



**CITY OF CHANDLER
JOB ORDER PROJECT AGREEMENT**

FIRE STATION WELL SITE IMPROVEMENTS

Project No. WA1521.403

Council Date: November 4, 2021

Item No.

This JOB ORDER PROJECT AGREEMENT ("Job Order") is made this ____ day of _____ 2021 ("Effective Date"), by and between the City of Chandler, an Arizona municipal corporation, ("City") and **Foresite Design & Construction, Inc.**, an Arizona corporation, ("JOC Contractor") and is entered into pursuant to Job Order Master Agreement No. JOC1905.401 ("JOC Master Agreement"). City and JOC Contractor may be referred to individually as "Party" or collectively as "Parties").

City and JOC Contractor, in consideration of the mutual covenants herein set forth, agree as follows:

RECITALS

A. On or about January 17, 2020, the Parties entered into the JOC Master Agreement, which terms and conditions are made a part of and incorporated into this Job Order Project Agreement by this reference.

B. City proposes to engage JOC Contractor to provide job order construction services as more fully described in **Exhibit "A"**, which is attached to and made a part of this Job Order by this reference.

C. JOC Contractor is ready, willing, and able to provide the services described in **Exhibit "A"** for the compensation and fees set forth and as described in **Exhibit "B"**, which is attached to and made a part of this Agreement by this reference.

ARTICLE 1. DESCRIPTION OF WORK

The Parties enter into this Job Order Project Agreement for the **Fire Station Well Site Improvements**, Project Number **WA1521.403**. The scope of work consists of well site improvements, all as more particularly set forth in **Exhibit "A"** attached hereto and incorporated herein by reference.

The JOC Contractor will not accept any change of scope, or change in contract provisions, unless issued in writing, as a contract amendment or change order and signed by the authorized signatories for each party.

Performance and Payment Bonds, as set forth in **Exhibit "C"** and **Exhibit "D"** respectively attached hereto and incorporated herein by reference, will be due prior to execution of each Job Order Project Agreement in the full amount of each Job Order.

At project completion, JOC Contractor must complete Contractor's Affidavit Regarding Settlement of Claims and Certificate of Completion, as set forth in **Exhibit "E"** and **Exhibit "F"** respectively attached hereto and incorporated herein by reference.

ARTICLE 2. PROJECT PRICE

City will pay JOC Contractor for completion of the Work in accordance with the JOC Master Agreement a fee not to exceed the Guaranteed Maximum Price of **\$805,267.10** Dollars determined and payable as set forth in JOC Master Agreement and **Exhibit "B"** attached hereto and made a part hereof by reference.

ARTICLE 3. CONTRACT TIME & SCHEDULE

JOC Contractor agrees to complete all Construction within **80** calendar days from the Notice to Proceed (NTP) Date.

ARTICLE 4. JOB ORDER CONTACTS

The following parties serve in the capacity below for this Job Order Project.

CITY:	Project Manager: Sandra Story	
	Phone:	480-782-3588
	Email:	sandra.story@chandleraz.gov
JOC CONTRACTOR:	Foresite Design & Construction, Inc.	
	1425 N. Mondel Drive	
	Gilbert, AZ 85233	
	JOC Contractor Representative: Scott Breeding	
	Phone:	480-820-1345
	Email:	scott.breeding@foresite-inc.com

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties have executed this Job Order as of the Effective Date.

"CITY"

CITY OF CHANDLER:

"JOC CONTRACTOR"

FORESITE DESIGN & CONSTRUCTION,
INC.:

MAYOR Date

Recommended By:

Andrew Goh, P.E.
CIP City Engineer

APPROVED AS TO FORM:

City Attorney By: _____

ATTEST:

City Clerk SEAL

ADDRESS FOR NOTICE
City of Chandler
P.O. Box 4008, Mail Stop 407
Chandler, AZ 85244-4008

Signature Date

W. SCOTT BREEDING
Print Name

V.P.
Title

SCOTT.BREEDING@FORESITE-INC.COM
Signer Email Address

ATTEST: If Corporation

W. SCOTT BREEDING
Secretary

ADDRESS FOR NOTICE

1425 N. MONROE DR.
GILBERT, AZ 85233

Phone: 480 920-1345 x11

Email: SCOTT.BREEDING@FORESITE-INC.COM

**EXHIBIT A
SCOPE OF WORK**

CHM

FORESITE
DESIGN & CONSTRUCTION
INCORPORATED

September 24, 2021

Via email: Sandy.story@chandleraz.gov

Ms. Sandy Story
City of Chandler
215 East Buffalo Street
Chandler, AZ 85225

RE: Fire Station Well Site Improvements
JOC Proposal

Dear Ms. Story,

ForeSite Design & Construction, Inc. is pleased to present our JOC proposal for the Fire Station Well Site Improvements project for the total sum of: **Eight hundred Five, Two hundred Sixty-seven and 10/100th dollars: \$ 805,267.10**

All work shall be in accordance with the following documents:

Plan Documents: (69 sheets) entitled: "Fire Station Well Site Improvements" – City Project No. WA1521.403 as prepared by Dibble, dated April, 2021.

Geotechnical Report: (45 Sheets) entitled: Geotechnical Study Chandler Fire Station No. 10 Well 5211 South McQueen Road Chandler Arizona" as prepared by Smith & Annala Engineering Co. dated January 18, 2018.

Specifications: (409 Sheets) entitled "Fire Station Well Site Improvements City Project No. WA1521.403" as prepared by Dibble, dated February 2021

Attached is an itemized breakdown of the proposal estimate to assist in the understanding of the project components. The anticipated schedule for this project is attached for your review, please note that generator is a long lead item and currently is around (22) weeks and keeps being extended. The lead time when the order is eventually placed in December may be even longer.

Construction schedule can be condensed further if all other scope of work is allowed to start early and the generator is installed after all work is completed. This would entail that the site may need to have temporary rental generator back up capabilities in the meantime.

In submitting this long lead material proposal, we agree:

1. To hold the proposal open for Thirty (30) days after the date of this proposal.
2. To accomplish the work in accordance with the JOC contract documents and the following clarifications, qualifications and exclusions listed below.

Clarifications, qualifications and exclusions:

1. ForeSite will be allowed to utilize the existing power and water on site during the construction activities for onsite power tools.

