCATIONS
- IP446 08/01 NOTICE TO POLICYHOLDERS
- IA319 01/08 EXCLUSION OF CERTIFIED ACTS AND OTHER ACTS OF TERRORISM
- IA4006 07/10 SPECIAL PER OCCURRENCE DEDUCTIBLE ENDORSEMENT
- IA4110SC 09/09 SOUTH CAROLINA CHANGES - CANCELLATION AND NONRENEWAL
- IA4226 03/02 NOTICE TO POLICY HOLDERS FUNGI OR BACTERIA EXCLUSION ENDORSEMENTS
- IA4338 05/11 SIGNATURE ENDORSEMENT
- IL0194 07/02 SOUTH CAROLINA CHANGES - LEGAL ACTION AGAINST US
- MI1429 09/91 NOTICE TO SOUTH CAROLINA INSUREDS
- FM502 07/08 COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS
- GA532 07/08 COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
- MA559 05/10 CONTRACTORS' EQUIPMENT (AND TOOLS) COVERAGE PART DECLARATIONS
- MA560 06/07 INSTALLATION FLOATER COVERAGE PART DECLARATIONS
- AA505 03/06 BUSINESS AUTO COVERAGE PART DECLARATIONS
- USC513 05/10 COMMERCIAL UMBRELLA LIABILITY COVERAGE PART DECLARATIONS

01-16-2013 10:28

Countersigned \_\_\_\_\_ (Date) By \_\_\_\_\_ (Authorized Representative)

NOTICE TO POLICYHOLDERS  
WINDSTORM OR HAIL PERCENTAGE DEDUCTIBLE

**THIS POLICY CONTAINS A  
SEPARATE DEDUCTIBLE FOR  
NAMED STORM OR WIND / HAIL  
LOSSES, WHICH MAY RESULT  
IN HIGH OUT-OF-POCKET  
EXPENSES TO YOU.**

REFER TO FORM IA 4216 SC FOR EXAMPLE OF  
HOW THE DEDUCTIBLE MIGHT AFFECT YOU.

IA 4217 SC (6/10)

**COINSURANCE CONTRACT**

The rate charged in this policy is based upon use of  
a coinsurance clause attached hereto, with the  
consent of the insured.

IA-461 (6/10)



# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

Attached to and forming part of POLICY NUMBER: ENP 017 65 43

Named Insured is the same as it appears in the Common Policy Dedarations

**LIMITS OF INSURANCE**

EACH OCCURRENCE LIMIT	\$ 1,000,000	
GENERAL AGGREGATE LIMIT	\$ 2,000,000	
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$ 2,000,000	
PERSONAL & ADVERTISING INJURY LIMIT	\$ 1,000,000	ANY ONE PERSON OR ORGANIZATION
DAMAGE TO PREMISES RENTED TO YOU LIMIT		ANY ONE
\$100,000 limit unless otherwise indicated herein:	\$ SEE GA233	PREMISES
MEDICAL EXPENSE LIMIT		
\$5,000 limit unless otherwise indicated herein:	\$ SEE GA233	ANY ONE PERSON

CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
			Products / Completed Operations	All Other	Products / Completed Operations	All Other
LOC. 1 - SC CARPENTRY	91342	B174,773	13.046	11.779		
CONCRETE CONSTRUCTION	91560	B99,335	10.072	9.995		
CONTRACTORS-EXECUTIVE INCL PROD AND/OR COMP OP	91580	B216,993		19.978		
CONT.-REPAIR FOR BLDG.	91585	E3,000,000 TOTAL COST	1.269	1.232		
PAINTING-EXTERIOR	98304	B120,492	7.887	11.882		
AUTOMATIC ADD. INSURED - CONTRACTORS OPERATIONS	29970			3.5%		
CONTRACTORS BROADENED COVERAGE	29975			3.5%		

The General Liability Coverage Part is subject to an annual minimum premium.

TOTAL ANNUAL PREMIUM ██████████

**FORMS AND / OR ENDORSEMENTS APPLICABLE TO COMMERCIAL GENERAL LIABILITY COVERAGE PART:**

GA101	12/04	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CG0300	01/96	DEDUCTIBLE LIABILITY INSURANCE
GA215SC	01/06	SOUTH CAROLINA CHANGES - EMPLOYEE BENEFIT LIABILITY
GA233	02/07	CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT
GA323	10/01	EXCLUSION - LEAD LIABILITY

**FORMS AND / OR ENDORSEMENTS APPLICABLE TO COMMERCIAL GENERAL LIABILITY COVERAGE PART:**

GA340	10/01	EXCLUSION - CONTRACTORS - PROFESSIONAL LIABILITY
GA369	11/02	EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS ("EIFS") AND DIRECT-APPLIED EXTERIOR FINISH SYSTEMS ("DEFS") - BROAD FORM
GA382	03/02	FUNGI OR BACTERIA EXCLUSION

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

**DEDUCTIBLE LIABILITY INSURANCE**

This endorsement modifies insurance provided under the following:

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

**SCHEDULE**

<b>COVERAGE</b>	<b>Amount and Basis of Deductible PER CLAIM or PER OCCURRENCE</b>	
Bodily Injury Liability OR	\$	\$
Property Damage Liability OR	\$	\$
Bodily Injury Liability and/or Property Damage Liability Combined	\$	\$

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

**APPLICATION OF ENDORSEMENT** (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused):

- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PREMISES/OPERATIONS FOR CLASS 91342
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PRODUCTS/COMP. OPS FOR CLASS 91342
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PREMISES/OPERATIONS FOR CLASS 91560
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PRODUCTS/COMP. OPS FOR CLASS 91560
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PREMISES/OPERATIONS FOR CLASS 91580
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PRODUCTS/COMP. OPS FOR CLASS 91580
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PREMISES/OPERATIONS FOR CLASS 91585
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PRODUCTS/COMP. OPS FOR CLASS 91585
- \$500 PD DEDUCTIBLE PER CLAIM FOR PREMISES/OPERATIONS FOR CLASS 98304
- \$500 PD DEDUCTIBLE PER CLAIM FOR PRODUCTS/COMP. OPS FOR CLASS 98304

**A.** Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.

Combined, to all damages sustained by any one person because of:

- (1) "Bodily injury";
- (2) "Property damage"; or
- (3) "Bodily injury" and "property damage" combined

**B.** You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:

as the result of any one "occurrence".

If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.

With respect to "property damage", person includes an organization.

**1. PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:

**2. PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage

- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage



Combined, to all damages because of:

- (1) "Bodily injury";
- (2) "Property damage"; or
- (3) "Bodily injury" and "property damage" combined

as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

C. The terms of this insurance, including those with respect to:

- 1. Our right and duty to defend the insured against any "suits" seeking those damages; and
- 2. Your duties in the event of an "occurrence", claim, or "suit"

apply irrespective of the application of the deductible amount.

D. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

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

**SOUTH CAROLINA CHANGES - EMPLOYEE  
BENEFIT LIABILITY**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
EMPLOYEE BENEFIT LIABILITY COVERAGE PART**

Exclusion (i) of Employee Benefit Liability Coverage Form **GA 102**, Commercial General Liability Broadened Endorsement **GA 210**, Commercial General Liability Extended Liability Endorsement **GA 227** and Contractors' Commercial General Liability Broadened Endorsement **GA 233** is hereby deleted in its entirety and replaced by the following:

**(i) Taxes.**

Taxes including those imposed under the Internal Revenue Code.

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

## **EXCLUSION - LEAD LIABILITY**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusions are added to Paragraph 2. Exclusions of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** and Paragraph 2. Exclusions of **SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of, resulting from, or in any way caused by or contributing to the actual, alleged or threatened ingestion, inhalation, absorption of, exposure to or presence of lead in any form emanating from any source.
2. Any loss, cost or expense arising out of, resulting from or in any way related to any:
  - a. Claim, suit, request, demand, directive, or order by or on behalf of any person, entity, or governmental authority that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of lead in any form; or
  - b. Claim or suit by or on behalf of any person, entity, or governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead in any form.

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

**EXCLUSION - CONTRACTORS - PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2. Exclusions of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, and Paragraph 2. Exclusions of **SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**:

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

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

**EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS ("EIFS") AND DIRECT-APPLIED EXTERIOR FINISH SYSTEMS ("DEFS") - BROAD FORM**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

- 1. The following exclusion is added to Paragraph 2. Exclusions of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, and Paragraph 2. Exclusions of SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" that arises out of, is caused by, or is attributable to, whether in whole or in part, any of the following:

- a. The design, manufacture, sale, service, handling, construction, fabrication, preparation, installation, application, maintenance, disposal or repair, including remodeling, service, correction, or replacement, of a "wall finish system", or any part thereof, including any method or procedure used to correct problems with installed or partially installed "wall finish systems"; or
- b. Any work or operations conducted by or on behalf of any insured on or to a "wall finish system", or any component thereof, or any component of a building or structure to which a "wall finish system" attaches that results, directly or indirectly, in the intrusion of water or moisture, including any resulting development or presence of "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage.

This exclusion also applies to any "bodily injury", "property damage" or "personal and advertising injury":

- a. For which any insured assumes liability in any part of any contract or agreement, regardless of whether such contract or agreement is an "insured contract";
- b. Arising out of, caused by, or attributable to, whether in whole or in part, warranties or representations made at any time with

respect to the fitness, quality, durability or performance of a "wall finish system"; and

- c. Arising out of, caused by, or attributable to, whether in whole or in part, the providing of or failure to provide any warning or instructions with regard to a "wall finish system".

- 2. SECTION V - DEFINITIONS is amended to include the following:

a. "Direct-applied exterior finish system" (commonly referred to as DEFS) means an exterior cladding or finish system and all component parts therein, used on any part of any structure, and consisting of:

- (1) A rigid or semi-rigid substrate;
- (2) The adhesive and / or mechanical fasteners used to attach the substrate to the structure including any water-durable exterior wall substrate;
- (3) A reinforced or unreinforced base coat or mesh;
- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any conditioners, primers, accessories, flashing, coatings, caulking or sealants used with the system for any purpose;

that interact to form an energy efficient wall.

b. "Exterior insulation and finish system" (commonly referred to as synthetic stucco or EIFS) means an exterior cladding or finish system and all component parts therein, 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 or unreinforced base coat or mesh;
- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any conditioners, primers, accessories, flashing, coatings, caulking or sealants used with the system for any purpose;

that interact to form an energy efficient wall.

c. "Fungi" means any type or form of fungus, and includes, but is not limited to, any form or type of mold, mushroom, or mildew and mycotoxins, spores, scents or byproducts produced or released by fungi.

d. "Wall finish system" means:

- (1) An "exterior insulation and finish system";
- (2) A "direct-applied exterior finish system"; or
- (3) Any energy efficient exterior cladding or finish system substantially similar to Paragraph (1) or (2) above.

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

**FUNGI OR BACTERIA EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. The following exclusion is added to Paragraph 2. Exclusions of SECTION I - COVERAGES. COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

**2. Exclusions**

This insurance does not apply to:

**Fungi or Bacteria**

a. "Bodily injury" or "property damage" caused directly or indirectly, in whole or in part, by any actual, alleged or threatened:

- (1) Inhalation of;
- (2) Ingestion of;
- (3) Contact with;
- (4) Absorption of;
- (5) Exposure to;
- (6) Existence of; or
- (7) Presence of,

any "fungi" or bacteria on or within a building or structure, including its contents, whether occurring suddenly or gradually;

b. Any loss, cost or expense associated in any way with, or arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, mitigating or disposing of, or in any way responding to, investigating, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity;

c. Any liability, with respect to "fungi" or bacteria, arising out of, resulting from, caused by, contributed to, or in any way related to any supervision, instruction, recommendation, warning or advice given or which should have been given in connection with:

- (1) The existence of "fungi" or bacteria;

(2) The prevention of "fungi" or bacteria;

(3) The remediation of "fungi" or bacteria;

(4) Any operation described in Paragraph A. 2. b. above;

(5) "Your product"; or

(6) "Your work"; or

d. Any obligation to share damages with or repay any person, organization or entity, related in any way to the liability excluded in Paragraphs A. 2. a., b. or c. above;

regardless of any other cause, event, material, product and / or building component that contributed concurrently or in any sequence to the injury or damage.

However this exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for human ingestion.

**B. The following exclusion is added to Paragraph 2. Exclusions of SECTION I - COVERAGES. COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY:**

**2. Exclusions**

This insurance does not apply to:

**Fungi or Bacteria**

a. "Personal and advertising injury" caused directly or indirectly, in whole or in part, by any actual, alleged or threatened:

(1) Inhalation of;

(2) Ingestion of;

(3) Contact with;

(4) Absorption of;

(5) Exposure to;

(6) Existence of; or

(7) Presence of,

any "fungi" or bacteria on or within a building or structure, including its contents, whether occurring suddenly or gradually;

- b. Any loss, cost or expense associated in any way with, or arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, mitigating or disposing of, or in any way responding to, investigating, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity;
- c. Any liability, with respect to "fungi" or bacteria, arising out of, resulting from, caused by, contributed to, or in any way related to any supervision, instruction, recommendation, warning or advice given or which should have been given in connection with:
  - (1) The existence of "fungi" or bacteria;
  - (2) The prevention of "fungi" or bacteria;
  - (3) The remediation of "fungi" or bacteria;

(4) Any operation described in Paragraph **B. 2. b.** above;

(5) "Your product"; or

(6) "Your work"; or

- d. Any obligation to share damages with or repay any person, organization or entity, related in any way to the liability excluded in Paragraphs **B. 2. a., b. or c.** above;

regardless of any other cause, event, material, product and / or building component that contributed concurrently or in any sequence to the injury or damage.

However this exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for human ingestion.

- C. For the purposes of this endorsement, **SECTION V - DEFINITIONS** is amended to include the following:

"Fungi" means any type or form of fungus, and includes, but is not limited to, any form or type of mold, mushroom or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.



# THE CINCINNATI INSURANCE COMPANY

## COMMERCIAL UMBRELLA LIABILITY COVERAGE PART DECLARATIONS

Previous Policy Number

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Attached to and forming part of POLICY NUMBER **ENP 017 65 43** Effective Date: **01-17-2013**  
**NAMED INSURED** is the same as it appears in the Common Policy Declarations unless another entry is made here.

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**LIMITS OF INSURANCE**  
 \$ **5,000,000** Each Occurrence Limit                      \$ **5,000,000** Aggregate Limit

**ADVANCE PREMIUM \$** [REDACTED]  
 Applicable to Premium, if box is checked:  
 Subject to Annual Adjustment  
 Subject to Audit (see Premium Computation Endorsement for Rating Basis)

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### SCHEDULE OF UNDERLYING INSURANCE

Insurer, Policy Number & Period:	Underlying Insurance:	Underlying Limits:
(a)	Employer's Liability	Bodily Injury by Accident: \$                      Each Accident Bodily Injury by Disease: \$                      Each Employee Bodily Injury by Disease: \$                      Policy Limit
(b) CINCINNATI INS. CO. ENP 017 65 43 01-17-2013 TO 01-17-2016	<input checked="" type="checkbox"/> Commercial General Liability Including: <input checked="" type="checkbox"/> Products-Completed Operations Coverage  <input type="checkbox"/> Cemetery Professional <input type="checkbox"/> Druggist Professional <input type="checkbox"/> Funeral Service Provider <input type="checkbox"/> Pedorthists Professional  or <input type="checkbox"/> Business Liability Including: <input type="checkbox"/> Funeral Service Provider <input type="checkbox"/> Druggist Professional	Bodily Injury and Property Damage Liability: \$    1,000,000 Each Occurrence Limit \$    2,000,000 General Aggregate Limit \$    2,000,000 Products-Completed Operations Aggregate Limit  Personal and Advertising Injury Limit: \$    1,000,000 Any One Person or Organization
(c) CINCINNATI INS. CO. EBA 017 65 43 01-17-2013 TO 01-17-2016	Automobile Liability Including: <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned Autos <input type="checkbox"/> Hired Autos <input checked="" type="checkbox"/> Any Auto	Bodily Injury Liability Limit: \$                      Each Person \$                      Each Occurrence Property Damage Liability Limit: \$                      Each Occurrence or Bodily Injury Liability and / or Property Damage Liability or Both Combined Limit: \$    1,000,000 Each Occurrence
(d)	Professional	\$ \$                      Aggregate
(e) CINCINNATI INS. CO. ENP 017 65 43 01-17-2013 TO 01-17-2016	Employee Benefit Liability	\$    1,000,000 Each Employee Limit \$    3,000,000 Aggregate Limit

(f)	Liquor Liability	\$	Each Common Cause Limit
		\$	Aggregate Limit

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Other

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FORMS AND / OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:

US101UM	12/04	COMMERCIAL UMBRELLA - TABLE OF CONTENTS
US3010	12/04	CONTRACTORS LIMITATIONS - INCLUDING EXCESS WRAP-UP COVERAGE
US3043	12/04	EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS ("EIFS") AND DIRECT-APPLIED EXTERIOR FINISH SYSTEMS ("DEFS") - BROAD FORM
US3048	12/04	FUNGI OR BACTERIA EXCLUSION
US395	12/04	LEAD LIABILITY EXCLUSION
US4062	11/05	MOBILE EQUIPMENT SUBJECT TO MOTOR VEHICLE INSURANCE LAWS - LIMITATION
US407	12/04	EMPLOYEE BENEFIT LIABILITY

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

**CONTRACTORS LIMITATIONS - INCLUDING EXCESS  
WRAP-UP COVERAGE**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

**SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified as follows:

I. The following exclusions are hereby added:

A. This insurance does not apply to:

- 1. "Property damage" to:
  - a. Leased, rented, or borrowed equipment; or
  - b. Property being transported, installed, erected, or worked upon by the insured or any contractors or subcontractors working directly or indirectly on any insured's behalf.
- 2. Any liability arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
  - a. Providing engineering, architectural or surveying services to others; or
  - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

Professional services include:

- a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
- b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.

However, to the extent coverage is provided by valid and collectible "underlying insurance" as listed in the

Schedule of Underlying Insurance, and then only for such hazards for which coverage is afforded by such "underlying insurance", professional services shall not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with construction work you perform.

B. The following exclusions apply, unless insurance is provided to the insured by valid and collectible "underlying insurance" as listed in the Schedule of Underlying Insurance, but only to the extent insurance is provided at the "underlying limit" scheduled for such "underlying insurance" and subject to all its limitations and exclusions:

This insurance does not apply to:

- 1. "Property damage" arising out of:
  - a. Blasting or explosion other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment; or
  - b. The collapse of or structural injury to any building or structure due to:
    - (1) Grading of land, excavating, burrowing, filling or backfilling, tunneling, pile driving, cofferdam work or caisson work; or
    - (2) Moving, shoring, underpinning, raising, or demolition of any building or structure or removal or rebuilding of any structural support thereof.

2. "Property damage" to wires, conduit, pipes, drains, sewers, tanks, tunnels or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such "property damage" is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating, drilling, burrowing, filling, backfilling, or pile driving.
3. Any liability arising out of any project insured at any time under an owner or contractor controlled insurance program (often referred to as a wrap-up plan or program) or similar insurance plan or program.

**II. Exclusion 3. Contractual Liability** (Exclusion 1.c. in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made) is deleted and replaced by the following:

This insurance does not apply to:

Any liability for which any insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply if such liability is insured by valid and collectible "underlying insurance", as listed and described in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is afforded by such "underlying insurance".

**III. Exclusion 7. Damage to Your Work** (Exclusion 1.g. in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made) is deleted and replaced by the following:

This insurance does not apply to:

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

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor, provided such liability is insured by valid and collectible "underlying insurance", as listed and described in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is afforded by such "underlying insurance".

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

**EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS ("EIFS") AND DIRECT-APPLIED EXTERIOR FINISH SYSTEMS ("DEFS") - BROAD FORM**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

- 1. **SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified to add the following:

This insurance does not apply to any liability that arises out of, is caused by, or is attributable to, whether in whole or in part, any of the following:

- a. The design, manufacture, sale, service, handling, construction, fabrication, preparation, installation, application, maintenance, disposal or repair, including remodeling, service, correction, or replacement, of a "wall finish system", or any part thereof, including any method or procedure used to correct problems with installed or partially installed "wall finish systems"; or
- b. Any work or operations conducted by or on behalf of any insured on or to a "wall finish system", or any component thereof, or any component of a building or structure to which a "wall finish system" attaches that results, directly or indirectly, in the intrusion of water or moisture, including any resulting development or presence of "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage.

This exclusion also applies to any liability:

- a. For which any insured assumes liability in any part of any contract or agreement, regardless of whether such contract or agreement is an "insured contract";
- b. Arising out of, caused by, or attributable to, whether in whole or in part, warranties or representations made at any time with respect to the fitness, quality, durability or

performance of a "wall finish system"; and

- c. Arising out of, caused by, or attributable to, whether in whole or in part, the providing of or failure to provide any warning or instructions with regard to a "wall finish system".

- 2. **SECTION V - DEFINITIONS** is amended to include the following:

a. "Direct-applied exterior finish system" (commonly referred to as DEFS) means an exterior cladding or finish system and all component parts therein, used on any part of any structure, and consisting of:

- (1) A rigid or semi-rigid substrate;
- (2) The adhesive and / or mechanical fasteners used to attach the substrate to the structure including any water-durable exterior wall substrate;
- (3) A reinforced or unreinforced base coat or mesh;
- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any conditioners, primers, accessories, flashing, coatings, caulking or sealants used with the system for any purpose;

that interact to form an energy efficient wall.

b. "Exterior insulation and finish system" (commonly referred to as EIFS) means an exterior cladding or finish system and all component parts therein, 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 or unreinforced base coat or mesh;
- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any conditioners, primers, accessories, flashing, coatings, caulking or sealants used with the system for any purpose;

that interact to form an energy efficient wall.

c. "Fungi" means any type or form of fungus, and includes, but is not limited to, any form or type of mold, mushroom, or mildew and mycotoxins, spores, scents or byproducts produced or released by fungi.

- d. "Wall finish system" means:
- (1) An "exterior insulation and finish system";
  - (2) A "direct-applied exterior finish system"; or
  - (3) Any energy efficient exterior cladding or finish system substantially similar to Paragraph (1) or (2) above.

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

**FUNGI OR BACTERIA EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART - CLAIMS MADE**

**I. SECTION I - COVERAGE, B. Exclusions**  
(and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified to add the following:

This insurance does not apply to:

- a. Any liability caused directly or indirectly, in whole or in part, by any actual, alleged or threatened:
  - (1) Inhalation of;
  - (2) Ingestion of;
  - (3) Contact with;
  - (4) Absorption of;
  - (5) Exposure to;
  - (6) Existence of; or
  - (7) Presence of,

any "fungi" or bacteria on or within a building or structure, including its contents, whether occurring suddenly or gradually;
- b. Any loss, cost or expense associated in any way with, or arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, mitigating or disposing of, or in any way responding to, investigating, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity;
- c. Any liability, with respect to "fungi" or bacteria, arising out of, resulting from, caused by, contributed to, or in any way

related to any supervision, instruction, recommendation, warning or advice given or which should have been given in connection with:

- (1) The existence of "fungi" or bacteria;
  - (2) The prevention of "fungi" or bacteria;
  - (3) The remediation of "fungi" or bacteria;
  - (4) Any operation described in Paragraph b. above;
  - (5) "Your product"; or
  - (6) "Your work"; or
- d. Any obligation to share damages with or repay any person, organization or entity, related in any way to the liability excluded in Paragraphs a., b. or c. above;

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to the injury or damage.

However this exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for human ingestion.

**II.** For the purposes of this endorsement, **SECTION V - DEFINITIONS** is amended to include the following:

"Fungi" means any type or form of fungus, and includes, but is not limited to, any form or type of mold, mushroom or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

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

## **LEAD LIABILITY EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

**SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified to add the following:

This insurance does not apply to:

- a. Any liability arising out of, resulting from, or in any way caused by or contributing to the actual, alleged or threatened ingestion, inhalation, absorption of, exposure to or presence of lead in any form emanating from any source.
- b. Any loss, cost or expense arising out of, resulting from or in any way related to any:
  - (1) Claim, "suit", request, demand, directive, or order by or on behalf of any person, entity, or governmental authority that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of lead in any form; or
  - (2) Claim or "suit" by or on behalf of any person, entity, or governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead in any form.



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

**MOBILE EQUIPMENT SUBJECT TO MOTOR VEHICLE  
INSURANCE LAWS - LIMITATION**

This endorsement modifies Insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

**SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified to add the following:

This insurance does not apply to:

Any liability arising out of the ownership, maintenance, occupancy, operation, use, "loading or unloading" of any land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law, unless such liability is covered by valid and collectible "underlying insurance" as listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is afforded by such "underlying insurance", unless otherwise excluded by this Coverage Part.

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

## **EMPLOYEE BENEFIT LIABILITY**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

This policy is modified to add the following:

- I. SECTION I - COVERAGE, A. Insuring Agreement(s)** is modified to add the following:

**EMPLOYEE BENEFIT LIABILITY:**

We will pay on behalf of the insured the "ultimate net loss" which the insured is legally obligated to pay as damages because of any negligent act, error or omission of the insured or any other person for whose acts the insured is legally liable arising out of the administration of the insured's employee benefit programs.

This insurance applies only to negligent acts, errors or omissions:

- a. Whose damages are in excess of the "underlying insurance" provided by an Employee Benefit Liability policy listed in the Schedule of Underlying Insurance; and
  - b. Which occur during the policy period.
- II. SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified to add the following exclusion:

This insurance does not apply to:

Any liability arising out of employee benefit programs unless such liability is covered by valid and collectible "underlying insurance" as listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is afforded by such "underlying insurance".

# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

Attached to and forming part of POLICY NUMBER: ENP 017 65 43

Named Insured is the same as it appears in the Common Policy Declarations

**LIMITS OF INSURANCE**

EACH OCCURRENCE LIMIT	\$ 1,000,000	
GENERAL AGGREGATE LIMIT	\$ 2,000,000	
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$ 2,000,000	
PERSONAL & ADVERTISING INJURY LIMIT	\$ 1,000,000	ANY ONE PERSON OR ORGANIZATION
DAMAGE TO PREMISES RENTED TO YOU LIMIT		ANY ONE
\$100,000 limit unless otherwise indicated herein:	\$ SEE GA233	PREMISES
MEDICAL EXPENSE LIMIT		
\$5,000 limit unless otherwise indicated herein:	\$ SEE GA233	ANY ONE PERSON

CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
			Products / Completed Operations	All Other	Products / Completed Operations	All Other
LOC. 1 - SC CARPENTRY	91342	B174,773	13.046	11.779		
CONCRETE CONSTRUCTION	91560	B99,335	10.072	9.995		
CONTRACTORS-EXECUTIVE INCL PROD AND/OR COMP OP	91580	B216,993		19.978		
CONT.-REPAIR FOR BLDG.	91585	E3,000,000 TOTAL COST	1.269	1.232		
PAINTING-EXTERIOR	98304	B120,492	7.887	11.882		
AUTOMATIC ADD. INSURED - CONTRACTORS OPERATIONS	29970			3.5%		
CONTRACTORS BROADENED COVERAGE	29975			3.5%		

The General Liability Coverage Part is subject to an annual minimum premium.

TOTAL ANNUAL PREMIUM ██████████

**FORMS AND / OR ENDORSEMENTS APPLICABLE TO COMMERCIAL GENERAL LIABILITY COVERAGE PART:**

GA101	12/04	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CG0300	01/96	DEDUCTIBLE LIABILITY INSURANCE
GA215SC	01/06	SOUTH CAROLINA CHANGES - EMPLOYEE BENEFIT LIABILITY
GA233	02/07	CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT
GA323	10/01	EXCLUSION - LEAD LIABILITY

**FORMS AND / OR ENDORSEMENTS APPLICABLE TO COMMERCIAL GENERAL LIABILITY COVERAGE PART:**

GA340	10/01	EXCLUSION - CONTRACTORS - PROFESSIONAL LIABILITY
GA369	11/02	EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS ("EIFS") AND DIRECT-APPLIED EXTERIOR FINISH SYSTEMS ("DEFS") - BROAD FORM
GA382	03/02	FUNGI OR BACTERIA EXCLUSION

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## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this Coverage Part 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 Coverage Part. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V - DEFINITIONS**.

### SECTION I - COVERAGES

#### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

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

- (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**; **SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**; or medical expenses under **SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS**.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under

#### SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

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

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the "coverage term" in which "bodily injury" or "property damage" occurs, you did not know, per Paragraph 1.d. below, that the "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part.

- c. "Bodily injury" or "property damage" which:

- (1) Occurs during the "coverage term"; and
- (2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have occurred;

includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term" in which it first became known by you.

- d. You will be deemed to know that "bodily injury" or "property damage" has occurred at the earliest time when any "authorized representative":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
- (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
- (5) Becomes aware, or reasonably should have become aware, of a

condition from which "bodily injury" or "property damage" is substantially certain to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

**2. Exclusions**

This insurance does not apply to:

**a. Expected or Intended Injury**

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the insured or which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

**b. Contractual Liability**

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

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. When a claim for such "bodily injury" or "property damage" is made, we will defend that claim provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

**c. Liquor Liability**

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

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

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

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

**d. Workers' Compensation and Similar Laws**

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

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured sustained in the "workplace";
- (2) An "employee" of the insured arising out of the performance of duties related to the conduct of the insured's business; or
- (3) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraphs (1) or (2) above.

