

CLERK'S CONTRACT and AGREEMENT COVER PAGE

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Innoprise Contract #: C20-0116

Year: 2020

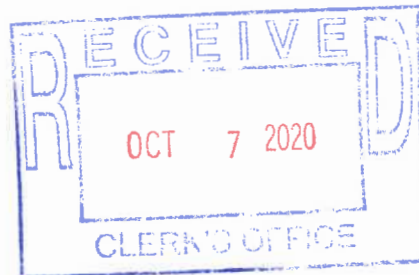
Amount: \$352,350.00

Department: NRF - Mike Mazza

Contract Type: Maintenance

Contractors Name: Malcor Roofing of Illinois, Inc.

Contract Description: Roofing Improvements 2020 - Public Works



MAYOR
Keith Pekau

VILLAGE CLERK
John C. Mehalek

14700 S. Ravinia Avenue
Orland Park, IL 60462
708.403.6100
OrlandPark.org



TRUSTEES

Kathleen M. Fenton
James V. Dodge
Daniel T. Calandriello
William R. Healy
Cynthia Nelson Katsenes
Michael R. Milani

October 7, 2020

Mr. Jason Doran
Malcor Roofing of Illinois, Inc.
1850 Dean Street
PO Box 941
St. Charles, Illinois 60174

NOTICE TO PROCEED – Roofing Improvements 2020-Public Works

Dear Mr. Doran:

This notification is to inform you that the Village of Orland Park has received all necessary contracts, certifications, insurance documents and bonds in order for work to commence on the above stated project as of October 1, 2020.

Please contact Mike Mazza at 708-403-6108 to arrange the commencement of the work.

The Village has processed Purchase Order #20-001815 for this contract and emailed this to your company on October 1, 2020. It is imperative that this number on the Purchase Order be noted on all invoices, correspondence, etc. All invoices should be sent directly to the Accounts Payable Department at 14700 S. Ravinia Ave. Orland Park, IL 60462 or emailed to accountspayable@orlandpark.org. Also, your final invoice for this contract should state that it is the final invoice pertaining to that Purchase Order.

For your records, I have enclosed one (1) original executed contract dated September 23, 2020 in an amount not to exceed Three Hundred Fifty Two Thousand Three Hundred Fifty and No/100 (\$352,350.00) Dollars. If you have any questions, please call me at 708-403-6173.

Sincerely,

Denise Domalewski
Purchasing & Contract Administrator

Encl:

CC: Mike Mazza
Joel Van Essen

MAYOR
Keith Pekau

VILLAGE CLERK
John C. Mehalek

14700 S. Ravinia Avenue
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TRUSTEES

Kathleen M. Fenton
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Michael R. Milani

September 23, 2020

Mr. Jason Doran
Malcor Roofing of Illinois, Inc.
1850 Dean Street
PO Box 941
St. Charles, Illinois 60174

NOTICE OF AWARD – Roofing Improvements 2020-Public Works

Dear Mr. Doran:

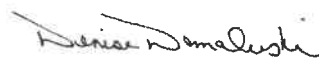
This notification is to inform you that the Village of Orland Park Board of Trustees has approved your proposal for *Roofing Improvements 2020-Public Works* submitted in response to our informal request for proposals.

In order to begin this engagement, you must comply with the following within ten business days of the date of this Notice of Award, which is by October 7, 2020.

- Attached is the Contract for Roofing Improvements 2020-Public Works. Please sign and return directly to me. I will obtain signatures to fully execute the Contract and one fully executed Contract will be returned to you.
- Please submit a Certificate of Insurance from your insurance company in accordance with all of the Insurance Requirements listed and agreed to in the contract at minimum and endorsements for a) the additional insured status, b) the waiver of subrogation for General Liability and c) the waiver of subrogation for Workers Compensation.
- Please submit Performance and Payment Bonds, dated September 23, 2020 for the full amount of the contract.

Deliver this information directly to me, Denise Domalewski, Purchasing & Contract Administrator, at Village Hall located at 14700 S. Ravinia Ave., Orland Park, IL 60462. The signed Contracts, Insurance Certificate and Payment & Performance Bonds are required to be in place and received at my office prior to the commencement of work on this project. You will be issued a Notice to Proceed letter when you are in full compliance with this process. If you have any questions, please do not hesitate to call me at 708-403-6173 or e-mail me at ddomalewski@orlandpark.org.

Sincerely,



Purchasing & Contract Administrator

cc: Mike Mazza
Joel Van Essen



ORLAND PARK

Roofing Improvements 2020 –Public Works (Contract for Maintenance)

This Contract is made this 23rd day of September, 2020 by and between the Village of Orland Park (hereinafter referred to as the "VILLAGE") and MALCOR ROOFING OF ILLINOIS, INC. (hereinafter referred to as the "CONTRACTOR").

WITNESSETH

In consideration of the promises and covenants made herein by the VILLAGE and the CONTRACTOR (hereinafter referred to collectively as the "PARTIES"), the PARTIES agree as follows:

SECTION 1: THE CONTRACT DOCUMENTS: This Contract shall include the following documents (hereinafter referred to as the "CONTRACT DOCUMENTS") however this Contract takes precedence and controls over any contrary provision in any of the CONTRACT DOCUMENTS. The Contract, including the CONTRACT DOCUMENTS, expresses the entire agreement between the PARTIES and where it modifies, adds to or deletes provisions in other CONTRACT DOCUMENTS, the Contract's provisions shall prevail. Provisions in the CONTRACT DOCUMENTS unmodified by this Contract shall be in full force and effect in their unaltered condition.

- The Contract
- The Terms and General Conditions pertaining to the Contract
- The Proposal DATED September 16, 2020 as it is responsive to the VILLAGE's requirements
- Certificate of Compliance
- Certificates of Insurance
- Payment & Performance Bonds

SECTION 2: SCOPE OF THE WORK AND PAYMENT: The CONTRACTOR agrees to provide labor, equipment and materials necessary to perform the following:

Provide roofing restoration with Fluid Applied Reinforced system for all sections of the Public Works Building roof over the V&E garage and the administration offices as detailed in the proposal and SOW defined by Tremco/WTI

(hereinafter referred to as the "WORK") and the VILLAGE agrees to pay the CONTRACTOR pursuant to the provisions of the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*) the following amounts for the WORK:

TOTAL: an amount not to exceed Three Hundred Fifty-Two Thousand Three Hundred Fifty and No/100 (\$352,350.00) Dollars

(hereinafter referred to as the "CONTRACT SUM"). The CONTRACT SUM shall not be increased without the express written consent of the VILLAGE.

10% retention will be withheld for this project. When final acceptance is obtained the retention will be released in its entirety.

SECTION 3: ASSIGNMENT: CONTRACTOR shall not assign the duties and obligations involved in the performance of the WORK except to the list of Subcontractors approved by the Village, which approval shall not be unreasonably withheld.

SECTION 4: TERM OF THE CONTRACT: The CONTRACTOR shall commence the WORK of this Contract upon receipt of a Notice to Proceed and shall complete performance of the WORK of this Contract by December 30, 2020, (hereinafter referred to as the "CONTRACT TIME"). Failure to meet the CONTRACT TIME shall be considered an occasion of default under the CONTRACT DOCUMENTS. The CONTRACT TIME shall not be increased without the express written consent of the VILLAGE. Final payment shall be made by the VILLAGE upon inspection of the WORK, completion of any punch list items and after receipt of final release and waiver of liens in accordance with the requirements of the CONTRACT DOCUMENTS. This Contract may be terminated by the VILLAGE for convenience or by either of the PARTIES for default in the performance of the duties of the PARTIES as described in the CONTRACT DOCUMENTS upon thirty (30) day's written notice provided as required herein.

SECTION 5: INDEMNIFICATION AND INSURANCE: The CONTRACTOR shall indemnify, defend and hold harmless the VILLAGE, its trustees, officers, officials, directors, agents, employees and representatives and assigns, from lawsuits, actions, costs (including attorneys' fees), claims or liability of any character, incurred due to the alleged negligence of the CONTRACTOR, brought because of any injuries or damages received or sustained by any person, persons or property on account of any act or omission, neglect or misconduct of said CONTRACTOR, its officers, officials, agents and/or employees arising out of, or in performance of any of the provisions of the CONTRACT DOCUMENTS, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act" or any other law, ordinance, order or decree. In connection with any such claims, lawsuits, actions or liabilities, the VILLAGE, its trustees, officers, officials, directors, agents, employees, representatives and their assigns shall have the right to defense counsel of their choice. The CONTRACTOR shall be solely liable for all costs of such defense and for all expenses, fees, judgments, settlements and all other costs arising out of such claims, lawsuits, actions or liabilities.

The Contractor shall not make any settlement or compromise of a lawsuit or claim, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village and any other indemnified party. The Village or any other indemnified party, in its or their sole discretion, shall have the option of being represented by its or their own counsel. If this option is exercised, then the Contractor shall promptly reimburse the Village or other indemnified party, upon written demand, for any expenses, including but not limited to court costs, reasonable attorneys' and witnesses' fees and other expenses of litigation incurred by the Village or other indemnified party in connection therewith.

The indemnification obligation under this paragraph shall not be limited in any way by any limitations on the amount or type of damages, compensation or benefits payable by or for the benefit of Subcontractor or any indemnities under any Worker's Compensation Act, Occupational Disease Act, Disability Benefits Act, or any other employee benefits act. The Subcontractor further agrees to waive any and all liability limitations based upon the Worker's Compensation Act court interpretations or otherwise.

Execution of this Contract by the VILLAGE is contingent upon receipt of Insurance Certificates provided by the CONTRACTOR in compliance with the CONTRACT DOCUMENTS.

SECTION 6: COMPLIANCE WITH LAWS: CONTRACTOR agrees to comply with all federal, state and local laws, ordinances, statutes, rules and regulations including but not limited to all applicable provisions of the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*) and the Illinois Prevailing Wage Act (820 ILCS 130/1 *et seq.*)

SECTION 7: FREEDOM OF INFORMATION ACT COMPLIANCE: The Illinois Freedom of Information Act (FOIA) has been amended and effective January 1, 2010. This amendment adds a new provision to Section 7 of the Act which applies to public records in the possession of a party with whom the Village of Orland Park has contracted. The Village of Orland Park will have only a very short period of time from receipt of a FOIA request to comply with the request, and there is a significant amount of work required to process a request including collating and reviewing the information.

The undersigned acknowledges the requirements of FOIA and agrees to comply with all requests made by the Village of Orland Park for public records (as that term is defined by Section 2(c) of FOIA) in the undersigned's possession and to provide the requested public records to the Village of Orland Park within two (2) business days of the request being made by the Village of Orland Park. The undersigned agrees to indemnify and hold harmless the Village of Orland Park from all claims, costs, penalty, losses and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the Village of Orland Park under this agreement.

SECTION 8: NOTICE: Where notice is required by the CONTRACT DOCUMENTS, it shall be considered received if it is 1) delivered in person, 2) sent by registered United States mail, return receipt requested, 3) delivered by messenger or mail service with a signed receipt, 4) sent by facsimile with an acknowledgment of receipt, or 4) by e-mail with an acknowledgment of receipt only if the PARTIES agree separately to use e-mail for providing notice. Notice shall be sent to the following:

To the VILLAGE:

Denise Domalewski
Purchasing & Contract Administrator
Village of Orland Park
14700 South Ravinia Avenue
Orland Park, Illinois 60462
Telephone: 708-403-6173
Facsimile: 708-403-9212
e-mail: ddomalewski@orlandpark.org

To the CONTRACTOR:

Jason Doran
Project Manager
Malcor Roofing of Illinois, Inc.
1850 Dean Street, PO Box 941
St. Charles, Illinois 60174
Telephone: 630-896-6479
Facsimile: 630-896-6597
e-mail: jason@malcorroofing.com

or to such other persons or to such other addresses as may be provided by one party to the other party under the requirements of this Section.

SECTION 9: FORCE MAJEURE: Whenever a period of time is provided for in this Contract for either the CONTRACTOR or VILLAGE to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, insurrection, rebellion, strike, lockout, fire, flood, storm, earthquake, tornado, pandemic, act of public enemies, action of federal or state government or any act of God; provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. An act or omission shall not be deemed to be "beyond Contractor's control" if committed, omitted, or caused by CONTRACTOR, CONTRACTOR's employees, officers or agents or a subsidiary, affiliate or parent of CONTRACTOR or by any corporation or other business entity that holds a controlling interest in

CONTRACTOR, whether held directly or indirectly (for example, but not by way of limitation, a strike by or lockout of CONTRACTOR's employees would not be an act "beyond Contractor's control"). Contractor shall notify the Village as soon as possible, but no later than two (2) business days, of any force majeure event. However, if the force majeure event continues to affect performance for more than three (3) business days, the Village may immediately terminate this Agreement. In the event of such termination, the Contractor shall be paid for services satisfactorily performed under this Agreement up to the effective date of termination and shall be entitled to reimbursement of any expenses already incurred and not recoverable by refunds.

SECTION 10: LAW AND VENUE: The law of the State of Illinois shall apply to this Agreement and venue for legal disputes shall be Cook County, Illinois.

SECTION 11: MODIFICATION: This Contract may be modified only by a written amendment signed by both PARTIES.

SECTION 12: COUNTERPARTS: This Contract may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.

This Contract shall become effective on the date first shown herein and upon execution by duly authorized agents of the PARTIES.

FOR: VILLAGE OF ORLAND PARK

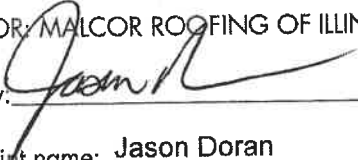
By: 

Print name: George Koczwar

Title: Village Manager

Date: 10-2-20

FOR: MALCOR ROOFING OF ILLINOIS, INC.

By: 

Print name: Jason Doran

Title: Project Manager

Date: 9/24/20



ORLAND PARK

Terms and General Conditions for the Contract between THE VILLAGE OF ORLAND PARK (the "VILLAGE") and MALCOR ROOFING OF ILLINOIS, INC. (the "CONTRACTOR") for **Roofing Improvements 2020-Public Works** (the "WORK") dated **September 23, 2020** (the "CONTRACT").

ARTICLE 1: DUTIES OF THE PARTIES

1.1 VILLAGE'S RIGHTS AND DUTIES

- 1.1.1 Upon request of the CONTRACTOR the VILLAGE shall furnish, with reasonable promptness, information necessary for the performance of the WORK of the CONTRACT including, where needed, land surveys showing boundaries, topography, the location of utilities and a legal description of the site where the WORK is to be performed.
- 1.1.2 The VILLAGE shall furnish access to its buildings and the site of the WORK as is necessary for the performance of the WORK and shall provide, at its own expense, as needed, temporary or permanent easements, zoning and other requirements including removal of encumbrances on the land needed to permit performance of the WORK.
- 1.1.3 The VILLAGE shall have the right to stop the WORK by a written order should the CONTRACTOR fail to correct Work not in accordance with the Contract Documents which will remain in effect until the WORK is corrected without giving rise to any duty on the part of the VILLAGE to stop the WORK for the benefit of the CONTRACTOR or any other entity.
- 1.1.4 The VILLAGE may, if the CONTRACTOR does not correct Work to make it conform to the Contract Documents, or cure a default, with reasonable promptness after receiving a written notice from the VILLAGE, correct the default itself and deduct the reasonable cost of the correction or cure from the amounts owed to the CONTRACTOR.
- 1.1.5 The Village, at any time and for any reason, may suspend work on any or all the Project by issuing a written work suspension notice to the Contractor. The Contractor must stop the performance of all the Work within the scope of the suspension notice until the Village directs the Contractor in writing to resume performance of the work. The Contract sum and time may, upon agreement of the parties, be adjusted for increase in cost and time caused by the suspension, delay or interruption.

1.2 CONTRACTOR'S RIGHTS AND DUTIES

- 1.2.1 The CONTRACTOR shall perform the WORK in accordance with the Contract Documents.
- 1.2.2 The CONTRACTOR shall examine existing conditions and take field measurements to facilitate the performance of the WORK and shall report to the VILLAGE or, where applicable, to the Architect, any errors, inconsistencies or omissions discovered. Contractor is not required to determine whether the Contract Documents conform to applicable local, state or federal statutes, ordinances, codes, rules or regulations, but where such nonconformity is found, Contractor shall report such to the VILLAGE, or where applicable, to the Architect.
- 1.2.3 Contractor shall pay for all material and labor necessary for the performance of the WORK and, unless agreed otherwise with the VILLAGE in a separate written document, for all utilities required such as light, heat and water.
- 1.2.4 Contractor warrants that the WORK shall contain material and equipment of good quality that is new and that the WORK and workmanship shall be free from defects for one (1) year after final payment or the length of time guaranteed under the warranty provided by the CONTRACTOR,

whichever is greater. Where there are deficiencies, Contractor agrees to correct them with reasonable promptness after receiving notice of said deficiencies from the VILLAGE. All manufacturers' guarantees and warranties shall be delivered to the VILLAGE prior to the issuance of final payment.