2. Work will be performed during normal business hours – Monday through Friday, 6:00 am to 3:00 pm daily, unless otherwise authorized.
3. Base estimate includes a 450 kW Diesel Generator.
4. On site vehicle driving surfaces are provided as stabilized ABC as per civil sheet ILO of Asphalt paving as noted on L1.0
5. Estimate assumes access to the site via the Fire Station Drive during placement of new concrete driveway.
6. Connecting pipes between settling chambers and well are provided as 12" maximum diameter as per supplier.
7. The following allowances are included in the proposal and any unused portion of the allowance will be returned to the City of Chandler:
 - Traffic control - \$1,000
 - Materials testing - \$8,000
 - Owner's contingency - \$60,000
 - Generator Redesign Contingency - \$5,500

Exclusions:

- Plan review and Building Permit fees
- Development fees & utility company charges
- Hazardous material testing or removal not under the jurisdiction of NESHAP scope
- Landscape Maintenance
- Hard dig
- Steel canopies that were to be constructed in phase 1
- New antennae, bases, and infrastructure
- Programming
- Reclaimed water pump station and infrastructure as shown on L1.0

Contact me by email or at 480-820-1345 ext. 30 with any questions or comments.

Sincerely,
ForeSite Design & Construction, Inc.

Edward M. Montoya
Senior Estimator

EXHIBIT B **FEE SCHEDULE**

FORESITE

DESIGN & CONSTRUCTION
INCORPORATED

September 24th, 2021 .

EXHIBIT "B"				
JOB ORDER COST PROPOSAL				
SUMMARY SHEET				
Negotiated Prices				
Price of Subcontractor(s)			\$	545,048.00
Price of Subconsultant(s)			\$	-
General Conditions			\$	30,497.10
Preconstruction Labor (if applicable)			\$	-
Construction Labor (if applicable)			\$	54,647.86
		SUBTOTAL (NEGOTIATED PRICES):	\$	630,192.96
Overhead and Profit (Coefficient per Job Order Master Agreement)				
		7.50%	\$	47,264.47
		TOTAL (NEGOTIATED PRICES + OVERHEAD & PROFIT):	\$	677,457.43
Insurance, Bonds, & Taxes				
Sales Tax Percentage (Current Tax Rate)		5.07%	\$	40,827.04
General Liability Insurance Percentage (Actual Cost per Job Order)			\$	9,010.18
Builder's Risk Insurance Percentage (Actual Cost per Job Order)			\$	3,775.57
Payment Bond (Actual Cost per Job Order)			\$	8,696.88
Performance Bond (Actual Cost per Job Order)			\$	-
		SUBTOTAL (INSURANCE, BONDS, & TAXES):	\$	62,309.67
		COMBINED TOTAL (TOTAL + INSURANCE, BONDS, & TAXES):	\$	739,767.10
City's Allowance			\$	65,500.00
		TOTAL JOB ORDER:	\$	805,267.10
<i>Per the Job Order Master Agreement - This Fee Table Includes all fees, costs, Insurance and bond premiums, allowances, construction contingency, and taxes of any type necessary to fully, properly and timely perform and construct the Work. Also per the Job Order Master Agreement - For any portion of the Work which, either through this Contract, Change Order or otherwise, is performed and paid for on a cost, or time and materials basis, the costs may be reimbursed to JOC Contractor and chargeable against the Contract Price will be determined as set forth in MAG 109.5.</i>				

EXHIBIT C

PERFORMANCE BOND

ARIZONA STATUTORY PERFORMANCE BOND
PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT: ForeSite Design & Construction, Inc.

(hereinafter "Principal"), and The Ohio Casualty Insurance Company (hereinafter "Surety"), a corporation organized and existing under the laws of the State of OH with its principal office in the City of Boston, MA, holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto City of Chandler (hereinafter "Obligee") in the amount of Eight Hundred Five Thousand Two Hundred (Dollars) (\$ 805,267.10), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 2021 for construction of **Fire Station Well Site Improvements, WA1521.403** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice of the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond will be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond may recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this 19th day of October, 2021

Reliable Risk Management, LLC
8655 E. Via de Ventura, G255
Scottsdale, AZ 85258
AGENT OF RECORD

ForeSite Design & Construction, Inc.
PRINCIPAL SEAL

By *[Signature]*

The Ohio Casualty Insurance Company
SURETY SEAL

By *[Signature]*
David Rybacki Attorney-in-Fact

City of Chandler Job Order Project Agreement
Public Works & Utilities Department, Capital Projects Division
Project Name: Fire Station Well Site Improvements
Project No.: WA1521.403
Rev. 3/2/21

EXHIBIT D

PAYMENT BOND

ARIZONA STATUTORY PAYMENT BOND
PURSUANT TO TITLES 28, 34, AND 41, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT: ForeSite Design & Construction, Inc.

(hereinafter "Principal"), as Principal, and The Ohio Casualty Insurance Company (hereinafter "Surety"), a corporation organized and existing under the laws of the State of OH with its principal office in the City of Boston, MA, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto City of Chandler (hereinafter "Obligee") in the amount of Eight Hundred Five Thousand Two Hundred (Dollars) (\$805,267.10) for the payment whereof, the Principal and Surety, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 2021 for construction of Fire Station Well Site Improvements, WA1521.403 which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 Arizona Revised Statutes, and all liabilities on this bond will be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this Contract.

The prevailing party in a suit on this bond may recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this 19th day of October, 2021

Reliable Risk Management, LLC
AGENT OF RECORD

8855 E. Via de Ventura, G255
Scottsdale, AZ 85258
AGENT ADDRESS

ForeSite Design & Construction, Inc.

PRINCIPAL

SEAL

By

The Ohio Casualty Insurance Company

SURETY

SEAL

By

David Rybacki Attorney-in-Fact



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8198074-884860

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Adam Beyer; David Rybecki; Jennifer R. Cooper; John D. Norbut; Roy Rose; Adam Craig Beyer

all of the city of Scottsdale state of AZ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 29th day of November, 2018.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

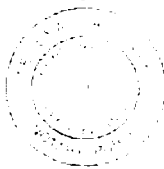
By:

David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 29th day of November, 2018 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By:

Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 19th day of October, 2021.



By:

Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-810-832-8240 between 9:00 am and 4:30 pm EST on any business day.

STATE OF ARIZONA

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

This is to certify, that this instrument is a true, full and correct copy of the original on file with the Department of Insurance and Financial Institutions of the State of Arizona and consists of 1 pages(s)

Hereunto set my hand and the official seal of this Department for the Director of Insurance and Financial Institutions this 24 February 2021.