This exclusion applies:

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

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

**f. Pollutant**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, Paragraph (a) does not apply to:

- 1) "Bodily injury" to any person injured while on any premises, site or location owned or occupied by, or rented or loaned to, you provided:

- a) The injury is caused by the inadequate ventilation of vapors;
- b) The person injured is first exposed to such vapors during the policy period; and
- c) Within 30 days of such first exposure, the person injured is clinically diagnosed or treated by a physician for the medical condition caused by the exposure to such vapors. However, Paragraph c) does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

This exception 1) shall apply only to Named Insureds; we shall have no duty to defend or pay damages for any person or organization that is not a Named Insured. However, this paragraph does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

For the purpose of the exception granted in Paragraph 1) only, vapors means any gaseous or airborne irritant or airborne contaminant, including smoke, fumes, vapor or soot, but excluding asbestos, which is discharged, dispersed, emitted, released or escapes from materials, machinery or equipment used in the service or maintenance of the premises. Vapors does not mean any gaseous or

airborne irritants or contaminants used in a manufacturing process or which is the product or by-product of any manufacturing process;

- 2) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor, and the owner or lessee of such premises, site or location has been added to this Coverage Part as an additional insured with respect to your ongoing operations or "your work" performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
  - 3) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - 1) Any insured; or
    - 2) Any person or organization for whom you may be legally responsible;
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, Paragraph (d) does not apply to:
    - 1) "Bodily injury" or "property damage" arising out of the discharge, dispersal, seepage, migration, release, es-

cape or emission of fuels, lubricants or other operating fluids, or exhaust gases, which are needed to perform, or are the result of, the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged, dispersed, released or emitted from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged, dispersed, released or emitted with the intent to cause "bodily injury" or "property damage" or with the knowledge that "bodily injury" or "property damage" is substantially certain to occur, or if such fuels, lubricants or other operating fluids, or exhaust gases, are brought on or to the premises, site or location with such intent to escape, seep or migrate, or be discharged, dispersed, released or emitted as part of the operations being performed by such insured, contractor or subcontractor;

- 2) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - 3) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the op-

erations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

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

However, Paragraphs (2)(a) and (b) do not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto or Watercraft**

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and



(b) Not being used to carry persons or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

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

(a) The operation of machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

**h. Mobile Equipment**

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

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

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

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by

governmental authority in hindering or defending against any of these.

**j. Damage to Property**

"Property damage" to:

(1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of an insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire or explosion) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days, for which the amount we will pay is limited to the Damage To Premises Rented To You Limit as described in **SECTION III - LIMITS OF INSURANCE**.

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

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

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

**k. Damage to Your Product**

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

**i. Damage to Your Work**

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

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

**m. Damage to Impaired Property or Property Not Physically Injured**

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

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

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

**n. Recall of Products, Work or Impaired Property**

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

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

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

**o. Personal and Advertising Injury**

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

**p. Asbestos**

"Bodily injury" or "property damage" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

**q. Employment-Related Practices**

"Bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

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

**r. Additional Insured Prior Knowledge**

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part, prior to the "coverage term" in which such "bodily injury" or "property damage" occurs or begins to occur.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that "bodily injury" or "property damage" has occurred or has begun to occur at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
- (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "bodily injury" or "property damage" is substantially certain to occur.

s. **Electronic Data**

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

t. **Distribution of Material in Violation of Statutes**

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

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- 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.

Exclusions c. through q. do not apply to "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner, for which the amount we will pay is limited to the Damage to Premises Rented To You Limit as described in **SECTION III - LIMITS OF INSURANCE**.

**COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**; or medical expenses under **SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS**.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**.

- b. This insurance applies to "personal and advertising injury" only if:
  - (1) The "personal and advertising injury" is caused by an offense arising out of your business; and
  - (2) The "personal and advertising injury" offense was committed in the "coverage territory" during the policy period; and
  - (3) Prior to the "coverage term" in which the "personal and advertising injury" offense is committed, you did not know, per Paragraph 1.d. below, that the offense had been committed or had begun to be committed, in whole or in part.
- c. "Personal and advertising injury" caused by an offense which:
  - (1) Was committed during the "coverage term"; and

- (2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have been committed;

includes any continuation, change or resumption of that offense after the end of the "coverage term" in which it first became known by you.

- d. You will be deemed to know that a "personal and advertising injury" offense has been committed at the earliest time when any "authorized representative":
  - (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
  - (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
  - (4) Becomes aware, or reasonably should have become aware, by any means, other than as described in (3) above, that the offense had been committed or had begun to be committed; or
  - (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

**2. Exclusions**

This insurance does not apply to:

- a. **Knowing Violation of Rights of Another**  
 "Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".
- b. **Material Published With Knowledge of Falsity**  
 "Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.
- c. **Material Published Prior to Coverage Term**  
 "Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the later of the following:

- (1) The inception of this Coverage Part; or
- (2) The "coverage term" in which insurance coverage is sought.

**d. Criminal Acts**

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

**e. Contractual Liability**

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

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "personal and advertising injury" is caused by or arises out of an offense committed subsequent to the execution of the contract or agreement. When a claim for such "personal and advertising injury" is made, we will defend that claim, provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

**f. Breach of Contract**

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

**g. Quality or Performance of Goods - Failure to Conform to Statements**

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

**h. Wrong Description of Prices**

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

**i. Infringement of Copyright, Patent, Trademark or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, pat-

ent, trademark, trade secret or other intellectual property rights.

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

**j. Insureds in Media and Internet Type Businesses**

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

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

However, this exclusion does not apply to Paragraphs 17. a., b. and c. of "personal and advertising injury" under **SECTION V - DEFINITIONS**.

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

**k. Electronic Chatrooms or Bulletin Boards**

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

**l. Unauthorized Use of Another's Name or Product**

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

**m. Employment Related Practices**

"Personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation

or discrimination directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

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

**n. Pollutant**

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

**o. Pollutant-Related**

Any loss, cost or expense arising out of any:

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

**p. Asbestos**

"Personal and advertising injury" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

**q. Additional Insured Prior Knowledge**

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that a "personal and advertising injury" offense had been committed or had begun to be committed, in whole or in part, prior to the "coverage term" in which such offense

was committed or began to be committed.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that a "personal and advertising injury" offense has been committed or has begun to be committed at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

- (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
- (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that the "personal and advertising injury" offense had been committed or had begun to be committed; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

**r. War**

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

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

**s. Distribution of Material in Violation of Statutes**

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

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- 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.

**COVERAGE C. MEDICAL PAYMENTS**

**1. Insuring Agreement**

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

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

provided that:

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

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

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

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

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

**c. Injury on Normally Occupied Premises**

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

**d. Workers' Compensation and Similar Laws**

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

**e. Athletic Activities**

To any person injured while officiating, coaching, practicing for, instructing or participating in any physical exercises or games, sports, or athletic contests or exhibitions of an athletic or sports nature.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY.**

**SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

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

1. All expenses we incur.
2. 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.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", in-

cluding actual loss of earnings up to \$250 a day because of time off from work.

5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on that part of the judgment we become obligated to pay and which falls within the applicable limit of insurance. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

**SECTION II - WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
  - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by

you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":
  - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
  - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
  - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
  - (d) Arising out of his or her providing or failing to provide professional health care services.
- (2) "Property damage" to property:
  - (a) Owned, occupied or used by; or
  - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by,
 

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
  - (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
    - a. Insurance under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
    - b. **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
    - c. **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. a. The General Aggregate Limit is the most we will pay for the sum of:
  - (1) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;
  - (2) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - (3) Damages under **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**.

This General Aggregate Limit will not apply if either the Location General Aggregate



gate Limit of Insurance, Paragraph 2.b., or the Construction Project General Aggregate Limit of Insurance, Paragraph 2.c. applies.

b. A separate Location General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each location owned by, or rented or leased to you and is the most we will pay for the sum of:

(1) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

(2) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**,

which can be attributed to operations at only a single location owned by, or rented or leased to you.

c. A separate Construction Project General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each construction project and is the most we will pay for the sum of:

(1) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

(2) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;

which can be attributed only to ongoing operations and only at a single construction project.

d. Only for the purpose of determining which General Aggregate Limit of Insurance, 2.a., 2.b., or 2.c., applies:

(1) Location means premises involving the same or connecting lots, or premises, whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

(2) Construction project means a location you do not own, rent or lease where ongoing improvements, alterations, installation, demolition or maintenance work is performed by you or on your behalf. All connected ongoing improvements, alterations, installation, demolition or maintenance work performed by you or on

your behalf at the same location for the same persons or organizations, no matter how often or under how many different contracts, will be deemed to be a single construction project.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to 2.a. above, the Personal and Advertising Injury Limit is the most we will pay under **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

a. Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**; and

b. Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire or explosion, while rented to you or temporarily occupied by you with permission of the owner.

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under **COVERAGE C. MEDICAL PAYMENTS** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each "coverage term".

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**

**1. Bankruptcy**

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

**2. Duties in the Event of Occurrence, Offense, Claim or Suit**

a. You must see to it that we are notified as soon as practicable of an "occurrence" or

a "personal and advertising injury" of-  
fense which may result in a claim. To the  
extent possible, notice should include:

- (1) How, when and where the "occur-  
rence" 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 "occur-  
rence" or offense.

b. If a claim is made or "suit" is brought  
against any insured, you must:

- (1) Immediately record the specifics of  
the claim or "suit" and the date re-  
ceived; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written  
notice of the claim or "suit" as soon as  
practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any  
demands, notices, summonses or  
legal papers received in connection  
with the claim or "suit";
- (2) Authorize us to obtain records and  
other information;
- (3) Cooperate with us in the investiga-  
tion or settlement of the claim or de-  
fense against the "suit"; and
- (4) Assist us, upon our request, in the  
enforcement of any right against any  
person or organization which may be  
liable to the insured because of in-  
jury or damage to which this insur-  
ance may also apply.

d. No insured will, except at that insured's  
own cost, voluntarily make a payment,  
assume any obligation, or incur any ex-  
pense, other than for first aid, without our  
consent.

**3. Legal Action Against Us**

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

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

A person or organization may sue us to re-  
cover on an agreed settlement or on a final  
judgment against an insured; but we will not  
be liable for damages that are not payable

under the terms of this Coverage Part or that  
are in excess of the applicable limit of insur-  
ance. An agreed settlement means a settle-  
ment and release of liability signed by us, the  
insured and the claimant or the claimant's le-  
gal representative.

**4. Liberalization**

If, within 60 days prior to the beginning of this  
Coverage Part or during the policy period, we  
make any changes to any forms or endorse-  
ments of this Coverage Part for which there is  
currently no separate premium charge, and  
that change provides more coverage than this  
Coverage Part, the change will automatically  
apply to this Coverage Part as of the latter of:

- a. The date we implemented the change in  
your state; or
- b. The date this Coverage Part became ef-  
fective; and

will be considered as included until the end of  
the current policy period. We will make no  
additional premium charge for this additional  
coverage during the interim.

**5. Other Insurance**

If other valid and collectible insurance is  
available to the insured for a loss we cover  
under **COVERAGE A. BODILY INJURY AND  
PROPERTY DAMAGE LIABILITY** or **COV-  
ERAGE B. PERSONAL AND ADVERTISING  
INJURY LIABILITY** of this Coverage Part, our  
obligations are limited as follows:

**a. Primary Insurance**

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

**b. Excess Insurance**

This insurance is excess over:

- (1) Any of the other insurance, whether  
primary, excess, contingent or on  
any other basis:
  - (a) That is Fire, Extended Cover-  
age, Builder's Risk, Installation  
Risk or similar insurance for  
"your work";
  - (b) That is Fire or Explosion insur-  
ance for premises rented to you  
or temporarily occupied by you  
with permission of the owner;
  - (c) That is insurance purchased by  
you to cover your liability as a  
tenant for "property damage" to

premises rented to you or temporarily occupied by you with permission of the owner; or

- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, g. Aircraft, Auto or Watercraft.**
- (2) Any other primary insurance available to the insured covering liability for damages arising out of the premises or operations, or the products and completed operations, for which the insured has been added as an additional insured by attachment of an endorsement.
- (3) Any other insurance:
- (a) Whether primary, excess, contingent or on any other basis, except when such insurance is written specifically to be excess over this insurance; and
- (b) That is a consolidated (wrap-up) insurance program which has been provided by the prime contractor/project manager or owner of the consolidated project in which you are involved.

When this insurance is excess, we will have no duty under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** or **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

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 that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance

shown in the Declarations of this Coverage Part.

**c. Method of Sharing**

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

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

**6. Premium Audit**

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

**7. Representations**

By accepting this Coverage Part, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this Coverage Part in reliance upon your representations.

**8. Separation of Insureds**

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

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

**9. Transfer of Rights of Recovery Against Others to Us**

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

**10. Two or More Coverage Forms or Policies Issued by Us**

If this Coverage Part and any other Coverage Form, Coverage Part or policy issued to you by us or any company affiliated with us apply to the same "occurrence" or "personal and advertising injury" offense, the aggregate maximum limit of insurance under all the Coverage Forms, Coverage Parts or policies shall not exceed the highest applicable limit of insurance under any one Coverage Form, Coverage Part or policy. This condition does not apply to any Coverage Form, Coverage Part or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Part.

**11. When We Do Not Renew**

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

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

**SECTION V - DEFINITIONS**

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

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

2. "Authorized representative" means:

- a. If you are designated in the Declarations as:

(1) An individual, you and your spouse are "authorized representatives".

(2) A partnership or joint venture, your members, your partners, and their spouses are "authorized representatives".

(3) A limited liability company, your members and your managers are "authorized representatives".

(4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors are "authorized representatives". Provided you are not a publicly traded organization, your stockholders are also "authorized representatives".

(5) A trust, your trustees are "authorized representatives".

b. Your "employees":

(1) Assigned to manage your insurance program; or

(2) Responsible for giving or receiving notice of an "occurrence", "personal and advertising injury" offense, claim or "suit";

are also "authorized representatives".

3. "Auto" means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

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

4. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

5. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:

- a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at

12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:

- (1) The day the policy period shown in the Declarations ends; or
  - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
- b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
6. "Coverage territory" means:
- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication,

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement to which we agree.
7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

11. "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.

12. "Insured contract" means:

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

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

- (1) That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations, within 50 feet of any rail-

- road property and affecting any rail-road bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (2) above and supervisory, inspection, architectural or engineering activities;
- (4) That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer, trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materials; market research; public relations and new product development;
- (5) Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph (4), above;
- (6) That indemnifies a web-site designer or content provider, or Internet search, access, content or service provider for injury or damage arising out of the planning, execution or failure to execute Internet services. Internet services include but are not limited to design, production, distribution, maintenance and administration of web-sites and web-banners; hosting web-sites; registering domain names; registering with search engines; marketing analysis; and providing access to the Internet or other similar networks; or
- (7) Under which the insured, if a web-site designer or content provider, or Internet search, access, content or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph (6), above.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "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 a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to

permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

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

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

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

18. "Pollutant" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether the injury or damage is caused directly or indirectly by the "pollutants" and whether:

- a. The insured is regularly or otherwise engaged in activities which taint or degrade the environment; or
- b. The insured uses, generates or produces the "pollutant".

19. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed; or
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
    - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

- b. Does not include "bodily injury" or "property damage" arising out of:
- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a schedule, states that products-completed operations are included.
20. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
- For the purposes of this insurance, "electronic data" is not tangible property.
21. "Suit" means a civil proceeding in which money damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
  - c. An appeal of a civil proceeding.
22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Volunteer worker" means a person who is not your "employee", and who donates his or

her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Workplace" means that place and during such hours to which the "employee" sustaining "bodily injury" was assigned by you, or any other person or entity acting on your behalf, to work on the date of "occurrence".
25. "Your product":
- a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
    - (2) The providing of or failure to provide warnings or instructions.
  - c. Does not include vending machines or other property rented to or located for the use of others but not sold.
26. "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.



## NUCLEAR ENERGY LIABILITY EXCLUSION (Broad Form)

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

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

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

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material", if:

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

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

(3) The "bodily injury" or "property damage" arises out of the furnishing by

an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this exclusion:

"Hazardous properties" includes radioactive, toxic or explosive properties.

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

"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.

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

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

A. Any "nuclear reactor";

B. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

C. Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

D. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

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

"Property damage" includes all forms of radioactive contamination of property.

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

**DEDUCTIBLE LIABILITY INSURANCE**

This endorsement modifies insurance provided under the following:

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

**SCHEDULE**

<b>COVERAGE</b>	<b>Amount and Basis of Deductible PER CLAIM or PER OCCURRENCE</b>	
Bodily Injury Liability OR	\$ SEE BELOW	\$
Property Damage Liability OR	\$	\$
Bodily Injury Liability and/or Property Damage Liability Combined	\$	\$

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

**APPLICATION OF ENDORSEMENT** (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused):

- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PREMISES/OPERATIONS FOR CLASS 91342
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PRODUCTS/COMP. OPS FOR CLASS 91342
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PREMISES/OPERATIONS FOR CLASS 91560
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PRODUCTS/COMP. OPS FOR CLASS 91560
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PREMISES/OPERATIONS FOR CLASS 91580
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PRODUCTS/COMP. OPS FOR CLASS 91580
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PREMISES/OPERATIONS FOR CLASS 91585
- \$500 PD DEDUCTIBLE PER OCCURRENCE FOR PRODUCTS/COMP. OPS FOR CLASS 91585
- \$500 PD DEDUCTIBLE PER CLAIM FOR PREMISES/OPERATIONS FOR CLASS 98304
- \$500 PD DEDUCTIBLE PER CLAIM FOR PRODUCTS/COMP. OPS FOR CLASS 98304

**A.** Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.

Combined, to all damages sustained by any one person because of:

- (1) "Bodily injury";
- (2) "Property damage"; or
- (3) "Bodily injury" and "property damage" combined

**B.** You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:

as the result of any one "occurrence".

If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.

**1. PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:

With respect to "property damage", person includes an organization.

- a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage

**2. PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage

Combined, to all damages because of:

- (1) "Bodily injury";
- (2) "Property damage"; or
- (3) "Bodily injury" and "property damage" combined

as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

C. The terms of this insurance, including those with respect to:

- 1. Our right and duty to defend the insured against any "suits" seeking those damages; and
- 2. Your duties in the event of an "occurrence", claim, or "suit"

apply irrespective of the application of the deductible amount.

D. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

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

**SOUTH CAROLINA CHANGES - EMPLOYEE  
BENEFIT LIABILITY**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
EMPLOYEE BENEFIT LIABILITY COVERAGE PART**

Exclusion (i) of Employee Benefit Liability Coverage Form **GA 102**, Commercial General Liability Broadened Endorsement **GA 210**, Commercial General Liability Extended Liability Endorsement **GA 227** and Contractors' Commercial General Liability Broadened Endorsement **GA 233** is hereby deleted in its entirety and replaced by the following:

**(i) Taxes**

Taxes including those imposed under the Internal Revenue Code.

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

**CONTRACTORS' COMMERCIAL GENERAL LIABILITY  
BROADENED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. Endorsement - Table of Contents:**

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**B. Limits of Insurance:**

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

**1. Employee Benefit Liability Coverage**

Each Employee Limit: \$ 1,000,000  
 Aggregate Limit: \$ 3,000,000  
 Deductible: \$ 1,000

**3. Damage to Premises Rented to You**

The lesser of:

- a. The Each Occurrence Limit shown in the Declarations; or
- b. \$500,000 unless otherwise stated \$ \_\_\_\_\_

**4. Supplementary Payments**

a. Bail bonds: \$ 1,000  
 b. Loss of earnings: \$ 350

**5. Medical Payments**

Medical Expense Limit: \$ 10,000

**6. Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.)**

Limits of Insurance (Each Occurrence)

Coverage a. \$1,000

Coverage b. \$5,000 unless otherwise stated \$ \_\_\_\_\_

Deductibles (Each Occurrence)

Coverage a. \$250

Coverage b. \$250 unless otherwise stated \$ \_\_\_\_\_

COVERAGE	PREMIUM BASIS (a) Area (b) Payroll (c) Gross Sales (d) Units (e) Other	RATE  (For Limits in Excess of \$5,000)	ADVANCE PREMIUM  (For Limits in Excess of \$5,000)
<b>TOTAL ANNUAL PREMIUM</b>			<b>\$</b>

**11. Property Damage to Borrowed Equipment**

Each Occurrence Limit: \$ 10,000

Deductible: \$ 250

**C. Coverages:**

**1. Employee Benefit Liability Coverage**

a. The following is added to **SECTION I - COVERAGES: Employee Benefit Liability Coverage.**

**(1) Insuring Agreement**

(a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- 2) Our right and duty to defend ends when we

have used up the applicable limit of insurance in the payment of judgments or settlements.

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

(b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and

- 1) Occurs during the policy period; or
- 2) Occurred prior to the effective date of this endorsement provided:

a) You did not have knowledge of a claim or "suit" on or before the effective date of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- i) Reports all, or any part, of the act, error or omission to us or any other insurer;
  - ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and
- b) There is no other applicable insurance.

**(2) Exclusions**

This insurance does not apply to:

**(a) Bodily Injury, Property Damage or Personal and Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

**(b) Dishonest, Fraudulent, Criminal or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

**(c) Failure to Perform a Contract**

Damages arising out of failure of performance of contract by any insurer.

**(d) Insufficiency of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

**(e) Inadequacy of Performance of Investment / Advice Given With Respect to Participation**

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past per-

formance of investment vehicles; or

- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**(f) Workers' Compensation and Similar Laws**

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

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



ment-related practices, acts or omissions; or

- (4) Consequential liability as a result of (1), (2) or (3) above.

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

**(3) Supplementary Payments**

**SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** also apply to this Coverage.

**b. Who is an Insured**

As respects Employee Benefit Liability Coverage, **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced by the following:

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

- (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

- (2) Each of the following is also an insured:

- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program".
- (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
- (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:

- (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

**c. Limits of Insurance**

As respects Employee Benefit Liability Coverage, **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced by the following:

- (1) The Limits of Insurance shown in Section B. **Limits of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:

- (a) Insureds;

- (b) Claims made or "suits" brought;
- (c) Persons or organizations making claims or bringing "suits";
- (d) Acts, errors or omissions; or
- (e) Benefits included in your "employee benefit program".

(2) The Aggregate Limit shown in Section B. **Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

(3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section B. **Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

- (a) An act, error or omission; or
- (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions,

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

**(4) Deductible Amount**

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

- (b) The deductible amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

(c) The terms of this insurance, including those with respect to:

- 1) Our right and duty to defend the insured against any "suits" seeking those damages; and
- 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,

apply irrespective of the application of the deductible amount.

- (d) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

**d. Additional Conditions**

As respects **Employee Benefit Liability Coverage, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

- (1) Item 2. **Duties in the Event of Occurrence, Offense, Claim or Suit** is deleted in its entirety and replaced by the following:

**2. Duties in the Event of an Act, Error or Omission, or Claim or Suit**

- a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:
  - (1) What the act, error or omission was and when it occurred; and
  - (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

(2) Item 5. **Other Insurance** is deleted in its entirety and replaced by the following:

**5. Other Insurance**

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

**a. Primary Insurance**

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

**b. Method of Sharing**

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

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

**c. No Coverage**

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

**e. Additional Definitions**

As respects **Employee Benefit Liability Coverage, SECTION V - DEFINITIONS** is amended as follows:

(1) The following definitions are added:

- 1. "Administration" means:
  - a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
  - b. Interpreting the "employee benefit programs";
  - c. Handling records in connection with the "employee benefit programs"; or
  - d. Effecting, continuing or terminating any "employee's" participation

in any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
  - b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
2. "Cafeteria plans" means plan authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
  3. "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
    - a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
    - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
    - c. Unemployment insurance, social security

benefits, workers' compensation and disability benefits; and

- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

(2) The following definitions are deleted in their entirety and replaced by the following:

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
  - c. An appeal of a civil proceeding.
8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

## 2. Unintentional Failure to Disclose Hazards

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 7. Representations** is hereby amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

**3. Damage to Premises Rented to You**

a. The last Subparagraph of Paragraph 2. **SECTION I - COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE, 2. LIABILITY Exclusions** is hereby deleted and replaced by the following:

Exclusions c. through q. do not apply to damage by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner.

b. The insurance provided under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

(1) As respects Water Damage Legal Liability, as provided in Paragraph 3.b. above:

The exclusions under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**, other than i. **War** and the **Nuclear Energy Liability Exclusion**, are deleted and the following are added:

This insurance does not apply to:

(a) "Property damage":

- 1) Assumed in any contract; or
- 2) Loss caused by or resulting from any of the following:
  - a) Wear and tear;
  - b) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
  - c) Smog;
  - d) Mechanical breakdown including rupture or bursting caused by centrifugal force;

e) Settling, cracking, shrinking or expansion; or

f) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(b) Loss caused directly or indirectly by any of the following:

- 1) Earthquake, volcanic eruption, landslide or any other earth movement;
- 2) Water that backs up or overflows from a sewer, drain or sump;
- 3) Water under the ground surface pressing on, or flowing or seeping through:
  - a) Foundations, walls, floors or paved surfaces;
  - b) Basements, whether paved or not; or
  - c) Doors, windows or other openings.

(c) Loss caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, or fire protection systems caused by or resulting from freezing, unless:

- 1) You did your best to maintain heat in the building or structure; or
- 2) You drained the equipment and shut off the water supply if the heat was not maintained.

(d) Loss to or damage to:

- 1) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or
- 2) The interior of any building or structure, or to personal property in the building or structure

caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

**c. Limit of Insurance**

The Damage to Premises Rented to You Limit as shown in the Declarations is amended as follows:

(2) Paragraph 6. of **SECTION III - LIMITS OF INSURANCE** is hereby deleted and replaced by the following:

6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "occurrence" to which this insurance applies.

(3) The amount we will pay is limited as described in Section B. **Limits of Insurance, 3. Damage to Premises Rented to You** of this endorsement.

**4. Supplementary Payments**

Under **SECTION I - COVERAGE, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**:

a. Paragraph 2. is replaced by the following:

Up to the limit shown in Section B. **Limits of Insurance, 4.a.** Bail Bonds of this endorsement 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.

b. Paragraph 4. is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in Section B. **Limits of Insurance, 4.b.** Loss of Earnings of this endorsement per day because of time off from work.

**5. Medical Payments**

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section B. **Limits of Insurance, 5. Medical Payments** of this endorsement.

**6. Voluntary Property Damage and Care, Custody or Control Liability Coverage**

a. **Voluntary Property Damage Coverage**

We will pay for "property damage" to property of others arising out of operations incidental to the insured's business when:

- (1) Damage is caused by the insured; or
- (2) Damage occurs while in the insured's possession.

With your consent, we will make these payments regardless of fault.

b. **Care, Custody or Control Liability Coverage**

**SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, j. Damage to Property**, Subparagraphs (3), (4) and (5) do not apply to "property damage" to the property of others described therein.

With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

a. The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (1) Insureds;
- (2) Claims made or "suits" brought; or
- (3) Persons or organizations making claims or bringing "suits".

**b. Deductible Clause**

- (1) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the deductible amount stated in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.
- (2) **Condition 2. Duties in the Event of Occurrence, Offense, Claim or Suit**, applies to each claim or "suit" irrespective of the amount.
- (3) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**7. 180 Day Coverage for Newly Formed or Acquired Organizations**

**SECTION II - WHO IS AN INSURED** is amended as follows:

Subparagraph **a.** of Paragraph **4.** is hereby deleted and replaced by the following:

- a. Insurance under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

**8. Waiver of Subrogation**

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 9. Transfer of Rights of Recovery Against Others to Us** is hereby amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

**9. Automatic Additional Insured - Specified Relationships**

a. The following is hereby added to **SECTION II - WHO IS AN INSURED**:

- (1) Any person or organization described in Paragraph **9.a.(2)** below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of:
  - (a) A written contract or agreement; or
  - (b) An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued,

is an insured, provided:

- (a) The written or oral contract or agreement is:
  - 1) Currently in effect or becomes effective during the policy period; and
  - 2) Executed prior to an "occurrence" or offense to which this insurance would apply; and
- (b) They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

(2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to such additional insureds is limited as provided herein:

- (a) The manager or lessor of a premises leased to you with whom you have agreed per Paragraph **9.a.(1)** above to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- 1) Any "occurrence" which takes place after

you cease to be a tenant in that premises.

- 2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- (b) Any person or organization from which you lease equipment with whom you have agreed per Paragraph 9.a.(1) above to provide insurance. Such person(s) or organization(s) are insureds solely with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person(s) or organizations(s). However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
- (c) Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
  - 1) The insurance afforded the vendor does not apply to:
    - a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
    - b) Any express warranty unauthorized by you;

- c) Any physical or chemical change in the product made intentionally by the vendor;
- d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
- 2) This insurance does not apply to any insured person or organization:
  - a) From whom you have acquired such products, or any ingredient, part or container, entering into, ac-



companying or containing such products; or

- b) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.

- (d) Any state or political subdivision with which you have agreed per Paragraph 9.a.(1) above to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent or control and to which this insurance applies:

- 1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- 2) The construction, erection, or removal of elevators; or
- 3) The ownership, maintenance, or use of any elevators covered by this insurance.

- (e) Any state or political subdivision with which you have agreed per Paragraph 9.a.(1) above to provide insurance, subject to the following provisions:

- 1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- 2) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or political subdivision.