- 1.2.5 Contractor shall work expeditiously to complete the WORK by the agreed upon date and, where necessary to accomplish that goal, shall work overtime without additional compensation.
- 1.2.6 Contractor shall seek, obtain and pay for all required building permits, licenses, and governmental inspections of the WORK.
- 1.2.7 CONTRACTOR shall comply with all local, state and federal statutes, ordinances, codes, rules, and regulations governing the performance of the CONTRACTOR for the completion of the WORK, including but not limited to all of the applicable provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 *et seq.*) and the Illinois Human Rights Act (775 ILCS 5/1-01 *et seq.*) The CONTRACTOR shall obtain and preserve per the terms of the Document Retention Laws of the State of Illinois, certified payroll records for all work performed to complete the WORK, including that work performed by all those contractors subordinate to the CONTRACTOR or Subcontractor.
 - 1.2.7.1 This CONTRACT calls for the construction/maintenance of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 *et seq.* ("the Act"). The Act requires CONTRACTORS and Subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the "prevailing rate of wages" (hourly cash wages plus fringe benefits) in the county where the work is performed. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website at: <https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. All CONTRACTORS and Subcontractors rendering services under this CONTRACT must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties. Each CONTRACTOR and Subcontractor participating on this project shall make and keep those records required under Section 5 of the Prevailing Wage Act (820 ILCS 130/5). In conformance with the Act, each CONTRACTOR and/or Subcontractor participating on this Project shall maintain records of all laborers, mechanics and other workers employed by them on this Project, including the following information on each worker: (1) name; (2) address; (3) telephone number when available; (4) social security number; (5) classification or classifications; (6) hourly wages paid in each pay period; (7) number of hours worked each day; and (8) starting and ending times of each day. These records shall be kept by the participating CONTRACTOR and Subcontractor for a period of not less than three (3) years. Each participating CONTRACTOR and Subcontractor shall submit a monthly certified payroll to the VILLAGE consisting of the above-referenced information as well as a statement signed by the participating CONTRACTOR or Subcontractor that certifies: (a) the records are true and accurate; (b) the hourly rates paid to each worker is not less than the general prevailing rate of hourly wages required under the Prevailing Wage Act; and (c) the CONTRACTOR or Subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.
 - 1.2.7.2 Neither the CONTRACTOR nor its Subcontractors shall tolerate or engage in any prohibited form of discrimination in employment as defined in the Illinois Human Rights Act. The CONTRACTOR shall maintain, and require that its Subcontractors maintain, policies of equal employment opportunity which shall prohibit discrimination against any employee or applicant for employment on the basis of race, religion, color, sex, national origin, ancestry, citizenship status, age, marital status, physical or mental disability unrelated to the individual's ability to perform the essential functions of the job, association with a person with a disability, or unfavorable discharge from military service. Contractors and all Subcontractors shall comply with all requirements of the Act including maintaining a sexual harassment policy and of the Rules of the Illinois Department of Human Rights with regard to posting information on employees' rights

under the Act. Contractors and all Subcontractors shall place appropriate statements identifying their companies as equal opportunity employers in all advertisements for work to be performed under the CONTRACT.

- 1.2.8 Contractor will not be relieved of any obligation to the VILLAGE due to failure to examine or receive documents, visit or become familiar with conditions or from facts of which Contractor should have been aware and Village, as existing law may allow, shall reject all claims related thereto.

ARTICLE 2: CONTRACT DOCUMENTS

2.1 The Contract Documents consist of the following items:

- .1 Agreement between the parties
- .2 Terms & General Conditions to the Agreement
- .3 Special Conditions to the Agreement, if any
- .4 The Roof Diagnostic Survey and report prepared by Tremco/WTI
- .5 Accepted proposal as it conforms to Village requirements
- .6 Addenda, if any
- .7 Certificate of Compliance
- .8 Required Certificates of Insurance
- .9 Performance and Payment Bonds

ARTICLE 3: PAYMENTS AND COMPLETION

- 3.1 The VILLAGE requires for each Application for Payment, a properly completed Contractor's Affidavit setting out, under oath, the name, address and amount due or to become due, of each subcontractor, vendor, supplier or other appropriate party included in that payment. For every party listed the CONTRACTOR shall also provide a full or partial waiver of lien, as appropriate, before a payment will be made to the CONTRACTOR. The CONTRACTOR's partial or final waiver of lien must be included. Payment certificates shall not be issued by Architect or payment shall not be made by the VILLAGE without such mechanics' lien waivers and contractors' sworn statements unless they are conditioned upon receipt of such waivers and statements.
- 3.2 No certificate shall be issued in favor of the CONTRACTOR and no payment will be made by the VILLAGE for material not actually installed and built into the WORK without written authorization for the VILLAGE.
- 3.3 Each participating CONTRACTOR and Subcontractor shall submit a monthly certified payroll to the VILLAGE consisting of the requirements as referenced above in Section 1.2.7.1.
- 3.4 Upon satisfaction of the terms and conditions of the CONTRACT, the CONTRACTOR agrees to provide the VILLAGE with a final release and waiver of all liens covering all of the WORK performed under the CONTRACT relative to the project prior to issuance of final payment. Said final waiver of lien shall identify and state that all Subcontractors have been paid in full and there are no contract balances outstanding and owed to any Subcontractor.
- 3.5 All payments shall be made to Contractor by Village pursuant to the provisions of the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*)

ARTICLE 4: TAXES

- 4.1 The VILLAGE is a public body and is exempt from excise, sales and use taxes and will furnish Contractor with exemption numbers as required. Contractor shall not include any such taxes in its cost figures.

ARTICLE 5: INSPECTION OF MATERIALS

- 5.1 The VILLAGE shall have a right to inspect any materials or equipment to be used in carrying out this contract. The CONTRACTOR shall be responsible for the contracted quality and standards of all materials, equipment, components or completed work finished under this contract up to the time of final acceptance by the VILLAGE. Materials, equipment, components or completed work not complying therewith may be rejected by the VILLAGE and shall be removed and replaced by the CONTRACTOR at no cost to the VILLAGE.

ARTICLE 6: ASSIGNMENT

- 6.1 The CONTRACTOR's duties and obligations under the CONTRACT shall not be assigned without the express written consent of the VILLAGE.
- 6.2 Work not performed by the CONTRACTOR with its own forces shall be performed by Subcontractors or Sub-subcontractors. The CONTRACTOR shall be responsible for management of the Subcontractors in the performance of their Work.
- 6.3 The CONTRACTOR shall not contract with anyone to whom the VILLAGE has a reasonable objection.
- 6.4 The CONTRACTOR shall prepare all Subcontracts and shall have full discretion to negotiate their terms, subject to the VILLAGE's reasonable requirements or objections as to form and content.
- 6.5 By appropriate agreement, written where legally required for validity, the CONTRACTOR shall require each Subcontractor, to the extent of the WORK to be performed by the Subcontractor, to be bound to the CONTRACTOR by terms of the Contract Documents, and to assume toward the CONTRACTOR all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the CONTRACTOR, by these Documents, assumes toward the VILLAGE. Each subcontract agreement shall preserve and protect the rights of the VILLAGE under the Contract Documents with respect to the work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the CONTRACTOR that the CONTRACTOR, by the Contract Documents, has against the VILLAGE. Where appropriate, the CONTRACTOR shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The CONTRACTOR shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

ARTICLE 7: GUARANTEES AND WARRANTIES

- 7.1 All guarantees and warranties required shall be furnished by the CONTRACTOR and shall be delivered to the VILLAGE before final voucher on the CONTRACT is issued.
- 7.2 Contractor shall supply the VILLAGE with "as-built" plans prior to the VILLAGE making the final payment.

ARTICLE 8: DEFAULT

- 8.1 If the CONTRACTOR fails to begin the WORK under this contract within the time specified, or fails to perform the WORK with sufficient workmen, equipment or materials to insure the completion of said Work within the specified time, or shall perform the WORK in an unsatisfactory manner, or shall neglect or refuse to remove materials or perform anew such work as shall be rejected as defective or unsuitable by reason of defect in material or workmanship or by reason of noncompliance with the specifications, or shall discontinue the prosecution of the WORK, or if the CONTRACTOR shall become insolvent or be declared bankrupt, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall fail to carry on the WORK in an acceptable manner, the VILLAGE shall give notice to the CONTRACTOR and his surety in writing specifying such failure, delay, neglect, refusal or default, and if the CONTRACTOR, within a period of ten (10)

calendar days after such notice, shall not proceed in accordance therewith, then the VILLAGE shall have full power and authority to declare the forfeiture of this contract, and to forfeit the rights of the CONTRACTOR in this contract.

- 8.2 Upon declaration of Contractor's default, the VILLAGE may, at his option, call upon the surety to complete the WORK in accordance with the terms of this contract or may take over the WORK, including any materials and equipment on the work site as may be suitable and acceptable to the VILLAGE and may complete the WORK by or on its own force account, or may enter into a new contract for the completion of the WORK, or may use such other methods as shall be required for the completion of the WORK in an acceptable manner.
- 8.3 All costs and charges incurred by the VILLAGE, together with the cost of completing the WORK shall be deducted from any moneys due or which may become due on this contract. In case the expense so incurred by the VILLAGE shall be less than the sum which would have been payable under this contract if it had been completed by the CONTRACTOR and had not been forfeited by the VILLAGE, then the CONTRACTOR shall be entitled to receive the difference, and in case such expense shall exceed the sum which would have been payable under this contract, the CONTRACTOR and the surety shall be liable and shall pay to the VILLAGE the amount of such excess.

ARTICLE 9: DISPUTES AND VENUE

- 9.1 If an Architect or Engineer has contracted with the VILLAGE to administer the CONTRACT between Village and Contractor, disputes shall be handled with the involvement of the Architect or Engineer according to the terms of the CONTRACT between the VILLAGE and the Architect or Engineer and any reference made herein to "Architect" shall be read as "Engineer" where applicable. In any other case, disputes concerning a question of fact under the CONTRACT shall be expressed in writing by the parties and, if within seven (7) days after receipt of such notice the parties have disposed of the dispute by agreement, the dispute, as it was expressed in writing by the parties, shall be subject to mediation under terms agreed to by the parties. Pending final decision of a dispute hereunder, the parties shall proceed diligently with the performance of the CONTRACT.
- 9.2 Any legal action taken by either party shall be decided based upon the laws of the State of Illinois and venue for such disputes shall be Cook County, Illinois.

ARTICLE 10: CONTRACT TIME

- 10.1 Time is of the essence of the CONTRACT. Village shall not grant, and Contractor shall not seek damages for delays; however, Village shall grant an increase in the Contract Time for delay not caused by Contractor, its Subcontractors or others for whose actions Contractor is liable.

ARTICLE 11: FORCE MAJEURE

- 11.1. Whenever a period of time is provided for in this Agreement for either the Contractor or Village to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, insurrection, rebellion, strike, lockout, fire, flood, storm, earthquake, tornado, pandemic, act of public enemies, action of federal or state government or any act of God; provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. An act or omission shall not be deemed to be "beyond Contractor's control" if committed, omitted, or caused by Contractor, Contractor's employees, officers or agents or a subsidiary, affiliate or parent of Contractor or by any corporation or other business entity that holds a controlling interest in Contractor, whether held directly or indirectly (for example, but not by way of limitation, a strike by or lockout of Contractor's employees would not be an act "beyond Contractor's control"). Contractor shall notify the Village as soon as possible, but no later than two (2) business days, of any force majeure event. However, if the force majeure event continues to affect performance for more than three (3) business days, the Village may immediately terminate this Agreement. In the event of such termination, the Contractor shall be paid for services satisfactorily performed under this Agreement up to the effective date of termination and shall be entitled to reimbursement of any expenses already incurred and not recoverable by refunds.

ARTICLE 12: INSURANCE AND INDEMNIFICATION

12.1 Insurance Requirements

- 12.1.1 The Contractor shall, within ten (10) business days of said receipt of notice of award of the CONTRACT, furnish to the VILLAGE a certificate of insurance showing the VILLAGE, its trustees, officers, directors, agents, employees, representatives and assigns as additional insureds to the General Liability and Automobile Liability policies by appropriate endorsement. Such coverage shall be placed with a provider acceptable to the VILLAGE, which is licensed to do business in the State of Illinois, and that maintains a minimum A. M. Best rating of A VII. The insurance coverage afforded under the CONTRACTOR's General Liability insurance policies shall be primary and non-contributory to any insurance carried independently by the Indemnitees. A Waiver of Subrogation in favor of the Additional Insureds shall apply to General liability and Worker's Compensation. All required insurance shall be maintained by the CONTRACTOR in full force and effect during the life of the CONTRACT, and until such time as all work has been approved and accepted by the VILLAGE. This provision constitutes the VILLAGE's continuing demand for such certificates and endorsement(s) or true and correct copies thereof and the obligation to provide such insurance coverage shall be in full force and effect during the life of the CONTRACT. Failure of the VILLAGE to request such certificates and endorsements shall not relieve the CONTRACTOR of these obligations to provide insurance.
- 12.1.2 The amounts and types of insurance required are defined in Exhibit 1, a copy of which is attached hereto and made a part hereof.
- 12.1.3 CONTRACTOR shall cause each Subcontractor to maintain insurance of the type specified in Exhibit 1. Prior to CONTRACT acceptance, and at any time when requested by the VILLAGE, CONTRACTOR shall furnish copies of certificates of insurance evidencing coverage for each Subcontractor and Sub-subcontractor.

12.2 Indemnification

- 12.2.1 The CONTRACTOR shall indemnify, defend and hold harmless the VILLAGE, its trustees, officers, officials, directors, agents, employees and representatives and assigns, from lawsuits, actions, costs (including attorneys' fees), claims or liability of any character, incurred due to the alleged negligence of the CONTRACTOR, brought because of any injuries or damages received or sustained by any person, persons or property on account of any act or omission, neglect or misconduct of said CONTRACTOR, its officers, officials, agents and/or employees arising out of, or in performance of any of the provisions of the Contract Documents, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act" or any other law, ordinance, order or decree. In connection with any such claims, lawsuits, actions or liabilities, the VILLAGE, its trustees, officers, officials, directors, agents, employees, representatives and their assigns shall have the right to defense counsel of their choice. The CONTRACTOR shall be solely liable for all costs of such defense and for all expenses, fees, judgments, settlements and all other costs arising out of such claims, lawsuits, actions or liabilities.
- 12.2.2 The CONTRACTOR shall not make any settlement or compromise of a lawsuit or claim, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the VILLAGE and any other indemnified party. The VILLAGE or any other indemnified party, in its or their sole discretion, shall have the option of being represented by its or their own counsel. If this option is exercised, then the CONTRACTOR shall promptly reimburse the VILLAGE or other indemnified party, upon written demand, for any expenses, including but not limited to court costs, reasonable attorneys' and witnesses' fees and other expenses of litigation incurred by the VILLAGE or other indemnified party in connection therewith.

ARTICLE 13: PERFORMANCE AND PAYMENT BONDS

- 13.1 The CONTRACTOR shall furnish Performance and Payment Bonds acceptable to the VILLAGE in the full amount of the CONTRACT. Bonds shall be from a surety licensed to do business in Illinois and said surety shall have a minimum A.M. Best rating of A-V. Each Bond shall require a time period during which the Bond can be called limited only to the extent required by Illinois law.

ARTICLE 14: EXECUTION OF CONTRACT

- 14.1 Execution of the CONTRACT between Village and Contractor is contingent upon receipt of required Certificates of Insurance, required signed certifications and required Performance and Payment Bonds.

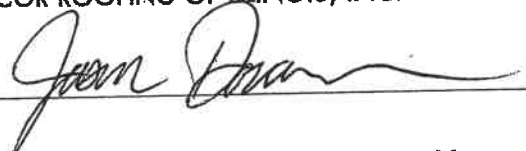
ARTICLE 15: CHANGES IN THE WORK

- 15.1 All changes in the WORK must be approved by the VILLAGE in a written document. Any change order or series of change orders that increase or decrease the Contract Sum by a total of \$10,000 or more or that increase or decrease the Contract Time by thirty (30) days or more must be accompanied by a written determination signed by the VILLAGE or its designee finding that the change was not reasonably foreseeable at the time the CONTRACT was signed, the change is germane to the CONTRACT or the change is in the best interest of the VILLAGE. Any change increasing the original Contract Sum by fifty percent (50%) or more must be re-bid by the VILLAGE as required by law.

ARTICLE 16: TERMINATION

- 16.1 The VILLAGE may, at any time, terminate the CONTRACT for the VILLAGE's convenience and without cause upon written notice to the CONTRACTOR and payment for all Work directed to be performed prior to the effective date of termination along with reasonable overhead and profit.

MALCOR ROOFING OF ILLINOIS, INC.