Authorized Representative



301814

Certificate No.:



STATE OF ARIZONA

DEPARTMENT OF INSURANCE CERTIFICATE OF AUTHORITY

I, GERMAINE L. MARKS, Director of Insurance of the State of Arizona, do hereby certify that

THE OHIO CASUALTY INSURANCE COMPANY
Domiciled in New Hampshire
NAIC NO. 24074

has complied with the requirements of the Arizona Revised Statutes, Title 20 and is hereby authorized, subject to the provisions thereof and the Charter Powers of said Company, to transact the following kinds of insurance business:

**CASUALTY WITH WORKERS' COMPENSATION
DISABILITY
MARINE AND TRANSPORTATION
PROPERTY
SURETY
VEHICLE**

within the State of Arizona unless surrendered, suspended or revoked by the Director of Insurance.

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Director of Insurance at the City of Phoenix. The effective date of this certificate is October 1, 2012.


Germaine L. Marks
Director of Insurance

273960



301814

EXHIBIT E

CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS

_____, Arizona

Date _____

Project Name: **Fire Station Well Site Improvements**

Project No.: **WA1521.403**

To the City of Chandler, Arizona

Gentlemen:

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged.

The undersigned, for the consideration of \$_____, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project. The undersigned further agrees to indemnify and save harmless the City of Chandler against any and all liens, claims or liens, suits, actions, damages, charges and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performances and materials furnished for the performance of said installation.

Signed and dated at _____, this _____ day of _____ 20_____.

CONTRACTOR

By _____

STATE OF ARIZONA)
) SS
COUNTY OF MARICOPA)

The foregoing instrument was subscribed and sworn to before me this _____ day of _____ 20 _____.

Notary Public

My Commission Expires

EXHIBIT G

CERTIFICATE OF COMPLETION

Project: **Fire Station Well Site Improvements**

Project No.: **WA1521.403**

(TO BE COMPLETED BY CONTRACTOR)

I HEREBY CERTIFY THAT ALL GOODS AND/OR SERVICES REQUIRED BY CITY OF CHANDLER PROJECT NO. **WA1521.403** HAVE BEEN DELIVERED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS AND BID SPECIFICATIONS AND ALL ACTIVITIES REQUIRED BY THE CONTRACTOR UNDER THE CONTRACT HAVE BEEN COMPLETED AS OF _____.

(Date)

FIRM NAME: _____

PRINCIPAL: _____

(Name)

(Signature)

DATE: _____

(Title)

CERTIFIED BY ENGINEER/CONSULTANT (IF APPLICABLE):

(Signature)

DATE: _____

(Firm Name)

PROJECT ACCEPTED BY USER DEPARTMENT

(Signature)

DATE: _____

(Dept. /Div.)

_____ Date of Final Walk-Through

_____ Date As-Built Received

_____ City As-Built Number



FOREDES-02

CREYMORE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/19/2021

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

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER LeBaron & Carroll LLC 1350 E Southern Avenue Mesa, AZ 85204	CONTACT NAME: PHONE (A/C, No, Ext): (480) 834-9315		FAX (A/C, No): (480) 844-9866
	E-MAIL ADDRESS: landc@lebaroncarroll.com		
INSURED Foresite Design & Construction, Inc. 1425 N Mondel Drive Gilbert, AZ 85233	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Westfield Insurance Company		24112
	INSURER B : American Liberty Insurance Company		12200
	INSURER C :		
	INSURER D :		
	INSURER E :		
INSURER F :			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	X	X	TRA0679332	9/1/2021	9/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 EPL \$ 100,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	TRA0679332	9/1/2021	9/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0			TRA0679332	9/1/2021	9/1/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	WCN02005953	1/1/2021	1/1/2022	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Leased/Rented			TRA0679332	9/1/2021	9/1/2022	\$1,000 Ded 250,000

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

Project: Fire Station Well Site Improvements 5211 S. McQueen Road Chandler, Arizona 85249

City of Chandler, its officers, officials, agents, and employees are included as additional insured as defined by the general liability and auto liability as required by written contract per attached forms. Coverage afforded is primary and non-contributory per attached form. Waiver of subrogation applies for the general liability, auto liability, and workers compensation as required by written contract per attached forms. Umbrella follows form.

CERTIFICATE HOLDER

CANCELLATION

City of Chandler 215 E. Buffalo St. Chandler, AZ 85225	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
All persons or organizations when you have agreed in writing in a contract or agreement that such persons or organizations be added as an additional insured.	All Locations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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

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

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

However:

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

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

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

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

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

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

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

whichever is less.

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) And Description Of Covered Operations
All persons or organizations when you have agreed in writing in a contract or agreement that such persons or organizations be added as an additional insured.	All Locations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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

However:

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

contract or agreement to provide for such additional insured.

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

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

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

whichever is less.

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**COMMERCIAL GENERAL LIABILITY CONTRACTORS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

The coverage provided by this endorsement is summarized below and is intended to provide a general coverage description only. For the details effecting each coverage please refer to the terms and conditions in this endorsement.

- A. Expected or Intended Injury**
 - Reasonable force
- B. Liquor Liability Coverage Extension**
- C. Non-Owned Watercraft**
 - Increased to 60 feet
- D. Non-Owned Aircraft**
- E. Damage To Property - Borrowed Equipment**
- F. Damage To Premises Rented To You**
- G. Personal And Advertising Injury**
 - Contractual Personal and Advertising Injury
 - Exclusions
- H. Supplementary Payments**
 - Bail Bonds - \$2,500
 - Loss of Earnings - \$1,000
- I. Additional Insureds - Automatic Status**
 - State or Governmental Agency or Subdivision or Political Subdivision Controlling Interest
 - Managers or Lessors of Premises
 - Mortgagee, Assignee or Receiver
 - Owners or Other Interests From Whom Land Has Been Leased
 - Co-Owners of Insured Premises
 - Lessor of Leased Equipment
- J. Who Is An Insured broadened**
 - Joint Ventures / Partnership / Limited Liability Company
 - Health Care Professionals (Incidental Medical Malpractice)
 - Individual Owners of Building are Insured's
 - Newly Formed or Acquired Entities
- K. Knowledge and Notice of Occurrence**
- L. Other Insurance Condition Amended**
- M. Unintentional Failure To Disclose Hazards**
- N. Waiver of Transfer Of Rights Of Recovery Against Others To Us - Automatic Status**
- O. Liberalization**
- P. Definitions**
 - Bodily Injury redefined
 - Insured Contract redefined
 - Expanded Personal and Advertising Injury definition

A. EXPECTED OR INTENDED INJURY

Under **SECTION 1, COVERAGES, COVERAGE**

A. BODILY INJURY AND PROPERTY DAMAGE

exclusion **a.** is replaced with the following:

a. Expected Or Intended Injury

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

B. LIQUOR LIABILITY COVERAGE EXTENSION

SECTION 1, COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Item 2. Exclusions c. Liquor Liability is deleted.