- (f) Any person or organization with which you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to liability arising out of "your work" performed for that additional insured by you or on your behalf. A person or organization's status as an insured under this provision of this endorsement continues for only the period of time required by the written contract or agreement, but in no event beyond the expiration date of this Coverage Part. If there is no written contract or agreement, or if no period of time is required by the written contract or agreement, a person or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

- (3) Any insurance provided to an additional insured designated under Paragraph 9.a.(2):

- (a) Subparagraphs (e) and (f) does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard";

- (b) Subparagraphs (a), (b), (d), (e) and (f) does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or their agents, "employees" or any other representative of the additional insured; or

- (c) Subparagraph (f) does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- 1) Defects in design furnished by or on behalf

of the additional insured; or

- 2) The rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
  - a) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
  - b) Supervisory, inspection, architectural or engineering activities.
- 3) "Your work" for which a consolidated (wrap-up) insurance program has been provided by the primecontractor-project manager or owner of the construction project in which you are involved.

- b. Only with regard to insurance provided to an additional insured designated under Paragraph 9.a.(2) Subparagraph (f) above, **SECTION III - LIMITS OF INSURANCE** is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever are less. If no limits are specified in the written contract or agreement, or if there is no written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

- c. **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is hereby amended as follows:

- (1) Condition 5. **Other Insurance** is amended to include:
  - (a) Where required by a written contract or agreement, this insurance is primary and / or noncontributory as re-

spects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and / or noncontributing, whichever applies, with this insurance.

- (b) Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:
  - 1) As otherwise provided in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance**; or
  - 2) For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

- (2) Condition 11. **Conformance to Specific Written Contract or Agreement** is hereby added:

**11. Conformance to Specific Written Contract or Agreement**

With respect to additional insureds described in Paragraph 9.a.(2)(f) above only:

If a written contract or agreement between you and the additional insured specifies that coverage for the additional insured:

- a. Be provided by the Insurance Services Office additional insured form number **CG 20 10** or **CG 20 37** (where edition specified); or
- b. Include coverage for completed operations; or
- c. Include coverage for "your work";

and where the limits or coverage provided to the addi-

tional insured is more restrictive than was specifically required in that written contract or agreement, the terms of Paragraphs 9.a.(3)(a), 9.a.(3)(b) or 9.b. above, or any combination thereof, shall be interpreted as providing the limits or coverage required by the terms of the written contract or agreement, but only to the extent that such limits or coverage is included within the terms of the Coverage Part to which this endorsement is attached. If, however, the written contract or agreement specifies the Insurance Services Office additional insured form number CG 20 10 but does not specify which edition, or specifies an edition that does not exist, Paragraphs 9.a.(3)(a) and 9.a.(3)(b) of this endorsement shall not apply and Paragraph 9.b. of this endorsement shall apply.

**10. Broadened Contractual Liability - Work Within 50' of Railroad Property**

It is hereby agreed that Paragraph f.(1) of Definition 12. "Insured contract" (SECTION V - DEFINITIONS) is deleted.

**11. Property Damage to Borrowed Equipment**

- a. The following is hereby added to Exclusion j. **Damage to Property of Paragraph 2., Exclusions of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

- b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

(1) The Limits of insurance shown in the Declarations are replaced by the limits designated in Section B. **Limits of Insurance, 11.** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section B. **Limits of Insurance,**

11. of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (a) Insureds;
- (b) Claims made or "suits" brought; or
- (c) Persons or organizations making claims or bring "suits".

**(2) Deductible Clause**

(a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible amount stated in Section B. **Limits of Insurance, 11.** of this endorsement. The limits of insurance will not be reduced by the application of such Deductible amount.

(b) Condition 2. **Duties in the Event of Occurrence, Offense, Claim or Suit,** applies to each claim or "suit" irrespective of the amount.

(c) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**12. Employees as Insureds - Specified Health Care Services**

It is hereby agreed that Paragraph 2.a.(1)(d) of SECTION II - WHO IS AN INSURED, does not apply to your "employees" who provide professional health care services on your behalf as duly licensed:

- a. Nurses;
- b. Emergency Medical Technicians; or
- c. Paramedics,

in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place.

**13. Broadened Notice of Occurrence**

Paragraph a. of Condition 2. **Duties in the Event of Occurrence, Offense, Claim or Suit (SECTION IV - COMMERCIAL GENERAL LIABILITY CONDI-**

**TIONS)** is hereby deleted and replaced by the following:

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

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

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".

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

## **EXCLUSION - LEAD LIABILITY**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusions are added to Paragraph 2. Exclusions of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** and Paragraph 2. Exclusions of **SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of, resulting from, or in any way caused by or contributing to the actual, alleged or threatened ingestion, inhalation, absorption of, exposure to or presence of lead in any form emanating from any source.
2. Any loss, cost or expense arising out of, resulting from or in any way related to any:
  - a. Claim, suit, request, demand, directive, or order by or on behalf of any person, entity, or governmental authority that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of lead in any form; or
  - b. Claim or suit by or on behalf of any person, entity, or governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead in any form.

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

**EXCLUSION - CONTRACTORS - PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2. Exclusions of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, and Paragraph 2. Exclusions of SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY:

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

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

**EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS ("EIFS") AND DIRECT-APPLIED EXTERIOR FINISH SYSTEMS ("DEFS") - BROAD FORM**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

- 1. The following exclusion is added to Paragraph 2. Exclusions of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, and Paragraph 2. Exclusions of SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" that arises out of, is caused by, or is attributable to, whether in whole or in part, any of the following:

- a. The design, manufacture, sale, service, handling, construction, fabrication, preparation, installation, application, maintenance, disposal or repair, including remodeling, service, correction, or replacement, of a "wall finish system", or any part thereof, including any method or procedure used to correct problems with installed or partially installed "wall finish systems"; or
- b. Any work or operations conducted by or on behalf of any insured on or to a "wall finish system", or any component thereof, or any component of a building or structure to which a "wall finish system" attaches that results, directly or indirectly, in the intrusion of water or moisture, including any resulting development or presence of "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage.

This exclusion also applies to any "bodily injury", "property damage" or "personal and advertising injury":

- a. For which any insured assumes liability in any part of any contract or agreement, regardless of whether such contract or agreement is an "insured contract";
- b. Arising out of, caused by, or attributable to, whether in whole or in part, warranties or representations made at any time with

respect to the fitness, quality, durability or performance of a "wall finish system"; and

- c. Arising out of, caused by, or attributable to, whether in whole or in part, the providing of or failure to provide any warning or instructions with regard to a "wall finish system".

- 2. SECTION V - DEFINITIONS is amended to include the following:

a. "Direct-applied exterior finish system" (commonly referred to as DEFS) means an exterior cladding or finish system and all component parts therein, used on any part of any structure, and consisting of:

- (1) A rigid or semi-rigid substrate;
- (2) The adhesive and / or mechanical fasteners used to attach the substrate to the structure including any water-durable exterior wall substrate;
- (3) A reinforced or unreinforced base coat or mesh;
- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any conditioners, primers, accessories, flashing, coatings, caulking or sealants used with the system for any purpose;

that interact to form an energy efficient wall.

b. "Exterior insulation and finish system" (commonly referred to as synthetic stucco or EIFS) means an exterior cladding or finish system and all component parts therein, 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 or unreinforced base coat or mesh;
- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any conditioners, primers, accessories, flashing, coatings, caulking or sealants used with the system for any purpose;

that interact to form an energy efficient wall.

- c. "Fungi" means any type or form of fungus, and includes, but is not limited to, any form or type of mold, mushroom, or mildew and mycotoxins, spores, scents or byproducts produced or released by fungi.
- d. "Wall finish system" means:
  - (1) An "exterior insulation and finish system";
  - (2) A "direct-applied exterior finish system"; or
  - (3) Any energy efficient exterior cladding or finish system substantially similar to Paragraph (1) or (2) above.



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

**FUNGI OR BACTERIA EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

A. The following exclusion is added to Paragraph 2. Exclusions of **SECTION I - COVERAGES. COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

**2. Exclusions**

This insurance does not apply to:

**Fungi or Bacteria**

a. "Bodily injury" or "property damage" caused directly or indirectly, in whole or in part, by any actual, alleged or threatened:

- (1) Inhalation of;
- (2) Ingestion of;
- (3) Contact with;
- (4) Absorption of;
- (5) Exposure to;
- (6) Existence of; or
- (7) Presence of,

any "fungi" or bacteria on or within a building or structure, including its contents, whether occurring suddenly or gradually;

b. Any loss, cost or expense associated in any way with, or arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, mitigating or disposing of, or in any way responding to, investigating, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity;

c. Any liability, with respect to "fungi" or bacteria, arising out of, resulting from, caused by, contributed to, or in any way related to any supervision, instruction, recommendation, warning or advice given or which should have been given in connection with:

- (1) The existence of "fungi" or bacteria;

(2) The prevention of "fungi" or bacteria;

(3) The remediation of "fungi" or bacteria;

(4) Any operation described in Paragraph **A. 2. b.** above;

(5) "Your product"; or

(6) "Your work"; or

d. Any obligation to share damages with or repay any person, organization or entity, related in any way to the liability excluded in Paragraphs **A. 2. a., b. or c.** above;

regardless of any other cause, event, material, product and / or building component that contributed concurrently or in any sequence to the injury or damage.

However this exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for human ingestion.

B. The following exclusion is added to Paragraph 2. Exclusions of **SECTION I - COVERAGES. COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY:**

**2. Exclusions**

This insurance does not apply to:

**Fungi or Bacteria**

a. "Personal and advertising injury" caused directly or indirectly, in whole or in part, by any actual, alleged or threatened:

- (1) Inhalation of;
- (2) Ingestion of;
- (3) Contact with;
- (4) Absorption of;
- (5) Exposure to;
- (6) Existence of; or
- (7) Presence of,

any "fungi" or bacteria on or within a building or structure, including its contents, whether occurring suddenly or gradually;

- b. Any loss, cost or expense associated in any way with, or arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, mitigating or disposing of, or in any way responding to, investigating, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity;
- c. Any liability, with respect to "fungi" or bacteria, arising out of, resulting from, caused by, contributed to, or in any way related to any supervision, instruction, recommendation, warning or advice given or which should have been given in connection with:
  - (1) The existence of "fungi" or bacteria;
  - (2) The prevention of "fungi" or bacteria;
  - (3) The remediation of "fungi" or bacteria;

(4) Any operation described in Paragraph **B. 2. b.** above;

(5) "Your product"; or

(6) "Your work"; or

- d. Any obligation to share damages with or repay any person, organization or entity, related in any way to the liability excluded in Paragraphs **B. 2. a., b. or c.** above;

regardless of any other cause, event, material, product and / or building component that contributed concurrently or in any sequence to the injury or damage.

However this exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for human ingestion.

- C. For the purposes of this endorsement, **SECTION V - DEFINITIONS** is amended to include the following:

"Fungi" means any type or form of fungus, and includes, but is not limited to, any form or type of mold, mushroom or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

## THE CINCINNATI INSURANCE COMPANY

### COMMERCIAL UMBRELLA LIABILITY COVERAGE PART DECLARATIONS

Previous Policy Number

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Attached to and forming part of POLICY NUMBER **ENP 017 65 43** Effective Date: **01-17-2013**

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NAMED INSURED is the same as it appears in the Common Policy Declarations unless another entry is made here.

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**LIMITS OF INSURANCE**

\$ **5,000,000** Each Occurrence Limit                      \$ **5,000,000** Aggregate Limit

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**ADVANCE PREMIUM \$** [REDACTED]

Applicable to Premium, if box is checked:

Subject to Annual Adjustment

Subject to Audit (see Premium Computation Endorsement for Rating Basis)

**SCHEDULE OF UNDERLYING INSURANCE**

Insurer, Policy Number & Period:	Underlying Insurance:	Underlying Limits:
(a)	Employer's Liability	Bodily Injury by Accident: \$                      Each Accident Bodily Injury by Disease: \$                      Each Employee Bodily Injury by Disease: \$                      Policy Limit
(b) CINCINNATI INS. CO. ENP 017 65 43 01-17-2013 TO 01-17-2016	<input checked="" type="checkbox"/> Commercial General Liability Including: <input checked="" type="checkbox"/> Products-Completed Operations Coverage  <input type="checkbox"/> Cemetery Professional <input type="checkbox"/> Druggist Professional <input type="checkbox"/> Funeral Service Provider <input type="checkbox"/> Pedorthists Professional  or <input type="checkbox"/> Business Liability Including: <input type="checkbox"/> Funeral Service Provider <input type="checkbox"/> Druggist Professional	Bodily Injury and Property Damage Liability: \$    1,000,000 Each Occurrence Limit \$    2,000,000 General Aggregate Limit \$    2,000,000 Products-Completed Operations Aggregate Limit  Personal and Advertising Injury Limit: \$    1,000,000 Any One Person or Organization
(c) CINCINNATI INS. CO. EBA 017 65 43 01-17-2013 TO 01-17-2016	Automobile Liability Including: <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned Autos <input type="checkbox"/> Hired Autos <input checked="" type="checkbox"/> Any Auto	Bodily Injury Liability Limit: \$                      Each Person \$                      Each Occurrence Property Damage Liability Limit: \$                      Each Occurrence  or Bodily Injury Liability and / or Property Damage Liability or Both Combined Limit: \$    1,000,000 Each Occurrence
(d)	Professional	\$ \$                      Aggregate
(e) CINCINNATI INS. CO. ENP 017 65 43 01-17-2013 TO 01-17-2016	Employee Benefit Liability	\$    1,000,000 Each Employee Limit \$    3,000,000 Aggregate Limit

(f)	Liquor Liability	\$	Each Common Cause Limit
		\$	Aggregate Limit

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Other

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**FORMS AND/ OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:**

US101UM	12/04	COMMERCIAL UMBRELLA - TABLE OF CONTENTS
US3010	12/04	CONTRACTORS LIMITATIONS - INCLUDING EXCESS WRAP-UP COVERAGE
US3043	12/04	EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS ("EIFS") AND DIRECT-APPLIED EXTERIOR FINISH SYSTEMS ("DEFS") - BROAD FORM
US3048	12/04	FUNGI OR BACTERIA EXCLUSION
US395	12/04	LEAD LIABILITY EXCLUSION
US4062	11/05	MOBILE EQUIPMENT SUBJECT TO MOTOR VEHICLE INSURANCE LAWS - LIMITATION
US407	12/04	EMPLOYEE BENEFIT LIABILITY

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## COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM

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

Throughout this Coverage Part 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 Coverage Part. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V - DEFINITIONS**.

### SECTION I - COVERAGE

#### A. Insuring Agreement

1. We will pay on behalf of the insured the "ultimate net loss" which the insured is legally obligated to pay as damages for "bodily injury", "personal and advertising injury" or "property damage" to which this insurance applies:
  - a. Which is in excess of the "underlying insurance"; or
  - b. Which is either excluded or not insured by "underlying insurance".
2. This insurance applies to "bodily injury", "personal and advertising injury" or "property damage" only if:
  - a. The "bodily injury", "personal and advertising injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
  - b. The "bodily injury" or "property damage" occurs during the policy period shown in the Declarations; or
  - c. The "personal and advertising injury" results from an "occurrence" that takes place during the policy period shown in the Declarations; and
  - d. Prior to the "coverage term" in which "bodily injury" or "property damage" occurs, or a "personal and advertising injury" offense is committed, you did not know, per Paragraph 5. below, that the "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part, or

that the "personal and advertising injury" offense had been committed or had begun to be committed, in whole or in part.

3. "Bodily injury" or "property damage" which:
  - a. Occurs during the "coverage term"; and
  - b. Was not, prior to the "coverage term", known by you, per Paragraph 5. below, to have occurred;

includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term" in which it first became known by you.
4. "Personal and advertising injury" caused by an offense which:
  - a. Was committed during the "coverage term"; and
  - b. Was not, prior to the "coverage term", known by you, per Paragraph 5. below, to have been committed;

includes any continuation, change or resumption of that "personal and advertising injury" offense after the end of the "coverage term" in which it first became known by you.
5. You will be deemed to know that "bodily injury" or "property damage" has occurred, or that a "personal and advertising injury" offense has been committed at the earliest time when any "authorized representative":
  - a. Reports all, or any part, of the "bodily injury", "personal and advertising injury" or "property damage" to us or any other insurer;
  - b. Receives a written or verbal demand or claim for damages because of the "bodily injury", "personal and advertising injury" or "property damage";
  - c. First observes, or reasonably should have first observed, the "bodily injury" or "property damage", or the offense that caused the "personal and advertising injury";
  - d. Becomes aware, or reasonably should have become aware, by any means, other than as described in c. above, that "bodily injury" or "prop-

erty damage" had occurred or had begun to occur, or that the "personal and advertising injury" offense had been committed or had begun to be committed; or

- e. Becomes aware, or reasonably should have become aware, of a condition from which "bodily injury", "personal and advertising injury" or "property damage" is substantially certain to occur.

6. The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE.**

No other obligation or liability to pay sums or perform acts or services is covered, unless expressly provided for under **SECTION I - COVERAGE, C. Defense and Supplementary Payments.**

**B. Exclusions**

This insurance does not apply to:

**1. Asbestos**

Any liability arising out of, attributable to or any way related to asbestos in any form or transmitted in any manner.

**2. Breach of Contract, Failure to Perform, Wrong Description and Violation of Another's Rights**

"Personal and advertising injury":

- a. Arising out of breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- b. Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- c. Arising out of the wrong description of the price of goods, products or services stated in your "advertisement"; or
- d. Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

**3. Contractual Liability**

Any liability for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for "bodily injury", "personal

and advertising injury" or "property damage":

- a. That the insured would have in the absence of the contract or agreement; or
- b. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury", "personal and advertising injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

**4. Damage to Impaired Property or Property Not Physically Injured**

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

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

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

**5. Damage to Property**

"Property damage" to property owned by any insured, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property.

**6. Damage to Your Product**

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

**7. Damage to Your Work**

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

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



**8. Distribution of Material in Violation of Statutes**

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

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; 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. Electronic Chatrooms or Bulletin Boards**

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

**10. Electronic Data**

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

**11. Employer's Liability Limitation**

Any liability arising from any injury to:

- a. An "employee" of the insured sustained in the "workplace";
- b. An "employee" of the insured arising out of the performance of duties related to the conduct of the insured's business; or
- c. The spouse, child, parent, brother or sister of that "employee" as a consequence of a. or b. above.

This exclusion applies:

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

This exclusion does not apply when such insurance is provided by valid and collectible "underlying insurance" listed in the Schedule of Underlying Insurance, or

would have been provided by such listed "underlying insurance" except for the exhaustion by payment of claims of its limits of insurance, and then only for such hazards for which coverage is provided by such "underlying insurance", unless otherwise excluded by this Coverage Part.

**12. Employment-Related Practices**

Any liability arising from any injury to:

- a. A person arising out of any:
  - (1) Refusal to employ that person;
  - (2) Termination of that person's employment; or
  - (3) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- b. The spouse, child, parent, brother or sister of that person as a consequence of any injury to that person at whom any of the employment-related practices described in Paragraphs (1), (2), or (3) above is directed.

This exclusion applies:

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

**13. Expected or Intended Injury**

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the insured or which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually intended or expected.

However, this exclusion does not apply to:

- a. "Bodily injury" resulting from the use of reasonable force to protect persons or property; or
- b. "Bodily injury" or "property damage" resulting from the use of reasonable force to prevent or eliminate danger

in the operation of "autos" or watercraft.

**14. Falsity, Prior Publication, Criminal Act and Media and Internet Type Businesses**

"Personal and advertising injury":

- a. Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- b. Arising out of oral or written publication of material whose first publication took place before the later of the following:
  - (1) The inception of this Coverage Part; or
  - (2) The "coverage term" in which insurance coverage is sought;
- c. Arising out of a criminal act committed by or at the direction of the insured; or
- d. Committed by an insured whose business is:
  - (1) Advertising, broadcasting, publishing or telecasting;
  - (2) Designing or determining content of web-sites for others; or
  - (3) An Internet search, access, content or service provider.

However, Paragraph d. does not apply to Paragraphs 17.a., b., c., d. and i. of "personal and advertising injury" under **SECTION V - DEFINITIONS**.

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

**15. Infringement of Copyright, Patent, Trademark or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

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

**16. Pollutant - Auto**

- a. "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, emission or escape of "pollutants":

(1) That are, or that are contained in any property that is:

- (a) Being transported or towed by, handled, or handled for movement into, onto or from, an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion;

- (b) Otherwise in the course of transit by or on behalf of the insured; or

- (c) Being stored, disposed of, treated or processed in or upon an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion;

(2) Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the insured for movement into or onto an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion; or

(3) After the "pollutants" or any property in which the "pollutants" are contained are moved from an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion to the place where they are finally delivered, disposed of or abandoned by the insured.

Paragraph (1) above does not apply to "bodily injury" or "property damage" arising from fuels, lubricants, or other operating fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their

behalf in any other fashion or its parts, if:

- (a) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (b) The "bodily injury" or "property damage" does not arise out of the operation of any equipment listed in Paragraphs **f.(2)** and **(3)** of the definition of "mobile equipment".

However, this exception to Paragraph **(1)** does not apply if the fuels, lubricants, or other operating fluids, exhaust gases or other similar "pollutants" are intentionally discharged, dispersed, emitted or released.

Paragraphs **(2)** and **(3)** above do not apply to an "occurrence" that occurs away from premises owned by or rented to an insured with respect to "pollutants" not in or upon an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of an "auto" that an insured owns, hires, borrows, rents, leases, or that is operated on their behalf in any other fashion; and
  - (b) The discharge, dispersal, seepage, migration, release, emission or escape of the "pollutants" is caused directly by such upset, overturn or damage.
- b. Any liability caused by "pollutants" and arising from the operation, maintenance, use, "loading or unloading" of an "auto", for which insurance coverage is excluded by "underlying insurance".

#### 17. Pollutant - Other Than Auto

- a. "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, emission or escape of "pollutants":

- (1) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured.

However, Paragraph **a.(1)** of this exclusion does not apply to the following if such liability is covered by "underlying insurance" listed in the Schedule of Underlying Insurance, but only to the extent insurance is provided at the "underlying limit" specified in the Schedule of Underlying Insurance for the "underlying insurance" listed and subject to all its terms, limitations and conditions:

- (a) "Bodily injury", if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use by the building's occupants or their guests;
- (b) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor, and the owner or lessee of such premises, site or location has been added to your "underlying insurance" as an additional insured with respect to your ongoing operations or "your work" performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
- (c) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

- (2) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

- (3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible;
- (4) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations, if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor.

However, Paragraph a.(4) of this exclusion does not apply to the following if such liability is covered by "underlying insurance" listed in the Schedule of Underlying Insurance, but only to the extent insurance is provided at the "underlying limit" specified in the Schedule of Underlying Insurance for the "underlying insurance" listed and subject to all its terms, limitations and conditions:

- (a) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by

such insured, contractor or subcontractor;

- (b) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (c) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

- (5) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations, if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of, "pollutants".

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

- c. Any loss, cost or expense arising out of any:

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

However, this Paragraph c. does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement,

or such claim or "suit" by or on behalf of a governmental authority.

- d. Any liability caused by "pollutants", for which insurance coverage is excluded by "underlying insurance".

**18. Recall of Products, Work or Impaired Property**

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

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

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

**19. Unauthorized Use of Another's Name or Product**

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

**20. Uninsured / Underinsured Motorist**

Any liability or obligation to any insured or anyone else under any uninsured motorist, underinsured motorist, automobile no-fault or first party personal injury law.

**21. War**

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

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

**22. Workers' Compensation**

Any liability or obligation of the insured under any workers' compensation, unemployment compensation, disability benefits or similar law. However, this exclusion does not apply to liability of others assumed by you under an "insured contract" in existence at the time of "occurrence".

**C. Defense and Supplementary Payments**

1. We will have the right and duty to defend the insured against any "suit" seeking damages because of "bodily injury", "personal and advertising injury" or "property damage" to which this insurance applies. We will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "personal and advertising injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result when:
  - a. The applicable limits of the "underlying insurance" and any other insurance have been exhausted by payment of claims; or
  - b. Damages are sought for "bodily injury", "personal and advertising injury" or "property damage" which are not covered by "underlying insurance" or other insurance.
2. Our right and duty to defend ends when the applicable Limits of Insurance, as stated in the Declarations, has been exhausted by payment of claims.
3. We have no duty to investigate, settle or defend any claim or "suit" other than those circumstances described in Paragraph C.1. However, we do have the right to participate in the investigation, settlement or defense of any claim or "suit" to which this insurance applies. If we exercise this right, we will do so at our expense.
4. If there is no underlying insurer or other insurance obligated to do so, we will pay the following when we provide a defense:
  - a. All expenses we incur.
  - b. The cost of bail bonds up to \$3,000. We do not have to furnish these bonds.
  - c. The cost of bonds to appeal a judgment or award in any claim or "suit" we defend and the cost of bonds to

release attachments, but only for bond amounts within the applicable Limits of Insurance. We do not have to furnish these bonds.

- d. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including the actual loss of earnings.
  - e. All costs taxed against the insured in the "suit".
5. If there is no underlying insurer obligated to do so, we will pay the following for an "occurrence" to which this insurance applies, even if we have no duty to provide a defense:
- a. Prejudgment interest awarded against the insured on that part of the judgment we become obligated to pay and which falls within the applicable Limit of Insurance. If we make an offer to pay the applicable Limits of Insurance, we will not pay any prejudgment interest based on the period of time after the offer.
  - b. All interest awarded against the insured on the full amount of any judgment that accrues:
    - (1) After entry of the judgment; and
    - (2) Before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Insurance.
6. The payments described in Paragraphs 4. and 5. above will not reduce the Limits of Insurance provided by this Coverage Part when defense or supplementary payments provided by the "underlying insurance" do not reduce their Limits of Insurance. However, when defense or supplementary payments provided by the "underlying insurance" reduce their Limits of Insurance then such expense payments paid by us will reduce the Limits of Insurance provided by this Coverage Part.
7. If we are prevented by law or otherwise from carrying out any of the provisions of **SECTION I - COVERAGE, C. Defense and Supplementary Payments**, we will pay any expense incurred with our written consent.

## SECTION II - WHO IS AN INSURED

- 1. Except for liability arising out of the ownership, maintenance, occupancy or use of an "auto":
  - a. If you are designated in the Declarations as:
    - (1) 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.
    - (2) A partnership or joint venture, you are an insured. Your members, partners and their spouses are also insureds, but only with respect to the conduct of your business.
    - (3) 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.
    - (4) An organization other than a partnership, joint venture, or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders. Each of the following is also a Named Insured:
      - (a) Any "subsidiary" company of such organization, including any "subsidiary" of such "subsidiary":
        - 1) Existing at the inception of this Coverage Part; or
        - 2) Formed or acquired on or after the inception of this Coverage Part.
      - (b) Any other company controlled and actively managed by such organization or any "subsidiary" thereof:
        - 1) At the inception of this Coverage Part; or
        - 2) If the control and active management thereof is acquired on or after the inception of this Coverage Part.
- (5) A trust, you are an insured. Your trustees are also insureds, but only

with respect to their duties as trustees.

b. Each of the following is also an insured:

- (1) Any "employee" of yours while acting within the scope of their duties as such.
- (2) Any person or organization while acting as your real estate manager.
- (3) Any person or organization having proper temporary custody of your property if you die, but only:
  - (a) With respect to liability arising out of the maintenance or use of that property; and
  - (b) Until your legal representative has been appointed.
- (4) Your legal representative if you die, but only with respect to duties as such.

2. Only with respect to liability arising out of the ownership, maintenance, occupancy or use of an "auto":

a. You are an insured.

b. Anyone else while using with your permission an "auto" you own, hire or borrow is also an insured except:

- (1) The owner or any other person or organization (except your "executive officers" or principals) from whom you hire or borrow an "auto", unless such persons or organizations are insureds in your "underlying insurance" listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is provided by such "underlying insurance". This exception does not apply if the "auto" is a trailer or semi-trailer connected to an "auto" you own.
- (2) Your "employee", if the "auto" is owned by that "employee" or a member of his or her household, unless:
  - (a) Such "employee" is an insured with respect to that "auto" in the "underlying insurance" listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is provided by such "underlying insurance"; or

(b) The "bodily injury" or "property damage" is sustained by a co-"employee" of such "employee".

(3) Someone using an "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos", unless that business is yours.

(4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from an "auto".

c. Anyone liable for the conduct of an insured described in Paragraphs 2.a. and b. above is also an insured, but only if they are provided insurance coverage for such liability by valid and collectible "underlying insurance" listed in the Schedule of Underlying Insurance and then only for such hazards for which coverage is provided by such "underlying insurance".

3. At your option and subject to the terms of this insurance, any additional insureds not addressed by Paragraphs 1. and 2. above covered in the "underlying insurance" listed in the Schedule of Underlying Insurance are also insureds, but only to the extent that insurance is provided for such additional insureds thereunder.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown as a Named Insured in the Declarations.

**SECTION III - LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. The Aggregate Limit is the most we will pay for all damages:

- a. Included in the "products-completed operations hazard";
- b. Because of "bodily injury" by disease sustained by your "employees" arising out of and in the course of their employment by you; or

- c. Because of "bodily injury", "personal and advertising injury" or "property damage" not included within a. or b. above. However, this Aggregate Limit will not apply to damages which are not subject to an Aggregate Limit in the "underlying insurance".

The Aggregate Limit applies separately to a., b. and c. The Aggregate Limit described in c. will apply only to damages not subject to a. or b. above.