By:  Date: 9/24/20
Print Name & Title: Jason Doran, Project Manager

VILLAGE OF ORLAND PARK

By:  Date: 10-2-20
Print Name: George Koczwar, Village Manager

EXHIBIT 1

Insurance Requirements

WORKERS COMPENSATION & EMPLOYER LIABILITY

STATUTORY coverage for all persons whom the CONTRACTOR may employ directly or through subcontractors in carrying out the WORK under this CONTRACT. Such insurance shall hold the VILLAGE free and harmless of all personal injuries of all persons whom the CONTRACTOR may employ directly or through Subcontractors

\$500,000 – Each Accident \$500,000 – Policy Limit

\$500,000 – Each Employee

Waiver of Subrogation in favor of the Village of Orland Park

AUTOMOBILE LIABILITY

\$1,000,000 – Combined Single Limit

Additional Insured Endorsement in favor of the Village of Orland Park

GENERAL LIABILITY (Occurrence basis)

\$1,000,000 – Each Occurrence \$2,000,000 – General Aggregate Limit

\$1,000,000 – Personal & Advertising Injury

\$2,000,000 – Products/Completed Operations Aggregate

Additional Insured Endorsement & Waiver of Subrogation in favor of the Village of Orland Park

EXCESS LIABILITY (Umbrella-Follow Form Policy)

\$2,000,000 – Each Occurrence \$2,000,000 – Aggregate

EXCESS MUST COVER: General Liability, Automobile Liability, Workers Compensation

Any insurance policies providing the coverages required of the Contractor shall be specifically endorsed to identify "The Village of Orland Park, and their respective officers, trustees, directors, employees and agents as Additional Insureds on a primary/non-contributory basis with respect to all claims arising out of operations by or on behalf of the named insured." If the named insureds have other applicable insurance coverage, that coverage shall be deemed to be on an excess or contingent basis. The policies shall also contain a Waiver of Subrogation in favor of the Additional Insureds in regards to General Liability and Workers Compensation coverage's. The certificate of insurance shall also state this information on its face. Any insurance company providing coverage must hold an A VII rating according to Best's Key Rating Guide. Permitting the contractor, or any subcontractor, to proceed with any work prior to our receipt of the foregoing certificate and endorsement however, shall not be a waiver of the contractor's obligation to provide all of the above insurance.

MALCOR ROOFING OF ILLINOIS, INC.

SECTION 00 41 13 - QUOTATION FORM

September 16th, 2020

Mr. Joel Van Essen

Director of Public Works

Village of Orland Park

15655 Ravinia Ave.

Orland Park IL 60462

Re: Proposal for 2020 Roofing Improvements - Administration and V&E roofs
Omnia Partners Certified Proposal No. IL-

Dear Mr. Van Essen,

Having carefully examined the instructions for quotations, project specifications, drawings, supporting documents and addenda issued prior to this date, we propose to furnish all labor, materials, equipment, transportation and other services required to successfully accomplish the work in accordance with the project documents.

This proposal and any work performed related to this proposal will be provided in accordance with the project documents and the terms, conditions and criteria established by Omnia Partners National Intergovernmental Purchasing Alliance (NIPA) Contract No. 180903-305537 Roofing Products and Services. The Proposer will be solely responsible for delivering the project in accordance with Omnia National IPA Contract No. 180903-305537 and the project documents.

A. Base Quotation - Roofing Restoration with Fluid Applied Reinforced system for all sections of the Administration and V&E Building Roofs. Price includes a \$4,000. in contingency funds for unforeseen needed repairs prior to application of fluid applied system. If these funds are not utilized in full, we will rebate the owner any balance at final invoicing.

\$ 352,350.00

B. Unit Pricing: Provide unit pricing for the following:

- a. 2.5" Flat-stock polyiso insulation replacement: \$ 1.25
- b. Cast Iron Roof drain replacement: \$ 2,200.00

C. Addendum: The Proposer has received addendum numbers NA and incorporated provisions of such addendums in this quotation.

D. The Proposer acknowledges scheduling for the construction of the specified project; which includes pre-construction activities, construction per major discipline, completion, project close out and commissioning.

1850 Dean Street, P.O. Box 941 St. Charles, IL 60174 P. 630.896.6479 F. 630.896.6597

a. *Number of workdays necessary*

The owner and their representatives reserve the right to waive any irregularities, to reject any or all Proposals, or to accept any Proposal.

Executed on September 14, , 2020.

Malcor Roofing of Illinois, Inc.

Taxpayer I.D. No.: 46.1189399

Contractor

By: Jason Doran

Address:

1850 Dean Street, St. Charles, IL 60174

Telephone No: 630.896.6479

email: jason@malcorroofing.com

Thank you for the opportunity to provide a proposal for this project. If you have any questions please feel free to call or email.

Jason Doran

Malcor Roofing of Illinois, Inc.

1850 Dean Street, P.O. Box 941 St. Charles, IL 60174 P. 630.896.6479 F. 630.896.6597

 ORLAND PARK
CERTIFICATE OF COMPLIANCE

The undersigned Jason Doran, as Project Manager
(Enter Name of Person Making Certification) (Enter Title of Person Making Certification)

and on behalf of Malcor Roofing of Illinois, Inc., certifies that:
(Enter Name of Business Organization)

1) BUSINESS ORGANIZATION:

The Proposer is authorized to do business in Illinois: Yes ☒ No ☐

Federal Employer I.D.#: 46.1189399
(or Social Security # if a sole proprietor or individual)

The form of business organization of the Proposer is (check one):

☐ Sole Proprietor
☐ Independent Contractor (Individual)
☐ Partnership
☐ LLC
☒ Corporation Illinois 2012
(State of Incorporation) (Date of Incorporation)

2) ELIGIBILITY TO ENTER INTO PUBLIC CONTRACTS: Yes ☒ No ☐

The Proposer is eligible to enter into public contracts, and is not barred from contracting with any unit of state or local government as a result of a violation of either Section 33E-3, or 33E-4 of the Illinois Criminal Code, or of any similar offense of "Bid-rigging" or "Bid-rotating" of any state or of the United States.

3) SEXUAL HARRASSMENT POLICY: Yes ☒ No ☐

Please be advised that Public Act 87-1257, effective July 1, 1993, 775 ILCS 5/2-105 (A) has been amended to provide that every party to a public contract must have a written sexual harassment policy in place in full compliance with 775 ILCS 5/2-105 (A) (4) and includes, at a minimum, the following information: (I) the illegality of sexual harassment; (II) the definition of sexual harassment under State law; (III) a description of sexual harassment, utilizing examples; (IV) the vendor's internal complaint process including penalties; (V) the legal recourse, investigative and complaint process available through the Department of Human Rights (the "Department") and the Human Rights Commission (the "Commission"); (VI) directions on how to contact the Department and Commission; and (VII) protection against retaliation as provided by Section 6-101 of the Act. (Illinois Human Rights Act). (emphasis added). Pursuant to 775 ILCS 5/1-103 (M) (2002), a "public contract" includes "...every contract to which the State, any of its political subdivisions or any municipal corporation is a party."

4) EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE: Yes ☒ No ☐

During the performance of this Project, Proposer agrees to comply with the "Illinois Human Rights Act", 775 ILCS Title 5 and the Rules and Regulations of the Illinois Department of Human Rights published at 44 Illinois Administrative Code Section 750, et seq. The

Proposer shall: (I) not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, or physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; (II) examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization; (III) ensure all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, or physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; (IV) send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Vendor's obligations under the Illinois Human Rights Act and Department's Rules and Regulations for Public Contract; (V) submit reports as required by the Department's Rules and Regulations for Public Contracts, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and Department's Rules and Regulations for Public Contracts; (VI) permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and Department's Rules and Regulations for Public Contracts; and (VII) include verbatim or by reference the provisions of this Equal Employment Opportunity Clause in every subcontract it awards under which any portion of this Agreement obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as the other provisions of this Agreement, the Proposer will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Proposer will not utilize any subcontractor declared by the Illinois Human Rights Department to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations. "Subcontract" means any agreement, arrangement or understanding, written or otherwise, between the Proposer and any person under which any portion of the Proposer's obligations under one or more public contracts is performed, undertaken or assumed; the term "subcontract", however, shall not include any agreement, arrangement or understanding in which the parties stand in the relationship of an employer and an employee, or between a Proposer or other organization and its customers. In the event of the Proposer's noncompliance with any provision of this Equal Employment Opportunity Clause, the Illinois Human Right Act, or the Rules and Regulations for Public Contracts of the Department of Human Rights the Proposer may be declared non-responsible and therefore ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this agreement may be canceled or avoided in whole or in part, and such other sanctions or penalties may be imposed or remedies involved as provided by statute or regulation.

5) PREVAILING WAGE COMPLIANCE: Yes ☒ No ☐

In the manner and to the extent required by law, this contract is subject to the Illinois Prevailing Wage Act and to all laws governing the payment of wages to laborers, workers and mechanics of Contractor or any subcontractor of the Contractor bound to this agreement who is performing services covered by this contract. If awarded the Contract, per 820 ILCS 130 et seq. as amended, Contractor shall pay not less

than the prevailing hourly rate of wages, the generally prevailing rate of hourly wages for legal holiday and overtime work, and the prevailing hourly rate for welfare and other benefits as determined by the Illinois Department of Labor or the Village and as set forth in the schedule of prevailing wages for this contract to all laborers, workers and mechanics performing work under this contract (available at <http://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>).

The undersigned Contractor further stipulates and certifies that it has maintained a satisfactory record of Prevailing Wage Act compliance with no significant Prevailing Wage Act violations for the past three (3) years. In accordance with Public Act 94-0515, the Contractor will submit to the Village certified payroll records (to include for every worker employed on the project the name, address, telephone number, social security number, job classification, hourly wages paid in each pay period, number of hours worked each day and starting and ending time of work each day) on a monthly basis, along with a statement affirming that such records are true and accurate, that the wages paid to each worker are not less than the required prevailing rate and that the Contractor is aware that knowingly filing false records is a Class B Misdemeanor.

6) TAX CERTIFICATION: Yes ☒ No ☐

Contractor is current in the payment of any tax administered by the Illinois Department of Revenue, or if it is: (a) it is contesting its liability for the tax or the amount of tax in accordance with procedures established by the appropriate Revenue Act; or (b) it has entered into an agreement with the Department of Revenue for payment of all taxes due and is currently in compliance with that agreement.

7) AUTHORIZATION & SIGNATURE:

I certify that I am authorized to execute this Certificate of Compliance on behalf of the Contractor set forth on the Proposal, that I have personal knowledge of all the information set forth herein and that all statements, representations, that the Proposal is genuine and not collusive, and information provided in or with this Certificate are true and accurate. The undersigned, having become familiar with the Project specified, proposes to provide and furnish all of the labor, materials, necessary tools, expendable equipment and all utility and transportation services necessary to perform and complete in a workmanlike manner all of the work required for the Project.

ACKNOWLEDGED AND AGREED TO:



Signature of Authorized Officer

Pam Theisen

Name of Authorized Officer

Corporation Secretary

Title

9/14/2020

Date



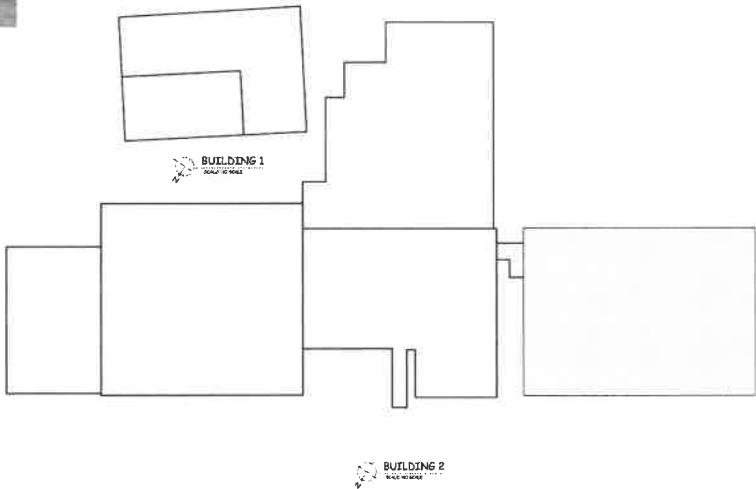
ROOF DIAGNOSTIC SURVEY FOR: CITY OF ORLAND PARK

15655 S Ravinia Ave - ORLAND PARK, IL

DRAWINGS

TITLE PAGE

SHEET A-1 CITY OF ORLAND PARK - MOISTURE SURVEY



How An Infrared Survey Works:



During the daytime, wet roof insulation absorbs more solar energy from the sun than dry roof insulation. During the nighttime, after the roof surface cools, the wet roof insulation will retain more solar energy than dry insulation and these temperature differences are detected by the infrared camera.

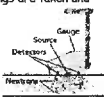
The wet roof areas are marked on the roof surface with visible paint markings. The wet roof areas are verified through core cuts and/or a Roof Moisture Meter.

How A Moisture Density Survey Works:

During the daytime, a 10'x10' or 5'x5' grid pattern is marked on the roof surface. Readings are taken and recorded at each grid intersection.

Fast neutrons are emitted from the source in the Roof Moisture Density Gauge into the roof system. The presence of hydrogen in the roof system slows the neutrons. These slowed neutrons as well as the fast neutrons are detected by the Roof Moisture Density Gauge "detectors". A reading is displayed in the digital readout and gets recorded.

Core cuts are taken to determine a baseline for dry roof materials. Then wet roof areas are marked on the roof surface with visible paint markings.





Thermogram T-01

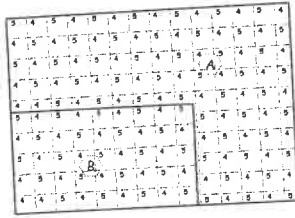


Thermogram T-02



Thermogram T-03

Trucks
Bldg



BUILDING 1
SCALE: AS SHOWN

V & E
Roof

C

Salt
Roof

A

Vehicle
Garage
Roof

B

Admin
Roof

D

E

BUILDING 2
SCALE: AS SHOWN

ROOF SECTION DATA - BUILDING 1			
ROOF SECT.	SIZE (S.F.)	WET (S.F.)	% WET
A	8,510	0	0.00%
B	4,280	0	0.00%
TOTALS	12,790	0	0.00%

ROOF SECTION DATA - BUILDING 2			
ROOF SECT.	SIZE (S.F.)	WET (S.F.)	% WET
A	7,938	0	0.00%
B	25,836	0	0.00%
C	17,210	620	3.60%
D	13,128	0	0.00%
E	140	0	0.00%
TOTALS	64,252	620	0.96%

CONSTRUCTION DATA

ROOF SECTION	CORE CUT NUMBER	MOISTURE READING	MOISTURE PERCENTAGE	ROOF CONSTRUCTION
A	A-1	20	N/A	SINGLE-PLY (RUBBER) ROOF SYSTEM
			0%	1/2" WOODFIBER INSULATION
			75%	2-1/2" POLYISOCYANURATE INSULATION
			N/A	METAL DECK

AREA DESTINATION		THERMOGRAPH		WET INSULATION		N.I.C.	
DRY CUT	TRACE CORE	TRACE CORE	TRACE CORE	WET INSULATION	WET INSULATION	MOISTURE GRID	MOISTURE GRID
WET CUT	PHOTOGRAPH	PHOTOGRAPH	PHOTOGRAPH	INTERMITTANT MOISTURE	INTERMITTANT MOISTURE	MOISTURE READING	MOISTURE READING

TREMPER
ROOFING & BUILDING MAINTENANCE

wti

CITY OF ORLAND PARK
15655 S Ravinia Ave
ORLAND PARK, IL

DATE	BY	SCALE
08/25/20	CAL/FIT	A-1

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2020 VILLAGE OF ORLAND PARK ROOFING PROJECT

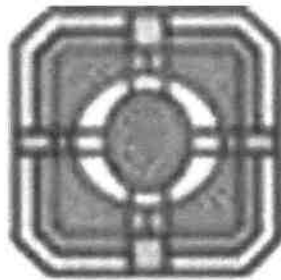
Customer: Orland Park Public Works

Address: 15655 S. Ravinia Ave
Orland Park, Illinois 60462

Village Contacts: Scott Hiland, Mike Mazza

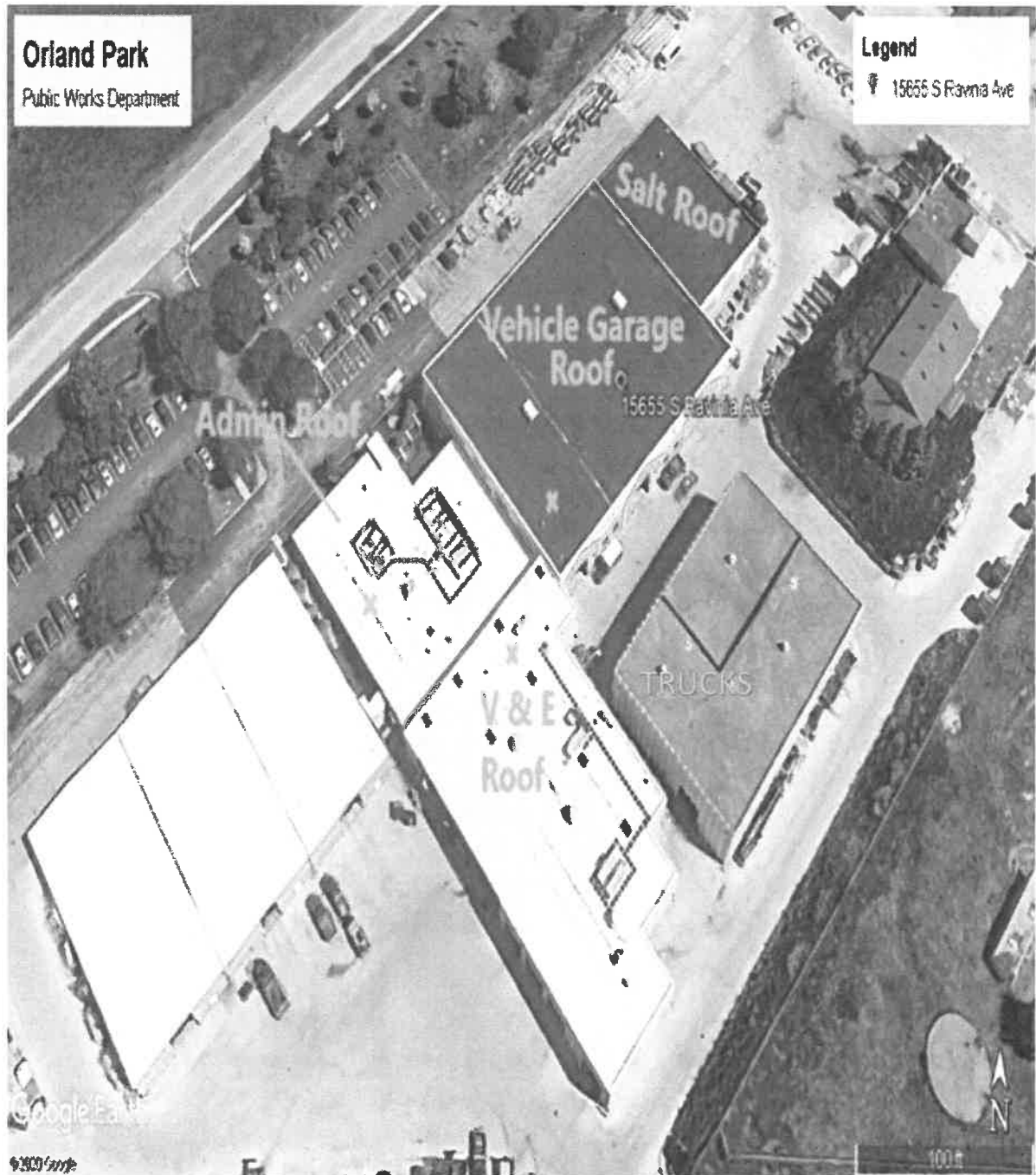
Tremco Contacts: Kevin Garmey, Chanc Laws