C. NON-OWNED WATERCRAFT

Under **SECTION 1, COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Item 2. Exclusions g.2(a)** is replaced with the following:

- (a) Less than 60 feet long; and

D. NON-OWNED AIRCRAFT

Under **SECTION 1, COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Item 2. Exclusions g. Aircraft, Auto or Watercraft**, the following is added:

- (6) An aircraft you do not own provided that:
 - (a) The pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
 - (b) It is rented with a trained, paid crew; and
 - (c) It does not transport persons or cargo for a charge.

E. DAMAGE TO PROPERTY - BORROWED EQUIPMENT

Under **SECTION 1, COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Item 2. Exclusions j.** is deleted and replaced by the following:

j. Damage To Property:

- (1) Property you own, rent or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of any 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 real property that must be restored, replaced, or repaired because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to:

- (i) "property damage" to tools or equipment loaned to you if the tools or equipment are not being used to perform operations at the time of loss; or
- (ii) "property damage" (other than damage by fire) to premises rented to you or temporarily occupied to you with the permission of the owner or to the contents of premises rented to you for a period of seven (7) or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance.**

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were not occupied, rented or held for rental by you beyond one year from the date "your work" was completed.

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."

F. DAMAGE TO PREMISES RENTED TO YOU

Under **SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Item 2. Exclusions**, the last paragraph of Item 2. Exclusions is replaced with the following:

Exclusion c. through n. do not apply to damage by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III - LIMITS OF INSURANCE.**

G. PERSONAL AND ADVERTISING INJURY

Under **SECTION 1, COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**, Item 2. **Exclusions e. Contractual Liability** is deleted.

Under **SECTION I - COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**, the following are added to Item 2. **Exclusions**:

q. Discrimination Relating To Room, Dwelling or Premises

Caused by discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured.

r. Fines or Penalties

Fines or penalties levied or imposed by a governmental entity because of discrimination.

H. SUPPLEMENTARY PAYMENTS

Under **SECTION I - SUPPLEMENTARY PAYMENTS COVERAGES A AND B**, item 1.b. is replaced with the following:

- b.** Up to \$2,500 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.

Under **SECTION I - SUPPLEMENTARY PAYMENTS COVERAGES A AND B**, item 1.d. is replaced with the following:

- d.** All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

I. ADDITIONAL INSURED - AUTOMATIC STATUS

SECTION II - WHO IS AN INSURED is amended to include as an insured any person or organization (called additional insured) described in paragraphs **a.** through **g.** below whom you are required to add as an additional insured on this policy under a written contract or written agreement. However the written contract or written agreement must be:

1. Currently in effect or becoming effective during the term of the policy; and
2. Executed prior to the "bodily injury", "property damage" or "personal injury and advertising injury", but

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

a. State or Governmental Agency or Subdivision or Political Subdivisions

A state or governmental agency or subdivision or political subdivision subject to the following provisions:

- (1) This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies;
 - (a) The existence, repair maintenance, erection, construction, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators.

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

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality.

b. Managers or Lessors of Premises

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or

- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

c. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver but only with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

d. Owners Or Other Interests From Whom Land Has Been Leased

An owner or other interest from who land has been leased by you but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

e. Co-owner of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability as co-owner of such premises.

f. Lessor of Equipment

Any person or organization from whom you lease equipment. Such person or organization are insureds only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person or organization.

A person's or organization's status as an insured under this endorsement ends when their written contract or written agreement with you for such leased equipment ends.

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

This insurance does not apply:

- (1) To any "occurrence" which takes place after the equipment lease expires; or
- (2) To "bodily injury", "property damage", or "personal and advertising injury" arising out of the sole negligence of such additional insured.

Any insurance provided to an additional insured designated under paragraphs a. through f. above does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard".

As respects the coverage provided under this provision, Paragraph 4.b.(1) of **Section IV - Commercial General Liability Conditions** is deleted and replaced with the following:

4. Other Insurance

b. Excess Insurance

- (1) This insurance is excess over:

Any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and non-contributing. Where required by written contractor written agreement, we will consider any other insurance maintained by the additional insured for injury or damage covered by this endorsement to be excess and non-contributing with this insurance.

J. WHO IS AN INSURED BROADENED

Under **SECTION II - WHO IS AN INSURED** the following is added to item 1:

f. Joint Ventures / Partnership / Limited Liability Company Coverage

You are an insured when you had an Interest in a joint venture, partnership or limited liability company which is terminated or ended prior to or during this policy period but only to the extent of your interest in such joint venture, partnership or limited liability company. This coverage does not apply:

- (1) Prior to the termination date of any joint venture, limited liability company or partnership; or

- (2) If there is other valid and collectible insurance purchased specifically to insure the joint venture, legal liability company or partnership.

Under **SECTION II - WHO IS AN INSURED, 2.a.(1)(d)** is deleted and replaced with the following:

- (d) Arising out of his or her providing or failing to provide professional health care services.

This does not apply to nurses, emergency medical technicians or paramedics employed by you to provide health care services, but only if you are not in the business or occupation of providing such professional services.

Under **SECTION II - WHO IS AN INSURED** the following is added:

4. For **COVERAGE A** and **COVERAGE B** only, the owner of any building leased to you, but only if the building owner is a shareholder in your corporation or a partner in your partnership insured by this policy, and only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you. However, this insurance does not apply:

- a. To any "occurrence" or offense which takes place after you cease to be a tenant in the premises; or
- b. To structural alterations, new construction or demolition operations performed by or on behalf of the building owner.

Under **SECTION II - WHO IS AN INSURED, 3.a.** is deleted and replaced with the following:

- a. Coverage under this provision is afforded only until the end of the policy period or the next anniversary of this policy's effective date after you acquire or form the organization whichever is earlier.

Under **SECTION II - WHO IS AN INSURED** the last paragraph in this section is deleted and replaced with the following:

Except as provided in 3. above, no person or organization is an insured with respect to the conduct of any current or past joint venture, limited liability company or partnership that is not shown as a named insured in the Declarations.