- 3. Subject to the Limit of Insurance described in 2.c. above:

- a. Only in the event that "underlying insurance" specifically listed in the Schedule of Underlying Insurance provides an annual Aggregate Limit of Insurance for damages that would not be subject to 2.a. or b. above that is applicable separately to each:

- (1) Location owned by, or rented or leased to you solely with respect to damages which are the result of a claim or "suit" for "bodily injury" or "property damage" which can be attributed to operations at only a single location, then the Aggregate Limit described in 2.c. above applies separately to each location owned by, or rented or leased to you.
- (2) Of your construction projects solely with respect to damages which are the result of a claim or "suit" for "bodily injury" or "property damage" which can be attributed only to ongoing operations and only at a single construction project, then the Aggregate Limit described in 2.c. above applies separately to each of your construction projects.

- b. Only with respect to the application of Limits of Insurance described in 3.a. above, the following terms location and construction project will have the following meanings:

- (1) Location means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
- (2) Construction project means a location you do not own, rent or lease where ongoing improvements, alterations, installation, demolition or maintenance work is performed by you or on your behalf. All connected

ongoing improvements, alterations, installation, demolition or maintenance work performed by you or on your behalf at the same location for the same persons or entities, no matter how often or under how many different contracts, will be deemed to be a single construction project.

- 4. Subject to the limits described in 2. and 3. above, the Each Occurrence Limit is the most we will pay for the "ultimate net loss":

- a. In excess of the applicable limits of "underlying insurance"; or
- b. If an "occurrence" is not covered by "underlying insurance", but covered by the terms and conditions of this Coverage Part,

Because of all "bodily injury", "personal and advertising injury" and "property damage" arising out of any one "occurrence".

We will not pay more than the Limit of Insurance shown in this Coverage Part's Declarations for each "occurrence" because any Personal Umbrella Liability Policy(ies) is / are attached to this policy.

- 5. Subject to the limits described in 2., 3. and 4. above and to the terms and conditions of the "underlying insurance":

- a. If the limits of "underlying insurance" have been reduced by payment of claims, this Coverage Part will continue in force as excess of the reduced "underlying insurance"; or
- b. If the limits of "underlying insurance" have been exhausted by payment of claims, this Coverage Part will continue in force as "underlying insurance".

- 6. The Limits of Insurance of this Coverage Part apply separately to each "coverage term".

**SECTION IV - CONDITIONS**

**1. Appeals**

If the insured or any insurer who provides the applicable "underlying insurance" elects not to appeal a judgment which exceeds the "underlying limit", we may elect to do so at our own expense. We shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall this provision increase our liability beyond:

- a. Our applicable Limits of Insurance for all "ultimate net loss";
- b. Our applicable Defense and Supplementary Payments as described in SEC-



**TION I - COVERAGE, C. Defense and Supplementary Payments; and**

c. The expense of such appeal.

**2. Audit**

If this Coverage Part is subject to Audit, as indicated in the Declarations, then the following Condition applies:

a. The premium shown in the Premium Computation Endorsement as Advance Premium is a deposit premium. At the close of each audit period, we will compute the earned premium for that period. If:

- (1) The earned premium is less than the deposit premium, we will return the excess to the first Named Insured; or
- (2) The earned premium is greater than the deposit premium, the difference will be due and payable to us by the first Named Insured upon notice from us. The due date for audit and retrospective premiums is the date shown as the due date on the bill.

However, in no event will the earned premium be less than the Minimum Premium stated in the Premium Computation Endorsement.

b. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**3. Bankruptcy**

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

**4. Duties in the Event of Occurrence, Claim or Suit**

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

- (1) How, when and where the "occurrence" 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".

This requirement applies only when the "occurrence" is known to an "authorized representative".

b. If a claim is made or "suit" is brought against any insured that is likely to involve this Coverage Part, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

This requirement will not be considered breached unless the breach occurs after such claim or "suit" is known to an "authorized representative".

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

**5. First Named Insured**

The person or organization first named in the Declarations will act on behalf of all other insureds where indicated in this Coverage Part.

**6. Legal Action Against Us and Loss Payments**

a. No legal action may be brought against us unless there has been full compliance with all the terms of this Coverage Part nor until the amount of the insured's obligation to pay has been finally determined as provided below. No person or organization has any right under this Coverage Part to bring us into any action to determine the liability of the insured.

b. We shall be liable for payment of the "ultimate net loss" for any "occurrence" to which this Coverage Part applies:

- (1) For "occurrences" not covered by "underlying insurance"; or

- (2) In excess of the "underlying limit" applicable to the "occurrence" only after the insurers who provide the applicable "underlying insurance" have paid or become obligated to pay the amount of the "underlying limit" applicable to the "occurrence".

Our payment will be made following final determination of the amount of the insured's obligation to pay either by final judgment against the insured or by written agreement with the insured, the claimant, the underlying insurers and us.

#### 7. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part at the latter of:

- a. The date we implemented the change in your state; or
- b. The date this Coverage Part became effective; and

Will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

#### 8. Maintenance of Underlying Insurance

- a. While this Coverage Part is in effect, the insured shall maintain in force the "underlying insurance" listed in the Schedule of Underlying Insurance as collectible insurance. The terms, conditions and endorsements of "underlying insurance" will not materially change and renewals or replacements of "underlying insurance" will not be more restrictive in coverage.
- b. Limits of "underlying insurance" will not be reduced, except for any reduction or exhaustion in the aggregate limits of insurance due to payment of claims which are in accordance with **SECTION I - COVERAGE, A. Insuring Agreement, Paragraph 2.** of this Coverage Part.
- c. In the event you fail or neglect to maintain "underlying insurance" as required, this Coverage Part will apply as though such "underlying insurance" was in force and collectible at the time a claim is presented to us which is in accordance with **SECTION I - COVERAGE, A. Insuring Agreement, Paragraph 2.** of this Coverage Part.

- d. The limits of "underlying insurance" shall be deemed applicable, regardless of any defense which the insurer who provides the "underlying insurance" may assert because of the insured's failure to comply with any Condition of the policy or the inability of the insurer to pay by reason of bankruptcy or insolvency.

#### 9. Other Insurance

This insurance is excess over, and shall not contribute with any other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

#### 10. Premium

The premium for this Coverage Part shall be as stated in the Declarations. The advance and anniversary premiums are not subject to adjustment, except as stated in the Declarations, or as stated in an endorsement issued by us to form a part of this Coverage Part.

You shall maintain records of such information as is necessary for premium computation, and shall, if requested by us, send copies of such records to us at the end of the "coverage term" and at such times during the policy period as we may direct.

#### 11. Representations

- a. By acceptance of this Coverage Part, you agree that the statements in the Declarations are your agreements and representations, that this Coverage Part is issued in reliance upon the truth of such representations and that this Coverage Part embodies all agreements existing between you and us or any of our agents relating to this insurance.
- b. However, to the extent that the following applies in the "underlying insurance" listed specifically in the Schedule of Underlying Insurance, it will also apply to this Coverage Part:

Based on our reliance upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of this Coverage Part, we will not reject coverage under this Coverage Part based solely on such failure.

#### 12. Separation of Insureds

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

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

**13. Transfer of Rights of Recovery Against Others to Us**

- a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.
- b. Any recoveries shall be applied as follows:
  - (1) First, we will reimburse anyone, including the insured, the amounts actually paid by them that were in excess of our payments;
  - (2) Next, we will be reimbursed to the extent of our actual payment; and
  - (3) Lastly, any amounts left after meeting the obligations outlined in (1) and (2) above will be distributed to anyone else known to us at the time a recovery is made and who is legally entitled to such recovery.

Expenses incurred in the recovery shall be apportioned among all interests in the ratio of their respective recoveries as finally settled. If there is no recovery as a result of our attempts, we shall bear all of the recovery expenses.

- c. If prior to an "occurrence" to which this Coverage Part would apply, you and the issuer of your applicable "underlying insurance" listed specifically in the Schedule of Underlying Insurance waive any right of recovery against a person or organization for injury or damage, we will also waive any rights we may have against such person or organization.

**14. When We Do Not Renew**

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

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

**SECTION V - DEFINITIONS**

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. "Advertisement" includes a publicity article. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".
- 2. "Authorized representative" means:
  - a. If you are:
    - (1) An individual, you and your spouse are "authorized representatives".
    - (2) A partnership or joint venture, your members, your partners, and their spouses are "authorized representatives".
    - (3) A limited liability company, your members and your managers are "authorized representatives".
    - (4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors are "authorized representatives". Provided you are not a publicly traded organization, your stockholders are also "authorized representatives".
    - (5) A trust, your trustees are "authorized representatives".
  - b. Your "employees" assigned to manage your insurance program, or assigned to give or receive notice of an "occurrence", claim or "suit" are also "authorized representatives".
- 3. "Auto" means:
  - a. Any land motor vehicle, trailer or semi-trailer designed for travel on public roads; or
  - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

"Auto" does not include "mobile equipment".

4. "Bodily injury" means bodily harm or injury, sickness, disease, disability, humiliation, shock, fright, mental anguish or mental injury, including care, loss of services or death resulting from any of these at any time.
5. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:
  - a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:
    - (1) The day the policy period shown in the Declarations ends; or
    - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
  - b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
6. "Coverage territory" means anywhere.
7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any similar governing document.
10. "Hostile fire" means one that becomes uncontrollable or breaks out from where it was intended to be.
11. "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.
12. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business, other than a contract or agreement pertaining to the rental or lease of any "auto", (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", "property damage" or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or
  - g. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

Paragraphs **f.** and **g.** do not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing. However, if such liability is insured by valid and collectible "underlying insurance" as listed in the Schedule of Underlying Insurance, this Paragraph (1) shall not apply for such hazards for which insurance coverage is afforded by such "underlying insurance";
  - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
  - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (2) above and supervisory, inspection, architectural or engineering activities;
  - (4) That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer, trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materials; market research; public relations and new product development;
  - (5) Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph (4), above;
  - (6) That indemnifies a web-site designer or content provider, or Internet search, access, content or service provider for injury or damage arising out of the planning, execution or failure to execute Internet services. Internet Services include but are not limited to design, production, distribution, maintenance and administration of web-sites and web-banners; hosting web-sites; registering domain names; registering with search engines; marketing analysis; and providing access to the Internet or other similar networks;
  - (7) Under which the insured, if a web-site designer or content provider, or Internet search, access, content or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph (6), above;
  - (8) That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
  - (9) That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of an "auto" over a route or territory that person or organization is authorized to serve by public authority.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".
  14. "Loading or unloading" means the handling of property:
    - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
    - b. While it is in or on an aircraft, watercraft or "auto"; or

- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

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

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

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

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;

- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

- 16. "Occurrence" means:

- a. An accident, including continuous or repeated exposure to substantially the same general harmful conditions, that results in "bodily injury" or "property damage"; or
- b. An offense that results in "personal and advertising injury".

All damages arising from the same accident, continuous or repeated exposure to substantially the same general harmful conditions, act or offense shall be deemed to arise from one "occurrence" regardless of:

- (1) The frequency of repetition;
- (2) The number or kind of media used; or
- (3) The number of claimants.

- 17. "Personal and advertising injury" means injury, including "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. Abuse of process;
- d. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- e. Defamation of character, including oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

- f. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - g. The use of another's advertising idea in your "advertisement";
  - h. Infringing upon another's copyright, trade dress or slogan in your "advertisement"; or
  - i. Discrimination, unless insurance coverage therefor is prohibited by law or statute.
18. "Pollutants" mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include, but are not limited to, substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether the injury or damage is caused directly or indirectly by the "pollutants" and whether:
- a. The insured is regularly or otherwise engaged in activities which taint or degrade the environment; or
  - b. The insured uses, generates or produces the "pollutant".
19. "Products-completed operations hazard":
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
    - (1) Products that are still in your physical possession; or
    - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
      - (a) When all of the work called for in your contract has been completed.
      - (b) When all of the work to be done at the site has been completed, if your contract calls for work at more than one site.
      - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- b. Does not include "bodily injury" or "property damage" arising out of:
    - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
    - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
20. "Property damage" means:
- a. Physical injury to or destruction of tangible property including all resulting loss of use. All such loss of use shall be deemed to occur at the time of the physical injury or destruction that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
- For the purposes of this insurance, "electronic data" is not tangible property.
21. "Subsidiary" means any organization in which more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, in any combination, by one or more of the Named Insureds.
22. "Suit" means a civil proceeding in which money damages because of "bodily injury", "personal and advertising injury" or "property damage" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such money damages are claimed and to which the insured must submit or does submit with our consent;
  - b. Any other alternative dispute resolution proceeding in which such money damages are claimed and to which the insured submits with our consent; or
  - c. An appeal of a civil proceeding.

23. "Temporary worker" means a person who is furnished to you to:

- a. Substitute for a permanent "employee" on leave; or
- b. Meet seasonal or short-term workload conditions.

24. "Ultimate net loss" means the sum actually paid or payable in the settlement or satisfaction of the insured's legal obligation for damages, covered by this insurance, either by adjudication or compromise. "Ultimate net loss" does not include Defense and Supplementary Payments as described in **SECTION I - COVERAGE, C. Defense and Supplementary Payments** of this Coverage Part.

25. "Underlying insurance" means the insurance listed in the Schedule of Underlying Insurance and the insurance available to the insured under all other insurance policies applicable to the "occurrence". "Underlying insurance" also includes any type of self-insurance or alternative method by which the insured arranges for funding of legal liabilities that affords coverage that this Coverage Part covers.

26. "Underlying limit" means the total of the applicable limits of all "underlying insurance" less the amount, if any, by which the applicable limit of the applicable policy listed in the Schedule of Underlying Insurance has been reduced solely by payment of loss resulting from claims which are in accordance with **SECTION I - COVERAGE, A. Insuring Agreement, Paragraph 2.** of this Coverage Part.

27. "Workplace" means that place and during such hours to which the "employee" sustaining injury was assigned by you, or any other person or entity acting on your behalf, to work on the date of "occurrence".

28. "Your product":

- a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

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

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

29. "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.



## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL UMBRELLA LIABILITY COVERAGE PART

**A. SECTION I - COVERAGE, B. Exclusions** is modified to add the following:

This insurance does not apply to:

1. Any liability:
  - a. With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. Any liability resulting from the "hazardous properties" of "nuclear material", if
  - a. The "nuclear material" (1) is at any "nuclear facility" owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom,
  - b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - c. The injury or damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if

such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion c. applies only to "property damage" to such "nuclear facility" and any property thereat.

**B. SECTION V - DEFINITIONS** is hereby modified to add the following definitions:

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;
4. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";
5. "Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".
6. "Nuclear facility" means:
  - a. Any "nuclear reactor";
  - b. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", (3) or handling, processing or packaging "waste";
  - c. Any equipment or device used for the processing, fabricating or alloying of "special nuclear materials", if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of

plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

- d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations con-

ducted on such site and all premises used for such operations;

- 7. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- 8. "Property damage" includes all forms of radioactive contamination of property.

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

**CONTRACTORS LIMITATIONS - INCLUDING EXCESS  
WRAP-UP COVERAGE**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

**SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified as follows:

- I. The following exclusions are hereby added:
  - A. This insurance does not apply to:
    - 1. "Property damage" to:
      - a. Leased, rented, or borrowed equipment; or
      - b. Property being transported, installed, erected, or worked upon by the insured or any contractors or subcontractors working directly or indirectly on any insured's behalf.
    - 2. Any liability arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
      - a. Providing engineering, architectural or surveying services to others; or
      - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

Professional services include:

- a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
- b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.

However, to the extent coverage is provided by valid and collectible "underlying insurance" as listed in the

Schedule of Underlying Insurance, and then only for such hazards for which coverage is afforded by such "underlying insurance", professional services shall not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with construction work you perform.

- B. The following exclusions apply, unless insurance is provided to the insured by valid and collectible "underlying insurance" as listed in the Schedule of Underlying Insurance, but only to the extent insurance is provided at the "underlying limit" scheduled for such "underlying insurance" and subject to all its limitations and exclusions:

This insurance does not apply to:

- 1. "Property damage" arising out of:
  - a. Blasting or explosion other than the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment; or
  - b. The collapse of or structural injury to any building or structure due to:
    - (1) Grading of land, excavating, burrowing, filling or backfilling, tunneling, pile driving, cofferdam work or caisson work; or
    - (2) Moving, shoring, underpinning, raising, or demolition of any building or structure or removal or rebuilding of any structural support thereof.

2. "Property damage" to wires, conduit, pipes, drains, sewers, tanks, tunnels or other similar property, or any apparatus in connection therewith, below the surface of the ground, if such "property damage" is caused by and occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating, drilling, burrowing, filling, backfilling, or pile driving.
3. Any liability arising out of any project insured at any time under an owner or contractor controlled insurance program (often referred to as a wrap-up plan or program) or similar insurance plan or program.

**ii. Exclusion 3. Contractual Liability** (Exclusion 1.c. in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made) is deleted and replaced by the following:

This insurance does not apply to:

Any liability for which any insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply if such liability is insured by valid and collectible "underlying insurance", as listed and described in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is afforded by such "underlying insurance".

**iii. Exclusion 7. Damage to Your Work** (Exclusion 1.g. in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made) is deleted and replaced by the following:

This insurance does not apply to:

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

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor, provided such liability is insured by valid and collectible "underlying insurance", as listed and described in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is afforded by such "underlying insurance".

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

**EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS ("EIFS") AND DIRECT-APPLIED EXTERIOR FINISH SYSTEMS ("DEFS") - BROAD FORM**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

- 1. **SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified to add the following:

This insurance does not apply to any liability that arises out of, is caused by, or is attributable to, whether in whole or in part, any of the following:

- a. The design, manufacture, sale, service, handling, construction, fabrication, preparation, installation, application, maintenance, disposal or repair, including remodeling, service, correction, or replacement, of a "wall finish system", or any part thereof, including any method or procedure used to correct problems with installed or partially installed "wall finish systems"; or
- b. Any work or operations conducted by or on behalf of any insured on or to a "wall finish system", or any component thereof, or any component of a building or structure to which a "wall finish system" attaches that results, directly or indirectly, in the intrusion of water or moisture, including any resulting development or presence of "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage.

This exclusion also applies to any liability:

- a. For which any insured assumes liability in any part of any contract or agreement, regardless of whether such contract or agreement is an "insured contract";
- b. Arising out of, caused by, or attributable to, whether in whole or in part, warranties or representations made at any time with respect to the fitness, quality, durability or

performance of a "wall finish system"; and

- c. Arising out of, caused by, or attributable to, whether in whole or in part, the providing of or failure to provide any warning or instructions with regard to a "wall finish system".

- 2. **SECTION V - DEFINITIONS** is amended to include the following:

a. "Direct-applied exterior finish system" (commonly referred to as DEFS) means an exterior cladding or finish system and all component parts therein, used on any part of any structure, and consisting of:

- (1) A rigid or semi-rigid substrate;
- (2) The adhesive and / or mechanical fasteners used to attach the substrate to the structure including any water-durable exterior wall substrate;
- (3) A reinforced or unreinforced base coat or mesh;
- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any conditioners, primers, accessories, flashing, coatings, caulking or sealants used with the system for any purpose;

that interact to form an energy efficient wall.

b. "Exterior insulation and finish system" (commonly referred to as synthetic stucco or EIFS) means an exterior cladding or finish system and all component parts therein, 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 or unreinforced base coat or mesh;
- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any conditioners, primers, accessories, flashing, coatings, caulking or sealants used with the system for any purpose;

that interact to form an energy efficient wall.

- c. "Fungi" means any type or form of fungus, and includes, but is not limited to, any form or type of mold, mushroom, or mildew and mycotoxins, spores, scents or byproducts produced or released by fungi.
- d. "Wall finish system" means:
  - (1) An "exterior insulation and finish system";
  - (2) A "direct-applied exterior finish system"; or
  - (3) Any energy efficient exterior cladding or finish system substantially similar to Paragraph (1) or (2) above.

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

## **FUNGI OR BACTERIA EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART - CLAIMS MADE**

**I. SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified to add the following:

This insurance does not apply to:

**a.** Any liability caused directly or indirectly, in whole or in part, by any actual, alleged or threatened:

- (1) Inhalation of;
- (2) Ingestion of;
- (3) Contact with;
- (4) Absorption of;
- (5) Exposure to;
- (6) Existence of; or
- (7) Presence of,

any "fungi" or bacteria on or within a building or structure, including its contents, whether occurring suddenly or gradually;

**b.** Any loss, cost or expense associated in any way with, or arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, mitigating or disposing of, or in any way responding to, investigating, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity;

**c.** Any liability, with respect to "fungi" or bacteria, arising out of, resulting from, caused by, contributed to, or in any way

related to any supervision, instruction, recommendation, warning or advice given or which should have been given in connection with:

- (1) The existence of "fungi" or bacteria;
- (2) The prevention of "fungi" or bacteria;
- (3) The remediation of "fungi" or bacteria;
- (4) Any operation described in Paragraph **b.** above;
- (5) "Your product"; or
- (6) "Your work"; or

**d.** Any obligation to share damages with or repay any person, organization or entity, related in any way to the liability excluded in Paragraphs **a., b.** or **c.** above;

regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to the injury or damage.

However this exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for human ingestion.

**II.** For the purposes of this endorsement, **SECTION V - DEFINITIONS** is amended to include the following:

"Fungi" means any type or form of fungus, and includes, but is not limited to, any form or type of mold, mushroom or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

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

## **LEAD LIABILITY EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

**SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified to add the following:

This insurance does not apply to:

- a. Any liability arising out of, resulting from, or in any way caused by or contributing to the actual, alleged or threatened ingestion, inhalation, absorption of, exposure to or presence of lead in any form emanating from any source.
- b. Any loss, cost or expense arising out of, resulting from or in any way related to any:
  - (1) Claim, "suit", request, demand, directive, or order by or on behalf of any person, entity, or governmental authority that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of lead in any form; or
  - (2) Claim or "suit" by or on behalf of any person, entity, or governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead in any form.



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

**MOBILE EQUIPMENT SUBJECT TO MOTOR VEHICLE  
INSURANCE LAWS - LIMITATION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

**SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified to add the following:

This insurance does not apply to:

Any liability arising out of the ownership, maintenance, occupancy, operation, use, "loading or unloading" of any land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law, unless such liability is covered by valid and collectible "underlying insurance" as listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is afforded by such "underlying insurance", unless otherwise excluded by this Coverage Part.

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

## **EMPLOYEE BENEFIT LIABILITY**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

This policy is modified to add the following:

**I. SECTION I - COVERAGE, A. Insuring Agreement(s)** is modified to add the following:

**EMPLOYEE BENEFIT LIABILITY:**

We will pay on behalf of the insured the "ultimate net loss" which the insured is legally obligated to pay as damages because of any negligent act, error or omission of the insured or any other person for whose acts the insured is legally liable arising out of the administration of the insured's employee benefit programs.

This insurance applies only to negligent acts, errors or omissions:

- a. Whose damages are in excess of the "underlying insurance" provided by an Employee Benefit Liability policy listed in the Schedule of Underlying Insurance; and
- b. Which occur during the policy period.

**II. SECTION I - COVERAGE, B. Exclusions** (and in the Professional Umbrella Liability Coverage Part and the Professional Umbrella Liability Coverage Part - Claims-Made only: Subparagraph 1.) is modified to add the following exclusion:

This insurance does not apply to:

Any liability arising out of employee benefit programs unless such liability is covered by valid and collectible "underlying insurance" as listed in the Schedule of Underlying Insurance, and then only for such hazards for which coverage is afforded by such "underlying insurance".

# EXHIBIT B

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-10-7812

MEETING STREET AT SHELMORE )  
PROPERTY OWNERS ASSOCIATION, INC. )  
d/b/a SHELMORE VILLAGE POA and )  
JULIAN SMITH, individually and on behalf of )  
all others similarly situated, )

Plaintiffs, )

SECOND AMENDED SUMMONS

vs. )

LINDEN CONSTRUCTION OF SOUTH )  
CAROLINA, INC., THE GUARANTEE )  
COMPANY OF NORTH AMERICA USA, )  
ATRIUM BUILDERS, INC., ECOVEST S&S )  
SHELMORE DEVELOPMENT, LLC, )  
ECOVEST DEVELOPMENT, LLC, )  
ECOVEST CHARLESTON, LLC, JAMES )  
JONES d/b/a QUALITY STUCCO, ROBERT )  
BESSINGER d/b/a BLUEPRINT )  
CONSTRUCTION, COASTAL ROOFING )  
COMPANY, INC., HELM CONSTRUCTION )  
OF SOUTH CAROLINA, LLC a/k/a HELM )  
CONSTRUCTION LTD CO., RUSSELL )  
HUNTLEY d/b/a CALIBER )  
CONSTRUCTION SERVICE, CALIBER, )  
LLC d/b/a CALIBER CONSTRUCTION )  
SERVICES, ORELLANA PAINTING, LLC, )  
J.R. BROADWAY COMPANY, LLC, JASON )  
R. BROADWAY, P.E., MS SHELMORE )  
VILLAGE, LLC, MEETING STREET )  
BUILDERS, LLC, MEETING STREET )  
COMPANIES, LLC, WINDSOR WINDOWS & )  
DOORS, a WOODGRAIN MILLWORK, INC. )  
COMPANY, ELI, INC., FINE BUILDERS, )  
LLC, HOWE & SIMPSON CONTRACTING, )  
LLC a/k/a HOWE & SIMPSON, LLC, )  
SOUTHCOAST EXTERIORS, INC., and )  
MICHAEL TENNY d/b/a SYNCO )  
ENTERPRISES, )

Defendants. )

FILED  
2015 OCT 13 PM 4:05  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

TO: THE ABOVE-NAMED DEFENDANTS:

IF YOU ARE IDENTIFIED IN BOLD PRINT, YOU ARE HEREBY SUMMONED and required to answer the Plaintiffs' Second Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Second Amended Complaint upon the subscriber, Jesse A. Kirchner, at his office located at 15 Middle Atlantic Wharf, Suite 101, Charleston, South Carolina, 29401, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Second Amended Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiffs will apply to the Court for the relief demanded in the Second Amended Complaint and judgment by default will be rendered against you.

All other parties who have been previously named and served in the above-referenced action are hereby summoned and required to answer the Plaintiffs' Second Amended Complaint and to serve a copy of your Answer to the Second Amended Complaint upon the subscriber, Jesse A. Kirchner, at his office located at 15 Middle Atlantic Wharf, Suite 101, Charleston, South Carolina, 29401, **within the time prescribed pursuant to SCRPC 15(a)**; and if you fail to answer the Second Amended Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiffs will apply to the Court for the relief demanded in the Second Amended Complaint and judgment by default will be rendered against you.

Respectfully submitted,

THURMOND KIRCHNER TIMBES & YELVERTON, PA

By: 

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*Attorney for the Plaintiffs*

October 13, 2015

Charleston, South Carolina.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-10-7812

MEETING STREET AT SHELMORE )  
PROPERTY OWNERS ASSOCIATION, INC. )  
d/b/a SHELMORE VILLAGE POA and )  
JULIAN SMITH, individually and on behalf of )  
all others similarly situated, )

Plaintiffs, )

**SECOND AMENDED COMPLAINT**  
**(amendments in bold)**

vs. )

(Class Action)

LINDEN CONSTRUCTION OF SOUTH )  
CAROLINA, INC., THE GUARANTEE )  
COMPANY OF NORTH AMERICA USA, )  
ATRIUM BUILDERS, INC., ECOVEST S&S )  
SHELMORE DEVELOPMENT, LLC, )  
ECOVEST DEVELOPMENT, LLC, )  
ECOVEST CHARLESTON, LLC, JAMES )  
JONES d/b/a QUALITY STUCCO, ROBERT )  
BESSINGER d/b/a BLUEPRINT )  
CONSTRUCTION, COASTAL ROOFING )  
COMPANY, INC., HELM CONSTRUCTION )  
OF SOUTH CAROLINA, LLC a/k/a HELM )  
CONSTRUCTION LTD CO., **RUSSELL** )  
**HUNTLEY d/b/a CALIBER** )  
**CONSTRUCTION SERVICE, CALIBER,** )  
**LLC d/b/a CALIBER CONSTRUCTION** )  
**SERVICES, ORELLANA PAINTING, LLC,** )  
J.R. BROADWAY COMPANY, LLC, JASON )  
R. BROADWAY, P.E., MS SHELMORE )  
VILLAGE, LLC, MEETING STREET )  
BUILDERS, LLC, MEETING STREET )  
COMPANIES, LLC, WINDSOR WINDOWS & )  
DOORS, a WOODGRAIN MILLWORK, INC. )  
COMPANY, ELI, INC., **FINE BUILDERS,** )  
**LLC, HOWE & SIMPSON CONTRACTING,** )  
**LLC a/k/a HOWE & SIMPSON, LLC,** )  
**SOUTHCOAST EXTERIORS, INC., and** )  
**MICHAEL TENNY d/b/a SYNCO** )  
**ENTERPRISES,** )

(Jury Trial Demanded)

Defendants. )

BY \_\_\_\_\_  
JULIE J. ARMSTRONG  
CLERK OF COURT

2015 OCT 13 PM 4:05

FILED

COME NOW THE PLAINTIFFS, MEETING STREET AT SHELMORE PROPERTY OWNERS ASSOCIATION, INC. d/b/a SHELMORE VILLAGE POA, and JULIAN SMITH on behalf of himself and all others similarly situated, by and through their undersigned counsel, pursuant to Rule 15, SCRPC, and the Consent Order Granting Plaintiffs Leave to Amend their Amended Complaint signed by the Honorable R. Markley Dennis on October 1, 2015, and hereby amend their First Amended Complaint as follows:

**PARTIES, JURISDICTION and FACTUAL ALLEGATIONS**

1. Plaintiff, Meeting Street at Shelmore Property Owners Association, Inc. (hereinafter "POA"), is a non-profit eleemosynary corporation and horizontal property regime organized and existing pursuant to the laws of South Carolina doing business in Charleston County as Shelmore Village POA.