Inspection Date: Sept 10, 2020



**ORLAND
PARK**

MAP



Green X indicates roof core locations

ROOF SECTION INFORMATION

Section: **Admin Roof**
Membrane: **Adhered EPDM w/ coating**
Coverboard: **Yes**
Insulation: **2.5" ISO, .5" Wood fiber Cover board**
Wet? **Moisture present**
Deck type: **Metal**
Size: Approx. **13,130 ft²**
Leaking: **Yes**
Slope: **Approximately 1/4" per foot**
Drainage: **Internal drains**



Core sample- 2.5" iso .5 wood fiber

ROOF SECTION INFORMATION

Section:	V & E Roof
Membrane:	Adhered EPDM w/ coating
Cover board:	Yes
Insulation:	2.5" ISO, .5 Wood fiber cover board
Vapor barrier:	No
Wet?	Moisture present
Deck:	Metal
Size: Approx.	17,210 ft ²
Leaking:	Yes
Slope:	¼ per foot slope
Drainage:	Internal drains



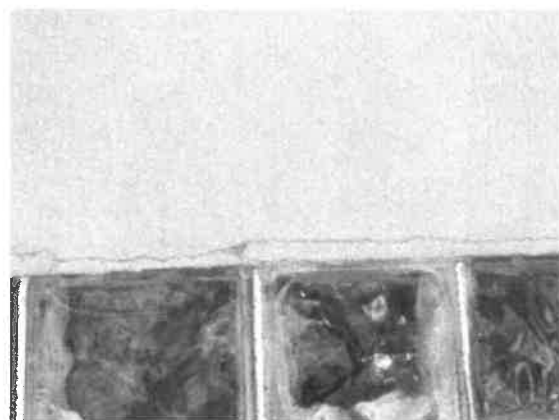
Overview



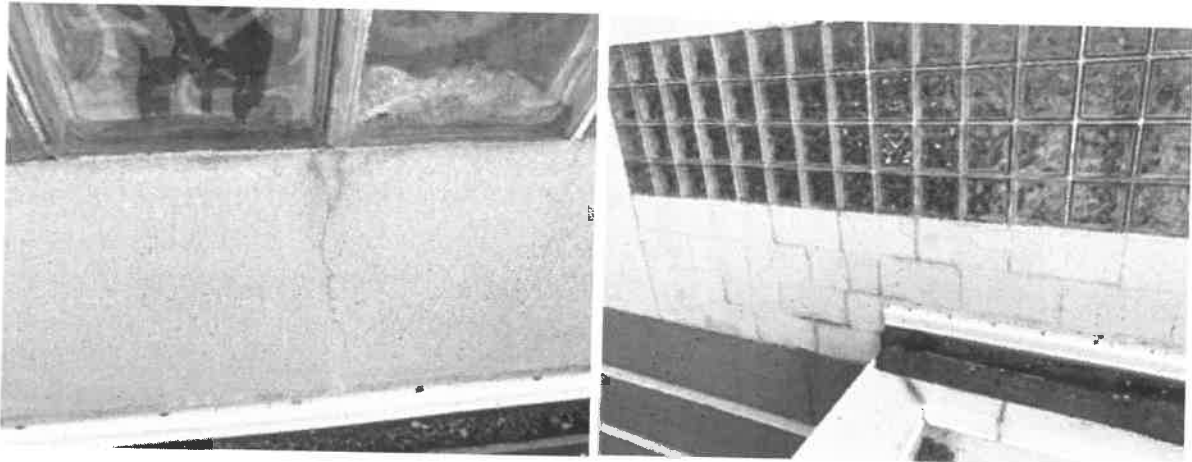
Overview



Core sample- 2.5" Iso, .5" Wood fiber cover board



Large crack across the top of the window



SOW: Admin and V&E Roof Restoration with Alpha Guard

- Tremco services to utilize water reclamation system to clean roof surface to provide suitable substrate for application of liquid restorative membrane.
- Remove existing walk pads and mark their location for new walkways.
- Cut out wet areas and repair with same size insulation and fully adhered EPDM. Strip into existing field membrane at cut joints using 6" wide cured cover strip.
- Repair designated flashing deficiencies, loose membrane, loose patches and field seams, punctures, and open corners using EPDM repair material.
- Prime existing repaired flashings and membrane with Alpha Guard WB Primer at 250 sf/gal
- Flashings: While primer is still tacky, apply Alpha Guard Bio Base coat at 3 gallons per square and fully embed Permafab polyester fabric so that no fabric is visible.
- Field: Same methodology with AG Base Coat and Permafab
- Top Coat: Apply 2 gallons per square of Alpha Guard Top coat to flashings and field in a uniform coverage.
- Walkway Areas: Around serviceable equipment and areas where walk pads existed, tape off 3 foot wide strip and apply ½ gallon per square of AG Top coat to surface. Broadcast white roofing granules into wet liquid and back roll with a roller to provide even coverage and traction.
- EIFS and Masonry Walls: cracks and open mortar joints are visible in the wall substrates. Power wash loose paint/coating from surface, prime with Solarguard primer, coat with Solarguard masonry coating.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/18/2020

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 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 Crissie Insurance Group 1700 Higgins Road Suite 320 Des Plaines IL 60018-4221		CONTACT NAME: Michelle Zingales PHONE (A/C No. Ext): (847) 296-0655 FAX (A/C No.): (847) 297-7779 E-MAIL: zingalesm@crissieins.com ADDRESS:	
INSURED Malcor Roofing of Illinois, Inc. 1850 Dean Street PO Box 941 St. Charles IL 60174		INSURER(S) AFFORDING COVERAGE INSURER A: National Fire Insurance Company of Hart 20478 INSURER B: Valley Forge Insurance Company 20508 INSURER C: Continental Insurance Company 35289 INSURER D: INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: 2020-2021 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 ☒ PRO-JECT ☐ LOC OTHER:			5095095983	6/1/2020	6/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			BUA5095096065	6/1/2020	6/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			CUE5095096020	6/1/2020	6/1/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	WC678652365	6/1/2020	6/1/2021	☒ 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 Equipment Installation Floater			5095095983 5095095983	6/1/2020 6/1/2020	6/1/2021 6/1/2021	\$125,000 Limit \$1,000,000 All Jobs

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

The Village of Orland Park, and their respective officers, officials, trustees, directors, employees and agents are included as additional insured on a primary and non-contributory basis including waiver of subrogation with respects to general liability per forms CNA75079XX 10/16, CNA74705XX 1/15, auto liability per form CNA63359XX 04/12 and umbrella liability per form CNA75504XX 03/15. Waiver of subrogation in favor of additional insureds with respects to workers compensation per form WC000313 4/84.

CERTIFICATE HOLDER

CANCELLATION

Village of Orland Park 14700 S Ravinia Avenue Orland Park, IL 60462	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 Anthony Crissie/MZ
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COMMENTS/REMARKS

Columbia Casualty Company
Contractors Pollution Incident Liability
Policy #C50950967907
\$1,000,000 Aggregate/Occurrence
\$10,000 SIR
Eff. 6/1/2020-6/1/2021

Columbia Casualty Company
Contractors Errors & Omissions
Policy #C6043617038
\$2,000,000 Aggregate/Occurrence
\$10,000 SIR
Eff. 6/1/2020-6/1/2021



CNA PARAMOUNT

**Blanket Additional Insured - Owners, Lessees or
Contractors - with Products-Completed
Operations Coverage Endorsement**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:
- A.** in the performance of your ongoing operations subject to such **written contract**; or
 - B.** in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury or property damage** included in the **products-completed operations hazard**, and only if:
 - 1. the **written contract** requires you to provide the additional insured such coverage; and
 - 2. this **coverage part** provides such coverage.
- II.** But if the **written contract** requires:
- A.** additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
 - B.** additional insured coverage with "arising out of" language; or
 - C.** additional insured coverage to the greatest extent permissible by law;
- then paragraph I. above is deleted in its entirety and replaced by the following:
- WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of **your work** that is subject to such **written contract**.
- III.** Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
- A.** coverage broader than required by the **written contract**; or
 - B.** a higher limit of insurance than required by the **written contract**.
- IV.** The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage, or personal and advertising injury** arising out of:
- A.** the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
 - 1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - 2. supervisory, inspection, architectural or engineering activities; or
 - B.** any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.
- V.** Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

CNA75079XX (10-16)

Page 1 of 2

Nat'l Fire Ins Co of Hartford

Insured Name: MALCOR ROOFING OF ILLINOIS INC.

Policy No: 5095095983

Endorsement No: 33

Effective Date: 06/01/2020

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**Blanket Additional Insured - Owners, Lessees or
Contractors - with Products-Completed
Operations Coverage Endorsement****Primary and Noncontributory Insurance**

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph 3. does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled DEFINITIONS is amended to add the following definition:

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

A. is currently in effect or becomes effective during the term of this policy; and

B. was executed prior to:

1. the **bodily injury or property damage**; or
2. the offense that caused the **personal and advertising injury**;

for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA75079XX (10-16)

Page 2 of 2

Nat'l Fire Ins Co of Hartford

Insured Name: MALCOR ROOFING OF ILLINOIS INC.

Policy No: 5095095983

Endorsement No: 33

Effective Date: 06/01/2020

**CNA PARAMOUNT****Contractors' General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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CNA74705XX (1-15)

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Nat'l Fire Ins Co of Hartford

Insured Name: MALCOR ROOFING OF ILLINOIS INC.

Policy No: 5095095983

Endorsement No: 2

Effective Date: 06/01/2020

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**Contractors' General Liability Extension Endorsement****1. ADDITIONAL INSUREDS**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs A. through H. below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph A. through H. below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The

**Contractors' General Liability Extension Endorsement**

coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the occurrence giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the products-completed operations hazard.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:

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**Contractors' General Liability Extension Endorsement**

- a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,
- in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
- 2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, **offense** or **claim** only when the **occurrence**, **offense** or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, **offense** or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, **offense** or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, **offense** or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

- 3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
 - a. on the effective date of this **Coverage Part**; or

**Contractors' General Liability Extension Endorsement**

b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

(a) any partnership, limited liability company or joint venture; or

(b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, management control means:

A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or

B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or self property held by a trust.

4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:

a. **bodily injury or property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor

b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.

5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. BROADENED LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND YOUR WORK

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusions k. and l. and replace them with the following:

This insurance does not apply to:

k. Damage to Your Product

Property damage to your product arising out of it, or any part of it except when caused by or resulting from:

(1) fire;

(2) smoke;

(3) collapse; or

(4) explosion.

l. Damage to Your Work

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

This exclusion does not apply:

(1) If the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor; or



**Contractors' General Liability Extension Endorsement**

(2) If the cause of loss to the damaged work arises as a result of:

- (a) fire;
- (b) smoke;
- (c) collapse; or
- (d) explosion.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for the sum of **damages** arising out of any one **occurrence** because of **property damage** to **your product** and **your work** that is caused by fire, smoke, collapse or explosion and is included within the **product-completed operations hazard**. This sublimit does not apply to **property damage** to **your work** if the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor.

C. This **Broadened Liability Coverage For Damage To Your Product And Your Work** Provision does not apply if an endorsement of the same name is attached to this policy.

7. CONTRACTUAL LIABILITY – RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

Insured Contract means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** 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 the **Named Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes 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;
- (2) Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

8. ELECTRONIC DATA LIABILITY

CNA74705XX (1-15)

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Nat'l Fire Ins Co of Hartford

Insured Name: MALCOR ROOFING OF ILLINOIS INC.

Policy No: 5095095983

Endorsement No: 2

Effective Date: 06/01/2020

**Contractors' General Liability Extension Endorsement**

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion p. **Electronic Data** and replace it with the following:

This insurance does not apply to:

p. **Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data** that does not result from physical injury to tangible property.

However, unless Paragraph (1) above applies, this exclusion does not apply to **damages** because of **bodily injury**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relation expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in Paragraph (1) or (2) above.

- B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for all **damages** arising out of any one **occurrence** because of **property damage** that results from physical injury to tangible property and arises out of **electronic data**.

- C. The following definition is added to **DEFINITIONS**:

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

- D. For the purpose of the coverage provided by this **ELECTRONIC DATA LIABILITY** Provision, the definition of **property damage** in **DEFINITIONS** is replaced by the following:

Property damage means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate **electronic data**, resulting from physical injury to tangible property. All such loss of **electronic data** shall be deemed to occur at the time of the **occurrence** that caused it.

For the purposes of this insurance, **electronic data** is not tangible property.

- E. If Electronic Data Liability is provided at a higher limit by another endorsement attached to this policy, then the \$100,000 limit provided by this **ELECTRONIC DATA LIABILITY** Provision is part of, and not in addition to, that higher limit.

9. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for



**Contractors' General Liability Extension Endorsement**

claims arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

10. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

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

11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER PROJECT

A. For each construction project away from premises the **Named Insured** owns or rents, a separate Construction Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:

1. All **damages** under **Coverage A**, except **damages** because of **bodily injury or property damage** included in the **products-completed operations hazard**; and
2. All medical expenses under **Coverage C**,

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Construction Project General Aggregate Limit of any other construction project.

B. All:

1. **Damages** under **Coverage B**, regardless of the number of locations or construction projects involved;
2. **Damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single construction project, except **damages** because of **bodily injury or property damage** included in the **products-completed operations hazard**; and
3. Medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a single construction project,

will reduce the General Aggregate Limit shown in the Declarations.

C. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Construction Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular construction project.

D. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury or property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.

**Contractors' General Liability Extension Endorsement**

- E. If a single construction project away from premises owned by or rented to the **Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- F. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

12. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

13. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Insuring Agreement** is amended to replace Paragraphs 1.b.(1) and 1.b.(2) with the following:
- b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:
- (1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.
- (2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and
- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:
- i. add the following to the **Employers Liability** exclusion:
- This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).
- ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:
- This insurance does not apply to:
- Contractual Liability**
- the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.
- iii. add the following additional exclusions:
- This insurance does not apply to:
- Discrimination**
- any actual or alleged discrimination, humiliation or harassment, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.
- Dishonesty or Crime**
- Any actual or alleged dishonest, criminal or malicious act, error or omission.
- Medicare/Medicaid Fraud**



**Contractors' General Liability Extension Endorsement**

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any health care incident for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees or volunteer workers** in the rendering of:

a. **professional health care services** on behalf of the **Named Insured** or

b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

iii. amend the definition of **Insured** to:

a. add the following:

the **Named Insured's employees** are **Insureds** with respect to:

- (1) **bodily injury** to a co-employee while in the course of the co-employee's employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

**Contractors' General Liability Extension Endorsement**

- (2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

the **Named Insured's** **volunteer workers** are **Insureds** with respect to:

- (1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

- (2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

- D. The **Other Insurance** condition is amended to delete Paragraph b.(1) in its entirety and replace it with the following:

Other Insurance

b. **Excess Insurance**

- (1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

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, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;
- the **bodily injury** or **property damage** first occurred after such termination date; and
- there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company; and

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph c. above. But this provision will not serve to exclude **bodily injury, property damage or personal and advertising injury** that would otherwise be covered under the **Contractors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

15. LEGAL LIABILITY – DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion j. **Damage to Property** in its entirety and replace it with the following:

This insurance does not apply to:



**Contractors' General Liability Extension Endorsement****j. Damage to Property****Property damage to:**

- (1) Property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to the **Named Insured**;
- (4) Personal property in the care, custody or control of the **Insured**;
- (5) That particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on the **Named Insured's** behalf are performing operations, if the **property damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

Paragraph (2) of this exclusion does not apply if the premises are **your work**.

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**.