K. KNOWLEDGE AND NOTICE OF OCCURRENCE

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 2. Duties in the Event of Occurrence, Offense, Claim Or Suit**, the following is added:

- e. The requirement in Condition 2.a. applies only when the "occurrence" or offense is known to:
 - (1) You, if you are an individual;
 - (2) A partner, if you are a partnership;
 - (3) An "executive officer" or insurance manager, if you are a corporation; or
 - (4) A manager, if you are a limited liability company.
- f. The requirement in Condition 2.b. will not be breached unless the breach occurs after such claim or "suit" is known to:
 - (1) You, if you are an individual;
 - (2) A partner, if you are a partnership;
 - (3) An "executive officer" or insurance manager, if you are a corporation; or
 - (4) A manager, if you are a limited liability company.
- g. Your rights under this Coverage Part will not be prejudiced if you fail to give us notice of an "occurrence," offense, claim, or "suit" and that failure is solely due to your reasonable belief that the "bodily injury" or "property damage" is not covered under this Coverage Part. However, you shall give written notice of this "occurrence," offense, claim, or "suit" to us as soon as you are aware this insurance may apply to such "occurrence," offense, claim or "suit."

L. OTHER INSURANCE CONDITION AMENDED

When required by written contract with any additional insured owner, lessee, or contractor to provide insurance on a primary and noncontributory basis, **Condition 4 of Section IV - Commercial General Liability Conditions** is deleted and replaced by the following:

4. Other Insurance

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

a. Primary Insurance

This insurance is primary and non-contributory except when **b.** below applies.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent, or on any other basis:

- (1) That is Fire, Extended Coverage, Builders Risk, Installation Risk, or similar coverage for your work;
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos," or watercraft to the extent not subject to Exclusion **g.** of **Section I - Coverage A.**
- (4) If the loss is caused by the sole negligence of any additional insured, owner, lessee, or contractor.

When this insurance is excess, we will have no duty under Coverage **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other defends, we will undertake to do so, but we will be entitled to the other 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 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 deductibles 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.

M. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, item **6. Representations**, the following is added:

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

N. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - AUTOMATIC STATUS

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, item **8. Transfer Of Rights Of Recovery Against Others To Us** is deleted and replaced by the following:

We waive any right of recovery we may have against any person or organization with respect to which the insured has waived its right of recovery.

It is further agreed that work commenced under letter of intent or work order, subject to subsequent reduction to writing, with customers whose customary written contracts would require a waiver of recovery rights against them also falls within this blanket waiver of recovery rights.

O. LIBERALIZATION

If we adopt a change in our forms or rules which would broaden coverage for contractors under this coverage form without an additional premium charge, your policy will automatically provide the additional coverage's as of the date the broadened coverage is effective in your state.

P. DEFINITIONS

Under **SECTION V - DEFINITIONS**, item **3.** is deleted and replaced with the following:

- 3.** "Bodily Injury" means bodily injury, disability, sickness, or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

Under **SECTION V - DEFINITIONS**, item **9.** is deleted and replaced with the following:

- 9.** "Insured Contract" means:

- a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b.** A sidetrack agreement;
- c.** Any easement or license agreement;

- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization.

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

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

- (1) That indemnifies an architect, engineer, or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give

them, if that is the primary cause of the injury or damage; or

- (2) Under which the insured if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insureds rendering or failure to render professional services including those listed in (1) above and supervisory, inspection, architectural or engineering, activities.

Under **SECTION V - DEFINITIONS**, item 14. the following is added to the definition of "Personal and advertising injury":

- h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:
 - (1) Not done intentionally by or at the direction of:
 - (a) The insured; or
 - (b) Any "executive officer", director, stockholder, partner, member or manager (if you are a limited liability company) of the insured;
 - (2) Not directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person or persons by any insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.



BUSINESS AUTO ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

The coverage provided by this endorsement is summarized below and is intended to provide a general coverage description only. For the details affecting each coverage, please refer to the terms and conditions in this endorsement.

- A. Who Is An Insured broadened:**
 - Additional Insured by Contract, Agreement or Permit
 - Legally Incorporated Subsidiaries
 - Newly Acquired Organizations
- B. Supplementary Payments**
 - Bail Bonds - \$5000
 - Loss of Earnings - \$500
- C. Fellow Employee Exclusion Amendment**
- D. Coverage Extensions**
 - Transportation Expenses
 - Personal Effects (Excess Basis)
- E. Additional Coverages**
 - Expenses paid for returning a stolen covered auto
 - Fire Department Service Charge
- F. Airbag Coverage - Accidental Discharge**
- G. Glass Repair - Waiver of Deductible**
- H. Knowledge and Notice of an Accident, Claim or Suit**
- I. Unintentional Failure To Disclose Hazards**
- J. Worldwide Coverage**
- K. Definitions**
 - Bodily Injury Redefined

In addition to the policy amendments contained in A. through K. listed above, the endorsements listed below will automatically be attached to your policy to complete the coverage provided by the Signature Series Business Auto Endorsement:

- Audio, Visual and Data Electronic Equipment Coverage Added Limits - CA 99 60
- Auto Loan/Lease Gap Coverage - CA 20 71
- Drive Other Car Coverage - Broadened Coverage For Named Individuals - (Executive Officers/Spouses) - CA 99 10
- Employee Hired Autos - CA 20 54
- Employees As Insureds - CA 99 33
- Hired Auto Physical Damage (Refer to Auto Declarations page)
- Rental Reimbursement Coverage - CA 99 23
- Waiver of Transfer of Rights of Recovery (Waiver of Subrogation) - CA 04 44

A. WHO IS AN INSURED BROADENED

SECTION II - COVERED AUTOS LIABILITY COVERAGE, item A. Coverage, 1. Who Is An Insured is amended to include the following additional paragraphs:

- d. Any legally incorporated subsidiary of yours in which you own more than

50% of the voting stock on the effective date of this endorsement.

However, "insured" does not include any subsidiary that is an "insured" under any other liability policy or would be an "insured" under such a policy but for its termination or the exhaustion of its limit of insurance.

Coverage under this provision is afforded only for the first 180 days after you acquire or form the organization or until the end of the policy period, whichever comes first.

- e. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or a majority interest. However, coverage under this provision:

- (1) Does not apply if the organization you acquire or form is an "insured" under another auto liability policy or would be "insured" under such a policy but for its termination or the exhaustion of its limits of insurance;
- (2) Does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- (3) Is afforded only for the first 180 days after you acquire or form the organization or until the end of the policy period, whichever comes first.

- f. Any person or organization with whom you agreed in writing in a contract, agreement or permit, to provide insurance such as is afforded under this policy.

This provision only applies if the written contract or agreement has been executed or permit has been issued, prior to the "bodily injury" or "property damage".