2. Plaintiff POA is comprised of all persons or entities owning condominium units located within the POA known as Shelmore Village in Mount Pleasant, South Carolina, and is governed by a Board of Directors (the "Board").

3. Shelmore Village consists of nine (9) buildings containing forty-one (41) condominium units. The buildings, condominiums, common elements and limited common elements are hereinafter referred to collectively as "Shelmore Village."

4. By virtue of its governing documents, the POA is charged with certain duties, powers, rights and authority in connection with Shelmore Village.

5. Specifically, the POA is charged with, *inter alia*, the management and administration of Shelmore Village, the investigation, maintenance and repair of Shelmore Village's common elements and limited common elements and the right to enforce all warranties relating to Shelmore Village and has the right and obligation to bring this action on behalf of Shelmore Village, the POA and the respective owners and members of the POA.



6. Plaintiff Julian Smith ("Smith") is a citizen and resident of South Carolina and is the owner of 720 South Shelmore units 101 and 201 and 716 South Shelmore units 104, 204, 105 and 205 in Shelmore Village.

7. By virtue of his ownership of these condominium units, Plaintiff Smith owns an undivided interest in the common elements and limited common elements of Shelmore Village as a tenant-in-common with all other owners.

8. Shelmore Village is located in Charleston County and is the subject of this action.

9. MS Shelmore Village, LLC is or was a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County.

10. Upon information and belief, Meeting Street Companies, LLC is a limited liability company organized and existing pursuant to the laws of North Carolina with its principal place of business in Mecklenburg County, North Carolina.

11. Upon information and belief, Meeting Street Builders, LLC is a limited liability company organized and existing pursuant to the laws of North Carolina with its principal place of business in Mecklenburg County, North Carolina.

12. Upon information and belief, MS Shelmore Village, LLC ("MS Shelmore") is or was a single purpose limited liability company organized and incorporated by Meeting Street Companies, LLC ("Meeting Street Companies") its agents, officers, directors, members, partners, and/or owners for the sole and singular purpose of designing, developing, constructing and selling Shelmore Village.

13. Upon information and belief, Meeting Street Builders, LLC ("Meeting Street Builders") served as the original general contractor for the construction of Shelmore Village.

14. Upon information and belief, MS Shelmore and Meeting Street Builders

functioned as the alter ego of Meeting Street Companies in the design, construction and development of Shelmore Village, and Meeting Street Companies, its agents, officers, directors, members, partners and owners exerted complete control over MS Shelmore and Meeting Street Builders in the design, development, construction and sale of Shelmore Village.

15. Upon information and belief, the legal distinction between MS Shelmore, Meeting Street Companies; Meeting Street Builders, their agents, officers, directors, members, partners and owners are blurred and they are, in effect, one and the same and their interests are so amalgamated such that the actions and liabilities of one should apply to the other.

16. MS Shelmore, Meeting Street Companies, and Meeting Street Builders may hereinafter be referred to collectively as "Meeting Street."

17. Ecovest S&S Shelmore Development, LLC is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County, South Carolina.

18. Ecovest Development, LLC is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County, South Carolina.

19. Ecovest Charleston, LLC is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County, South Carolina.

20. Upon information and belief, Ecovest S&S Shelmore Development, LLC ("Ecovest Shelmore") is a single purpose limited liability company organized and incorporated by Ecovest Development, LLC ("Ecovest Development") and Ecovest Charleston, LLC ("Ecovest Charleston") and their agents, officers, directors, members,

partners, and/or owners for the sole and singular purpose of acquiring, developing, renovating and selling Shelmore Village.

21. Upon information and belief, Ecovest Shelmore functioned as the alter ego of Ecovest Development and Ecovest Charleston in the development of Shelmore Village, and Ecovest Development and Ecovest Charleston, their agents, officers, directors, members, partners and owners exerted complete control over Ecovest Shelmore in the acquisition, development, renovation and sale of Shelmore Village.

22. Upon information and belief, the legal distinction between Ecovest Shelmore, Ecovest Development, Ecovest Charleston, their agents, officers, directors, members, partners and owners are blurred and they are, in effect, one and the same and their interests are so amalgamated such that the actions and liabilities of one should apply to the other.

23. Ecovest S&S Shelmore Development, LLC and Ecovest Development, LLC and Ecovest Charleston, LLC may hereinafter be referred to collectively as "Ecovest."

24. Upon information and belief, on or about December 28, 2012, Ecovest acquired Shelmore Village from the original developer, Meeting Street, and/or its lenders and thereafter developed, completed, constructed, renovated, marketed and sold Shelmore Village and the individual condominium units contained within Shelmore Village.

25. Ecovest's website, [www.ecovestcharleston.com](http://www.ecovestcharleston.com), claims that Ecovest "has been involved in \$10's of millions worth of projects in the Charleston, SC area." Notably, an image of Shelmore Village is prominently displayed on the Ecovest website.

26. Among other things, on its website Ecovest touts its "specialties" as "troubled asset acquisition, real estate development, commercial and residential construction."

27. Although not licensed contractors or residential builders in the state of South Carolina, Ecovest represented to the Plaintiffs and to the public at large that it specializes in commercial and residential construction.

28. The "Contact Us" page of Ecovest's website identifies 42 Broad Street, Charleston, South Carolina as its address and a telephone number of 843-958-9887. Upon information and belief, this is the same address and telephone number for Ecovest Development, Ecovest Charleston and Ecovest Shelmore – further evidencing their amalgamated interests.

29. Subsequent to its acquisition of Shelmore Village, Ecovest undertook the investigation, repair, renovation and/or reconstruction of Shelmore Village:

30. Upon information and belief, investigations performed by or on behalf of Ecovest identified numerous construction defects at Shelmore Village.

31. Upon information and belief, Ecovest hired Mark Clancy, AIA, LEED AP of Clancy Wells Architects to serve as the architect of record to design appropriate plans and specifications for the correction of the construction defects and other renovation, completion and repairs to Shelmore Village.

32. Upon information and belief, Clancy Wells agreed to provide professional architectural services for Ecovest, specifically including, but not limited to, making weekly site visits to Shelmore Village to observe, in part, whether the construction work was being completed in accordance with the plans, specifications, details, directives and all applicable building codes and industry standards.

33. Upon information and belief, Ecovest turned over control of the POA to the owners on or about March 6, 2014 (the "Turnover").

34. Upon information and belief, prior to the Turnover, Ecovest appointed Jeffrey Roberts, Joe Jarvis, Jason Fabrizio, Austin Stone and Jack Brickman to serve as the Board of Directors for the POA.

35. Upon information and belief, none of the Ecovest-appointed directors were property owners at Shelmore Village and all were employees or agents of Ecovest. As

such, Ecovest controlled the Board of Directors and hence controlled the actions of the Association up until the Turnover.

36. Upon information and belief, Ecovest and the Ecovest-appointed directors directed and controlled the repairs, renovations and re-construction of Shelmore Village.

37. The Ecovest-appointed directors were duty bound to place the interests of the POA ahead of the interests of Ecovest irrespective of the potential ramifications to Ecovest. Upon information and belief, because the Ecovest-appointed directors were Ecovest employees, agents or members and not property owners, they were unable to discharge their duties in this regard as their loyalties were to Ecovest, rather than the POA.

38. Defendant Linden Construction of South Carolina, Inc. ("Linden") is a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County.

39. Upon information and belief, Linden served as the general contractor for the renovation, repair, re-construction and completion of Shelmore Village and agreed to perform its work in accordance with the applicable building code, design professional specifications, details, directives and manufacturer's specifications.

40. Specifically, but not limited to, Linden agreed to:

- (a) uninstall and reinstall 577 exterior windows and 151 exterior doors to include proper flashing (including head flashing) and sill pans and adequate waterproofing around the opening;
- (b) complete removal and replacement of the existing masonry veneer and installation of moisture barrier, seismic brick ties, masonry mat, through-wall flashing, weep holes, masonry units and mortar, and masonry headers/lintels;
- (c) remove and replace the existing fiber cement siding;
- (d) re-caulk all open joints on the exterior building envelope and all new joints created with the new exterior finish system;
- (e) install proper thru-wall flashing;

- (f) repair roofing membrane; and
- (g) remove approximately 6" of stucco around doors and windows to install proper head and thru-wall flashing.

41. Atrium Builders, Inc. ("Atrium") is a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County.

42. Upon information and belief, Atrium provided labor and materials as a subcontractor to Linden for the performance of the work outlined above.

43. Upon information and belief, Linden and Atrium did not perform all of the work it contractually agreed to perform. Specifically, during the course of construction, Linden and Atrium made the decision to leave the windows and doors in place and did not remove and re-flash the windows and doors as called for by Clancy Wells Architects and Linden's contract.

44. Upon information and belief, no reduction was made in Linden's contract price despite the fact that it failed and refused to perform a substantial portion of the work.

45. Upon information and belief, Clancy Wells Architects observed on numerous occasions deviations in the work being performed by Linden, Atrium and their subcontractors and notified Ecovest and Linden of the same.

46. Upon information and belief, Clancy Wells Architect's warnings and admonitions were not heeded by Ecovest, Linden or Atrium, and, as a result, Clancy Wells Architects terminated its relationship with Ecovest before the Shelmore Village project was completed.

47. Notwithstanding Clancy Wells Architects' documented exceptions to the building practices being employed by Linden, Atrium and their subcontractors, on or about April 11, 2013 Brandon Linden, President of Linden Construction, and William B.

Beuchene, President of Atrium Builders, Inc., certified and guaranteed in writing to the Board of Directors of the POA that the work being performed by Linden, Atrium and their subcontractors was being performed in a "technically correct manner, per codes and normal standards."

48. Notwithstanding Ecovest's knowledge of Linden and Atrium's defective work as documented by Clancy Wells Architects, Ecovest marketed Shelmore Village to the public and to the Plaintiffs as a luxury work-live development of the highest quality.

49. The Guarantee Company of North America USA ("Guarantee") is a foreign corporation conducting business in Charleston County, South Carolina and provided a surety bond to the Plaintiff POA guaranteeing and securing the proper performance of Linden Construction's work at Shelmore Village.

50. Despite written notice of deficient and non-conforming work, Guarantee has failed and refused to guarantee the proper performance of Linden's work at Shelmore Village.

51. Upon information and belief, James Jones d/b/a Quality Stucco ("Quality Stucco") is a citizen and resident of South Carolina and, at all times relevant hereto was doing business as Quality Stucco in Charleston County in South Carolina. Specifically, Quality Stucco was engaged as a subcontractor to Linden and was responsible for installing all or a portion of the stucco cladding and related flashings at the Project.

52. Upon information and belief, Robert Bessinger d/b/a Blueprint Construction ("Blueprint Construction") is a citizen and resident of South Carolina and, at all times relevant hereto was doing business as Blueprint Construction in Charleston County in South Carolina. Specifically, Blueprint Construction was engaged as a subcontractor to Linden and was responsible for installing siding, exterior trim and related flashings and installing flashings on all or a portion of the doors and windows at the Project.

53. Coastal Roofing Company, Inc. is a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County. Specifically, Coastal Roofing Company, Inc. ("Coastal Roofing") was engaged as a subcontractor to Linden, and was responsible for performing roofing installation and related flashings at the Project.

54. Upon information and belief, Helm Construction of South Carolina, LLC is a limited liability corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County.

55. Upon information and belief, Helm Construction, Ltd Co. is a corporation organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County.

56. Upon information and belief, Helm Construction of South Carolina, LLC a/k/a Helm Construction, Ltd Co. ("Helm") was engaged as a subcontractor to Linden and was responsible for framing and drywall installation at the Project.

57. **Upon information and belief, Russell Huntley d/b/a Caliber Construction Service ("Huntley") is a citizen and resident of North Carolina, and at all times relevant hereto, was doing business as Caliber Construction Service in Charleston County, South Carolina. Upon information and belief, Russell Huntley d/b/a Caliber Construction Service was engaged as a subcontractor to Atrium to perform masonry work and related flashing at Shelmore Village.**

58. Upon information and belief, Caliber, LLC d/b/a Caliber Construction Services ("Caliber") is a limited liability company organized and existing pursuant to the laws of North Carolina and at all times relative hereto, was doing business as Caliber Construction Services in Charleston County, South Carolina. Upon information and belief, Caliber was engaged as a subcontractor to Linden to



perform masonry work and related flashing at Shelmore Village, and is hereby substituted for Defendant Caliber Construction, Inc. relating back *nunc pro tunc*.

59. Upon information and belief, Orellana Painting, LLC ("Orellana") is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Berkeley County, and at all times hereto, conducting business in Charleston County.

60. Upon information and belief, Orellana was engaged as a subcontractor to Linden to perform exterior painting, caulking and related components at Shelmore Village.

61. Upon information and belief, Defendants Quality Stucco, Blueprint Construction, Coastal Roofing, Helm, Huntley, Caliber and Orellana provided services, labor and materials to the Project as set forth above as subcontractors to Linden and may hereinafter be referred to collectively as "Defendant Subcontractors."

62. J R Broadway Company, LLC is a limited liability company organized and existing pursuant to the laws of South Carolina with its principal place of business in Charleston County.

63. Upon information and belief, Jason R. Broadway, P.E., is the principal of J R Broadway Company, LLC and is a citizen and resident of Charleston County.

64. Upon information and belief, Jason R. Broadway, P.E. and J R Broadway Company, LLC (hereinafter referred to collectively as "Broadway") either served as a design consultant and/or effectively assumed the role of the design professional of record upon the departure of Clancy Wells Architects from Shelmore Village.

65. Upon information and belief, Broadway directed, inspected, and/or supervised work by Linden and Atrium that was defective, non-conforming and in violation

of applicable building codes, industry standards, manufacturer's instructions and in violation of plans, specifications and details of the design professional of record, Clancy Wells Architects.

66. Windsor Window Company is or was duly organized pursuant to the laws of Idaho, conducted business in Charleston County, and has or had a registered agent for service of process in South Carolina.

67. Woodgrain Millwork, Inc. is or was duly organized pursuant to the laws of Oregon, conducted business in Charleston County, and has a registered agent for service of process in South Carolina.

68. Upon information and belief, Windsor Window Company is a wholly owned subsidiary of Woodgrain Millwork and they will hereinafter be referred to collectively as "Windsor."

69. Upon information and belief, Windsor designed, manufactured, marketed, sold and distributed the fenestration products installed at Shelmore Village.

**70. Upon information and belief, ELI, Inc. ("ELI") is a corporation organized and existing pursuant to the laws of South Carolina, conducting business in Charleston County.**

71. Upon information and belief, ELI was engaged as a subcontractor to Meeting Street Builders and performed concrete work, grading and drainage work, among other related work at Shelmore Village.

72. Upon information and belief, Fine Builders, LLC ("Fine") is a limited liability company organized and existing pursuant to the laws of South Carolina, conducting business in Charleston County, South Carolina.

73. Upon information and belief, Fine was engaged as a subcontractor to Meeting Street Builders and performed framing work and related components at

**Shelmore Village.**

74. Upon information and belief, Howe & Simpson Contracting, LLC a/k/a Howe & Simpson, LLC ("Howe") is a limited liability company organized and existing pursuant to the laws of North Carolina, conducting business in Charleston County, South Carolina.

75. Upon information and belief, Howe was engaged as a subcontractor to Meeting Street Builders and performed framing and roofing work and related components at Shelmore Village.

76. Upon information and belief, Southcoast Exteriors, Inc. ("Southcoast") is a corporation organized and existing pursuant to the laws of South Carolina, conducting business in Charleston County.

77. Upon information and belief, Southcoast was engaged as a subcontractor to Meeting Street Builders and performed siding and deck waterproofing work and related components at Shelmore Village.

78. Upon information and belief, Michael Tenny d/b/a Synco Enterprises ("Synco") is a citizen and resident of Charleston County, South Carolina doing business as Synco Enterprises in Charleston County.

79. Upon information and belief, Synco was engaged as a subcontractor to Meeting Street Builders and performed stucco and masonry work and related components at Shelmore Village.

80. Upon information and belief, Defendants ELI, Fine, Howe, Southcoast and Synco provided services, labor and material at Shelmore Village as set forth above as subcontractors to Meeting Street and may hereinafter be referred to collectively as "MS Subcontractors."

81. Plaintiffs have experienced numerous instances of water intrusion into the

building, the common elements, the limited common elements, and the individual condominium units at Shelmore Village.

82. Recently, an architect and professional engineers inspected Shelmore Village and discovered numerous construction deficiencies, building code violations, deviations from manufacturer's specifications and substantial resulting damage.

83. Plaintiff POA made repeated demands upon Ecovest, Linden, Guarantee and Atrium to investigate and cure the defects and repair the resulting damages.

84. These Defendants failed to remedy the defects. Consequently, water intrusion through the building envelope and resulting damage to the building, common elements, limited common elements and the individual condominium units in addition to personal property of the members of the Plaintiff POA and Plaintiff Class continued unabated.

85. Plaintiffs are informed and believe that the damage to Shelmore Village, its common elements, limited common elements, and individual condominium units is a direct and proximate result of defects and deficiencies in the development, construction and attempted repairs of Shelmore Village, specifically including, but not limited to, the following:

- (a) In failing to remove and re-flash the windows at Shelmore Village in accordance with the applicable building code and industry standards;
- (b) In installing metal head flashing with a negative slope and sealing the drainage intersection rendering the flashing ineffective;
- (c) In failing to install the windows in accordance with the manufacturer's installation instructions and the applicable building code;
- (d) In applying self-adhered flashing tape over the nailing fin at the sill of the windows preventing drainage;
- (e) In failing to install exterior doors in accordance with the manufacturer's installation instructions and the applicable building code;

- (f) In failing to install the stucco cladding in accordance with ASTM C-926 and 1063 and other applicable industry standards;
- (g) In failing to install the stucco cladding with appropriate through-wall flashings or other drainage mechanisms;
- (h) In failing to install the stucco cladding in accordance with the applicable building code;
- (i) In failing to appropriately seal or caulk the stucco cladding;
- (j) In failing to install the stucco cladding in accordance with the manufacturer's installation instructions;
- (k) In failing to install the brick cladding in accordance with industry standards and the applicable building code;
- (l) In failing to install horizontal joint reinforcing within the brick cladding assembly;
- (m) In failing to install appropriate flashings or weep assemblies in the brick cladding;
- (n) In failing to appropriately install through-wall flashing assemblies in the brick cladding;
- (o) In failing to install steel lintels with appropriating coating so as to protect them from the elements resulting in rusting and corroded lintels;
- (p) In failing to install the cementitious siding in accordance with manufacturer's installation instructions and the applicable building code;
- (q) In failing to install the weather resistive barrier in a workmanlike manner, in accordance with the applicable building code and manufacturer's installation instructions;
- (r) In failing to install an continuous waterproofing system;
- (s) In installing defective windows;
- (t) In failing to install the exterior cladding in a leak-proof manner;
- (u) In failing to install appropriate sealant joints at the intersections of dissimilar materials in the building envelope;
- (v) In failing to install the roof in a leak-proof manner;
- (w) In failing to flash deck-to-wall intersections;

- (x) In failing to install a continuous water management system in the building envelope;
- (y) In failing to undertake repairs commensurate with industry standards, manufacturer's installation instructions and the applicable building code;
- (z) In failing to undertake repairs to arrest water intrusion into the buildings;
- (aa) In failing to properly and adequately investigate the nature of the defects;
- (bb) In failing to act as a reasonably prudent developer would act under similar circumstances;
- (cc) In failing to act as a reasonably prudent contractor and subcontractor would act under similar circumstances;
- (dd) In failing to act as a reasonably prudent design professional would act under similar circumstances; and
- (ee) In such other failures as will be shown through the discovery and trial of this matter.

86. Plaintiffs are informed and believe that various components of Shelmore Village, including those listed above, are not in compliance with the building codes and standards which were applicable to this project at the time of construction and must be replaced or remedied to comply with current building codes and standards applicable to this project.

87. At the time the Certificates of Occupancy were issued, Shelmore Village contained latent defects.

88. The Plaintiffs have been and will continue to be proximately damaged by the latent construction defects existing at Shelmore Village.

89. The latent design and construction defects caused substantial consequential and resulting damage to various non-defective components of Shelmore Village's common elements, limited common elements, and the individual condominium units, in the form of, *inter alia*, water intrusion, water damage, rusted/falling fasteners and framing members,

damage to decks and balconies, damage to insulation, wood components, interior trim, interior drywall, and non-defective elements of the brick, siding, deck, balconies, windows, doors, roof, soffit, and water management systems.

90. Notwithstanding that Plaintiffs have properly maintained Shelmore Village during the period of homeowner control, the construction defects set forth herein caused occurrences in the form of leaks, defects, and failures within the wall, which are not readily apparent to one examining the exterior surface thereof.

91. The latent construction defects resulted in continual exposure to the same generally harmful conditions over time in the form of repeated injurious events that occurred each and every year since construction, and constitute "occurrences" and compensable damage. The latent construction defects resulted in repeated water intrusion into the Shelmore Village, failure of the components of the exterior envelope, failure of the structural systems, and other consequential damages. Further, the negligence of each Defendant herein resulted in damage to the work of the other contractors, subcontractors and trades and in damage to Shelmore Village, the Plaintiffs' property, and the Plaintiffs' use and enjoyment of Shelmore Village.

92. Due to the construction defects and resulting property damage, Plaintiffs have, and in the future will be forced to expend significant sums of money to repair the damage, will have to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies, and to implement the remediation plan for Shelmore Village.

93. Additionally, Plaintiffs have suffered, and will continue to suffer, loss of use and enjoyment of Shelmore Village, its common areas, limited common areas, parking areas and individual condominium units. Such loss and interference with the use and enjoyment of Shelmore Village will continue through the time in which repairs are

undertaken.

94. As a direct and proximate result of the Defendants' actions, Plaintiffs have spent and will continue to expend substantial sums of money in order to investigate, renovate and restore Shelmore Village, to make it safe and habitable and, in addition thereto, Shelmore Village has suffered a loss in value and depreciation by virtue of the defects and damages. In addition, Plaintiffs will be required to expend substantial sums which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

95. As a result of the conduct referenced herein, Plaintiffs are entitled to punitive damages in an amount to be determined.

96. This matter arises out of the design, development, construction, repair, renovation, marketing and sale of Shelmore Village, located in Charleston County.

97. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto, and venue is proper in this forum.

#### **CLASS ACTION ALLEGATIONS**

98. Plaintiff Smith, and other similarly situated unit owners, owns an undivided interest in the common elements and limited common elements of Shelmore Village.

99. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Smith brings this action both individually and as a proposed class action against Defendants on behalf of himself and all other similarly situated persons and entities, that own condominium units within Shelmore Village (hereinafter referred to collectively as the "Class"). The Class is more particularly defined as follows:

All persons and/or entities that own condominium units within Shelmore



Village.

Excluded from the Class are:

- (a) Any Judge presiding over this action and members of their families;
- (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and Defendants' current or former employees, investors, members, or officers;
- (c) Any former owner of a condominium unit; and
- (d) All persons who properly execute and file a timely request for exclusion from the Class.

100. As representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure, the Plaintiffs seek to recover monetary damages from the Defendants, for negligence, gross negligence, recklessness, wantonness, willfulness, breach of fiduciary duties, breach of express and implied warranties, with respect to their duties as a developer in the development, marketing, sale of, administration, care, and maintenance and/or repair of Shelmore Village, as well as their duties to design and construct Shelmore Village free from defects and in accordance with all applicable building and dwelling codes.

101. *Numerosity*: The Class is composed of in excess of forty-one persons or entities geographically dispersed throughout the State of South Carolina and other states, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of eighty persons or entities.

102. *Commonality*: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include, but are not limited to, the following:

- (a) Whether the exterior cladding systems (brick, cement siding and

- stucco) were installed in accordance with the applicable building code;
- (b) Whether the Defendants negligently installed the windows;
  - (c) Whether the Defendants negligently failed to install thru-wall flashings;
  - (d) Whether the Defendants negligently installed a weather resistive barrier;
  - (e) Whether Defendants knew or should have known of these defects;
  - (f) Whether repairs undertaken by the Defendants were performed in a negligent or grossly negligent manner;
  - (g) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;
  - (h) Whether Defendants are financially responsible to pay the full costs and expenses of repairs;
  - (i) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair/replacement of building components, as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use; and
  - (j) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

103. *Typicality*: Plaintiff Smith's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in the design, development, construction, reconstruction, marketing, selling, management and repair of Shelmore Village.

104. *Adequate Representation*: Plaintiff Smith will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiffs have retained counsel experienced in the prosecution of construction defect claims and complex litigation, including condominium defect claims and class actions.

105. *Predominance and Superiority*: This class action is appropriate for

certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since, among other things, individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

106. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice vis-à-vis each class member. All Class Members have the same legal right to, and interest in, redress for damages associated with the defective conditions existing within Shelmore Village.

107. Plaintiff POA and the Class, who are all members of the POA, envision no unusual difficulty in the management of this action as a class action.

108. Each Class Member has an interest of more than \$100.00.

109. The amount of money at stake for each Class Member is not sufficient for each member to hire their own counsel, forensic engineers and architects and bring their own action.

**FOR A FIRST CAUSE OF ACTION**  
**(Breach of Implied Warranty of Habitability as to Ecovest)**

110. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully

restated herein.

111. In marketing and selling Shelmore Village or otherwise placing Shelmore Village into the stream of commerce, Ecovest, by operation of law, impliedly warranted that Shelmore Village would be habitable and free from all defects.

112. Ecovest breached the implied warranty of habitability by constructing, renovating, repairing, marketing and selling a defective project as set forth above.

113. As a direct, foreseeable and proximate result of Ecovest's breach of the implied warranty of habitability, the Plaintiffs suffered significant physical damage to Shelmore Village, including water intrusion, loss of use, as well as diminution in its value. The Plaintiffs have further been damaged in that they have spent, and will continue to expend, large sums of money in order to determine the extent of the damage to Shelmore Village and to repair it.

114. Any attempts by Ecovest to disclaim the warranty of habitability are void and unenforceable under the law of South Carolina as interpreted by the South Carolina Supreme Court in that, *inter alia*, the purported disclaimer was not conspicuous and, does not specifically mention the warranty of habitability, and was not specifically bargained for with Plaintiffs or with the other individual condominium unit owners or purchasers.

115. Plaintiffs are entitled to a judgment against Ecovest in an amount to be proven at trial for all direct, indirect, actual, resulting and consequential damages proximately caused by Ecovest's breach of the warranty of habitability.

**FOR A SECOND CAUSE OF ACTION**  
**(Breach of Fiduciary Duty as to Ecovest)**

116. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

117. During the time that Ecovest controlled the actions of the Board of Directors, Ecovest and Jeffrey Roberts, Joe Jarvis, Jason Fabrizio, Austin Stone and Jack Brickman

owed the Plaintiffs, and all other unit owners, a fiduciary duty to place the interests of the Plaintiffs and the POA above the interests of Ecovest. This fiduciary duty included a duty to conduct a good faith investigation of all possible design and construction deficiencies at Shelmore Village without regard to whether Ecovest was ultimately liable for all damages arising from the deficiencies in design, construction and repair and to make appropriate and code-compliant repairs.

118. Ecovest also owed a non-delegable duty to the Plaintiffs to ensure that all of the common elements and limited common elements of Shelmore Village were either in good repair and in compliance with all applicable building codes, or that sufficient funds had been provided to the POA by Ecovest to make any necessary repairs at the time of transition of control of the Board from Ecovest to the owners of Shelmore Village condominium units.

119. Ecovest and the Ecovest-appointed Board of Directors failed to make the needed repairs to the common elements, limited common elements, and other building components before transition of control of the Board from Ecovest to the owners of Shelmore Village condominium units and failed to mitigate continuing damage to Shelmore Village and, instead, made repairs they knew, or should have known, were cosmetic in nature without addressing the root cause of the water intrusion and without providing a permanent solution.

120. Further, in violation of South Carolina law, Ecovest failed to adequately fund the POA so that it could make the necessary repairs.

121. By failing to repair the common elements, limited common elements, and other building components and by failing to properly fund the POA for the purpose of making such repairs, Ecovest and the Ecovest-appointed Board of Directors breached their fiduciary duties and other non-delegable duties owed to the Plaintiffs.

122. As a proximate and direct result of the breach of fiduciary duties on the part of Ecovest and the Ecovest-controlled Board of Directors, Plaintiffs have spent and will continue to expend substantial sums of money in order to renovate and restore Shelmore Village to make it safe and habitable, and in addition thereto, Shelmore Village suffered a loss in value and depreciation by virtue of the defects and damages. In addition, Plaintiffs will be required to expend substantial sums which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

123. Additionally, Plaintiffs have suffered, and will continue to suffer, loss of use of their units as well as the common areas and the limited common areas of the building. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas during the time in which construction repairs are undertaken to Shelmore Village.

124. The Plaintiffs are entitled to a judgment against Ecovest for all actual, direct, indirect, resulting and consequential damages proximately caused by the breach of their fiduciary and other non-delegable duties in an amount to be proven at trial.

**FOR A THIRD CAUSE OF ACTION**  
**(Negligence / Gross Negligence as to Ecovest)**

125. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

126. As the developers of Shelmore Village, Ecovest owed a duty of due care to the Plaintiffs in overseeing the construction, renovation, management, and operation of Shelmore Village.