Paragraphs (3) and (4) of this exclusion do not apply to **property damage** to:

- i. tools, or equipment the **Named Insured** borrows from others, nor
- ii. other personal property of others in the **Named Insured's** care, custody or control while being used in the **Named Insured's** operations away from any **Named Insured's** premises.

However, the coverage granted by this exception to Paragraphs (3) and (4) does not apply to:

- a. property at a job site awaiting or during such property's installation, fabrication, or erection;
- b. property that is **mobile equipment** leased by an **Insured**;
- c. property that is an **auto**, aircraft or watercraft;
- d. property in transit; or
- e. any portion of **property damage** for which the **Insured** has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.

A separate limit of insurance and deductible apply to such property of others. See **LIMITS OF INSURANCE** as amended below.

**Contractors' General Liability Extension Endorsement**

- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **LIMITS OF INSURANCE**.

- C. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$25,000 is the most the Insurer will pay under **Coverage A** for **damages** arising out of any one **occurrence** because of the sum of all **property damage** to borrowed tools or equipment, and to other personal property of others in the **Named Insured's** care, custody or control, while being used in the **Named Insured's** operations away from any **Named Insured's** premises. The Insurer's obligation to pay such **property damage** does not apply until the amount of such **property damage** exceeds \$1,000. The Insurer has the right but not the duty to pay any portion of this \$1,000 in order to effect settlement. If the Insurer exercises that right, the **Named Insured** will promptly reimburse the Insurer for any such amount.

- D. Paragraph 6., **Damage To Premises Rented To You Limit**, of **LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to Paragraph 5. above, (the Each Occurrence Limit), the **Damage To Premises Rented To You Limit** is the most the Insurer will pay under **Coverage A** for **damages** because of **property damage** to any one premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, including contents of such premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. The **Damage To Premises Rented To You Limit** is the greater of:

- a. \$500,000; or
- b. The **Damage To Premises Rented To You Limit** shown in the Declarations.

- E. Paragraph 4.b.(1)(a)(ii) of the **Other Insurance Condition** is deleted and replaced by the following:

(ii) That is property insurance for premises rented to the **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

16. LIQUOR LIABILITY

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Liquor Liability**.

This **LIQUOR LIABILITY** provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

17. MEDICAL PAYMENTS

- A. **LIMITS OF INSURANCE** is amended to delete Paragraph 7. (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph 5. above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

- (1) \$15,000 unless a different amount is shown here: \$N,NNN,NNN,NNN; or
- (2) the amount shown in the Declarations for Medical Expense Limit.



**Contractors' General Liability Extension Endorsement**

- B.** Under **COVERAGES**, the Insuring Agreement of **Coverage C – Medical Payments** is amended to replace Paragraph 1.a.(3)(b) with the following:

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

18. NON-OWNED AIRCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. 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;
2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. the aircraft is not being used to carry persons or property for a charge.

19. NON-OWNED WATERCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

- (2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

- (a) less than 75 feet long; and
- (b) not being used to carry persons or property for a charge.

20. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

- A.** Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

- B.** Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

- (a) the **Named Insured**; or
- (b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

**Contractors' General Liability Extension Endorsement**

This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of 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**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

Provision 1. **ADDITIONAL INSURED** of this endorsement; or
attachment of an additional insured endorsement to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

21. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY

- A. Under **COVERAGES, Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability**.
- B. Solely for the purpose of the coverage provided by this **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** provision, the following changes are made to the section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

1. Paragraph 2.d. is replaced by the following:
 - d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;
2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

- C. This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

22. PROPERTY DAMAGE – ELEVATORS

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs (3), (4) and (6) of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

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**Contractors' General Liability Extension Endorsement**

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the claim.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor

**Contractors' General Liability Extension Endorsement**

2. **Bodily injury or property damage** included within the **products-completed operations hazard** that arises out of those portions of the project that are not **residential structures**.

B. Condition 4. Other Insurance is amended to add the following subparagraph 4.b.(1)(c):

This insurance is excess over:

- (c) Any of the other insurance whether primary, excess, contingent or any other basis that is insurance available to the **Named Insured** as a result of the **Named Insured** being a participant in a **consolidated (wrap-up) insurance program**, but only as respects the **Named Insured's** involvement in that **consolidated (wrap-up) insurance program**.

C. DEFINITIONS is amended to add the following definitions:

Consolidated (wrap-up) insurance program means a construction, erection or demolition project for which the prime contractor/project manager or owner of the construction project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project, such as an Owner Controlled Insurance Program (O.C.I.P.) or Contractor Controlled Insurance Program (C.C.I.P.).

Residential structure means any structure where 30% or more of the square foot area is used or is intended to be used for human residency, including but not limited to:

1. single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments; and
2. the common areas and structures appurtenant to the structures in paragraph 1. (including pools, hot tubs, detached garages, guest houses or any similar structures).

However, when there is no individual ownership of units, **residential structure** does not include military housing, college/university housing or dormitories, long term care facilities, hotels or motels. **Residential structure** also does not include hospitals or prisons.

This **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured**:

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.



**Business Auto Policy
Policy Endorsement**

C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered **auto**. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

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**Business Auto Policy
Policy Endorsement**

F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

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- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

- (6) 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 or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

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

Form No: CNA63359XX (04-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 14; Page: 4 of 4

Underwriting Company: Valley Forge Insurance Company, 151 N Franklin St, Chicago, IL 60606

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**Workers Compensation And Employers Liability Insurance
Policy Endorsement**

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 on whose behalf you are required to obtain this waiver of our right to recover from under a written contract or agreement.

The premium charge for the endorsement is reflected in the Schedule of Operations.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: WC 00 03 13 (04-1984)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 3; Page: 1 of 1

Underwriting Company: Continental Casualty Company, 151 N Franklin St, Chicago, IL 60606

Policy No: WC 6 78652365

Policy Effective Date: 06/01/2020

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PARAMOUNT EXCESS AND UMBRELLA LIABILITY POLICY

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

The "Insurer" refers to the insurer providing this insurance as set forth on the Declarations of this Policy. Words and phrases that appear in **bold** have special meaning. Refer to the section entitled **DEFINITIONS**.

I. COVERAGES

A. Coverage A - Excess Follow Form Liability

The Insurer will pay on behalf of the **Insured** those **damages** in excess of the applicable **underlying limits**. Coverage hereunder will attach only after the full amount of the applicable **underlying limits** have been exhausted through payment in legal currency of covered loss under all applicable **underlying insurance** and to which this Coverage A applies.

Coverage A under this Policy will then apply in conformance with the provisions of the applicable **underlying insurance** except for the premium, limits of insurance, deductible, retentions, or any defense obligations and any other terms and conditions specifically set forth in this Policy.

Upon exhaustion of the applicable **underlying limits**, the Insurer shall only pay for **damages** in excess of the applicable **underlying limits**. This Coverage A does not provide coverage for any loss not covered by the applicable **underlying insurance** except and to the extent that such loss is not paid under the applicable **underlying insurance** solely by reason of the exhaustion of the applicable **underlying limits** through payment of loss thereunder.

This Coverage applies:

1. if the applicable **underlying insurance** is on an occurrence basis, then only if that which must take place in the policy period of the **underlying insurance** in order to trigger coverage, takes place during this **policy period**; and
2. if the applicable **underlying insurance** is on a claims made basis, then only if:
 - a. that which must take place in the **underlying insurance** in order to trigger coverage, takes place after the retroactive date and prior to the end of the **policy period**; and
 - b. the **claim** is first made during the **policy period**.

B. Coverage B - Umbrella Liability

The Insurer will pay on behalf of the **Insured** those **damages** in excess of the **retained amount**:

1. that an **Insured** becomes legally obligated to pay because of **bodily injury, property damage or personal and advertising injury**; or
2. because of liability for **bodily injury or property damage** assumed under an **insured contract**, provided the **bodily injury or property damage** occurs subsequent to the execution of such **insured contract**;

and provided that:

- a. the **bodily injury or property damage** occurs during the **policy period**;
- b. the **bodily injury or property damage** is caused by an **occurrence** that takes place in the **coverage territory**;



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Policy

- c. the **personal and advertising injury** is caused by an offense arising out of the **Named Insured's** business; and
- d. the offense giving rise to **personal and advertising injury** was first committed during the **policy period** and in the **coverage territory**;

Provided, however, that **Coverage B - Umbrella Liability**:

- i. does not apply to:
 - (a) any part of **damages** to which **underlying insurance** applies; or
 - (b) any part of **damages** to which **underlying insurance** would have applied regardless of:
 - (1) the availability of **underlying insurance**; or
 - (2) the exhaustion of the applicable **underlying limits**;
 - (c) any **defense costs** related to **damages** as described in **a.** and **b.** above.
- ii. applies only if prior to the effective date of the **policy period**, no **authorized insured**:
 - (a) knew that such **bodily injury** or **property damage** had occurred, in whole or in part. If any **authorized insured** knew, prior to the **policy period**, that any such **bodily injury** or **property damage** had 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**; or
 - (b) knew that any offense giving rise to **personal and advertising injury** had occurred, in whole or in part.

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 **authorized insured**, includes any continuation, change or resumption of that **bodily injury** or **property damage** after the end of the **policy period**.

An **authorized insured** will be deemed to know:

- 1. that such **bodily injury** or **property damage** occurred, at the earliest time when such **authorized insured**:
 - a. reports the **bodily injury** or **property damage** to the Insurer or any other insurer;
 - b. receives a **claim** arising out of the **bodily injury** or **property damage**; or
 - c. becomes aware by any other means that the **bodily injury** or **property damage** has occurred or has begun to occur;
- 2. that such offense giving rise to **personal and advertising injury** occurred, on the date of the first utterance or dissemination or, if there is no utterance or dissemination, then on the first date of the activity giving rise to a **claim**.

C. Coverage C - Crisis Management Expenses

The Insurer will reimburse the **Named Insured** for **crisis management expenses** incurred by the **Named Insured** as a direct result of its response to a **crisis management event** that first occurs during the **policy period**, provided:

- 1 such **crisis management event** is reported to the Insurer as soon as reasonably practicable following the **crisis management event**, or within 72 hours after such **crisis management event** begins if such **crisis management event** is likely to give rise to **bodily injury** or **property damage**;



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2. such **crisis management expenses** are incurred within 180 days after the **crisis management event** and reported to the Insurer as soon as reasonably practicable; and,
3. such **crisis management expenses** are approved in advance by the Insurer.

The period of time for which the Insurer will pay **crisis management expenses** will not be limited by the expiration of the **policy period**.

D. Coverage D – Key Employee

The Insurer will reimburse the **Named Insured** for **key employee replacement expenses** due to the **Named Insured's** permanent loss of the services of a **key employee** provided that:

1. the **Named Insured** would not have incurred such **key employee replacement expenses** if the **Named Insured** had not lost the services of the **key employee**;
2. such **key employee replacement expenses** are incurred by the **Named Insured** within 180 days of the **covered accident** and reported to the Insurer as soon as reasonably practicable;
3. such loss of service is caused by a **covered accident**;
4. the **covered accident** occurs during the **policy period**; and
5. a replacement for such **key employee** is hired within 180 days after the **covered accident**.

The period of time for which the Insurer will pay **key employee replacement expenses** will not be limited by the expiration of the **policy period**.

II. DEFENSE COSTS PAYMENT AND RELATED DUTIES

- A. The Insurer has the right and duty to defend any **suit**, and the right to assume control of the investigation and settlement of any **claim**, against the **Insured**, as follows:
1. with respect to the **Coverage A - Excess Follow Form Liability**, upon exhaustion through payment in legal currency of the full amount of the applicable **underlying limits** over which **Coverage A** applies.
 2. with respect to the **Coverage B - Umbrella Liability**, upon receipt by the Insurer of a **claim** to which Coverage B applies.

When the Insurer has the duty to defend any **suit** and the right to investigate any **claim** but is prevented by law from doing so, the **Insured** will undertake such defense and investigation, and the Insurer will reimburse the **Insured** for the **defense costs**.

The Insurer's obligation to defend any **suit**, investigate any **claim**, or reimburse for any **defense costs** does not apply if any other insurer has a duty to defend. Further, any obligation to defend any **suit**, investigate any **claim**, or reimburse for any **defense costs** ceases upon exhaustion of the applicable limits of insurance of this Policy.

- B. The Insurer may, at the Insurer's sole discretion and at the Insurer's own cost, elect to participate in the investigation, settlement or defense of any **claim** against any of the **Insureds** for matters covered by this Policy even if the applicable **underlying limit** has not been exhausted.
- C. The Insurer will pay **defense costs** as follows:
- 1 with respect to the **Coverage A - Excess Follow Form Liability**, **defense costs** are paid within or excess of the limits of insurance as set forth in the applicable **underlying insurance**.
 2. with respect to the **Coverage B - Umbrella Liability**, **defense costs** are paid in excess of and do not erode the limits of insurance or the **retained amount**.
- D Where the Insurer investigates a **claim** or defends a **suit**, the Insurer will do so even if the allegations of a **claim** are groundless, false, or fraudulent. If Insurer investigates a **claim** or defends a **suit**, Insurer will



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do so only until the Insurer:

1. makes payment of; or
2. offers to pay; or
3. deposits in court

that part of a judgment up to but not exceeding the Insurer's applicable limits of insurance.

- E. No Insured** shall admit liability, consent to any judgment, agree to any settlement or make any settlement offer which is reasonably likely to involve this Policy without the Insurer's prior written consent, such consent not to be unreasonably withheld. The **Insureds** agree that they shall not knowingly take any action that increases the Insurer's exposure for **damages** or **defense costs** under this Policy.

III. EXCLUSIONS

A. Coverage A - Excess Follow Form Liability and Coverage B - Umbrella Liability Exclusions

With respect to both the **Coverage A- Excess Follow Form Liability** and **Coverage B -Umbrella Liability**, this Insurance does not apply to:

1. Access to or Disclosure of Confidential or Personal Information and Data-Related Liability

any actual or alleged **damages** arising out of:

- a. any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- b. the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**.

This exclusion applies even if **damages** are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in paragraph **a.** or **b.** above.

However, unless paragraph **a.** above applies, this exclusion does not apply to **bodily injury** to the extent that such liability is covered by **underlying insurance**.

2. Asbestos

- a. any actual or alleged liability arising out of the actual, alleged or threatened exposure at any time to **asbestos**; or
- b. any actual or alleged loss, cost or expense that may be awarded or incurred:
 - i. by reason of a **claim** for any such injury or damage; or
 - ii. in complying with a governmental direction or request to test for, monitor, clean up, remove, contain or dispose of **asbestos**.

3. Damage to Impaired Property or Property not Physically Injured

any actual or alleged **property damage** to **impaired property** or property that has not been physically injured, arising out of:

- a. a defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**; or
- b. a delay or failure by the **Named Insured** or anyone acting on the **Named Insured's** 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.

4. Damage to Premises Rented or Occupied by the Named Insured

any actual or alleged **property damage** to premises rented to the **Named Insured** or in the case of damage by fire, while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner.

5. Distribution or Recording of Material or Information in Violation of Laws

any actual or alleged liability arising directly or indirectly out of any actual or alleged:

a. violation of:

- i.** the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- ii.** the CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- iii.** the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- iv.** any statute, ordinance, regulation or law other than the TCPA, CAN-SPAM Act of 2003, or FCRA, including FACTA, 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; or

- b.** conversion or consumption of another's tangible property or electronic assets. For the purpose of this provision, electronic assets include but are not limited to minute allowances, text message allowances, and other electronic consumables.

6. Employment Related Practices

any actual or alleged **bodily injury** or **personal and advertising injury** to:

a. a person arising out of any actual or alleged:

- i.** refusal to employ that person;
- ii.** termination of that person's employment;
- iii.** employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, 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 such **bodily injury** or **personal and advertising injury** to that person at whom any of the employment-related practices described in paragraphs **a. i., ii., or iii.** above is directed.

This exclusion applies:

- a.** whether the injury-causing event described in paragraphs **a. i., ii., or iii.** above occurs before employment, during employment or after employment of that person;
- b.** whether the **Insured** may be liable as an employer or in any other capacity; and
- c.** to any obligation to share damages with or repay someone else who must pay damages because of the injury.

However, this exclusion does not apply to **bodily injury** a person sustains during a job interview while attempting to demonstrate a physical capability or skill required by the job to the extent that



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such liability is covered by **underlying insurance**.

7. ERISA

any actual or alleged liability arising out of any actual or alleged obligation of any **Insured** under the Employees Retirement Income Security Act of 1974 or any similar common or statutory law anywhere in the world including any amendments or additions thereto.

8. Nuclear Energy Liability

any actual or alleged **bodily injury, property damage or personal and advertising injury**:

- a. with respect to which an **Insured** under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of insurance;
- b. resulting from the **hazardous properties of nuclear material** and with respect to which:
 - i. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
 - ii. the **Insured** is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization; or
- c. resulting from **hazardous properties of nuclear material**, if:
 - i. the **nuclear material**:
 - (a) is at any **nuclear facility** owned by, or operated by or on behalf of, an **Insured** or
 - (b) has been discharged or dispersed therefrom;
 - ii. the **nuclear material** is contained in **spent fuel** or **nuclear waste** at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an **Insured**; or
 - iii. the **bodily injury, property damage or personal and advertising injury** arises out of the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion applies only to **property damage** to such **nuclear facility** and any property thereat.
- d. Under any Medical Payments coverage, to expenses with respect to **bodily injury** resulting from the **hazardous properties of nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization.