B. SUPPLEMENTAL PAYMENTS

SECTION II - COVERED AUTOS LIABILITY COVERAGE, item A. **Coverage**, 2. **Coverage Extensions**, a. **Supplementary Payments**, subparagraphs (2) and (4) are deleted and replaced with the following:

- (2) Up to \$5,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 per day because of time off from work.

C. FELLOW EMPLOYEE EXCLUSION AMENDMENT

SECTION II - COVERED AUTOS LIABILITY COVERAGE, item B. **Exclusions**, 5. **Fellow Employee** does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

D. COVERAGE EXTENSIONS

SECTION III - PHYSICAL DAMAGE COVERAGE, Item A. **Coverage**, 4. **Coverage Extensions**, a. **Transportation Expenses** is replaced with the following:

a. Transportation Expenses

We will pay up to \$100 per day to a maximum of \$1,800 for transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

The following is added to Item 4. **Coverage Extensions**:

c. Personal Effects

We will pay up to \$500 for the "loss" of your personal effects that are contained in a covered "auto" due to the total theft of the covered "auto." We will pay only for those personal effects that are contained in covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage.

Our payment for "loss" of or damage to personal effects will apply only on an excess basis over other collectible insurance.

E. ADDITIONAL COVERAGES

SECTION III - PHYSICAL DAMAGE COVERAGE, A. **Coverage**, is amended to include the following additional coverage items:

5. We will pay the expense of returning a stolen covered "auto" to you.

6. Fire Department Service Charge

When a fire department is called to save or protect a covered "auto", its equipment, its contents or occupants from a Covered Cause Of Loss, we will pay up to \$1,000 for your liability for Fire Department Service Charges:

(a) Assumed by contract or agreement prior to loss; or

(b) Required by local ordinance.

No deductible applies to this additional coverage.

F. AIRBAG COVERAGE - ACCIDENTAL DISCHARGE

SECTION III - PHYSICAL DAMAGE COVERAGE, Item B. Exclusions, subparagraph 3.a. is deleted and replaced with the following:

a. Wear and tear, freezing, mechanical or electrical breakdown.

Mechanical breakdown does not apply to the accidental discharge of an airbag.

G. GLASS REPAIR - WAIVER OF DEDUCTIBLE

SECTION III - PHYSICAL DAMAGE COVERAGE, item D. Deductible the following paragraph is added:

No deductible shall apply to glass damage if the glass is repaired rather than replaced.

H. KNOWLEDGE AND NOTICE OF AN ACCIDENT, CLAIM OR SUIT

SECTION IV - BUSINESS AUTO CONDITIONS, Item A. Loss Conditions is amended as follows:

Subparagraph a. under Item 2. **Duties In The Event Of Accident, Claim, Suit Or Loss**, is amended to include the following paragraphs:

This requirement applies when the "accident," claim, "suit" or "loss" is first known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

Subparagraph b.(2) under 2. **Duties In The Event Of Accident, Claim, Suit Or Loss** is amended as follows:

- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit."

Your employees may know of documents received concerning a claim or "suit". This will not

mean that you have such knowledge, unless receipt of such documents is known to you, any of your executive officers or partners or your insurance manager.

I. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Under **SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 2. Concealment, Misrepresentation Or Fraud** is amended to include the following additional paragraph:

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure.

J. WORLDWIDE COVERAGE

Under **SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 7. Policy Period, Coverage Territory**, subparagraph (5) is deleted and replaced with the following:

(5) Anywhere in the world, if:

- (a) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 45 days or less; and
- (b) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, Puerto Rico or Canada or in a settlement we agree to.
- (c) If, for such "autos" a "suit" is brought outside the territory described in 7.(1) through 7.(4) above, we will reimburse the insured for defense expenses incurred with our written consent, but we will make no payment, nor will we reimburse the insured for damages.

K. DEFINITIONS

Under **SECTION V - DEFINITIONS, Item C.** is replaced by the following:

- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY INSURANCE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance, item c. is replaced by the following:

- c.** Regardless of the provisions of Paragraph **a.** above, this Coverage Form's Covered Autos Liability Coverage is primary and we will not seek contribution from any other insurance for any liability assumed under an "insured contract" that requires liability to be assumed on a primary noncontributory basis.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF
RECOVERY AGAINST OTHERS TO US
(WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: FORESITE DESIGN & CONSTRUCTION

Endorsement Effective Date: 09/01/21

SCHEDULE

Name(s) Of Person(s) Or Organization(s):
Automatic Status when required by Contract

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

The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Any person or organization as required by written contract.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The Information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective Date: 01/01/2021

Policy No.: WCN-02005953-221

Endorsement No.

Insured: ForeSite Design & Construction, Inc.

Premium:

Insurance Company: American Liberty Insurance Company

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

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

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

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

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

SECTION I - COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" 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 damages for such "bodily injury" or "property damage" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. 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. At our discretion, we may investigate any "occurrence" that may involve this insurance and settle any resultant claim or "suit" for which we have the duty to defend. But:

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

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

- b. This insurance applies to "bodily injury" or "property damage" that is subject to an applicable "retained limit". If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "bodily injury" or "property damage" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "underlying insurance".
- c. This insurance applies to "bodily injury" and "property damage" only if:
 - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph 1.a. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- d. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1.a. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

e. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1.a. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

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

2. Exclusions

This insurance does not apply to:

a. Expected or Intended Injury

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

b. Contractual Liability

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

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than

an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

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

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

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

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

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

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

This exclusion does not apply to the extent that valid "underlying insurance" for the liquor liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the liquor liability risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

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. ERISA

Any obligation of the insured under the Employees' Retirement Income Security Act of 1974 (ERISA), and any amendments thereto or any similar federal, state or local statute.

f. Auto Coverages

- (1) "Bodily injury" or "property damage" arising out of the ownership, maintenance or use of any "auto" which is not a "covered auto"; or
- (2) Any loss, cost or expense payable under or resulting from any first-party physical damage coverage; no-fault law, personal injury protection or auto medical payments coverage; or uninsured or underinsured motorist law.

g. Employer's Liability

"Bodily injury" to:

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

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

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

With respect to injury arising out of a "covered auto", this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits. For the purposes of this insurance, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

This exclusion does not apply to the extent that valid "underlying insurance" for the employer's liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the employer's liability risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

h. 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) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harrasment, humiliation, discrimination or malicious prosecution 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 Paragraph (a), (b), or (c) above is directed.

This exclusion applies whether the injury-causing event described in Paragraph (a), (b) or (c) above occurs before employment, during employment or after employment of that person.