127. Ecovest breached the duty of due care they owed to Plaintiffs by marketing,

developing, constructing, renovating and selling a defective condominium project as set forth above, as well as through one or more of the following particulars:

- (a) By failing to properly select the professional engineer, general contractor, and materials used in the construction and renovation of Shelmore Village;
- (b) By failing to properly oversee the design, construction and renovation, including the selection of contractors and subcontractors, of Shelmore Village when they planned to sell the condominium units to members of the public for profit;
- (c) By failing to heed the warnings of their design professional, Clancy Wells Architects;
- (d) By failing to follow design and repair specifications of their design professional, Clancy Wells Architects;
- (e) By negligently making misrepresentations to the Plaintiffs concerning the quality of the construction of Shelmore Village;
- (f) By failing to properly and prudently fund and effect repairs to the common elements, limited common elements, and individual units of Shelmore Village when they controlled the POA and its Board of Directors;
- (g) By failing to properly and prudently fund the POA before transition of control of the Board to the individual condominium unit owners;
- (h) By engaging in self-dealing and self-interested transactions while allowing the defects and resulting damage at Shelmore Village to continue unabated;
- (i) By attempting to insert anti-suit provisions in Shelmore Village's governing documents without negotiation, discussion, or consent from the owners;
- (j) By attempting to insert warranty waivers in Shelmore Village's governing documents without negotiation, discussion or consent from the owners; and
- (k) In such other failures that will be shown during the discovery of this case and at trial.

128. The negligent acts and omissions of Ecovest were the proximate causes of construction and design deficiencies set forth above, which resulted in property damage and financial damages to Plaintiffs.

129. Due to the design and construction defects and resulting property damage

caused by Ecovest's negligence, Plaintiffs have spent, and will continue to expend, substantial sums of money in order to renovate and restore Shelmore Village to make it safe and habitable. In addition thereto, Shelmore Village suffered a loss in value and depreciation by virtue of the defects and damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

130. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of Shelmore Village. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of Shelmore Village during the time in which construction repairs are undertaken.

131. As a direct and proximate result of the negligence and gross negligence of Ecovest, the Plaintiffs are entitled to a judgment against Ecovest for all actual, direct, indirect, resulting, consequential and punitive damages in an amount to be determined at the trial of this case.

**FOR A FOURTH CAUSE OF ACTION**  
**(Amalgamation as to Ecovest)**

132. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

133. Ecovest Development, LLC and Ecovest Charleston, LLC collectively held themselves out to the Plaintiffs and the public as the developer of Shelmore Village.

134. Upon information and belief, Ecovest Development, Ecovest Charleston and their agents, officers, directors, members, and owners wholly own and/or completely dominate and control Ecovest S&S Shelmore Development, LLC.



135. Upon information and belief, Ecovest S&S Shelmore Development, LLC at all times relevant to this action:

- (a) Failed to observe corporate formalities;
- (b) Was grossly undercapitalized for the purposes of the corporate undertaking, to wit, the development, construction, renovation, marketing, and sale of Shelmore Village and the remediation of any and all defects in the design and construction of Shelmore Village;
- (c) Was controlled by Ecovest Development and Ecovest Charleston and their agents, officers, directors, members and owners to such an extent that it was merely a façade for the operations of Ecovest Development and Ecovest Charleston and their agents, officers, directors, members and owners;
- (d) Does not have any functioning officers or directors that are independent of Ecovest Development and Ecovest Charleston;
- (e) Does not have any employees that are independent of Ecovest Development and Ecovest Charleston;
- (f) Shares the same address and telephone number as Ecovest Development and Ecovest Charleston; and
- (g) Is functionally insolvent.

136. In addition, upon information and belief, any and all funds that were paid to Ecovest S&S Shelmore Development, through the sale of the individual units contained within Shelmore Village, were siphoned from the company by Ecovest, and its agents, directors, officers, members and/or owners.

137. Ecovest Development, Ecovest Charleston and their agents, directors, officers, members and/or owners, dominated and controlled Ecovest S&S Shelmore Development such that it was merely an alter ego of Ecovest Development and Ecovest Charleston set up to shield Ecovest Development and Ecovest Charleston from liability resulting from their marketing, construction, renovation and sale of Shelmore Village.

138. Upon information and belief the interests of Ecovest Development, Ecovest Charleston and their agents, directors, officers, members and/or owners, and Ecovest S&S

Shelmore Development are so amalgamated that the Plaintiffs are entitled to disregard the corporate forms and recover against Ecovest Development and Ecovest Charleston.

139. Further, Ecovest Development's website ([www.ecovestcharleston.com](http://www.ecovestcharleston.com)), other marketing materials, and press releases claim Shelmore Village to be one of its developments.

140. It would be inequitable to allow the true developers to hide behind a corporate shield that has no basis in fact for the express purpose of avoiding their obligations, responsibilities and liabilities to the Plaintiffs.

141. Because the interests of Ecovest Development, Ecovest Charleston and their agents, directors, officers, members and owners, and Ecovest S&S Shelmore Development are so amalgamated, Plaintiffs are entitled to disregard the corporate forms and recover against Ecovest Development, Ecovest Charleston and their agents, directors, officers, members and owners in an amount to be determined by the trier of fact.

**FOR A FIFTH CAUSE OF ACTION**  
**(Negligence / Gross Negligence as to Linden Construction, Defendant**  
**Subcontractors and Atrium Builders)**

142. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

143. Linden and Atrium, and **Defendant Subcontractors**, either by their own employees or through the use of subcontractors, constructed and renovated Shelmore Village, its common elements and limited common elements.

144. At all times relevant hereto, Linden, Defendant Subcontractors and Atrium and their agents, servants, employees, and/or subcontractors undertook and owed a duty to the Plaintiffs and its members to perform their work at Shelmore Village in accordance with the applicable building and dwelling codes, approved construction plans and specifications, and in a careful, diligent, and workmanlike manner, free from latent defects.

145. Linden, Defendant Subcontractors and Atrium and their agents, servants, employees, and/or subcontractors were negligent, careless, reckless, willful and wanton in failing to perform their work in accordance with the applicable building and dwelling codes, approved construction plans and specifications, and in failing to perform their work in a careful, diligent, and workmanlike manner, free from latent defects, thereby breaching the above-referenced duties by, but not limited to, the particulars previously set forth above.

146. As a direct, foreseeable and proximate result of the negligence and gross negligence of Linden, Defendant Subcontractors and Atrium, Plaintiffs have spent and will continue to expend substantial sums of money in order to renovate and restore Shelmore Village to make it safe and habitable, and in addition thereto, Shelmore Village suffered a loss in value and depreciation by virtue of the defects and damages. In addition, Plaintiffs will be required to expend substantial sums which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

147. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of Shelmore Village. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of Shelmore Village during the time in which construction repairs are undertaken.

148. The violation of applicable building codes constitutes negligence per se.

149. The breach of duty, code violations, and deviations from industry standards on the part of Linden, Defendant Subcontractors and Atrium and their agents, servants, employees and/or subcontractors constitute gross negligence, entitling Plaintiffs to an award of all actual, direct, indirect, resulting, consequential, and punitive damages.

150. As a result of the negligence and gross negligence of Linden, Defendant Subcontractors and Atrium and their agents, servants, employees and/or subcontractors, the Plaintiffs are entitled to a judgment against Linden, Defendant Subcontractors and Atrium for all actual, direct, indirect, resulting, consequential, and punitive damages in an amount to be determined at the trial of this case.

**FOR A SIXTH CAUSE OF ACTION**  
**(Breach of Implied Warranty of Workmanlike Service as to  
Linden Construction, Defendant Subcontractors and Atrium Builders)**

151. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

152. By undertaking and performing construction work at Shelmore Village, Linden, Defendant Subcontractors and Atrium impliedly warranted that their work would be performed in a careful, diligent, and workmanlike manner and would be free from all defects:

153. Linden, Defendant Subcontractors and Atrium and their agents, servants, employees and subcontractors breached the implied warranty of workmanlike service by constructing a project with the defects and deficiencies set forth above.

154. Plaintiffs have been proximately damaged by Linden, Defendant Subcontractors and Atrium's breach of their implied warranty of workmanlike service in that Plaintiffs have spent, and will continue to expend, substantial sums of money in order to renovate and restore Shelmore Village to make it safe and habitable. In addition thereto, Shelmore Village suffered a loss in value and depreciation by virtue of the defects and damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

155. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of Shelmore Village. Such loss will continue

through the interference with the use and enjoyment of the common areas and limited common areas of Shelmore Village during the time in which construction repairs are undertaken.

156. As a direct and proximate result of Linden, Defendant Subcontractors and Atrium's breach of their implied warranties, Plaintiff is entitled to a judgment against Linden, Defendant Subcontractors and Atrium for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at the trial of this case.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Breach of Performance Bond as to Linden and Guarantee)**

157. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

158. Guarantee provided a surety bond to the Plaintiff POA guaranteeing the proper performance of the obligations of Linden and others supplying labor and material for the renovation of Shelmore Village.

159. Guarantee has actual notice of Linden's breach of its obligations. Nevertheless, Guarantee has failed and refused to guarantee Linden's proper performance of its work, thereby breaching the terms of its bond.

160. Plaintiffs have been damaged by Guarantee's breach of its bond and Plaintiffs are entitled to recover from Guarantee any and all damages that Plaintiffs may suffer as a result of Linden's breach of its obligations, duties and Linden's negligence.

**FOR AN EIGHTH CAUSE OF ACTION**  
**(Breach of Warranty as to Broadway)**

161. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

162. Upon information and belief, Broadway, pursuant to his contract with Ecovest, expressly warranted that his plans, specifications, details, instructions and other

instruments of service would be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards.

163. Broadway warranted the sufficiency of his design, plans, specifications, details and instructions for Shelmore Village to the Plaintiffs.

164. Plaintiffs are beneficiaries of the express and implied warranties provided by Broadway.

165. As indicated in the Affidavit of Jason D. Gregorie, PE, CFM, which is attached hereto as Exhibit A, and which is incorporated herein by reference, Broadway breached his express and implied warranties by failing to design the Shelmore Village renovations free from defects and in compliance with the applicable building codes and industry standards and otherwise directing that work be performed in violation of the applicable building code, manufacturer's installation instructions and industry standards of care.

166. Plaintiffs have been proximately damaged by Broadway's breach of his express and implied warranties in that Plaintiffs have spent, and will continue to expend, substantial sums of money in order to renovate and restore Shelmore Village to make it safe and habitable. In addition thereto, Shelmore Village suffered a loss in value and depreciation by virtue of the defects and damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

167. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of Shelmore Village. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of Shelmore Village during the time in which construction repairs are undertaken.

168. As a direct and proximate result of Broadway's breach of express and implied warranties, the Plaintiffs are entitled to a judgment against Broadway for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at trial.

**FOR A NINTH CAUSE OF ACTION**  
**(Negligence / Gross Negligence as to Broadway)**

169. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

170. Broadway agreed to provide professional engineering services for the design and engineering of the renovations at Shelmore Village, specifically including, but not limited to, the issuance of plans, specifications, details, directives and instructions for the renovation of Shelmore Village. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, building codes, regulations, statutes, and industry standards.

171. Upon information and belief, Broadway agreed to make periodic visits to Shelmore Village during construction and perform other contract administration services to observe, among other things, whether the construction was being completed in accordance with the plans and specifications and all applicable building codes.

172. It was foreseeable that Plaintiffs and its members, as the owners of Shelmore Village' common elements and limited common elements, would be damaged if Broadway breached the above-referenced duties. As such, Broadway owed a duty of due care to the Plaintiffs and its members.

173. As indicated in the Affidavit of Jason D. Gregorie, PE, CFM, which is attached hereto as Exhibit A, and which is incorporated herein by reference, Broadway breached his duty of care in the following particulars, including but not limited to:

- (a) Failing to properly design and prepare specifications, details and instructions for Shelmore Village which were compliant with all applicable

building codes and professional standards;

- (b) Failing to specify products that were in compliance with applicable building codes;
- (c) Failing to design and specify an exterior cladding system for Shelmore Village with an adequate water management system to prevent water from intruding into the interior of the condominium units or the wall cavities of the building;
- (d) Failing to design and specify an adequate water management system in and around building openings, including, but not limited to, the exterior windows at Shelmore Village;
- (e) Failing to design and specify deck-to-wall intersection waterproofing that complies with applicable building codes and design standards;
- (f) Failing to properly administer, observe and inspect the construction of Shelmore Village for compliance with the plans and specifications and applicable building codes;
- (g) In specifically directing work that was in violation of the applicable building code, manufacturer's installation instructions and industry standards;
- (h) Failing to properly carry out inspections and contract administration duties;
- (i) Failing to act as a reasonably prudent design professional would act under similar circumstances;
- (j) Failing to detect deficient and non-code compliant work by Linden, Atrium and their subcontractors; and
- (k) Such other breaches of the standard of care which are determined during the ongoing investigation of design deficiencies at Shelmore Village.

174. As a direct, foreseeable and proximate result of the negligence, design defects and resulting property damage, Plaintiffs have spent, and will continue to expend, substantial sums of money in order to renovate and restore Shelmore Village to make it safe and habitable. In addition thereto, Shelmore Village suffered a loss in value and depreciation by virtue of the defects and damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.



175. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of Shelmore Village. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of Shelmore Village during the time in which construction repairs are undertaken.

176. As a direct and proximate result of Broadway's negligence, Plaintiffs are entitled to a judgment against Broadway for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at trial.

**FOR A TENTH CAUSE OF ACTION**  
**(Breach of Implied Warranty of Habitability as to Meeting Street)**

177. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

178. In designing, developing, marketing and selling Shelmore Village or otherwise placing Shelmore Village into the stream of commerce, Meeting Street, by operation of law, impliedly warranted that Shelmore Village would be habitable and free from all defects.

179. Meeting Street breached the implied warranty of habitability by designing, developing, constructing, marketing and selling a defective project as set forth above.

180. As a direct, foreseeable and proximate result of Meeting Street's breach of the implied warranty of habitability, the Plaintiffs suffered significant physical damage to Shelmore Village, including water intrusion, loss of use, as well as diminution in its value. The Plaintiffs have further been damaged in that they have spent, and will continue to expend, large sums of money in order to determine the extent of the damage to Shelmore Village and to repair it.

181. Any attempts by Meeting Street to disclaim the warranty of habitability are void and unenforceable under the law of South Carolina as interpreted by the South

Carolina Supreme Court in that, *inter alia*, the purported disclaimer was not conspicuous and, does not specifically mention the warranty of habitability, and was not specifically bargained for with Plaintiffs or with the other individual condominium unit owners or purchasers.

182. Plaintiffs are entitled to a judgment against Meeting Street in an amount to be proven at trial for all direct, indirect, actual, resulting and consequential damages proximately caused by Meeting Street's breach of the warranty of habitability.

**FOR AN ELEVENTH CAUSE OF ACTION**  
**(Negligence / Gross Negligence as to Meeting Street)**

183. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

184. As the original developers of Shelmore Village, Meeting Street owed a duty of due care to the Plaintiffs in overseeing the design, development, construction, management, and operation of Shelmore Village.

185. Meeting Street breached the duty of due care they owed to Plaintiffs by marketing, designing, developing, constructing, and selling a defective condominium project as set forth above, as well as through one or more of the following particulars:

- (a) By failing to properly select the design professional, general contractor, and materials used in the construction and renovation of Shelmore Village;
- (b) By failing to properly oversee the design and construction, including the selection of contractors and subcontractors, of Shelmore Village when they planned to sell the condominium units to members of the public for profit;
- (c) By negligently making misrepresentations to the Plaintiffs concerning the quality of the construction of Shelmore Village;
- (d) By failing to properly and prudently fund and effect repairs to the common elements, limited common elements, and individual units of Shelmore Village when they controlled the POA and its Board of Directors;

- (e) By engaging in self-dealing and self-interested transactions while allowing the defects and resulting damage at Shelmore Village to continue unabated;
- (f) By attempting to insert anti-suit provisions in Shelmore Village's governing documents without negotiation, discussion, or consent from the owners;
- (g) By attempting to insert warranty waivers in Shelmore Village's governing documents without negotiation, discussion or consent from the owners; and
- (h) In such other failures that will be shown during the discovery of this case and at trial.

186. The negligent acts and omissions of Meeting Street are the proximate causes of construction and design deficiencies set forth above, which resulted in property damage and financial damages to Plaintiffs.

187. Due to the design and construction defects and resulting property damage caused by Meeting Street's negligence, Plaintiffs have spent, and will continue to expend, substantial sums of money in order to renovate and restore Shelmore Village to make it safe and habitable. In addition thereto, Shelmore Village suffered a loss in value and depreciation by virtue of the defects and damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

188. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of Shelmore Village. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of Shelmore Village during the time in which construction repairs are undertaken.

189. As a direct and proximate result of the negligence and gross negligence of

Meeting Street, the Plaintiffs are entitled to a judgment against Meeting Street for all actual, direct, indirect, resulting, consequential and punitive damages in an amount to be determined at the trial of this case.

**FOR A TWELFTH CAUSE OF ACTION**  
**(Negligence / Gross Negligence as Meeting Street Builders and MS Subcontractors)**

190. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

191. Meeting Street Builders and MS Subcontractors, either by their own employees or through the use of subcontractors, constructed all or portions of Shelmore Village, its common elements and limited common elements.

192. At all times relevant hereto, Meeting Street Builders and MS Subcontractors, their agents, servants, employees, and/or subcontractors undertook and owed a duty to the Plaintiffs and its members to perform their work at Shelmore Village in accordance with the applicable building and dwelling codes, approved construction plans and specifications, and in a careful, diligent, and workmanlike manner, free from latent defects.

193. Meeting Street Builders and MS Subcontractors, their agents, servants, employees, and/or subcontractors were negligent, careless, reckless, willful and wanton in failing to perform their work in accordance with the applicable building and dwelling codes, approved construction plans and specifications, and in failing to perform their work in a careful, diligent, and workmanlike manner, free from latent defects, thereby breaching the above-referenced duties by, but not limited to, the particulars previously set forth above.

194. As a direct, foreseeable and proximate result of the negligence and gross negligence of Meeting Street Builders and MS Subcontractors, Plaintiffs have spent and will continue to expend substantial sums of money in order to renovate and restore Shelmore Village to make it safe and habitable, and in addition thereto, Shelmore Village

suffered a loss in value and depreciation by virtue of the defects and damages. In addition, Plaintiffs will be required to expend substantial sums which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

195. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of Shelmore Village. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of Shelmore Village during the time in which construction repairs are undertaken.

196. The violation of applicable building codes constitutes negligence per se.

197. The breach of duty, code violations, and deviations from industry standards on the part of Meeting Street Builders and MS Subcontractors, their agents, servants, employees and/or subcontractors constitute gross negligence, entitling Plaintiffs to an award of all actual, direct, indirect, resulting, consequential, and punitive damages.

198. As a result of the negligence and gross negligence of Meeting Street Builders and MS Subcontractors, their agents, servants, employees and/or subcontractors, Plaintiffs are entitled to a judgment against Meeting Street Builders and MS Subcontractors for all actual, direct, indirect, resulting, consequential, and punitive damages in an amount to be determined at the trial of this case.

**FOR A THIRTEENTH CAUSE OF ACTION**  
**(Breach of Implied Warranty of Workmanlike Service as to**  
**Meeting Street Builders and MS Subcontractors)**

199. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

200. By undertaking and performing construction work at Shelmore Village,

Meeting Street Builders and **MS Subcontractors** impliedly warranted that their work would be performed in a careful, diligent, and workmanlike manner and would be free from all defects.

201. Meeting Street Builders and **MS Subcontractors**, their agents, servants, employees and subcontractors breached the implied warranty of workmanlike service by constructing a project with the defects and deficiencies set forth.

202. Plaintiffs have been proximately damaged by Meeting Street Builders' and **MS Subcontractors'** breach of their implied warranty of workmanlike service in that Plaintiffs have spent, and will continue to expend, substantial sums of money in order to renovate and restore Shelmore Village to make it safe and habitable. In addition thereto, Shelmore Village suffered a loss in value and depreciation by virtue of the defects and damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Plaintiffs' damage in an amount to be determined.

203. Additionally, Plaintiffs have, and will continue to, suffer loss of use of the common areas and the limited common areas of Shelmore Village. Such loss will continue through the interference with the use and enjoyment of the common areas and limited common areas of Shelmore Village during the time in which construction repairs are undertaken.

204. As a direct and proximate result of Meeting Street Builders' and **MS Subcontractors'** breach of their implied warranties, Plaintiffs are entitled to a judgment against Meeting Street Builders and **MS Subcontractors** for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at the trial of this case.

**FOR A FOURTEENTH CAUSE OF ACTION**  
**(Amalgamation as to Meeting Street)**

205. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully restated herein.

206. MS Shelmore Village, LLC and Meeting Street Companies, LLC collectively held themselves out to the Plaintiffs and the public as the developer of Shelmore Village.

207. Upon information and belief, Meeting Street Companies, LLC and its agents, officers; directors, members, and owners wholly own and/or completely dominate and control MS Shelmore Village, LLC and Meeting Street Builders, LLC.

208. Upon information and belief, MS Shelmore Village, LLC and Meeting Street Builders, LLC at all times relevant to this action:

- (a) Failed to observe corporate formalities;
- (b) Were grossly undercapitalized for the purposes of the corporate undertaking, to wit, the development, construction, marketing, and sale of Shelmore Village;
- (c) Were dominated and controlled by Meeting Street Companies and its agents, officers, directors, members and owners to such an extent that it was merely a façade for the operations of Meeting Street Companies and its agents, officers, directors, members and owners;
- (d) Do not have any functioning officers or directors that are independent of Meeting Street Companies;
- (e) Do not have any employees that are independent of Meeting Street Companies;
- (f) Share the same address and telephone number as Meeting Street Companies; and
- (g) Are functionally insolvent.

209. In addition, upon information and belief, any and all funds that were paid to MS Shelmore Village, through the sale of the individual units contained within Shelmore Village, were siphoned from the company by Meeting Street Companies, and its agents, directors, officers, members and/or owners.

210. MS Shelmore Village and Meeting Street Builders and their agents, directors, officers, members and/or owners, dominated and controlled Meeting Street Companies such that they were merely alter egos of Meeting Street Companies set up to shield Meeting Street Companies from liability resulting from their marketing, construction, and sale of Shelmore Village.

211. Upon information and belief the interests of MS Shelmore Village and Meeting Street Builders and their agents, directors, officers, members and/or owners, and Meeting Street Companies are so amalgamated that the Plaintiffs are entitled to disregard the corporate forms and recover against Meeting Street Companies.

212. It would be inequitable to allow the true developers to hide behind a corporate shield that has no basis in fact for the express purpose of avoiding their obligations, responsibilities and liabilities to the Plaintiffs.

213. Because the interests of Meeting Street Companies and their agents, directors, officers, members and owners, and MS Shelmore Village and Meeting Street Builders are so amalgamated, Plaintiffs are entitled to disregard the corporate forms and recover against Meeting Street Companies and their agents, directors, officers, members and owners in an amount to be determined by the trier of fact.

**FOR A FIFTEENTH CAUSE OF ACTION**  
**(Negligence / Gross Negligence as to Windsor Windows)**

214. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

215. Upon information and belief, Windsor Windows designed, manufactured, marketed, distributed, sold and/or otherwise placed into the stream of commerce, the fenestration products that were installed at Shelmore Village.

216. Windsor Windows had a duty to use due care in the design, manufacture and



testing of the fenestration that were installed at Shelmore Village.

217. Windsor Windows was negligent, grossly negligent, willful, wanton, careless, heedless and reckless in one or more of the following particulars:

- (a) In developing and designing the fenestration products in a defective manner;
- (b) In failing to reasonably test the fenestration products to determine if they were in accordance with applicable building codes and industry standards;
- (c) In failing to use the degree of care and caution that a reasonably prudent manufacturer would have used in manufacturing the fenestration products installed at Shelmore Village; and
- (d) In marketing and selling its fenestration products for installation at Shelmore Village when it knew or should have known that the fenestration products were defective.

218. Windsor Windows's negligence has allowed water to continuously intrude into the building envelope at Shelmore Village, which has resulted in actual property damage to Shelmore Village beyond the work product itself.

219. Plaintiff has been damaged in that it will have to expend large sums in order to determine the extent of the damage to the structure and to have it repaired.

220. Windsor Windows's negligence has drastically diminished the value of Shelmore Village.

221. Windsor Windows's breach of duty in designing, manufacturing, marketing, distributing, and selling the defective fenestration products constitutes gross negligence, entitling the Plaintiffs to a recovery of actual, consequential, and punitive damages.

**FOR A SIXTEENTH CAUSE OF ACTION**  
**(Strict Liability / Products Liability as to Defendant Windsor Windows)**

222. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

223. Upon information and belief, Windsor Windows is in the business of designing,

manufacturing, marketing, distributing, selling, and/or installing fenestration products. Windsor Windows marketed the fenestration products installed at Shelmore Village as ones that would provide a safe and durable barrier from the elements.

224. Windsor Windows's fenestration products were defective in that they caused a severe amount of water to intrude into the building envelope of Shelmore Village, resulting in actual property damage to Shelmore Village beyond the work product itself.

225. Windsor Windows, in violation of South Carolina Code §15-73-10, designed, manufactured, marketed, distributed, and sold a product that was defective and was in a condition unreasonably dangerous to the Plaintiffs and their property.

226. The Plaintiffs could not have discovered the fenestration product defects nor perceived their defective and dangerous condition through the exercise of reasonable care. The defective nature of the fenestration products is beyond the ordinary knowledge common to the consuming public and these Plaintiffs.

227. The cost of altering the design and manufacture of the fenestration products supplied to Shelmore Village to make them safe was substantially less than the resulting damage, cost and injury suffered by the Plaintiffs.

228. As a direct and proximate result of Windsor Windows's manufacture and sale of defective products, Plaintiffs have suffered severe and permanent damages to Shelmore Village, and will have to expend large sums of money to have Shelmore Village repaired and corrected.

229. Windsor Windows's manufacture and sale of defective products constitutes gross negligence, entitling the Plaintiffs to a recovery of actual, consequential, and punitive damages.

**FOR A SEVENTEENTH CAUSE OF ACTION**  
**(Breach of Implied Warranties as to Defendant Windsor Windows)**

230. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

231. The fenestration manufactured and/or sold by Windsor Windows for installation in Shelmore Village were subject to the implied warranty of merchantability, which includes warranties that the fenestration products would not allow moisture to intrude and damage Shelmore Village.

232. Windsor Windows's fenestration products failed to prevent moisture from entering the building envelope of Shelmore Village. Instead, the fenestration products permitted moisture to continuously intrude into Shelmore Village resulting in serious damage beyond the work product itself.

233. Windsor Windows had reason to know, and in fact intended that its fenestration products were to be used as a component of the structure's exterior envelope.

234. Windsor Windows breached the implied warranty of Fitness for a Particular Purpose and/or Fitness for its Intended Use by the particulars previously described above.

235. By reason of this breach of implied warranty, Plaintiffs have suffered damages in that they will have to expend large sums in order to determine the damage to Shelmore Village and to repair the defects.


236. Windsor Windows's breach of implied warranty in designing, manufacturing, marketing, distributing, and selling the defective fenestration products constitutes gross negligence, entitling the Plaintiffs to a recovery of actual, consequential, and punitive damages.

WHEREFORE, the Plaintiffs pray this Honorable Court inquire into the matters set forth herein and award judgment in favor of the Plaintiffs against the Defendants, jointly and severally, as follows:

- (a) For all actual, direct, indirect, special and consequential damages against the Defendants, jointly and severally, in an amount to be shown at trial;
- (b) For punitive damages in an amount to be determined by the trier of fact;
- (c) For prejudgment and post judgment interest;
- (d) For all attorneys' fees and costs associated with investigating and prosecuting this action; and
- (e) For all other relief this Honorable Court deems just and proper.

Respectfully submitted,

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.