Solely as used in this exclusion:

- (a) **property damage** includes all forms of radioactive contamination of property;
- (b) **hazardous properties** includes but is not limited to radioactive, toxic or explosive properties;
- (c) source material, special nuclear material, and by-product material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- (d) **spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**.



9. Recall of Products, Work or Impaired Property

any actual or alleged loss, cost or expense incurred by the **Named Insured** or any person or entity, for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of **your product, your work or 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.

10. Unfair Competition/Antitrust Claims/RICO Claims

any actual or alleged liability arising out of any:

- a. unfair competition, dilution, deceptive trade practices, or civil actions for consumer fraud;
- b. charges of price fixing, monopolization or restraint of trade; or
- c. any violation of:
 - i. the Federal Trade Commission Act;
 - ii. the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
 - iii. the Racketeer Influenced and Corrupt Organizations Act;
 - iv. any rules or regulations promulgated under or in connection with the above statutes; or
 - v. any state, federal or local statute or other law which similarly regulates business practices.

11. Uninsured/Underinsured Motorists

any actual or alleged liability arising out of any obligations under an uninsured/underinsured motorist law, a personal injury protection law, a reparations benefit law or other similar law.

12. War

any actual or alleged liability arising, directly or indirectly out of any:

- 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.

13. Workers' Compensation and Similar Laws /Nonsubscriber Status

any actual or alleged liability arising out of any obligation of any **Insured**:

- a. under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- b. by reason of a statement of non-subscription on file with any applicable Worker's Compensation authority of any State indicating the **Named Insured** has chosen not to participate in the Workers Compensation system in accordance with laws of such state.

B. Coverage A - Excess Follow Form Liability Exclusions

With respect to **Coverage A - Excess Follow Form Liability**, this Insurance does not apply to:

1. Coverages Subject to a Sub Limit

any actual or alleged liability, loss, cost or expense covered under any **underlying insurance** which is



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subject to a **sub limit**.

2. Crisis Management Expenses

crisis management expenses except as provided for in **Coverage C** above even if such insurance is afforded under **underlying insurance** or would have been afforded but for the exhaustion of the **underlying limits**.

3. Pollution

- a. any actual or alleged **bodily injury** or **property damage** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:
 - i. at or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any **Insured** except that this subparagraph does not apply to:
 - (a) **bodily injury** or **property damage** arising out of heat, smoke or fumes from a **hostile fire**; or
 - (b) **bodily injury** if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - ii. at or from any premises, site or location which is or was at any time used by or for any **Insured** or others for the handling, storage, disposal, processing or treatment of waste;
 - iii. which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any **Insured** or any person or organization for whom the **Named Insured** may be legally responsible; or
 - iv. at or from any premises, site or location on which any **Insured** or any contractors or subcontractors working directly or indirectly on any **Insured's** behalf are performing operations:
 - (a) If the **pollutants** are brought on or to the premises, site or location in connection with such operations by such **Insured**, contractor or subcontractor; except that this subparagraph does not apply to **bodily injury** or **property damage** arising out of:
 - (1) the escape of fuels, lubricants, or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for operation of **mobile equipment** or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the **bodily injury** or **property damage** arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids; or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such **Insured**, contractor or subcontractor; or
 - (2) heat, smoke or fumes from a **hostile fire**; or
 - (b) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**;
 - v. that are, or that are contained in property that is:
 - (a) being transported or towed by, or handled for movement into, onto or from a covered **auto**;
 - (b) otherwise in the course of transit; or



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- (c) being stored, disposed of, treated or processed in or upon the covered **auto** except that this subparagraph does not apply to fuels, lubricants, fluids, exhaust, gases or other similar **Pollutants** that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered **auto** or its parts if the **pollutants** escape or are discharged, dispersed or released directly from an **auto** part designed by its manufacturer to hold, store, receive or dispose of such **pollutants**;
 - vi. before the **pollutants** or property in which the **pollutants** are contained are moved from the place where they are accepted by the **Insured** for movement into or onto the covered **auto**;
or
 - vii. after the **pollutants** or property in which the **pollutants** are contained are moved from the covered **auto** to the place where they are finally delivered, disposed of or abandoned by the **Insured**.
- Subparagraphs vi. and vii. do not apply if the **pollutants** or property in which the **pollutants** are contained are upset, overturned or damaged as a result of the maintenance or use of a covered **auto** and the discharge, dispersal, release or escape of the **pollutants** is caused directly by such upset, overturn or damage.
- b. any actual or alleged **personal and advertising injury** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time.
 - c. any actual or alleged loss, cost or expense arising out of any:
 - i. 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
 - ii. claim by or on behalf of a governmental authority for **damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

However, if liability for **damages** because of **property damage** is not excluded by paragraph a. of this exclusion, then neither will paragraph c. above serve to exclude such **damages**.

C. Coverage B - Umbrella Liability Exclusions

With respect to the **Coverage B - Umbrella Liability**, this Insurance does not apply to:

1. Aircraft, Auto, Watercraft or Mobile Equipment

any actual or alleged **bodily injury, property damage, personal and advertising injury** arising out of the ownership, maintenance, operation, use, **loading or unloading** or entrustment to others of any:

- a. **aircraft** owned by any **Insured** or rented, loaned or chartered by or on behalf of any **Insured** without crew; or
- b. **autos, watercraft or mobile equipment**

This exclusion applies even if such **claim** against an **Insured** alleges negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Insured**.

This exclusion does not apply to:

- i. watercraft while ashore on premises the **Named Insured** owns or rents;
- ii. watercraft the **Named Insured** does not own that is:
 - (a) less than 55 feet long; and
 - (b) not being used to carry persons or property for a charge; or



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- iii. liability assumed under any **insured contract** for the ownership, maintenance or use of watercraft.

2. Contractual Liability

any actual or alleged **bodily injury, property damage or personal and advertising injury** for which an **Insured** is obligated to pay **damages** by reason of the assumption of liability in a contract or agreement other than an **insured contract**. This exclusion does not apply to liability that the **Insured** would have in the absence of such contract or agreement.

3. Damage to Property

any actual or alleged **property damage** to:

- a. property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by the **Named Insured**, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- b. premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- c. property loaned to the **Named Insured**;
- d. personal property in the care, custody or control of the **Insured**;
- e. that particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on its behalf are performing operations, if the **property damage** arises out of those operations; or
- f. that particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

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

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

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

4. Damage to Your product

any actual or alleged **property damage** to **your product** arising out of it or any part of it.

5. Damage to Your work

any actual or alleged **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 the **Named Insured's** behalf by a subcontractor.

6. Employee Injury

any actual or alleged **bodily injury or personal and advertising injury** to:

- a. an **employee** arising out of and in the course of employment by the **Insured** or performing duties related to the conduct of the **Insured's** business; or
- b. the **spouse, child, parent, brother or sister** of that **employee** as a consequence of a. above.



This exclusion applies:

- i. whether an **Insured** may be liable as an employer or in any other capacity; and
- ii. 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**.

7. Expected or Intended injury

any actual or alleged **bodily injury** or **property damage** arising out of an act or omission:

- a. intended by an **Insured**; or
- b. that would be expected from the standpoint of a reasonable person in the circumstances of the **Insured**;

to cause **bodily injury** or **property damage**, even if the actual **bodily injury** or **property damage** is of a different degree or type than intended or expected.

This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

8. Fungi or Other Organic Pathogens

- a. any actual or alleged **bodily injury**, **property damage** or **personal and advertising injury** arising out of any actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or growth or presence of any **fungi or other organic pathogens**;
- b. any actual or alleged loss, cost or expense arising out of or relating to the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of, or in any way responding to or assessing the effects of **fungi or other organic pathogens** by any **Insured** or by anyone else; or
- c. any actual or alleged **property damage** caused by water where there also exists any **property damage** arising out of or relating to, in whole or in part, the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or growth or presence of any **fungi or other organic pathogens**.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage, loss, cost or expense.

9. Liquor Liability

any actual or alleged **bodily injury** or **property damage** for which any **Insured** may be held liable by reason of:

- a. causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on the **Insured's** premises, for consumption on the **Insured's** premises;
- b. the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

- i. the supervision, hiring, employment, training or monitoring of others by that **Insured**; or



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- ii. 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 **a.**, **b.** or **c.** above.

10. Nonemployment Related Discrimination

any actual or alleged personal and advertising injury arising out of any actual or alleged nonemployment related discrimination committed intentionally against a person.

11. Personal and Advertising Injury

any actual or alleged **personal and advertising injury**:

a. Breach of Contract

arising out of breach of contract, except an implied contract to use another's advertising idea in the **Named Insured's advertisement**.

b. Criminal Acts or Conduct

arising out of any actual or alleged criminal act or omission committed by or at the direction of any **Insured**. This exclusion does not apply to the extent liability is imposed upon the **Insured** for acts or omissions of another committed without the knowledge or consent of the **Insured**.

c. Electronic Chat Rooms or Bulletin Boards

arising out of an electronic chat room or bulletin board the **Insured** hosts, owns, or over which the **Insured** exercises control.

d. Infringement of Copyright, Patent, Trademark or Trade Secret

arising out of 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 the **Named Insured's advertisement**. However, this exclusion does not apply to infringement of copyright, trade dress or slogan in the **Named Insured's advertisement**.

e. Insureds in Media and Internet Type Businesses

committed by an **Insured** whose business is:

- i. advertising, broadcasting, publishing or telecasting;
- ii. designing or determining content or web-sites for others; or
- iii. an Internet search, access, content or service provider.

However, this exclusion does not apply to paragraph **A.**, **B.** or **C.** of **personal and advertising injury** as defined in the section entitled Definitions.

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

f. Knowing Violation of Rights of Another

caused by an actual or alleged offense, act or omission by or at the direction of the **Insured** if the **Insured** knew or should have known that such offense, act or omission would cause such **personal and advertising injury**.



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g. 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**.

h. Material Published with Knowledge of Falsity

arising out of written publication in any manner of material, if the **Insured** knew or should have known the material was false.

i. Quality or Performance of Goods – Failure to Conform to Statements

arising out of any failure of goods, products or services to conform to any statement of quality or performance made in the **Named Insured's advertisement**.

j. Unauthorized Use of Another's Name or Product

arising out of unauthorized use of another's name or product in the **Named Insured's** e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

k. Wrong Description of Prices

arising out of the wrong description of the price of goods, products or services stated in the **Named Insured's advertisement**.

12. Pollution

- a.** any actual or alleged **bodily injury, property damage or personal and advertising injury** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time.
- b.** any actual or alleged loss, cost or expense arising out of any:
 - i.** request, demand, order, or statutory or regulatory requirement that anyone test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **pollutants**; or
 - ii.** **claim** 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**.

13. Silica

- a.** any actual or alleged **bodily injury** arising, in whole or in part, out of the actual, alleged or threatened respiration or ingestion at any time of **silica**; or
- b.** any actual or alleged **property damage** arising in whole or in part out of the actual, alleged or threatened presence of **silica**.
- c.** any actual or alleged **personal and advertising injury** arising, in whole or in part, out of the actual, alleged or threatened:
 - i.** exposure at any time to; or
 - ii.** presence at any time of;
silica.

14. Terrorism

any actual or alleged **bodily injury, property damage or personal and advertising injury** arising out of any act of terrorism.



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D. Coverage D - Key Employee Exclusions

With respect to **Coverage D – Key Employee**, this insurance does not apply to any actual or alleged:

1. Death or Disability

death or permanent disability of a **key employee** relating to, or arising out of:

- a. nuclear reaction or radiation or radioactive contamination, however caused;
- b. sickness or disease, including mental illness or mental injury;
- c. pregnancy, childbirth, miscarriage or abortion;
- d. suicide, attempted suicide or self inflicted bodily injury, while sane or insane;
- e. the **key employee's** intoxication, impairment or otherwise being under the influence of alcohol or controlled substances;
- f. war, including undeclared or civil war;
- g. 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
- h. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

2. Other Expenses

- a. expenses the **Named Insured** incurs which the **Named Insured** would not have incurred if the **Named Insured** had used all reasonable means to:
 - i. find a permanent replacement for the **key employee**; and
 - ii. reduce or discontinue the **key employee** replacement expense;as soon as possible after the **Named Insured's** permanent loss of the services of the **key employee** caused by a **covered accident**.
- b. additional expenses incurred due to the **Named Insured's** loss of the services of a permanent replacement appointed or hired to replace a **key employee**, however caused. However, this exclusion does not apply if the replacement employee is included in the definition as a **key employee** and the **Named Insured's** loss of the services of the replacement employee is caused by a **covered accident**.

IV. WHO IS AN INSURED

The following persons or organizations are **Insureds**.

- A. With respect to **Coverage A - Excess Follow Form Liability**, the **Named Insured** and any persons or organizations included as an insured under the provisions of **underlying insurance** are **Insureds**, and then only for the same coverage, except for limits of insurance, afforded under such **underlying insurance**.
- B. With respect to the **Coverage B - Umbrella Liability**:
 - 1. If the **Named Insured** is designated in the Declarations of this Policy as:
 - a. an individual, the **Named Insured** and the **Named Insured's spouse** are **Insureds**, but only with respect to the conduct of a business of which the **Named Insured** is the sole owner.
 - b. a partnership or joint venture, the **Named Insured** is an **Insured**. The **Named Insured's** members, the **Named Insured's** partners, and their **spouses** are also **Insureds**, but only with respect to the conduct of the **Named Insured's** business.



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- c. a limited liability company, the **Named Insured** is an **Insured**. The **Named Insured's** members are also **Insureds**, but only with respect to the conduct of the **Named Insured's** business. The **Named Insured's** managers are **Insureds**, but only with respect to their duties as the **Named Insured's** managers.
 - d. an organization other than a partnership, joint venture or limited liability company, the **Named Insured** is an **Insured**. The **Named Insured's** executive officers and directors are **Insureds**, but only with respect to their duties as the **Named Insured's** officers or directors. The **Named Insured's** stockholders are also **Insureds**, but only with respect to their liability as stockholders.
 - e. a trust, the **Named Insured** is an **Insured**. The **Named Insured's** trustees are also **Insureds**, but only with respect to their duties as trustees.
2. Each of the following are also **Insureds**:
- a. The **Named Insured's** volunteer workers but only while performing duties related to the conduct of the **Named Insured's** business.
 - b. The **Named Insured's** employees, other than either the **Named Insured's** executive officers (if the **Named Insured** is an organization other than a partnership, joint venture or limited liability company) or the **Named Insured's** managers (if the **Named Insured** is a limited liability company), but only for acts within the scope of their employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business.

However, none of these employees or volunteer workers are **Insureds** for:

- i. **bodily injury or personal and advertising injury:**
 - (a) to the **Named Insured**, to the **Named Insured's** partners or members (if the **Named Insured** is a partnership or joint venture), to the **Named Insured's** members (if the **Named Insured** is a limited liability company), to a co-employee while in the course of his or her employment or performing duties related to the conduct of the **Named Insured's** business, or to the **Named Insured's** other volunteer workers while performing duties related to the conduct of the **Named Insured's** business;
 - (b) to the spouse, child, parent, brother or sister of that co-employee or volunteer worker as a consequence of paragraph (i)(a) above;
 - (c) for which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph i. (a) or (b) above; or
 - (d) arising out of his or her providing or failing to provide professional health care services.
- ii. **property damage** to property:
 - (a) owned, occupied or used by;
 - (b) rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;the **Named Insured**, any of the **Named Insured's** employees, volunteer workers, any partner or member (if the **Named Insured** is a partnership or joint venture), or any member (if the **Named Insured** is a limited liability company).

- C. With respect to the **Coverage C - Crisis Event Management** and the **Coverage D - Key Employee**, the **Named Insured** is the **Insured**.

V. LIMITS OF INSURANCE

A. Multiple Insureds, claims, claimants

The limits of insurance shown in the Declarations of this Policy and the rules below fix the most the



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Insurer will pay regardless of the number of:

1. **Insureds**;
2. **claims** made or brought against the **Insured**;
3. **persons** or organizations making **claims** or bringing **claims**; and
4. coverages under this Policy.

B. Aggregate Limit

Subject to the paragraphs **D.** and **E.** below, the limit of insurance shown in the Declarations of this Policy as the **Aggregate** limit is the most that the Insurer will pay as **damages** under this Policy, regardless of which coverage applies, except for:

1. **damages** covered by any auto liability policy listed in the Schedule of **Underlying Insurance** where the limits of insurance of such auto liability policy are not aggregated; and
2. **damages** covered under the **products-completed operations hazard**.

The limits of insurance shown in the Declarations of this Policy apply to the entire **policy period**, regardless of length.

In addition, with respect to **Coverage A – Excess Follow Form Liability** only, the **Aggregate** limit shown in the Declarations of this Policy shall be applied in the same manner as the applicable **Aggregate** limits in the Schedule of **underlying insurance**.

C. Aggregate Products-Completed Operations Hazard

Subject to paragraph **D.** and **E.** below, the limit of insurance shown in the Declarations of this Policy as the **Aggregate Products-Completed Operations Hazard** limit is the most that the Insurer will pay as **damages** arising out of the **products-completed operations hazard**, regardless of whether such **damages** are or otherwise would be covered in any way under more than one coverage.

D. Policy Aggregate Limit

This provision **D.** only applies if an amount is shown in the Declarations as the **Policy Aggregate Limit**.