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

i. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time; or
- (2) "Pollution cost or expense".

This exclusion does not apply if valid "underlying insurance" for the pollution liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the pollution risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

j. Aircraft Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft 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 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 50 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (4) The extent that valid "underlying insurance" for the aircraft or watercraft liability risks described

above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" or "property damage". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the aircraft or watercraft risks described above will follow the same provisions, exclusions and limitations that are contained in the "underlying insurance", unless otherwise directed by this insurance; or

- (5) Aircraft that is:

- (a) Chartered by, loaned to, or hired by you with a paid crew; and
- (b) Not owned by any insured.

k. Racing Activities

"Bodily injury" or "property damage" arising out of the use of "mobile equipment" or "autos" in, or while in practice for, or while being prepared for, any pre-arranged professional or organized racing, speed, demolition, or stunting activity or contest.

l. 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.

m. Damage To Property

"Property damage" to:

- (1) Property:
 - (a) 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; or

- (b) Owned or transported by the insured and arising out of the ownership, maintenance or use of a "covered auto".
 - (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
 - (3) Property loaned to you;
 - (4) Personal property in the care, custody or control of the insured;
 - (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
 - (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.
- 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 (1)(b), (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.
- Paragraphs (3) and (4) of this exclusion do not apply to liability assumed under a written Trailer Interchange agreement.
- Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

n. Damage To Your Product

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

o. 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 sub-contractor.

p. 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.

q. Recall Of Products, Work Or Impaired Property

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

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

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

r. Personal And Advertising Injury

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

s. Professional Services

"Bodily injury" or "property damage" due to rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
- (3) Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
- (4) Engineering services, including related supervisory or inspection services;
- (5) Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;

- (6) Any health or therapeutic service treatment, advice or instruction;
- (7) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming or therapy;
- (8) Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardio-vascular fitness, bodybuilding or physical training programs;
- (9) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (10) Body piercing services;
- (11) Services in the practice of pharmacy;
- (12) Law enforcement or firefighting services; and
- (13) Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

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

t. Electronic Data

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

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

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

This exclusion does not apply if valid "underlying insurance" for the electronic data risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". The in-

surance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

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

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

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

COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" 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 damages for such "personal and advertising injury" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. 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. At our discretion, we may investigate any offense that may involve this insurance and settle any resultant claim or "suit" for which we have the duty to defend. But:

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

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

- b. This insurance applies to "personal and advertising injury" that is subject to an applicable "retained limit". If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "personal and advertising injury" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "underlying insurance".
- c. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

- a. "Personal and advertising injury":

- (1) **Knowing Violation Of Rights Of Another**

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".

- (2) **Material Published With Knowledge Of Falsity**

Arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

- (3) **Material Published Prior To Policy Period**

Arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

- (4) **Criminal Acts**

Arising out of a criminal act committed by or at the direction of the insured.

- (5) **Contractual Liability**

For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to:

- (a) Liability for damages that the insured would have in the absence of the contract or agreement.
 - (b) Liability for false arrest, detention or imprisonment assumed in a contract or agreement.

- (6) **Breach Of Contract**

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

- (7) **Quality Or Performance Of Goods -- Failure To Conform To Statements**

Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

- (8) **Wrong Description Of Prices**

Arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

- (9) **Infringement Of Copyright, Patent, Trademark Or Trade Secret**

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

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

- (10) **Insureds In Media And Internet Type Businesses**

Committed by an insured whose business is:

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

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

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

(11) Electronic Chatrooms Or Bulletin Boards

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

(12) Unauthorized Use Of Another's Name Or Product

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.

(13) Pollution

Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

(14) Employment-related Practices

To:

- (a) A person arising out of any:
 - (i) Refusal to employ that person;
 - (ii) Termination of that person's employment; or
 - (iii) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harrassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (b) 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 Paragraph (i), (ii) or (iii) above is directed.

This exclusion applies whether the injury-causing event described in Paragraph (i), (ii) or (iii) above occurs before employment, during employment or after employment of that person.

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

(15) Professional Services

Arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (a) Legal, accounting or advertising services;
- (b) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
- (c) Inspection, supervision, quality control, architectural or engineering activities done, by or for you on a project on which you serve as construction manager;
- (d) Engineering services, including related supervisory or inspection services;
- (e) Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;
- (f) Any health or therapeutic service treatment, advice or instruction;
- (g) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming or therapy;
- (h) Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;

- (i) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (j) Body piercing services;
- (k) Services in the practice of pharmacy;
- (l) Law enforcement or firefighting services; and
- (m) Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

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 offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional service.

(16) War

However caused, arising, directly or indirectly, out of:

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

(17) Recording And Distribution Of Material Or Information In Violation Of Law

Arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (a) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (b) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

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

- b. "Pollution cost or expense".

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

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

- a. All expenses we incur.
- b. Up to \$2000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "occurrence" we cover. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. When we have the right but not the duty to defend the insured and elect to participate in the defense, we will pay our own expenses but will not contribute to the expenses of the insured or the "underlying insurer".
3. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies if any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:

(a) Obtain records and other information related to the "suit"; and

(b) Conduct and control the defense of the indemnitee in such "suit".

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

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

SECTION II - WHO IS AN INSURED

1. Except for liability arising out of the ownership, maintenance or use of "covered autos":
 - 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, your 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.

- (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) 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:
- (a) "Bodily injury" or "personal and advertising injury":
- (i) 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" 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;
- (ii) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (a)(i) above; or
- (iii) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (a)(i) or (ii) above.
- (b) "Property damage" to property:
- (i) Owned, occupied or used by;
- (ii) 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).
- (2) Any person (other than your "employee" or "volunteer worker"), or any 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. That representative will have all your rights and duties under this Coverage Part.
- c. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- (1) Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- (2) Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- (3) Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
2. Only with respect to liability arising out of the ownership, maintenance or use of "covered autos":
- a. You are an insured.
- b. Anyone else while using with your permission a "covered auto" you own, hire or borrow is also an insured except:

- (1) The owner or anyone else from whom you hire or borrow a "covered auto". This exception does not apply if the "covered auto" is a trailer or semitrailer connected to a "covered auto" you own.
 - (2) Your "employee" if the "covered auto" is owned by that "employee" or a member of his or her household.
 - (3) Someone using a "covered 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 a "covered auto".
 - (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a "covered auto" owned by him or her or a member of his or her household.
 - (6) "Employees" with respect to "bodily injury" to:
 - (a) Any fellow "employee" of the insured arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
 - (b) The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph (a) above.
 - c. Anyone liable for the conduct of an insured described above is also an insured, but only to the extent of that liability.
3. Any additional insured under any policy of "underlying insurance" will automatically be an insured under this insurance.
- Subject to Section III - Limits Of Insurance, if coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
- a. Required by the contract or agreement, less any amounts payable by any "underlying insurance"; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "underlying insurance".