By: 

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October 13, 2015  
Charleston, South Carolina

**Meeting Street at Shelmore Property Owners Association, Inc. d/b/a Shelmore Village  
POA, et al. v. Linden Construction of South Carolina, Inc., et al.**

C/A No.: 2014-CP-10-7812

**CERTIFICATE OF SERVICE**

I, J. Ashley Garrett, an employee of Thurmond Kirchner Timbes & Yelverton, P.A., pursuant to Rule 5(b)(1) SCRPC and counsel's regular business practices, do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of **Plaintiffs' Second Amended Summons and Second Amended Complaint** to the following counsel of record:

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I further certify that I have this date served via electronic mail, a true and correct copy of Plaintiffs' Second Amended Summons and Second Amended Complaint to the following counsel of record:

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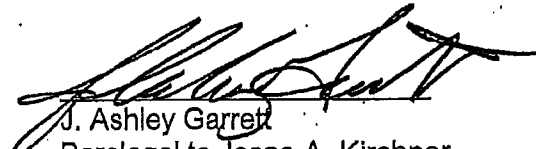
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and Matthew S. Byzet

This 13 day of October, 2015  
Charleston, South Carolina

# EXHIBIT C



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
MEETING STREET AT SHELMORE )  
PROPERTY OWNERS ASSOCIATION, )  
INC. D/B/A SHELMORE VILLAGE POA )  
AND JULIAN SMITH, INDIVIDUALLY )  
AND ON BEHALF OF ALL OTHERS )  
SIMILARLY SITUATED, )

Plaintiffs, )

vs. )

LINDEN CONSTRUCTION OF SOUTH )  
CAROLINA, INC., THE GUARANTEE )  
COMPANY OF NORTH AMERICA USA, )  
ATRIUM BUILDERS, INC., ECOVEST )  
S&S SHELMORE DEVELOPMENT, )  
LLC, ECOVEST DEVELOPMENT, LLC, )  
ECOVEST CHARLESTON, LLC, JAMES )  
JONES D/B/A QUALITY STUCCO, )  
ROBERT BESSINGER D/B/A )  
BLUEPRINT CONSTRUCTION, )  
COASTAL ROOFING COMPANY, INC., )  
HELM CONSTRUCTION OF SOUTH )  
CAROLINA, LLC A/K/A HELM )  
CONSTRUCTION LTD CO., RUSSELL )  
HUNTLEY D/B/A CALIBER )  
CONSTRUCTION SERVICE, CALIBER, )  
LLC D/B/A CALIBER CONSTRUCTION )  
SERVICES, ORELLANA PAINTING, )  
LLC, J R BROADWAY COMPANY, LLC, )  
JASON R. BROADWAY, P.E., MS )  
SHELMORE VILLAGE, LLC, MEETING )  
STREET BUILDERS, LLC, MEETING )  
STREET COMPANIES, LLC, WINDSOR )  
WINDOWS & DOORS, A WOODGRAIN )  
MILLWORK, INC. COMPANY, ELI, )  
INC., FINE BUILDERS, LLC, HOWE & )  
SIMPSON CONTRACTING, LLC A/K/A )  
HOWE & SIMPSON, LLC, )  
SOUTHCOAST EXTERIORS, INC., AND )  
MICHAEL TENNY D/B/A SYNCO )  
ENTERPRISES, )

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-10-7812

**DEFENDANTS ECOVEST S&S SHELMORE  
DEVELOPMENT, LLC AND ECOVEST  
DEVELOPMENT, LLC AMENDED  
ANSWER TO PLAINTIFFS' SECOND  
AMENDED COMPLAINT AND CROSS-  
CLAIMS  
(JURY TRIAL REQUESTED)**

*JBY*

**FILED**  
**2015 NOV 24 PM 3:50**  
**JULIE J ARMSTRONG**  
**CLERK OF COURT**

Defendants. )  
 )  
 )

COME NOW the Defendants Ecovest S&S Shelmore Development, LLC (“Ecovest S&S”) and Ecovest Development, LLC (“Ecovest Development”) (collectively, “Ecovest” or “These Defendants”), and file this Amended Answer to the Second Amended Complaint of Meeting Street at Shelmore Property Owners Association, Inc. d/b/a Shelmore Village POA and Julian Smith, individually and on behalf of all others similarly situated (hereinafter, collectively, “Plaintiffs”), and bring cross-claims against certain Defendants, as follows. Except as specifically admitted herein, each and every allegation in the Plaintiffs’ Second Amended Complaint is expressly denied.

1. Upon information and believe, These Defendants admit the allegations in Paragraphs 1 and 2 of Plaintiffs’ Second Amended Complaint.

2. Responding to the allegations in Paragraph 3, These Defendants admit Shelmore Village consists of nine (9) buildings and forty-one (41) condominium units. These Defendants lack sufficient information to form a belief as to the remainder of the allegations in Paragraph 3, and therefore, deny same and demand strict proof thereof.

3. Responding to the allegations in Paragraphs 4 and 5, These Defendants crave reference to the applicable POA governing documents and deny any allegations inconsistent with same.

4. These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 6 and 7, and therefore, deny same and demand strict proof thereof.

5. These Defendants deny the allegations in Paragraph 8, as stated.

6. These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 9 through 16, and therefore, deny same and demand strict proof thereof.

7. Ecovest S&S admits the allegations in Paragraph 17.

8. Ecovest Development admits the allegations in Paragraph 18.

9. Upon information and belief, These Defendants admit the allegations in Paragraph 19.

10. These Defendants deny the allegations in Paragraphs 20 through 37. Further responding, Ecovest S&S purchased thirty-one (31) units in the condominium complex known as Shelmore Village, located on South Shelmore Boulevard in Mount Pleasant, South Carolina. Ecovest Development performed certain due diligence and investigation into the project prior to the purchase by Ecovest S&S. Ecovest Development has never purchased or sold any units at Shelmore Village. Upon information and belief, Ecovest Charleston played no role in this project and has never had an ownership stake in any unit at Shelmore Village.

11. Upon information and belief, These Defendants admit the allegations in Paragraphs 38 through 42.

12. These Defendants deny the allegations in Paragraphs 43 through 48, to the extent the allegations are intended to allege liability or wrongdoing on the part of These Defendants.

13. Upon information and belief, These Defendants admit the allegations in Paragraphs 49 and 50.

14. These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 51 through 80, and therefore, deny same and demand strict proof thereof.

15. These Defendants deny the allegations in Paragraphs 81 through 96, including all subparts.

16. The allegations in Paragraph 97 call for a legal conclusion, and therefore require no response from These Defendants. To the extent a response is required, the allegations are denied.

17. These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 98 and 99, and therefore, deny same and demand strict proof thereof.

18. These Defendants deny the allegations in Paragraph 100.

19. These Defendants lack sufficient information to form a belief as to the allegations in Paragraph 101, and therefore, deny same and demand strict proof thereof.

20. These Defendants deny the allegations in Paragraphs 102 and 103, including all subparts.

21. These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 104 and 105, and therefore, deny same and demand strict proof thereof.

22. These Defendants deny the allegations in Paragraph 106.

23. These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 107 through 109, and therefore, deny same and demand strict proof thereof.

24. Responding to the allegations in Paragraph 110, These Defendants reassert and re-allege their responses to Paragraphs 1-109 as if restated verbatim herein.

25. These Defendants deny the allegations in Paragraphs 111 through 115.

26. Responding to the allegations in Paragraph 116, These Defendants reassert and re-allege their responses to Paragraphs 1-115 as if restated verbatim herein.

27. These Defendants deny the allegations in Paragraphs 117 through 124.

28. Responding to the allegations in Paragraph 125, These Defendants reassert and re-allege their responses to Paragraphs 1-124 as if restated verbatim herein.

29. These Defendants deny the allegations in Paragraphs 126 through 131, including all subparts.

30. Responding to the allegations in Paragraph 132, These Defendants reassert and re-allege their responses to Paragraphs 1-131 as if restated verbatim herein.

31. These Defendants deny the allegations in Paragraphs 133 through 139, including all subparts.

32. To the extent the allegations in Paragraph 140 are directed to These Defendants, they are denied.

33. These Defendants deny the allegations in Paragraph 141.

34. Responding to the allegations in Paragraph 142, These Defendants reassert and re-allege their responses to Paragraphs 1-141 as if restated verbatim herein.

35. Paragraphs 143 through 150 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 143 through 150, and therefore, deny same and demand strict proof thereof.

36. Responding to the allegations in Paragraph 151, These Defendants reassert and re-allege their responses to Paragraphs 1-150 as if restated verbatim herein.

37. Paragraphs 152 through 156 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 152 through 156, and therefore, deny same and demand strict proof thereof.

38. Responding to the allegations in Paragraph 157, These Defendants reassert and re-allege their responses to Paragraphs 1-156 as if restated verbatim herein.

39. Paragraphs 158 through 160 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 158 through 160, and therefore, deny same and demand strict proof thereof.

40. Responding to the allegations in Paragraph 161, These Defendants reassert and reallege their responses to Paragraphs 1-160 as if restated verbatim herein.

41. These Defendants deny the allegations in Paragraph 162.

42. Paragraphs 163 through 168 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 163 through 168, and therefore, deny same and demand strict proof thereof.

43. Responding to the allegations in Paragraph 169, These Defendants reassert and reallege their responses to Paragraphs 1-168 as if restated verbatim herein.

44. Paragraphs 170 through 176 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 170 through 176, and therefore, deny same and demand strict proof thereof.

45. Responding to the allegations in Paragraph 177, These Defendants reassert and reallege their responses to Paragraphs 1-176 as if restated verbatim herein.

46. Paragraphs 178 through 182 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 178 through 182, and therefore, deny same and demand strict proof thereof.

47. Responding to the allegations in Paragraph 183, These Defendants reassert and re-allege their responses to Paragraphs 1-182 as if restated verbatim herein.

48. Paragraphs 184 through 189 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 184 through 189, and therefore, deny same and demand strict proof thereof.

49. Responding to the allegations in Paragraph 190, These Defendants reassert and re-allege their responses to Paragraphs 1-189 as if restated verbatim herein.

50. Paragraphs 191 through 198 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 191 through 198, and therefore, deny same and demand strict proof thereof.

51. Responding to the allegations in Paragraph 199, These Defendants reassert and re-allege their responses to Paragraphs 1-198 as if restated verbatim herein.

52. Paragraphs 200 through 204 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 200 through 204, and therefore, deny same and demand strict proof thereof.

53. Responding to the allegations in Paragraph 205, These Defendants reassert and re-allege their responses to Paragraphs 1-204 as if restated verbatim herein.

54. Paragraphs 206 through 213 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to

the allegations in Paragraphs 206 through 213, and therefore, deny same and demand strict proof thereof.

55. Responding to the allegations in Paragraph 214, These Defendants reassert and re-allege their responses to Paragraphs 1-213 as if restated verbatim herein.

56. Paragraphs 215 through 221 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 215 through 221, and therefore, deny same and demand strict proof thereof.

57. Responding to the allegations in Paragraph 222, These Defendants reassert and re-allege their responses to Paragraphs 1-221 as if restated verbatim herein.

58. Paragraphs 223 through 229 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 223 through 229, and therefore, deny same and demand strict proof thereof.

59. Responding to the allegations in Paragraph 230, These Defendants reassert and re-allege their responses to Paragraphs 1-229 as if restated verbatim herein.

60. Paragraphs 231 through 236 contain allegations directed to parties other than These Defendants, such that These Defendants lack sufficient information to form a belief as to the allegations in Paragraphs 231 through 236, and therefore, deny same and demand strict proof thereof.

61. These Defendants deny the allegations in the Plaintiffs' prayer for relief.



**FURTHER RESPONDING AND  
AS A FIRST AFFIRMATIVE DEFENSE**  
(Acts of Third Parties)

62. Damages, if any, were the result of the acts or omissions of other parties named and un-named in this action, for which These Defendants bear no responsibility.

**FURTHER RESPONDING AND  
AS A SECOND AFFIRMATIVE DEFENSE**  
(Unclean Hands)

63. Plaintiffs' claims are barred, in whole or in part, by the doctrine of Unclean Hands.

**FURTHER RESPONDING AND  
AS A THIRD AFFIRMATIVE DEFENSE**  
(Comparative Negligence)

64. Plaintiffs' recovery should be barred, or, alternatively, reduced proportionality by Plaintiffs' own comparative negligence.

**FURTHER RESPONDING AND  
AS A FOURTH AFFIRMATIVE DEFENSE**  
(Failure to Mitigate)

65. Plaintiffs' recovery should be barred, or, alternatively, reduced proportionately by Plaintiffs' own failure to mitigate damages.

**FURTHER RESPONDING AND  
AS A FIFTH AFFIRMATIVE DEFENSE**  
(Intervening and Superseding Acts)

66. Plaintiffs' damages, if any, are the direct and proximate results of intervening and superseding acts of other parties not affiliated with These Defendants.

**FURTHER RESPONDING AND  
AS A SIXTH AFFIRMATIVE DEFENSE**  
(Lack of Proximate Cause)

67. Plaintiffs' damages, if any, are not the proximate result of any act or omission of

These Defendants.

**FURTHER RESPONDING AND  
AS A SEVENTH AFFIRMATIVE DEFENSE**  
(Rule 12(b)(6))

68. Plaintiffs fail to state facts sufficient to constitute a cause of action and, therefore, Plaintiffs' claims should be dismissed pursuant to Rule 12(b)(6), S.C.R. Civ. P.

**FURTHER RESPONDING AND  
AS AN EIGHTH AFFIRMATIVE DEFENSE**  
(Setoff)

69. These Defendants allege that recovery by Plaintiffs must be setoff or reduced, abated, or apportioned to the extent that any other parties' actions caused or contributed to Plaintiffs' damages.

**FURTHER RESPONDING AND  
AS A NINTH AFFIRMATIVE DEFENSE**  
(Statute of Limitations and Repose)

70. To the extent that Plaintiffs failed to comply with the applicable statute of limitations or statute of repose, Plaintiffs' claims are barred against These Defendants.

**FURTHER RESPONDING AND  
AS A TENTH AFFIRMATIVE DEFENSE**  
(Useful Life)

71. Plaintiffs' claims are barred as to any and all components of the subject property that have reached or exceeded their useful life expectancy.

**FURTHER RESPONDING AND  
AS A ELEVENTH AFFIRMATIVE DEFENSE**  
(Notice and Opportunity to Cure)

72. Failure to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §§ 40-59-810 to 40-59-860, bars or, alternatively, stays all claims against These Defendants.

**FURTHER RESPONDING AND  
AS A TWELFTH AFFIRMATIVE DEFENSE**  
(Waiver, Estoppel, Laches)

73. Plaintiffs' claims may be barred by the doctrines of Waiver, Estoppel, and/or Laches.

**FURTHER RESPONDING AND  
AS A THIRTEENTH AFFIRMATIVE DEFENSE**  
(Economic Loss)

74. Plaintiffs' claims against These Defendants are barred to the extent that such claims seek recovery in tort for purely economic loss.

**FURTHER RESPONDING AND  
AS A FOURTEENTH AFFIRMATIVE DEFENSE**  
(Punitive Damages)

75. Punitive damages are inappropriate in this case because These Defendants did not engage in any malicious, reckless, wrongful, or intentional conduct upon which an award of punitive damages could be based. Furthermore, because claims against These Defendants for punitive damages are improper, an award of punitive damages would violate the Constitutions of the United States and the State of South Carolina.

**FURTHER RESPONDING AND  
AS A FIFTEENTH AFFIRMATIVE DEFENSE**  
(Reservation and Non-Waiver)

76. These Defendants reserve and specifically do not waive any and all such affirmative defenses which may become apparent through the course of discovery.

**FURTHER RESPONDING AND  
AS A SIXTEENTH AFFIRMATIVE DEFENSE**  
(Failure to Maintain)

77. Plaintiffs were obligated to maintain the structure(s) against normal wear, tear and deterioration due to age and the elements and Plaintiffs may have failed to do so and such is

the direct and proximate cause of the damages suffered by Plaintiffs and such constitutes a complete defense to the claims of Plaintiffs.

**FURTHER RESPONDING AND**  
**AS A SEVENTEENTH AFFIRMATIVE DEFENSE**  
**(No Joint and Several Liability)**

78. There was no concert of action between These Defendants and any other Defendant and, therefore, These Defendants are not a joint tortfeasor and These Defendants may not be held jointly and severally liable with other Defendants pursuant to S.C. Code Ann. §15-38-15, as amended, and all other applicable common law and statutory provisions.

**FURTHER RESPONDING AND**  
**AS AN EIGHTEENTH AFFIRMATIVE DEFENSE**  
**(Negligence of Others)**

79. Any alleged injury Plaintiffs sustained may have been due to and proximately caused by the sole and intervening negligence, recklessness, willfulness and/or wantonness of some persons or entities other than These Defendants over which These Defendants had no control and which occurred prior or subsequent to any acts or omissions by These Defendants, if any (which is expressly denied), and, therefore, the sole and intervening acts of other third-parties may be the real and proximate cause of any alleged injuries to the Plaintiffs, therefore, Plaintiffs may not recover from These Defendants.

**FURTHER RESPONDING AND**  
**AS A NINETEENTH AFFIRMATIVE DEFENSE**  
**(Rule 8(c) SCRPC)**

80. To the extent applicable, These Defendants raise all affirmative defenses required by Rule 8(c). SCRPC.

**FURTHER RESPONDING AND**  
**AS A TWENTIETH AFFIRMATIVE DEFENSE**  
**(No Standing)**

81. Plaintiffs may lack proper standing such as to allow them to bring the claims set forth in their Complaint.

**FURTHER RESPONDING AND**  
**AS A TWENTY-FIRST AFFIRMATIVE DEFENSE**  
**(Right to Amend)**

82. These Defendants have not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiffs' allegations. These Defendants intend to act as best they can to inform themselves of the pertinent facts and prevailing circumstances surrounding any alleged injury or damage to Plaintiffs as alleged in the Complaint and give notice of their intent to assert any further affirmative defenses that their investigation gathering process may indicate as supported by fact and law. These Defendants reserve the right to amend this Answer and assert such additional defenses.

**FURTHER ANSWERING AND BY WAY OF CROSS-CLAIMS AGAINST  
DEFENDANTS LINDEN CONSTRUCTION OF SOUTH CAROLINA, INC., ATRIUM  
BUILDERS, INC., JAMES JONES D/B/A QUALITY STUCCO, ROBERT BESSINGER  
D/B/A BLUEPRINT CONSTRUCTION, COASTAL ROOFING COMPANY, INC.,  
HELM CONSTRUCTION OF SOUTH CAROLINA, LLC A/K/A HELM  
CONSTRUCTION LTD CO., RUSSELL HUNTLEY d/b/a CALIBER CONSTRUCTION  
SERVICE, CALIBER, LLC d/b/a CALIBER CONSTRUCTION SERVICES,  
ORELLANA PAINTING, LLC, JR BROADWAY COMPANY, LLC, AND JASON R.  
BROADWAY, P.E.**

83. Defendants Ecovest hereby incorporate by reference the answers, defenses and allegations contained in the foregoing paragraphs as if fully set forth herein.

84. Defendant Ecovest S&S purchased thirty-one (31) units in the condominium complex known as Shelmore Village in Mount Pleasant, South Carolina on December 27, 2012

with the intent to upfit the units and prepare them for sale. The units required varying degrees of repair and restoration prior to being sold. Ecovest S&S ultimately sold each unit purchased after the necessary upfit was completed.

85. Upon information and belief, Defendant Linden Construction of South Carolina, Inc. ("Linden") is a corporation organized and existing under the laws of the State of South Carolina, and at all times referenced herein, was doing business in Charleston County, South Carolina. Linden acted as the general contractor for certain repairs, renovation and construction performed for various units at Shelmore Village.

86. Upon information and belief, Atrium Builders, Inc. ("Atrium") is a corporation organized and existing under the laws of the State of South Carolina, and at all times referenced herein, was doing business in Charleston County, South Carolina. Atrium provided certain construction-related services pursuant to repairs and renovations performed for various units at Shelmore Village.

87. Upon information and belief, James Jones d/b/a Quality Stucco ("Quality Stucco") is a citizen and resident of South Carolina who was doing business as Quality Stucco in Charleston County at times relevant hereto. Upon information and belief, Quality Stucco provided certain construction-related services pursuant to repairs and renovations performed for various units at Shelmore Village.

88. Upon information and belief, Robert Bessinger d/b/a Blueprint Construction ("Blueprint Construction") is a citizen and resident of South Carolina who was doing business as Blueprint Construction in Charleston County at times relevant hereto. Upon information and

belief, Blueprint Construction provided certain construction-related services pursuant to repairs and renovations performed for various units at Shelmore Village.

89. Upon information and belief, Coastal Roofing Company, Inc. ("Coastal Roofing") is a corporation organized and existing pursuant to the laws of South Carolina who was doing business in Charleston County at times relevant hereto. Upon information and belief, Coastal Roofing provided certain construction-related services pursuant to repairs and renovations performed for various units at Shelmore Village.

90. Upon information and belief, Helm Construction of South Carolina, LLC a/k/a Helm Construction, Ltd Co. ("Helm") is a limited liability company organized and existing pursuant to the laws of South Carolina who was doing business in Charleston County at times relevant hereto. Upon information and belief, Helm provided certain construction-related services pursuant to repairs and renovations performed for various units at Shelmore Village.

91. Upon information and belief, Russell Huntley d/b/a Caliber Construction Service ("Huntley") is a citizen and resident of North Carolina who was doing business in Charleston County at times relevant hereto. Upon information and belief, Huntley provided certain construction-related services pursuant to repairs and renovations performed for various units at Shelmore Village.

92. Upon information and belief, Caliber, LLC d/b/a Caliber Construction Services ("Caliber") is a limited liability company organized and existing pursuant to the laws of North Carolina who was doing business in Charleston County at times relevant hereto. Upon information and belief, Caliber provided certain construction-related services pursuant to repairs and renovations performed for various units at Shelmore Village.

93. Upon information and belief, Orellana Painting, LLC (“Orellana”) is a limited liability company organized and existing pursuant to the laws of South Carolina who was doing business in Charleston County at times relevant hereto. Upon information and belief, Orellana provided certain construction-related services pursuant to repairs and renovations performed for various units at Shelmore Village.

94. Upon information and belief, Quality Stucco, Blueprint Construction, Coastal Roofing, Helm, Huntley, Caliber and Orellana provided construction-related services to units at Shelmore Village as subcontractors to Linden and/or Atrium and are collectively referred to herein as the “Subcontractors.”

95. Linden and Atrium, and upon information and belief the Subcontractors, provided certain construction-related services to units owned by Ecovest S&S, including the unit which was sold to and is now owned by Neil and Judith Rabin, located at 712 South Shelmore Boulevard, Unit 118, Suites 105 and 205 (“Rabin’s Unit”).

96. Upon information and belief, JR Broadway Company, LLC is a limited liability company organized and existing under the laws of the State of South Carolina, and at all times referenced herein, was doing business in Charleston County, South Carolina.

97. Upon information and belief, Jason R. Broadway, P.E. is a citizen and resident of Charleston County and is a licensed engineer in South Carolina. JR Broadway Company, LLC and Jason R. Broadway, P.E. (collectively, “Broadway”) provided certain professional services pursuant to repairs and renovations performed for various units at Shelmore Village.

98. Upon information and belief, this Court has jurisdiction over the subject matter of this action and the parties to this action.



99. Plaintiffs have sued Defendants Ecovest for damages which allegedly arise from certain construction deficiencies which allegedly exist at Shelmore Village.

**FOR A FIRST CAUSE OF ACTION BY DEFENDANT ECOVEST S&S  
(Indemnity as to Linden, Atrium and Subcontractors)**

100. Defendants Ecovest hereby incorporate by reference the answers, defenses and allegations contained in the foregoing paragraphs as if fully set forth herein.

101. Upon information and belief, the Rabin's Unit suffered from instances of water intrusion due to construction-related deficiencies. These issues required certain repairs and remediation to Building 4 of Shelmore Village and forced the Rabins to spend time outside of their unit while repairs were being made.

102. Defendant Ecovest S&S paid for certain repairs to the Rabin's Unit and Building 4, and was forced to reimburse the Rabins for expenses and costs incurred pursuant to the construction-related issues with their unit.

103. Linden, Atrium and the Subcontractors provided certain construction-related services to the Rabin's Unit and Building 4 while it was owned by Ecovest S&S.

104. Ecovest S&S' actions in no way contributed to the construction-related issues at Building 4 or the Rabin's Unit.

105. Ecovest S&S suffered damages as a result of the repairs required at the Rabin's Unit and Building 4. Upon information and belief, these damages are due in whole or in part to the actions of Linden and/or Atrium and/or the Subcontractors, or other parties or individuals under the control of Linden and/or Atrium.

106. Ecovest S&S is entitled to indemnity from Linden and Atrium and the Subcontractors for the costs and expenses incurred in repairing the Rabin's Unit and Building 4, and other related actual, consequential and special damages.

**FOR A SECOND CAUSE OF ACTION BY ECOVEST S&S  
(Negligence as to Linden, Atrium, the Subcontractors, and Broadway)**

107. Defendants Ecovest hereby incorporate by reference the answers, defenses and allegations contained in the foregoing paragraphs as if fully set forth herein.

108. Defendants Linden, Atrium, the Subcontractors, and Broadway agreed to provide certain construction-related labor, materials, equipment, and/or services to the construction of Shelmore Village.

109. Defendants Linden, Atrium, the Subcontractors, and Broadway had a duty to properly, adequately and completely perform their scope of work, provide certain services and/or provide certain materials in compliance with the contract, plans and specifications, applicable industry standards and/or building codes, and/or applicable standards of care.

110. If the allegations within the Plaintiffs' Second Amended Complaint are proven true, which have been denied by Defendants Ecovest, Defendants Linden, Atrium, the Subcontractors, and Broadway breached this duty and were negligent, grossly negligent, wanton, reckless, and/or willful in failing to provide the services and/or materials in compliance with the contract, plans and specifications, applicable industry standards and/or building codes, and/or applicable standards of care.

111. As a direct and proximate result of the alleged negligence of Defendants Linden, Atrium, the Subcontractors, and Broadway, Defendant Ecovest S&S has been exposed to a potential judgment, and has suffered actual damages in the cost of defending this lawsuit. If the allegations within the Plaintiffs' Second Amended Complaint are proven true, Defendant Ecovest S&S is informed and believes that they are entitled to judgment against Defendants

Linden, Atrium, the Subcontractors, and Broadway for any amount which Defendant Ecovest S&S may be required to pay to the Plaintiffs herein as a result of the negligence of Defendants Linden, Atrium, the Subcontractors, and Broadway and for other actual, consequential and special damages.

**FOR A THIRD CAUSE OF ACTION BY ECOVEST S&S  
(Breach of Implied Warranty of Workmanlike Service as to Linden, Atrium, and the  
Subcontractors)**

112. Defendants Ecovest hereby incorporate by reference the answers, defenses and allegations contained in the foregoing paragraphs as if fully set forth herein.

113. Defendants Linden, Atrium, and the Subcontractors impliedly and/or expressly warranted to purchasers and subsequent purchasers that the labor, materials and/or services provided to the Shelmore Village project would be of proper quality, care, adequacy, suitability and workmanship.

114. If the allegations within the Plaintiffs' Second Amended Complaint are proven true, which have been denied by Defendants Ecovest, Defendants Linden, Atrium, and the Subcontractors breached express and/or implied warranties of workmanlike service and fitness and Defendant Ecovest S&S is entitled to a judgment against them for the costs and expenses incurred in defending this lawsuit and for other actual, consequential and special damages.

**FOR A FOURTH CAUSE OF ACTION BY ECOVEST S&S  
(Breach of Warranty as to Broadway)**

115. Defendants Ecovest hereby incorporate by reference the answers, defenses and allegations contained in the foregoing paragraphs as if fully set forth herein.

116. Defendants Broadway impliedly and/or expressly warranted that their plans, specifications, details, instructions, recommendations and other instruments of services would be in compliance with applicable building codes, regulations, statutes, industry standards.

117. If the allegations within the Plaintiffs' Second Amended Complaint are proven true, which have been denied by Defendants Ecovest, Defendants Broadway breached this warranty by failing to design the work at Shelmore Village to be free from defects and in compliance with the applicable building codes, regulations, statutes and industry standards, or otherwise failing to recommend and/or direct that the work be performed in a manner that complied with the applicable building codes, regulations, statutes and industry standards, and Defendant Ecovest S&S is entitled to a judgment against Defendants Broadway for the costs and expenses incurred in defending this lawsuit and for other actual, consequential and special damages.

**FOR A FIFTH CAUSE OF ACTION BY ECOVEST S&S  
(Breach of Implied Warranty of Habitability as to Linden, Atrium, and the  
Subcontractors)**

118. Defendants Ecovest hereby incorporate by reference the answers, defenses and allegations contained in the foregoing paragraphs as if fully set forth herein.

119. Defendants Linden, Atrium, and the Subcontractors impliedly and/or expressly warranted to purchasers and subsequent purchasers the units at Shelmore Village would be reasonably suitable for habitation and fitness for the intended use.

120. If the allegations within the Plaintiffs' Second Amended Complaint are proven true, which have been denied by Defendants Ecovest, Defendants Linden, Atrium, and the Subcontractors breached express and/or implied warranties of habitability and fitness for

intended use and Defendant Ecovest S&S is entitled to a judgment against them for the costs and expenses incurred in defending this lawsuit and for other actual, consequential and special damages.

**FOR A SIXTH CAUSE OF ACTION BY DEFENDANTS ECOVEST  
(Indemnity as to Linden, Atrium, the Subcontractors, and Broadway)**

121. Defendants Ecovest hereby incorporate by reference the answers, defenses and allegations contained in the foregoing paragraphs as if fully set forth herein.

122. If the Plaintiffs have been damaged as described in the Second Amended Complaint, which is denied, then that damage was the result of the negligence and/or breaches of warranties of Defendants Linden, Atrium, the Subcontractors, and Broadway.

123. If Defendants Ecovest S&S and Ecovest Development are found liable to Plaintiffs in any respect, Defendants Ecovest are entitled to indemnity, either in contract or equity, from Defendants Linden, Atrium, the Subcontractors, and Broadway for the costs and expenses in defending this lawsuit and their actual, consequential and special damages.

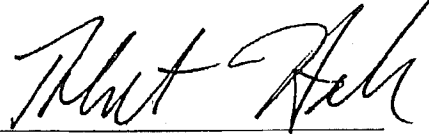
WHEREFORE, having fully responded to the allegations of the Plaintiffs' Second Amended Complaint, These Defendants pray that judgment be granted in their favor, costs of defending this action be cast upon the Plaintiffs, or alternatively, These Defendants pray for judgment as requested herein and for other and further relief as this court may deem just and proper.