Subject to the **Each Incident** limit, **Aggregate** limit and **Aggregate products-completed operations hazard** limit, the **Policy Aggregate** limit is the most the Insurer will pay as **damages** under this Policy, regardless of which coverage applies, except for **damages** covered by any auto liability policy listed in the Schedule of **Underlying Insurance** where the limits of insurance of such auto liability policy are not aggregated.

E. Each Incident

Subject to paragraphs **B.**, **C.** and **D.** above, the limit of insurance shown in the Declarations of this Policy as the **Each Incident** limit is the most the Insurer will pay for the sum of all **damages** arising out of any one **incident** under this Policy, regardless of which coverage applies.

F. Crisis Management

Solely with respect to **Coverage C – Crisis Management Expenses**, the most the Insurer will pay is the limit of insurance shown on the Declarations of this Policy as the **Crisis Management Expenses Aggregate** limit, regardless of the number **crisis management events** for which **crisis management expenses** are incurred. **Crisis management expenses** are not subject to the **retained amount**.

The **Crisis Management Expenses Aggregate** limit of insurance is in addition to and will not erode any other limits of this Policy. The **Crisis Management Expenses Aggregate** limit of insurance shall be excess of any other limits of insurance available to the **Insured** for the same expenses.

G. Key Employee Replacement Expenses



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Solely with respect to **Coverage D – Key Employee**, the most the Insurer will pay for **key employee replacement expenses** is the **Key Employee Aggregate** limit shown on the Declarations of this Policy, regardless of the number **key employees** for which **key employee replacement expenses** are incurred. **Key employee replacement expenses** are not subject to the **retained amount**.

The **Key Employee Replacement Expenses Aggregate** limit of insurance is in addition to and will not erode any other limits of this Policy. The **Key Employee Replacement Expenses Aggregate** limit of insurance shall be excess of any other limits of insurance available to the **Insured** for the same expenses.

H. Defense Costs

Defense costs are either paid within or are in excess of the limits of insurance as set forth in paragraph C. of the section entitled **Defense Costs Payment and Related Duties**.

I. Exhaustion or Reduction of Applicable Underlying Limit

Solely with respect to **Coverage A - Excess Follow Form Liability**, if the applicable **underlying limits** are:

1. reduced solely by the payment of covered loss as set forth in **Coverage A** including related costs and expenses (if such related costs and expense reduce such limits) **Coverage A** will apply in excess of the remaining amount of such applicable **underlying limit**; or
2. exhausted, solely by the payment of covered loss as set forth in **Coverage A** including related costs and expenses (if such related costs and expense reduce such limits) then **Coverage A** will apply, subject to this Policy's limit of insurance provision and to the remaining terms and provisions and conditions of this Policy in place of such exhausted applicable **underlying limit**.

If any loss covered under any **underlying insurance** is subject to a **sub-limit** (whether or not such **sub-limit** erodes the limits generally available to all claims), then the **underlying limits** shall not be deemed depleted by payment of any such **sub-limits**.

Nothing herein shall serve to increase the limits of insurance shown in the Declarations of this Policy.

VI. CONDITIONS

A. Appeals

If the **Named Insured** or its **underlying insurers** elect not to appeal a judgment in excess of the limits of insurance afforded by the **underlying insurance** the Insurer may elect to appeal at the Insurer's expense. The Insurer's limits of insurance shall not be increased because of such appeal. However, the Insurer will pay the following costs and expenses:

1. all premium bonds to release attachments for an amount not in excess of the applicable limit of insurance of this policy;
2. all premiums on appeal bonds required in such defended **claims**, but without obligation to apply for or furnish such bonds;
3. court fees; and
4. costs and expenses taxed against the **Named Insured** by the appellate court and interest accruing after entry of a judgment against the **Named Insured** and before the Insurer has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance of this Policy. Where the **underlying insurers** terminate their liability to pay interest on the judgment by an offer to pay their limits, the **Named Insured** shall demand that such limits be paid. If the appeal is successful, such amounts not obligated to be paid shall be returned to such **underlying insurer**.

B. Cancellation and Nonrenewal

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The Cancellation/Nonrenewal provisions are as set forth in the Cancellation/Nonrenewal Endorsement attached to this Policy.

C. Changes to the Policy

Notice to any of the Insurer's agents or knowledge possessed by any such agent or any other person shall not act as a waiver or change in any part of this Policy, nor will such notice prevent the Insurer from asserting any rights under the provisions of this Policy. None of the provisions of this Policy will be waived, changed or modified except by written endorsement issued by the Insurer to form a part of this Policy.

D. Concealment, Misrepresentation and Fraud

No concealment, misrepresentation or fraud shall avoid or defeat recovery under this Policy unless such concealment, misrepresentation or fraud was material. Concealment, misrepresentation or fraud in the procurement of this Policy which if known by the Insurer would have led to refusal by the Insurer to make this contract or provide coverage, or to make this contract or provide coverage on different terms or conditions, will be deemed material.

E. Duties of the First Named Insured on the Declarations of this Policy

The **First Named Insured**, on behalf of all others, will be:

1. authorized to make changes in the terms of this Policy with the consent of the Insurer;
2. the payee of any premiums the Insurer refunds;
3. responsible for:
 - a. remitting the payment of all premiums due, but all **Named Insureds** jointly and severally agree to make such payments in full if the **First Named Insured** fails to pay the amount due within 10 days after the Insurer give written notice or demand;
 - b. keeping records of the information the Insurer requires for premium computation, and sending copies of such records at such times as requested by the Insurer;
 - c. notifying the Insurer that the **First Named Insured** on behalf of all others wants to cancel this Policy; and
 - d. providing any notice required under this Policy.

F. Economic and Trade Sanctions

This Policy does not provide coverage for an **Insured**, transaction or that part of loss that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

G. Entire Contract

By acceptance of this Policy, the **Insureds** agree that this Policy, including all endorsements to this Policy, constitute the entire contract existing between the parties relating to this insurance.

H. Estates, Legal Representatives and Spouses

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this Policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such spouse. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or spouse outside the scope of such person's capacity or status as such provided however that this sentence does not apply to the spouse of:

1. a sole proprietorship **Named Insured**; or



2. members or partners of joint venture or partnership **Named Insureds**.

Examination of the Named Insured's Books and Records

The Insurer may examine and audit the **Named Insured's** books and records as they relate to this Policy at any time during the **policy period** and up to 3 years afterward.

J. Financial Impairment

Bankruptcy, rehabilitation, receivership, liquidation or other financial impairment of the **Named Insured** or an **underlying insurer** shall neither relieve nor increase any of the Insurer's obligations under this Policy.

In the event there is diminished recovery or no recovery available to the **Named Insured** as a result of financial impairment of an **underlying insurer**, the coverage under this Policy shall apply only in excess of the **underlying limits**. Under no circumstances shall the Insurer be required to drop down and replace the **underlying limits**, or assume the obligations of the **Named Insured** or the financially impaired insurer.

K. Headings

The description in the headings and subheadings of this Policy is solely for convenience, and forms no part of the terms and conditions of coverage.

L. Inspections and Surveys

The Insurer has the right but is not obligated to:

1. make inspections and surveys at any time;
2. give the **Named Insured** reports on the conditions it finds;
3. recommend changes; or
4. conduct loss control and prevention activity.

Any inspections, surveys, reports, or recommendations relate only to insurability and the premiums to be charged.

The Insurer does not:

1. make safety inspections;
2. undertake to perform the duty of any organization to provide for the health or safety of workers or the public; nor
3. warrant that conditions are safe or healthful or comply with laws, regulations, codes or standards.

This provision applies not only to the Insurer, but also to any rating, advisory, rate service, or similar organization which makes insurance inspections, surveys, recommendations, reports, or gives loss control or prevention advice, on its behalf.

M. Legal Action Limitation

No person or organization has a right under this Policy:

1. to join the Insurer as a party or otherwise bring the Insurer into a **suit** asking for **damages** from an **Insured**; or
2. to sue Insurer on this Policy unless all of its terms have been fully complied with.

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



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N. Maintenance of Underlying Insurance

Solely with respect to **Coverage A - Excess Follow Form Liability**, while this Policy is in force the **First Named Insured** agrees that the **underlying insurance** and renewals and replacements thereof shall be maintained, without alterations of terms or conditions, in full effect during the term of this Policy; except for reduction or exhaustion of the limits of insurance in the **underlying insurance**, provided that such reduction or exhaustion is solely the result of **incidents** covered under this Policy.

If the **First Named Insured** fails to maintain **underlying insurance**, this condition shall not invalidate this Policy. However, in the event of such failure, the Insurer will only be liable to the same extent as if such **underlying insurance** was in full force and effect without alteration of its terms and conditions.

O. Notice of Claims/Crisis Management Event/Covered Accident

1. Solely with respect to **Coverage A - Excess Follow Form Liability**, if any **underlying insurance** is a policy issued by the Insurer or any of its affiliates, then notice of any **claim** under such **underlying insurance** is notice to the Insurer under this Policy.
2. It is a condition precedent to coverage under this Policy that:
 - a. subject to paragraph b. below, the **Insured** notify the Insurer as soon as practicable of an **incident** which an **Insured** believes may result in a **claim**. To the extent possible, notice should include:
 - i. how, when and where the **incident** took place;
 - ii. the names and addresses of any injured persons and witnesses; and
 - iii. the nature and location of any injury or damage arising out of the **incident**.
 - b. the **Insured** notify the Insurer as soon as practicable of an **incident** if it involves:
 - i. a demand against the **Insured** which exceeds 50% of any remaining applicable **underlying limit**;
 - ii. any **underlying insurance** reserve or monetary exposure exceeding \$500,000; or
 - iii. any of the following:
 - (a) brain damage, including but not limited to any neurological impairment of infants or adults and coma;
 - (b) spinal cord injury, including but not limited to paraplegia or quadriplegia;
 - (c) loss of any organ;
 - (d) severe disfigurement, including but not limited to burns and amputations; or
 - (e) death.
 - c. if a **claim** is made against any **Insured**, the **Named Insured**:
 - i. will immediately record the specifics of the **claim** and the date received and notify the Insurer of such **claim**;
 - ii. will immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with the **claim**;
 - iii. will authorize the Insurer to obtain records and other information;
 - iv. will cooperate with the Insurer in the investigation or settlement of the **claim** or defense against the **suit**;will assist the Insurer, upon its request, in the enforcement of any right against any person



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or organization which may be liable to the **Insured** because of injury or damage to which this insurance may also apply; and

- vi. will not voluntarily make a payment, except at its own cost, assume any obligation, or incur any expense, other than for first aid, without the Insurer's prior consent.

3. Cooperation

With respect to both **Coverage A - Excess Follow Form Liability** and **Coverage B - Umbrella Liability**, the **Named Insured** will cooperate with the Insurer in addressing all **claims** required to be reported to the Insurer in accordance with this paragraph **O. Notice of Claims/Crisis Management Event/Covered Accident**, and refuse, except solely at its own cost, to voluntarily, without the Insurer's approval, make any payment, admit liability, assume any obligation or incur any expense related thereto.

P. Notices

Any notices required to be given by an **Insured** shall be submitted in writing to the Insurer at the address set forth in the Declarations of this Policy.

Q. Other Insurance

If the **Insured** is entitled to be indemnified or otherwise insured in whole or in part for any **damages** or **defense costs** by any valid and collectible **other insurance** for which the **Insured** otherwise would have been indemnified or otherwise insured in whole or in part by this Policy, the limits of insurance specified in the Declarations of this Policy shall apply in excess of, and shall not contribute to a **claim, incident** or such event covered by such **other insurance**.

With respect to **Coverage A - Excess Follow Form Liability** only, if:

- a. the **Named Insured** has agreed in writing in a contract or agreement with a person or entity that this insurance would be primary and would not seek contribution from any other insurance available;
- b. **Underlying Insurance** includes that person or entity as an additional insured; and
- c. **Underlying Insurance** provides coverage on a primary and noncontributory basis as respects that person or entity;

then this insurance is primary to and will not seek contribution from any insurance policy where that person or entity is a named insured.

R. Premium

All premium charges under this Policy will be computed according to the Insurer's rules and rating plans that apply at the inception of the current **policy period**. Premium charges may be paid to the Insurer or its authorized representative.

S. In Rem Actions

A quasi *in rem* action against any vessel owned or operated by or for a **Named Insured**, or chartered by or for a **Named Insured**, will be treated in the same manner as though the action were *in personam* against the **Named Insured**.

T. Separation of Insureds

Except with respect to the limits of insurance, and any rights or duties specifically assigned in this Policy to the **First Named Insured**, this insurance applies:

- 1. as if each **Named Insured** were the only **Named Insured**; and
- 2. separately to each **Insured** against whom a **claim** is made.

U. Transfer of Interest



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Assignment of interest under this policy shall not bind the Insurer unless its consent is endorsed hereon.

V. Unintentional Omission

Based on Insurer's reliance on the **Named Insured's** representations as to existing hazards, if the **Named Insured** should unintentionally fail to disclose all such hazards at the effective date of this Policy, the Insurer will not deny coverage under this Policy because of such failure.

W. Waiver of Rights of Recovery

The Insurer waives any right of recovery it may have against any person or organization because of payments the Insurer makes under this Policy if the **Named Insured** has agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

1. is in effect or becomes effective during the **policy period**; and
2. was executed prior to loss.

VII. DEFINITIONS

For purposes of this Policy, words in bold face type, whether expressed in the singular or the plural, have the meaning set forth below.

Advertisement means a notice that is broadcast or published to the general public or specific market segments about the **Named Insured's** 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 the **Named Insured's** goods, products or services for the purposes of attracting customers or supporters is considered an **advertisement**.

Aircraft means any machine or device that is capable of atmospheric flight.

Arbitration proceeding means a formal alternative dispute resolution proceeding or administrative hearing to which an **Insured** is required to submit by statute or court rule or to which an **Insured** has submitted with the Insurer's consent.

Asbestos means the mineral in any form whether or not the asbestos was at any time airborne as a fiber, particle or dust, contained in or formed a part of a product, structure or other real or personal property, carried on clothing, inhaled or ingested, or transmitted by any other means.

Authorized Insured means any **executive officer**, member of the **Named Insured's** risk management or in-house general counsel's office, or any **employee** authorized by the **Named Insured** to give or receive notice of a **claim**.

Auto means:

- A. a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- B. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

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

Bodily injury means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the bodily injury, sickness or disease.

Claim means a:

- A. **suit**; or



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- B. written or oral demand for **damages** alleging injury to which this insurance applies.

Coverage territory means:

- A. the United States of America (including its territories and possessions), Puerto Rico and Canada;
- B. international waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in paragraph A. above; or
- C. all other parts of the world if the injury or damage arises out of:
 - 1. goods or products made or sold by the **Named Insured** in the territory described in paragraph A. above;
 - 2. the activities of a natural person whose home is in the territory described in paragraph A. above, but is away for a short time on the **Named Insured's** business; or
 - 3. an offense that take place through the Internet or similar electronic means of communication, provided that the **Insured's** responsibility to pay **damages** is determined in a **suit** on the merits, in the territory described in paragraph A. above or in a settlement the Insurer agrees to.

Covered accident means a sudden and unexpected event, which solely and independently of any other cause results in the **key employee's** death or **permanent disability** within one year after the date of the sudden event.

Crisis management event means an event that an **executive officer** reasonably believes has resulted or may result in significant adverse regional or national media coverage and a claim for:

- A. **bodily injury, property damage** or any of the following **personal and advertising injury** offenses:
 - 1. false arrest, detention or imprisonment;
 - 2. malicious prosecution or abuse of process; or
 - 3. wrongful eviction from, wrongful entry into, or the 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; and
- B. **damages** to which this insurance applies, that are in excess of any applicable:
 - 1. **underlying limits**; or
 - 2. **retained amount**.

Crisis management expenses means **crisis management public relations expenses** and **crisis management other expenses** provided however **crisis management expenses** do not include any of the following:

- A. salary, wages, or benefits of the **Named Insured** or the **Named Insured's employees**;
- B. loss of business income;
- C. costs to acquire, repair or replace real or personal property; or
- D. expense to hire a public adjuster or appraiser or any other claim adjustment expenses incurred by a **Named Insured**.

Crisis management public relations expenses means reasonable and necessary expenses incurred in connection with a **crisis management event** by the **Named Insured**:

- A. to hire a **crisis management firm**;
 - B. to set up call centers or similar inquiry management system to manage inquiries from, or to directly contact, individuals or entities that may be directly impacted by such **crisis management event**;
- to create and deliver notification letters to contact individuals or entities that may be directly impacted



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by the **crisis management event**; or

- D. other related miscellaneous expenses.

Crisis management other expenses means reasonable and necessary expenses incurred in connection with a **crisis management event** by the **Named Insured**:

- A. to pay medical expenses, funeral expenses, psychological counseling expenses, travel expenses, and temporary living expenses of a third party who incurs **bodily injury**, or a family member of such third party, by reason of such **crisis management event**;
- B. for travel expenses incurred by or on behalf of **Insureds** and at the direction of the **crisis management firm**;
- C. to secure the scene of a **crisis management event**; and
- D. other related miscellaneous expenses.

Crisis management firm means a public relations firm, law firm or crisis management firm approved by the Insurer to provide media management services and to respond to actual or anticipated adverse publicity arising out of a **crisis management event** or **covered accident**.