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not 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, "suits" brought, or number of vehicles involved; or
 - c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss" under:
 - a. Coverage A, except "ultimate net loss" because of "bodily injury" or "property damage" arising out of the ownership, maintenance or use of a "covered auto"; and
 - b. Coverage B.
3. Subject to Paragraph 2. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" because of all "bodily injury" and "property damage" under Coverage A arising out of any one "occurrence".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all "ultimate net loss" because of all "personal and advertising injury" sustained by any one person or organization.
5. If there is "underlying insurance" with a policy period that is nonconcurrent with the policy period of this Commercial Liability Umbrella Coverage Part, the "retained limit(s)" will only be reduced or exhausted by payments for:
 - a. "Bodily injury" or "property damage" which occurs during the policy period of this Coverage Part; or
 - b. "Personal and advertising injury" for offenses that are committed during the policy period of this Coverage Part.

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

The Aggregate Limit, as described in Paragraph 2. above, applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - CONDITIONS

1. Appeals

If the "underlying insurer" or insured elects not to appeal a judgment in excess of the "retained limit", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section III - Limits Of Insurance.

2. Bankruptcy

a. Bankruptcy Of Insured

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

b. Bankruptcy Of Underlying Insurer

Bankruptcy or insolvency of the "underlying insurer" will not relieve us of our obligations under this Coverage Part.

However, this insurance will not replace the "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". This insurance will apply as if the "underlying insurance" were in full effect.

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

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

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

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

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

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

c. You and any other involved insured must:

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

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

4. Legal Action Against Us

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

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

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

5. Other Insurance

a. This insurance is excess over, and shall not contribute with any of the 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.

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

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

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

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 the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

7. Representations Of Fraud

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us;
- c. We have issued this policy in reliance upon your representations; and
- d. This policy is void in any case of fraud by you as it relates to this policy or any claim under this policy.

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. 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.

11. Loss Payable

Liability under this Coverage Part does not apply to a given claim unless and until:

- a. The insured or insured's "underlying insurer" has become obligated to pay the "retained limit"; and
- b. The obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant and us.

12. Transfer Of Defense

When the underlying limits of insurance have been used up in the payment of judgments or settlements, the duty to defend will be transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies which would have been covered by the "underlying insurance" had the applicable limit not been used up.

13. Maintenance Of/Changes To Underlying Insurance

Any "underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of the aggregate limit in accordance with the provisions of such "underlying insurance" that results from payment of claims, settlement or judgments to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "underlying insurance". Failure to maintain "underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "underlying insurance" were in full effect.

If there is an increase in the scope of coverage of any "underlying insurance" during the term of this policy, our liability will be no more than it would have been if there had been no such increase.

You must notify us in writing, as soon as practicable, if any "underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

14. Expanded Coverage Territory

- a. If a "suit" is brought in a part of the "coverage territory" that is outside the United States of America (including its territories and possessions), Puerto Rico or Canada, and we are prevented by law, or otherwise, from defending the insured, the insured will initiate a defense of the "suit". We will reimburse the insured, under Supplementary Payments, for any reasonable and necessary expenses incurred for the defense of a "suit" seeking damages to which this insurance applies, that we would have paid had we been able to exercise our right and duty to defend.

If the insured becomes legally obligated to pay sums because of damages to which this insurance applies in a part of the "coverage territory" that is outside the United States of America (including its territories and possessions), Puerto Rico or Canada, and we are prevented by law, or otherwise, from paying such sums on the insured's behalf, we will reimburse the insured for such sums.

- b. All payments or reimbursements we make for damages because of judgments or settlements will be made in U.S. currency at the prevailing exchange rate at the time the insured became legally obligated to pay such sums. All payments or reimbursements we make for expenses under Supplementary Payments will be made in U.S. currency at the prevailing exchange rate at the time the expenses were incurred.
- c. Any disputes between you and us as to whether there is coverage under this policy must be filed in the courts of the United States of America (including its territories and possessions), Canada or Puerto Rico.

- d. The insured must fully maintain any coverage required by law, regulation or other governmental authority during the policy period, except for reduction of the aggregate limits due to payments of claims, judgments or settlements.

Failure to maintain such coverage required by law, regulation or other governmental authority will not invalidate this insurance. However, this insurance will apply as if the required coverage by law, regulation or other governmental authority was in full effect.

SECTION V - DEFINITIONS

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

However, "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, disability, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".
4. "Coverage territory" means anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America.
5. "Covered auto" means only those "autos" to which "underlying insurance" applies.
6. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

7. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work", or your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any 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".
 - g. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in

the absence of any contract or agreement.

Paragraphs f. and g. do not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
 - (2) That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
 - (3) That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a "covered auto" over a route or territory that person or organization is authorized to serve by public authority.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
 However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
 - (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
 However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".
13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
 14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
 15. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
 16. "Pollution cost or expense" means 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".
 17. "Products-completed operations hazard":
 - a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

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

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

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

18. "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.

With respect to the ownership, maintenance or use of "covered autos", property damage also includes "pollution cost or expense", but only to the extent that coverage exists under the "underlying insurance" or would have existed but for the exhaustion of the underlying limits.

For the purposes of this insurance, with respect to other than the ownership maintenance or use of "covered autos", electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells,

data processing devices or any other media which are used with electronically controlled equipment.

- 19. "Retained limit" means the available limits of "underlying insurance" scheduled in the Declarations or the "self-insured retention", whichever applies.
- 20. "Self-insured retention" means the dollar amount listed in the Declarations that will be paid by the insured before this insurance becomes applicable only with respect to "occurrences" or offenses not covered by the "underlying insurance". The "self-insured retention" does not apply to "occurrences" or offenses which would have been covered by "underlying insurance" but for the exhaustion of applicable limits.
- 21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the "underlying insurer's" consent.
- 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. "Ultimate net loss" means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of settlement or judgments or any arbitration or other alternate dispute method entered into with our consent or the "underlying insurer's" consent.
- 24. "Underlying insurance" means any policies of insurance listed in the Declarations under the Schedule of "underlying insurance".
- 25. "Underlying insurer" means any insurer who provides any policy of insurance listed in the Schedule of "underlying insurance".
- 26. "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.
- 27. "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.

28. "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.