[SIGNATURE BLOCK TO FOLLOW]

Respectfully Submitted,

CARLOCK, COPELAND & STAIR LLP

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Development, LLC and Ecovest Development, LLC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
MEETING STREET AT SHELMORE )  
PROPERTY OWNERS ASSOCIATION, )  
INC. D/B/A SHELMORE VILLAGE POA )  
AND JULIAN SMITH, INDIVIDUALLY )  
AND ON BEHALF OF ALL OTHERS )  
SIMILARLY SITUATED, )

Plaintiffs, )

vs. )

LINDEN CONSTRUCTION OF SOUTH )  
CAROLINA, INC., THE GUARANTEE )  
COMPANY OF NORTH AMERICA USA, )  
ATRIUM BUILDERS, INC., ECOVEST )  
S&S SHELMORE DEVELOPMENT, )  
LLC, ECOVEST DEVELOPMENT, LLC, )  
ECOVEST CHARLESTON, LLC, JAMES )  
JONES D/B/A QUALITY STUCCO, )  
ROBERT BESSINGER D/B/A )  
BLUEPRINT CONSTRUCTION, )  
COASTAL ROOFING COMPANY, INC., )  
HELM CONSTRUCTION OF SOUTH )  
CAROLINA, LLC A/K/A HELM )  
CONSTRUCTION LTD CO., RUSSELL )  
HUNTLEY D/B/A CALIBER )  
CONSTRUCTION SERVICE, CALIBER, )  
LLC D/B/A CALIBER CONSTRUCTION )  
SERVICES, ORELLANA PAINTING, )  
LLC, J R BROADWAY COMPANY, LLC, )  
JASON R. BROADWAY, P.E., MS )  
SHELMORE VILLAGE, LLC, MEETING )  
STREET BUILDERS, LLC, MEETING )  
STREET COMPANIES, LLC, WINDSOR )  
WINDOWS & DOORS, A WOODGRAIN )  
MILLWORK, INC. COMPANY, ELI, )  
INC., FINE BUILDERS, LLC, HOWE & )  
SIMPSON CONTRACTING, LLC A/K/A )  
HOWE & SIMPSON, LLC, )  
SOUTHCOAST EXTERIORS, INC., AND )  
MICHAEL TENNY D/B/A SYNCO )  
ENTERPRISES, )

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-10-7812

CERTIFICATE OF SERVICE

FILED  
2015 NOV 24 PM 3:51  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

Defendants. )  
)  
)

I hereby certify that I have this day served a copy of the within and foregoing *Defendants Ecovest S&S Shelmore Development, LLC and Ecovest Development, LLC Amended Answer to Plaintiffs' Second Amended Complaint and Cross-Claims* upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, and/or electronic mail addressed to counsel of record as follows:

Jesse Kirchner, Esq.  
Thurmond Kirchner & Timbes  
15 Middle Atlantic Wharf  
Charleston, SC 29401  
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*Counsel for Linden Construction of SC, Inc.*

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Greenville, SC 29603  
*Counsel for Linden Construction of SC, Inc.*

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*Counsel for The Guarantee Company of North America*

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Mary-Margaret F. Noland, Esq.  
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Charleston, SC 29401  
*Counsel for Windsor Windows & Doors, A Woodgrain Millwork, Inc. Company*

Shanna M. Stephens, Esq.  
Danielle B. Wegener, Esq.  
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Charleston, SC 29401  
*Counsel for Defendant James Jones d/b/a Quality Stucco and Defendant Helm Construction of South Carolina, LLC a/k/a Helm Construction Ltd Co.*

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Best Honeycut, P.A.  
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Charleston, SC 29422  
*Counsel for Meeting Street Builders, LLC, Meeting Street Companies, LLC, and MS Shelmore Village, LLC*



Mark S. Barrow, Esq.  
Christy E. Mahon, Esq.  
Post Office Box 12129  
Columbia, SC 29211  
*Counsel for Atrium Builders, Inc.*

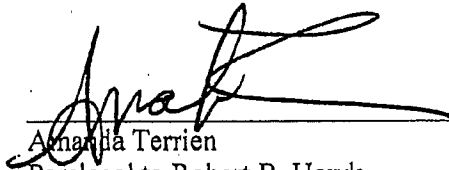
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*Counsel for Robert Bessinger d/b/a Blueprint  
Construction*

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Edwin J. Anglin, Esq.  
Jeff Ross Law, LLC  
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Mt. Pleasant, SC 29464  
*Counsel for ELI, Inc.*

K. Michael Barfield, Esq.  
D. Summers Clarke, II, Esq.  
Barnwell Whaley Patterson Helms, LLC  
Post Office Drawer H  
Charleston, SC 29402  
*Counsel for J.R. Broadway Co., LLC and  
Jason R. Broadway, PE*

John E. Rogers, II, Esq.  
The Ward Law Firm, P.A.  
P.O. Box 5663  
Spartanburg, SC 29304  
*Counsel for Southcoast Exteriors, Inc.*

This 23<sup>rd</sup> day of November, 2015.

  
Annalisa Terrien  
Paralegal to Robert B. Hawk

LAW OFFICES

**CARLOCK, COPELAND & STAIR, LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ROBERT B. HAWK

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E-MAIL ADDRESS  
rhawk@carlockcopeland.com

www.carlockcopeland.com

REPLY TO CHARLESTON  
OFFICE

FACSIMILE  
843-727-2995

November 23, 2015

Ms. Julie J. Armstrong, Clerk  
Circuit Court of Charleston County  
100 Broad Street, Suite 106  
Charleston, SC 29401

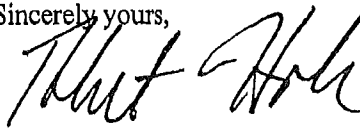
Re: Meeting Street at Shelmore Property Owners Association, Inc. d/b/a Shelmore  
Village POA, *et al.* v. Linden Construction of South Carolina, Inc., *et al.*  
Case No.: 2014-CP-10-7812  
CCS File No.: 4014-50366

Dear Ms. Armstrong:

Enclosed for filing, please find Defendants Ecovest S&S Shelmore Development, LLC and Ecovest Development, LLC Amended Answer to Plaintiffs' Second Amended Complaint and Cross-Claims regarding the above-referenced matter. By copy of this correspondence, I have served the same upon all counsel of record.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,



ROBERT B. HAWK

RBH/amt  
Enclosure  
cc: All Counsel of Record

# EXHIBIT D

JOINT VENTURE AGREEMENT

***Linden Construction of South Carolina, Inc and Atrium Builders, Inc***

THIS AGREEMENT ("Agreement") is made as of the 8th day of February, 2013, by and between Linden Construction of South Carolina, Inc, a South Carolina corporation (Linden Construction); and Atrium Builders, Inc, a South Carolina Corporation (Atrium Builders) (collectively, "Company A" and "Company B," are hereinafter referred to as the "Parties" or individually as a "Party").

**WITNESSETH:**

WHEREAS, the Parties desire to form a Joint venture (the "Group") for the purposes and upon the terms and conditions contained herein; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties do agree as follows:

1. **Formation.** The Parties hereby form a Joint Venture under the laws of the State of South Carolina which shall be named Linden Construction of South Carolina, Inc and Atrium Builders, Inc, Joint Venture Group.
2. **Principal Place of Business.** The principal place of business and mailing address of the group 245 Seven Farms Drive, Suite 230, Daniel Island, SC 29492
3. **Purposes.** The initial purpose of the Group shall be to negotiate and/or bid to secure the general construction contract from Shelmore POA, Inc, General Corporation 42 Broad St., Charleston, SC 29401 for the construction of Exterior Renovation located at Shelmore Village, Mt Pleasant, SC (the "Project").

Upon securing the general construction contract, the Parties agree to cooperate fully in the performance of said contract.

4. **Responsibilities of the Parties**
  - a. Jointly assemble the pricing necessary to create the bid proposal.
  - b. Jointly prepare the bid.
  - c. Project management shall be by Atrium Builders, Inc with Linden Construction dealing directly with the Owner.
  - d. Job superintendence shall be by Atrium Builders, Inc
  - e. Jointly prepare and issue subcontracts and purchase orders for all expenditures in excess of \$500.00.

- f. Project accounting shall be by Atrium Builders, Inc. with joint approval of all payments made.
  - g. Jointly create the Project schedule.
  - h. Jointly share equally in all earnings or losses upon Project completion.
  - i. Linden Construction and Atrium Builder to be reimbursed monthly for direct material and labor costs plus sales tax, payroll taxes and Insurance based upon jointly agreed to manpower levels and purchases.
  - j. Linden Construction and Atrium Builders to be reimbursed monthly for jointly agreed to payments made to suppliers and subcontractors
  - k. All Reimbursements to be funded by the Joint Southcoast Bank account in Linden Constructions name.
  - l. Funding for reimbursements to come from monthly payments from Shelmore POA, heirs and assigns (the "Owner") or pursuant to Paragraph 6(b) below. Funding from the Owner to be directly deposited to the Southcoast Bank account.
  - m. Parties may also be reimbursed for other costs and expenses as set forth in Paragraph 9 below.
5. Term. The term of the relationship shall commence on the date hereof and shall continue until 365 days after substantial completion of the project, unless earlier terminated and dissolved as hereinafter provided.
6. Capital Contributions.
- a. The Parties shall not be required to contribute any Initial capital to the Venture. Each Party shall be obligated and does hereby covenant and agree to pay incurred financial obligations in a timely fashion subject to reimbursement pursuant to the terms of this Agreement. Each Party's ownership interest in the profits or losses of the Group ("Group Interest") shall be 50%.
  - b. The Parties acknowledge that the Joint Venture may require funds (in addition to funds generated and levied from execution of the contract with Shelmore POA "OWNER") with which to operate the Project. The parties shall, by mutual agreement, contribute to the Project on a 50%-50% basis as may be necessary to retire obligations of the Group.

c. In the event that both Parties are unable to agree that such capital call or expenditure is appropriate, then the matter shall be resolved in the following manner (the "Informal Arbitration Procedure"): Each Party shall appoint an individual who is knowledgeable about the matter in dispute (each such individual shall be hereafter called the "Party's Expert"). The two individuals so appointed will choose a third individual who is also knowledgeable about the matter in dispute (such individual shall be hereafter called the "Neutral Expert"). Each Party shall submit to the three appointed individuals (the Party's Experts and the Neutral Expert shall be hereafter collectively called the "Experts") a written summary of its position concerning the matter in dispute (such written summary shall be hereinafter called a "Position Paper"). The Experts shall determine by majority vote which of the two Position Papers should control and is most consistent with the provisions of this Agreement. The Position Paper determined to control shall be binding on the Group and shall be implemented by the Group. Each Party must select its Party's Expert within five (5) days after the Dispute Date, which is the date on which notice is first given to the other that the capital call or expenditure is being challenged. If a Party fails to select its Expert within such time, the other Party shall be permitted to make such appointment in writing on behalf of the Party who has failed to appoint, provided such non-appointing Party is delivered a copy of such written appointment within five (5) business days after the appointment. The Neutral Expert must be selected within fifteen (15) days of the Dispute Date, but if for any reason such Neutral Expert is not selected within such time, then the Party requesting the expenditure shall apply to a court of competent jurisdiction praying for such court to make such appointment. If, with the reasonable opinion of counsel for the Party requesting such expenditure, such court will not make such appointment, then the Neutral Expert will be selected pursuant to the rules of the American Arbitration Association. Each Party must submit its Position Paper to the Experts within twenty-five (25) days of the Dispute Date. The Experts must choose between the Position Papers within thirty-five (35) days of the Dispute Date. The Party whose Position Paper is determined not to control shall bear the cost of all Experts.

If a Party advances funds on behalf of another Party and it is subsequently determined by the Experts or Expert that no contribution was necessary, the advancing Party shall be permitted to withdraw its contribution from the Group along with all sums advanced on behalf of the other Party, all without interest thereon.

- d. Unless the dispute resolution mechanism set forth in Paragraph 6(b) above is used, if a Party (the "Defaulting Party") fails to make any or all of its proportionate contributions when requested by the other Party (the "Due Date") and continues to fail to pay for a period of thirty (30) days after notice from the other Party that such contribution was not made by the Due Date, then the Defaulting Party shall be in default hereunder. In such event, the other Party (the "Non-defaulting Party") shall have the right, but not the obligation, to pay to the Group an amount equal to the contribution not made by the Defaulting Party, in which case such amount shall be treated as a loan from the Non defaulting Party to the Defaulting Party bearing interest at an annual rate equal to the Prime Rate of Southcoast Bank (as such prime rate is defined by such bank), plus two percent (2%), and thereafter all distributions of cash flow otherwise distributable from the Partnership to the Defaulting Partner shall be paid to the Non-defaulting Partner until such time as the principal of and interest on such loan is paid in full.

**7. Reserves; Allocations and Distributions.**

- a. The Parties shall have the right to accumulate the receipts of the Group as reserves for the purpose of meeting anticipated payments and expenditures.
- b. Except as provided in Section 8 hereof, the net income and net loss of the Group shall be allocated to Parties according to their respective Group interest, as initially established at 50% per Party or as adjusted in accordance with this Agreement.
- c. The net cash flow of the Group remaining after the establishment of reserves by the Parties shall be distributed at least annually and more often if the Parties so determine. All distributions shall be made to Parties according to their respective Group interest on the record date of the distribution.
- d. In the event the Owner's lending institution requires a "Performance and Payment" bond (it is recognized that Linden Construction will then assume an unequal portion of the liability). Should a "Payment and Performance Bond" be required, the first \$5,000.00 of net cash flow shall be paid to Linden Construction and the remaining cash flow split between Linden Construction and Atrium Builders on a 50-50 basis per paragraph 7(c) above.

8. Distributions on Dissolution.

Upon the dissolution of the Group, its assets shall be distributed according to the following priorities:

(First) all of the Group's debts and liabilities to persons other than the Parties shall be paid and discharged;

(Next) all of the Group's debts and liabilities to the Parties shall be paid and discharged;

(Next) the assets of the Group (including cash) remaining after satisfaction of all debts and liabilities of the Group as provided in paragraphs (a) and (b) hereof, shall be distributed to Parties according to the positive account balance at the time of distribution.

9. Costs and Expenses.

All costs and expenses incurred in connection with the construction, operation and management of the Project (including costs and expenses of printing, maps, plats, surveys, studies and Allowable Travel Expenses) or in connection with any other undertaking of the Group, whether arising either prior or subsequent to the date hereof, shall be initially borne by the Party incurring such cost and expense with full reimbursement being made to such Party by the Group within thirty (30) days after (1) the cost or expense is incurred or (2) the Group has obtained and consummated the closing of the construction contract for the Project; whichever is later. Notwithstanding the foregoing, each Party shall bear the cost and expense attributable to its participation in the Group, including salaries, Non-Allowable expense, office expenses and other charges attributable to its overhead. As used herein, the term "Allowable Travel Expenses" shall mean all properly substantiated and reasonable expenses incurred by a Party, an employee or independent contractor of a Party or party related to a Party (up to an aggregate amount of \$5,000) for lodging, accommodations (but not meals), airplane fares and/or other air transportation costs, rental cars (other than personal vehicles) and other transportation; provided, however, that all such expenses are incurred in connection with the construction of the Project. The term "Non-Allowable Travel Expenses" shall mean all travel expenses other than Allowable Travel Expenses. Home office expenses of the Parties shall not be considered costs of the project as these expenses are a part of the estimated markup. Cost of project management is part of the estimated markup and not reimbursable.

10. Liabilities of the Group.

Subject to the Provisions for Indemnification as provided in Section 18 of this Agreement, all liabilities of the Group of every kind and nature and in the order of priority as set forth in Paragraph 8 above, whether contractual or non-contractual, shall first be satisfied out of the assets of the Group (including the proceeds of any liability insurance which the Group may recover therefor), and if and to the extent that such assets shall not be sufficient to satisfy any such liability and the satisfaction of such liability shall by its terms, if any, not be limited to the assets of the Group, each Party shall be responsible, including the making of any payments in respect thereto, for its prorated share of all such liabilities in accordance with each Party's respective Group interest at the time each such liability was incurred.



11. Other Agreements in Connection with Project. Each Party acknowledges and agrees that upon submittal of the construction proposal or bid to Shelmore POA, and acceptance thereof by Shelmore POA, Linden Construction will enter into a contract with Shelmore POA in accordance with the submitted bid.
12. Insurance. The terms of each Party's insurance policies shall remain in effect for this Project with the costs of insurance being reimbursed for direct labor costs at a rate of 35% of direct labor. On or before the date of the execution of the construction contract, each Party shall furnish to the other certificates of insurance for all insurance coverages reasonably necessary for the Project.
13. Other Activities No Conflict. Each Party shall have the right to carry on and engage in other business ventures and activities, and neither Party shall be liable to the Group on charges of usurpation of Group opportunity, conflicts of interest, self-dealing or the like as a result of any such activities; provided, however, that neither Party shall participate in any other construction activity at the Project site without the express written permission of the other Party.
14. Bank Accounts. The financial account of the Group shall be maintained by the Group in a checking account with Southcoast Bank. Any funds maintained in such accounts may be withdrawn upon the signatures of Brandon Linden and Bill Beauchene.
15. Group Year; Books of the Group. Unless otherwise agreed in writing by the Parties and permitted under the Code, the Group shall maintain a calendar year and shall use the accrual method for purposes of income tax and accounting. The books of the Group shall be kept and maintained during the period prior to completion of construction at 919 West Richardson Avenue, Summerville, SC 29483 and shall be open to inspection at all reasonable times. Copies of said books will be provided to either Party upon request. Said books shall be audited at least annually by an independent certified public accountant satisfactory to the Parties unless otherwise determined by both Parties.
16. Authorized Group Representatives. Linden Construction hereby appoints Brandon Linden, President and Atrium Builders does hereby appoint Bill Beauchene, President, as their duly authorized representatives to bind their companies and to act in their respective interests with respect to the business of the Group. The Parties may from time to time appoint one or more different or additional such representatives and shall endeavor to communicate and deal with such designated representatives in the conduct of the Group's business so as to minimize the involvement of unnecessary officers or employees of the Parties. As between the Parties, any notice or other document required or permitted under the terms of this Group Agreement shall be effective if signed on behalf of a Party by at least one of its then acting designated representatives.

17. Transfer, Assignment and Encumbrance of Group Interest.

- a. Neither Party shall transfer or assign or mortgage, pledge or otherwise encumber its interest in the Group.

18. Indemnification.

- a. Each Party shall indemnify the other Party, its shareholders, officers, directors, partners and employees, and the Group and save and hold each of them harmless from, against, for and in respect of any and all damages, losses, obligations, liabilities, claims, deficiencies, costs and expenses, including, without limitation, reasonable attorneys' fees and other costs and expenses incident to any suit, action, investigation, claim or proceeding suffered, sustained, incurred or required to be paid by such other Party, its shareholders, officers, directors, partners and employees, or the Group by reason of the failure of such Party to materially observe or perform its covenants and agreements set forth in this Agreement.
- b. Upon receipt of notice of any suit, action, investigation, claim or proceeding for which indemnification shall be required to an indemnified Party or shareholder, officer, director, partner or employee, in accordance herewith the indemnifying Party promptly will defend, contest or otherwise protect against any such suit, action, investigation, claim or proceeding at its own cost and expense. The indemnified Party or shareholder, officer, director, partner or employee may, but shall not be obligated to, participate at its own expense in a defense thereof and of any related action against the Group by counsel of its own choosing, but the indemnifying Party shall be entitled to control the defense unless the indemnified Party or shareholder, officer, director, partner or employee has relieved the indemnifying Party from liability with respect to the particular matter. In the event the indemnifying Party fails to timely defend, contest or otherwise protect against any such suit, action, investigation, claim or proceeding, the indemnified Party or shareholder, officer, director, partner or employee may, but will not be obligated to, defend, contest or otherwise protect against the same, and make any compromise or settlement thereof and recover the entire costs thereof from the indemnifying Party, including reasonable attorneys' fees, disbursements and all amounts paid as a result of such suit, action, investigation, claim or proceeding or the compromise or settlement thereof.

19. Default.

- a. With respect to any one Party, if any of the following events has occurred and is continuing, such Party shall be deemed to be in default under the terms of this Agreement:
  - i. A Party shall withdraw or take action to withdraw from the Group, otherwise than in accordance with this Agreement, without the prior written consent of the other Party;
  - ii. Except for a default pursuant to Paragraph 6, a Party shall fail to fulfill any of its other obligations under the terms of this Agreement within thirty (30) days after receipt of notice of such failure to perform from the Non-defaulting Party;
  - iii. There shall have occurred a dissolution of the Group under the laws of the State of South Carolina in contravention of this Agreement as a result of any action or failure to act on the part of a Party;
  - iv. The filing by a Party of a voluntary petition in bankruptcy or adjudication as a bankrupt, or insolvent, or the filing by such Party of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal or state law or regulation relating to bankruptcy, insolvency or other relief for debtors; or such Party's seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of such Party, or the making of any general assignment for the benefit of creditors or the admission in writing of such Party's inability to pay its debts generally as they become due; or
  - v. The entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against a Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof; or the appointment of any trustee, receiver or liquidator of such Party without the consent or acquiescence of such Party which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);
  - vi. The occurrence of any material default or event of default under the terms of any debt, or security interest under which a Party is a borrower or debtor and under which any secured party or lender has recourse against such Party for the payment of any deficiency judgment and the occurrence of such event would reasonably be expected to have a material and adverse effect on the Project or the Property;

- vii. Any creditor of a Party shall seek collateral or security for any previously unsecured indebtedness and such action would reasonably be expected to have a material and adverse effect on the Project or the Property; or
  - viii. A Party shall cease to exist (whether as a result of dissolution under applicable law or otherwise), under the laws of the respective State of such Party's formation.
- b. In the event that either Party defaults under this Agreement as provided in Section 19(a) above, the non-defaulting Party shall cause written notice of such default to be given to the defaulting Party. If such default shall continue for a period of ten (10) days after the giving of such notice, the defaulting Party does hereby grant to the non-defaulting Party the irrevocable right to purchase the entire interest of the defaulting Party in the Group for a purchase price equal to (i) seventy-five percent (75%) multiplied times the Value of the Defaulting Party's Group Interest and less (ii) all amounts owed by the defaulting Party to the non-defaulting Party. The Parties agree that the foregoing reduction from Value shall be deemed liquidated damages and not a penalty. The non-defaulting Party shall exercise its option by delivering written notice to the defaulting Party and therein shall specify the time of closing, which shall not be more than sixty (60) days following the date the purchase price is determined. The closing shall take place at the office of the non-defaulting Party.
- c. Upon the occurrence of any default hereunder and the continuance of such default for a period of ten (10) days after the giving of written notice of such default by the Non-defaulting Party to the Defaulting Party, the Non-defaulting Party shall have the right, but not the obligation, to terminate this Agreement with the Defaulting Party. Such right to termination shall continue so long as any default is continuing under the terms of this Agreement, but until the Defaulting Party receives notice from the Non-defaulting Party of the Non-defaulting Party's intent to terminate such Agreements, its obligations and duties thereunder shall continue.
- d. Time is of the essence in the performance of this Agreement. Immediately upon the occurrence of any default as set forth above, the Non-defaulting Party shall have the right to take such steps as shall be reasonably necessary to protect the rights of such Party or the rights or property of the Group and upon taking any such action shall be entitled to contribution and indemnification by the Defaulting Party.

**20. Dissolution.**

- a. The Group shall be dissolved upon:
  - i. An election to dissolve the Group made in writing by both Parties;
  - ii. The distribution of the net proceeds therefrom.
  - iii. The occurrence of any event which makes it unlawful for the business of the Group to be carried on or for the Parties to carry it on in the Group; or
  - iv. Any other act or occurrence which causes a dissolution under the laws of the State of South Carolina.
  
- b. If a dissolution occurs as a result of the occurrence of an event as described in subsection 20(a)(i), (ii) or (iii) above, the Group shall wind up the affairs of the Group in accordance with the applicable laws or the State of South Carolina. If a dissolution of the Group shall occur as a result of the occurrence of an event as described in subsection 20(a)(iv) above, and if no default shall have occurred under this Agreement, the Parties may elect either to reform a Group or other entity to operate the Project or to wind up the affairs of the Group.

**21. Tax Elections.** All incurred sales taxes, etc., will be paid by the Group. Each Party shall be responsible for payment of income taxes for incomes earned from the Group by each Party. All Parties agree that at the request of either Party, if allowed under the existing IRS Code, the Group may make an election under §761 to be treated as an entity under such §761 rather than a partnership for tax purposes.

**22. Notices.** The address of each Party for all purposes shall be the address set forth on the first page of this Agreement or such other address of which the other Party has received written notice. Any notice, demand or request required or permitted to be given or made hereunder shall be in writing or when sent by certified or registered mail, return receipt requested, to such Party at such address and shall be deemed delivered three (3) business days after deposit with the US Postal Service.

**23. Titles and Captions.** All articles or section titles or captions in this Agreement are for convenience only; they shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

**24. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of South Carolina.

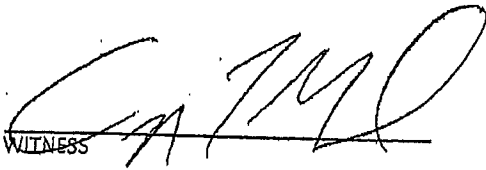
**25. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, but any assignment of interest hereunder shall be governed by and subject to the provisions of Section 17 hereof.

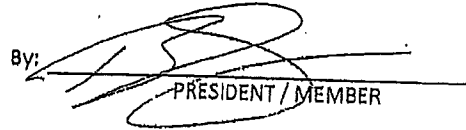
26. Entire Agreement. This Agreement contains the entire agreement between the parties hereto relative to the subject hereof and no variations, modification or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

27. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

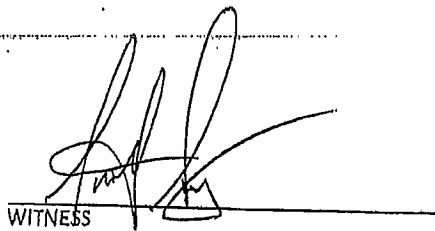
Linden Construction of South Carolina, Inc  
A SOUTH CAROLINA CORPORATION

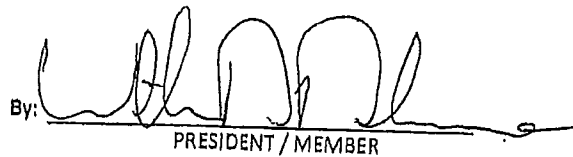
  
WITNESS

By:   
PRESIDENT / MEMBER

WITNESS

Atrium Builders, Inc  
A SOUTH CAROLINA CORPORATION

  
WITNESS

By:   
PRESIDENT / MEMBER

WITNESS

# LINDEN construction

## PROJECT STRUCTURE SUMMARY

PROJECT INFORMATION	
Project Name	SHELMORE VILLAGE EXTERIOR REPAIRS
Solicitation #	N/A
Location (city, state)	MT, PLEASANT, SC
Approximate Size (SF, stories, etc.)	9 BUILDINGS
Estimated Total Contract (\$)	\$801,500.00
Set-Aside Type (if applicable)	N/A
Brief Description	N/A
Site Visit Date	N/A
Proposal Due Date	N/A
Prime	LINDEN CONSTRUCTION
Teaming Partner	ATRIUM BUILDERS

DIVISION OF WORK		
ITEM	Prime	Teaming Partner
<b>PROPOSAL PHASE RESPONSIBILITIES</b>		
1. Estimate		
2. Bid Bond	X	X
3. Technical Proposal	X	
4. Production	X	X
5. Delivery	X	X
<b>DESIGN PHASE RESPONSIBILITIES (enter firm names in contract-holder's column)</b>		
1. Architect	N/A	N/A
2. Structural Engineer	N/A	N/A
3. MEP Engineer	N/A	N/A
4. Specialties (list)	N/A	N/A
a.		
b.		
c.		
<b>CONSTRUCTION PHASE RESPONSIBILITIES (check responsible party's column)</b>		
1. Program Manager	X	X
2. Project Manager	X	X
3. Program Safety Manager		X
4. Program QC Manager		X
5. Contract Administration/Project Accounting		X
6. Superintendent		X
7. Site Safety & Health Officer		X
8. On-Site QC Manager		X
9. Project Coordinator		X
10. Jobsite Office Expenses	X	X
11. Performance & Payment Bonds	X	
12. Others (list):	N/A	N/A
a.		
b.		

# LINDEN construction

## PROJECT STRUCTURE SUMMARY

DIVISION OF WORK		
ITEM	Prime	Teaming Partner
<b>PROJECT FINANCIAL STRUCTURE</b>		
1. JOB COST: Each Party will apply the following job cost elements to the project contract amount, for costs directly supporting the project:		
a. Subcontractors	X	X
b. Materials incorporated into the Work	X	X
c. Equipment used in Work (market rental value)	X	X
d. Jobsite Office Expenses	X	X
e. Project Labor for labor categories listed above (enter fringe loading % rate at right)		38%
f. Miscellaneous Project Expenses – travel, sustenance and consumables directly related to the work		SUPER TRUCK
g. Insurance (enter rate at right as a % or \$10,000 of contract)	N/A	N/A
2. OVERHEAD: Each Party will apply the following overhead cost elements to the project contract amount, for costs directly supporting the project:		
a. Home Office Overhead (enter OH % rate at right)	0	0
3. MARGIN: Project Margin will be derived by subtracting agreed JOB COST and OVERHEAD elements from the project contract amount. The remainder (PROJECT MARGIN) will be split according to the following percentages (enter %s at right, totaling 100%):		
	50	50
4. BUY OUT SAVINGS: Savings in Job Cost Items realized after the contract is awarded will be split according to the following percentages (enter %s at right, totaling 100%):		
	50	50

This Project Structure Summary is hereby made part of the Teaming Agreement, dated 2/08/13, for the Project named above.

Linden Construction:

By: BRANDON LINDEN

Signed: 

Title: PRESIDENT

Atrium Builders:

By: BILL BENSCHANG

Signed: 

Title: PRESIDENT



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Slew of Construction Companies Hit with Insurance Policy Class Action](#)

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