Damages means the amount an **Insured** is legally obligated to pay, either through:

- A. final adjudication of a **claim**; or
- B. through compromise or settlement of a **claim** with the Insurer's written consent or direction, because of covered **incidents**. In addition, **damages** includes the above-mentioned sums only after deducting all other recoveries and salvages.

However, **damages** does not include:

- 1. civil or criminal fines, sanctions, penalties or forfeitures, whether pursuant to law, statute, regulation or court rule;
- 2. injunctive or declaratory relief;
- 3. any amount that is not insurable under any applicable law; or
- 4. plaintiff's attorney fees associated with any of the above.

Notwithstanding paragraph 3. above, **damages** shall include (subject always to this Policy's other terms, conditions and limitations) punitive and exemplary damages the enforceability of which shall be governed by such applicable law that most favors coverage for **damages**.

Defense costs mean:

- A. reasonable and necessary fees, costs, and expenses incurred by the Insurer or consented to by the Insurer and incurred by the **Named Insured** in the defense or appeal of a covered **suit** or in the investigation of any covered **claim**, and includes premium for appeal bonds arising out of a covered judgment, attachment bonds or similar bonds, but only for bond amounts up to the applicable limit of insurance. In addition, the Insurer will pay up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which **bodily injury** coverage applies. The Insurer has no obligation to provide such bonds.
- B. prejudgment interest awarded against an **Insured** on that part of a judgment covered by this policy. If the Insurer makes an offer to pay the applicable limit of insurance, the Insurer will not pay any prejudgment interest based on that period of time after the offer.
post judgment interest which accrues after entry of judgment, but before the Insurer has paid or offered to pay, or deposited in court that part of the judgment which is within the limit of insurance of this Policy. The amount of interest the Insurer pays will be in direct proportion to the amount of **damages**
- C.



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the Insurer pays in relation to the total amount of the judgment.

- D. all reasonable expenses incurred by a natural person **Insured** at the Insurer's request to assist the Insurer in the investigation or defense of the **claim**. This includes such **Insured's** actual loss of earnings up to \$750 per 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**.

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.

Employee includes **leased workers** or employees loaned to the **Insured**. **Temporary workers** are not **employees**.

Executive Officer means any natural person holding any of the following positions created by the **Named Insured's** charter, constitution, bylaws or any other similar governing document:

- A. director, officer, trustee or governor of a corporation;
- B. management committee member of a joint venture;
- C. partner of a partnership;
- D. manager of a limited liability company; and
- E. trustee of a trust.

An **executive officer** is not an **employee**.

First Named Insured means the person or organization first listed as a **Named Insured** in the Declarations of this Policy.

Fungi means any form of fungus, including but not limited to, yeast, mold, mildew, rust, smut or mushroom, and including any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of fungi. However, **fungi** does not include any fungi intended by the **Insured** for human consumption.

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

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. the **Named Insured** has 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 the **Named Insured's** fulfilling the terms of the contract or agreement.

Incident means:

- A. with respect to **Coverage A - Excess Follow Form Liability**, a covered event as defined in applicable **underlying insurance**;
- B. solely with respect to **Coverage B - Umbrella Liability**:
 - 1. with respect to **bodily injury** and **property damage**, **incident** means an **occurrence**; or
- C. 2. with respect to **personal and advertising injury**, **incident** means an offense that gives rise to such **personal and advertising injury**.



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Insured means any person or organization set forth in the section entitled **WHO IS AN INSURED**.

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 the **Named Insured** or temporarily occupied by the **Named Insured** with permission of the owner is not an **insured contract**;
- B. a sidetrack agreement;
- C. an 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; or
- F. the part of any other contract or agreement pertaining to its business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization, provided the **bodily injury** or **property damage** is caused, in whole or in part, by the **Named Insured** or by those acting on its behalf. However, such part of a contract or agreement shall only be considered an **insured contract** to the extent the **Named Insured's** assumption of the tort liability is permitted by law. "Tort liability" means liability that would be imposed by law in the absence of contracts or agreements. This paragraph F. does not include that part of a contract or agreement:
 - 1. that indemnifies a railroad for **bodily injury** or **property damage** arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - 2. that indemnifies an architect, engineer or surveyor for **bodily injury** or **property 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 **bodily injury** or **property damage**;
 - 3. under which an **Insured**, if an architect, engineer or surveyor, assumes liability for **bodily injury** or **property damage** arising out of such **Insured's** rendering or failure to render professional services, including those listed in paragraph 2. above and supervisory, inspection, architectural or engineering activities; or
 - 4. that indemnifies a person or organization for damage by fire to premises rented to or loaned to an **Insured**.

Key employee means any of the following officer and employment positions:

- A. Chief Executive Officer;
- B. Chief Operating Officer;
- C. Chief Financial Officer;
- D. Corporate Secretary;
- E. Treasurer;
- F. Executive Vice President; and



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G. Risk Manager

Key employee also means anyone added as such by endorsement to the Policy.

Key employee replacement expenses means the actual and necessary expenses incurred by the **Named Insured**:

- A. to continue the performance of the **key employee's** normal job responsibilities, with comparable quality, while a permanent replacement for the **key employee** is being sought, appointed or hired, and trained.
- B. to find a qualified permanent replacement to fill the **key employee's** position:
 1. costs of advertising the employment position opening;
 2. travel, lodging, meal and entertainment expenses incurred in interviewing job applicants for the employment position opening; and
 3. miscellaneous extra expenses incurred in finding, interviewing and negotiating with the job applicants, including, but not limited to, overtime pay, costs to verify the background and references of the job applicants and legal expenses incurred to draw up employment contracts.
- C. to minimize the amount of **key employee replacement expenses**, but only to the extent the amount of **key employee replacement expenses** otherwise payable under paragraphs 1. and 2. above are reduced.
- D. to relocate the replacement employee to an area within a reasonable commute from their place of employment.
- E. to pay the following reasonable and necessary expenses incurred in connection with the death or permanent disability of any **key employee**:
 1. to hire a **crisis management firm**.
 2. to create and deliver notification letters to contact individuals or entities that may be directly impacted by the **key employee covered accident**; or
 3. other related miscellaneous expenses
- F. **Key employee replacement expenses** also include first year amounts of the replacement employee's:
 1. annual base starting salary;
 2. employee perquisite costs; and
 3. employee benefit costs;

in excess of the amounts which would have been incurred for the **key employee** if the **Named Insured** had not lost the services of the **key employee**. However, the Insurer will not pay more for these expenses than 10% of the amounts which would have been incurred for the **key employee**.

Key employee replacement expenses do not include the following:

- a. any expenses which would have been incurred by the **Named Insured** for the **key employee** if the **Named Insured** had not lost the services of the **key employee**;
- b. any **key employee replacement expenses** that are paid for by any **other insurance**;
- c. except as provided in paragraph F. above, salary, wages, or benefits of the **Named Insured**, the **Named Insured's employees**, the **Named Insured's temporary workers** or **volunteer workers**;
- d. costs to acquire, repair or replace real or personal property;
- e. the **Named Insured's** loss of business income;
- f. expenses incurred by or on behalf of the **Named Insured** to hire a public adjuster or appraiser or any other claim adjustment expenses incurred by the **Named Insured**; and



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- g. expenses incurred by or on behalf of the **Named Insured** due to **bodily injury, property damage, or personal and advertising injury**.

Leased worker means a person leased to the **Named Insured** by a labor leasing firm under an agreement between the **Named Insured** and such labor leasing firm, to perform duties related to the conduct of the **Named Insured's** business. **Leased worker** does not include a **temporary worker**.

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.

However, **loading or unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the **aircraft, watercraft or auto**.

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 the **Named Insured** owns or rents;
- C. vehicles that travel on crawler treads;
- D. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - 1. power cranes, shovels, loaders, diggers or drills; or
 - 2. road construction or resurfacing equipment such as graders, scrapers or rollers;
- E. vehicles not described in **A., B., C. or D.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - 1. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - 2. cherry pickers and similar devices used to raise or lower workers; and
- F. vehicles not described in **A., B., C. or D.** above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **autos**:
 - 1. equipment designed primarily for:
 - a. snow removal;
 - b. road maintenance, but not construction or resurfacing; or
 - c. street cleaning;
 - 2. cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - 3. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, **mobile equipment** does not include 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**.

Named Insured means the persons or organizations named as such in the Declarations of this Policy.

Nuclear facility means:

- A. any **nuclear reactor**;
- B. any equipment or device designed or used for:
 - 1. separating the isotopes of uranium or plutonium;
 - 2. processing or utilizing **spent fuel**; or
 - 3. handling, processing or packaging **nuclear waste**;
- C. any equipment or device used for the processing, fabricating or alloying of special **nuclear material** if at any time the total amount of such material in the custody of any **Insured** at the premises where such equipment is located consists of or contains more than:
 - 1. 25 grams of plutonium or uranium 233 or any combination thereof; or
 - 2. 250 grams of uranium 235; and
- D. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **nuclear waste**;

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

Nuclear material means source material, special nuclear material, or by-product material as these terms are defined in the Atomic Energy Act of 1954 or in any law amendatory thereof.

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

Nuclear Waste means waste material:

- A. containing by-product material other than the tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material (as defined in the Atomic Energy Act of 1954 or in any law amendatory thereof) content; and
- B. resulting from the operation by any person or organization, of a **nuclear facility** included within paragraphs A. and B. of the definition of **nuclear facility**.

Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Other insurance means any:

- A. valid and collectible policy of insurance;
- B. self insurance; or
- C. indemnity agreement by which an **Insured** arranges for funding or transferring its liabilities

that provides coverage that this Policy also provides. **Other insurance** does not include **underlying insurance** or any policy that was bought specifically to apply in excess of the limits of insurance shown in the Declarations of this Policy.

Other organic pathogens means any organic irritant or contaminant other than **fungi**, including but not limited to bacteria, microbes and viruses (whether or not a microorganism), that cause infection and disease.

Other organic pathogens includes any spores, mycotoxins, odors, variants, mutations, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of such



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pathogens, and any colony or group of the foregoing.

However, **other organic pathogens** does not mean pathogens that were transmitted directly from person to person.

Permanent disability means permanent physical inability, or mental inability due to a permanent physical inability, of the **key employee** to perform the normal duties of the applicable position for which the individual qualifies as a **key employee**.

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 or abuse of process;
- C. wrongful eviction from, wrongful entry into, or the 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 the **Named Insured's advertisement**; or
- G. infringing upon another's copyright, trade dress or slogan in the **Named Insured's advertisement**.

Policy period means the time from 12.01 A.M. on the effective date of this Policy as set forth in the Declarations of this Policy to the earlier of 12.01 A.M. of the expiration, termination or cancellation date of this Policy.

Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes medical waste and materials to be recycled, reconditioned or reclaimed.

Products-completed operations hazard means **bodily injury** or **property damage** occurring away from premises the **Named Insured** owns or rents and arising out of **your product** or **your work** except:

- A. products that are still in the **Named Insured's** physical possession; or
- B. work that has not yet been completed or abandoned. However, **your work** will be deemed completed at the earliest of the following times:
 - 1. when all of the work called for in the **Named Insured's** contract has been completed;
 - 2. when all of the work to be done at the job site has been completed if the **Named Insured's** contract calls for work at more than one job site; or
 - 3. 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.

However, **products-completed operations hazard** does not include **bodily injury** or **property damage** arising out of:

- A. the transportation of property, unless **bodily injury** or **property damage** arises out of a condition in or on a vehicle not owned or operated by the **Named Insured**, and that condition was created by the **loading or unloading** of that vehicle by any **Insured**;
- B. the existence of tools, uninstalled equipment or abandoned or unused materials; or



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- C. products or operations for which the **underlying insurer** states that products-completed operations are subject to the General Aggregate Limit.

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 **incident** that caused it.

However, **electronic data** is not tangible property.

Retained amount means the self insured retention as set forth on the Declarations of this Policy or the amount payable by **other insurance**, whichever is greater.

Silica means the chemical compound silicon dioxide (SiO₂) in any form, including dust which contains silicon dioxide.

Spouse means any husband, wife or partner in a marriage or civil union or any person qualifying as a domestic partner under any federal, state or local laws or under the **Named Insured's** employee benefit plans or employee benefits program.

Sub limit means a limit that is lower than the **underlying limits**.

Suit means a civil proceeding in which **damages** because of injury or damage to which this insurance applies are alleged, including:

- A. an **arbitration proceeding** alleging such **damages**; or
- B. any other alternative dispute resolution proceeding in which such **damages** are claimed and to which the **Insured** submits with the Insurer's consent.

Temporary worker means a worker who is furnished to the **Named Insured** to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions.

Underlying insurance means policies of insurance listed in the Schedule of **Underlying Insurance** including renewal or replacement of such insurance which is neither more restrictive nor more broad than that listed in the aforementioned Schedule of **Underlying Insurance**.

Underlying insurer means the insurer providing the **underlying insurance**. It does not include any insurer whose policies were purchased specifically to be in excess of this policy.

Underlying limits means the limits of insurance as set forth in the Schedule of **Underlying Insurance**.

Volunteer worker means a person who is not an **employee** and who donates his or her work and acts at the direction of or within the scope of duties determined by the **Named Insured** and is not paid a fee, salary or other compensation by the **Named Insured** or anyone else for their work performed for the **Insured**.

Your product means:

A. means:

- 1. any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - a. the **Named Insured**;
 - b. others trading under the **Named Insured's** name; or
 - c. a person or organization whose business or assets the **Named Insured** has acquired; and
- 2. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.



**CNA Paramount Excess and Umbrella Liability
Policy**

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.

Your work:

A. means:

1. work or operations performed by the **Named Insured** or on its behalf; and
2. materials, parts or equipment furnished in connection with such work or operations.

B. Includes:

1. warranties or representations made 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.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by the Insurer's Chairman and Secretary, but this Policy shall not be binding upon the Insurer unless completed by the attachment of the Declarations of this Policy and signed by the Insurer's duly authorized representative if required.

Chairman of the Board

Secretary



AIA Document A312™ – 2010

Performance Bond

NIL 1839

CONTRACTOR:
(Name, legal status and address)

Malcor Roofing of Illinois, Inc.
1850 Dean Street
St. Charles, IL 60174

SURETY:
(Name, legal status and principal place of business)

Merchants National Bonding, Inc.
P.O. Box 14498
Des Moines, IA 50306-3498

OWNER:
(Name, legal status and address)

Village of Orland Park
14700 S. Ravinia Ave.
Orland Park, IL 60462

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

CONSTRUCTION CONTRACT

Date: September 23, 2020

Amount: Three Hundred Fifty-Two Thousand Three Hundred Fifty and 00/100 (\$ 352,350.00)

Description:
(Name and location) Roofing Improvements 2020 - Public Works

BOND

Date: September 23, 2020
(Not earlier than Construction Contract Date)

Amount: Three Hundred Fifty-Two Thousand Three Hundred Fifty and 00/100 (\$ 352,350.00)

Modifications to this Bond: ☒ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
Malcor Roofing of Illinois, Inc.

SURETY

Company: (Corporate Seal)
Merchants National Bonding, Inc.

Signature: _____
Name _____
and Title: _____
(Any additional signatures appear on the last page of this Performance Bond.)

Signature: Jason D. Cromwell
Name Jason D. Cromwell
and Title: Attorney-in-Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Smith Manus
2307 River Road, Suite 200
Louisville, KY 40206
(800) 235-9347

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Init.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)
CONTRACTOR AS PRINCIPAL SURETY
Company: (Corporate Seal) Company: (Corporate Seal)

Signature: _____ Signature: _____
Name and Title: _____ Name and Title: _____
Address _____ Address _____



AIA Document A312™ – 2010

Payment Bond

NIL 1839

CONTRACTOR:
(Name, legal status and address)

Malcor Roofing of Illinois, Inc.
1850 Dean Street
St. Charles, IL 60174

SURETY:
(Name, legal status and principal place of business)

Merchants National Bonding, Inc.
P.O. Box 14498
Des Moines, IA 50306-3498

OWNER:
(Name, legal status and address)

Village of Orland Park
14700 S. Ravinia Ave.
Orland Park, IL 60462

CONSTRUCTION CONTRACT

Date: September 23, 2020

Amount: Three Hundred Fifty-Two Thousand Three Hundred Fifty and 00/100

(\$ 352,350.00)

Description:

(Name and location) Roofing Improvements 2020 - Public Works

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

BOND

Date: September 23, 2020

(Not earlier than Construction Contract Date)

Amount: Three Hundred Fifty-Two Thousand Three Hundred Fifty and 00/100

(\$ 352,350.00)

Modifications to this Bond: ☒ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Malcor Roofing of Illinois, Inc.

SURETY

Company: (Corporate Seal)

Merchants National Bonding, Inc.

Signature: _____

Name

and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature: _____

Name

and Title: Jason D. Cromwell

Attorney-in-Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Smith Manus
2307 River Road, Suite 200
Louisville, KY 40206
(800) 235-9347

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address _____

Signature: _____

Name and Title: _____

Address _____

MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually, Brook T Smith; Deborah S Neichter; James H Martin; James T Smith; Jason D Cromwell; Raymond M Hundley

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 11th day of February, 2020.



MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By

Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 11th day of February, 2020, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



POLLY MASON
Commission Number 750576
My Commission Expires
January 07, 2023

Polly Mason
Notary Public

(Expiration of notary's commission
does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 23rd day of September, 2020.



William Warner Jr.
Secretary