

IMPORTANT INFORMATION

NOTICE - OFFER OF TERRORISM COVERAGE NOTICE - DISCLOSURE OF PREMIUM

THIS NOTICE DOES NOT FORM A PART OF YOUR POLICY, GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY

You are hereby notified that under the Terrorism Risk Insurance Act, as extended and reauthorized ("Act"), you have a right to purchase insurance coverage of losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, subject to all applicable policy provisions. The Terrorism Risk Insurance Act established a federal program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks.

This Notice is designed to alert you to coverage restrictions and to certain terrorism provisions in the policy. If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) apply.

CHANGE IN THE DEFINITION OF A CERTIFIED ACT OF TERRORISM

The Act applies when the Secretary of the Treasury certifies that an event meets the definition of an act of terrorism. Originally the Act provides that to be certified an act of terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest to coerce the government or population of the United States. However, the 2007 reauthorization of the Act no longer requires the act of terrorism to be committed by or on behalf of a foreign interest and certified acts of terrorism now encompass, for example, a terrorist act committed against the United States government by a United States citizen when the act is determined by the federal government to be "a certified act of terrorism."

In accordance with the Act, we are required to offer you coverage for losses resulting from an act of terrorism that is certified under the federal program. The policy's other provisions, including nuclear, war or military action exclusions, will still apply to such an act. The premium charge for terrorism coverage is shown separately on your Policy Declarations, and is also included in the total premium.

DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

LIMITATION ON PAYMENT OF TERRORISM LOSSES (applies to policies which cover terrorism losses insured under the federal program, including those which only cover fire losses)

If aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a Program Year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

Further, this coverage is subject to a limit on our liability, pursuant to the federal law where, if aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.



POLICYHOLDER NOTICE

CNA Commercial Insurance
333 S. Wabash Ave.
Chicago, Illinois 60604-4153

Regarding Your: CNA Commercial Insurance Coverage

Dear CNA Policyholder:

Ethics and proper business conduct has been the cornerstone of CNA since 1897. While much has changed during the last century, our commitment to these core values has not wavered. We strongly believe that proper business conduct is more than the practice of avoiding wrong; it is also a matter of choosing to do right. Nowhere is this more essential than helping in the fight against terrorism. As such, we are committed to complying with U.S. Department of Treasury Office of Foreign Asset Control (OFAC) requirements.

Through a variety of laws, OFAC administers and enforces economic sanctions against countries and groups of individuals, such as terrorists and narcotics traffickers. These laws prohibit **all** United States citizens (including corporations and other entities) and permanent residents from engaging in transactions with sanctioned countries and with individuals and entities on the Specially Designated Nationals (SDN) list. Because all U.S. citizens and companies are subject to this law, we wanted to be sure you were aware of its scope and restrictions. If you haven't already done so, you may want to consider discussing this issue with your legal counsel to ensure you are in compliance.

For insurance companies, accepting premium from, issuing a policy to, insuring property of, or making a claim payment to an individual or entity that is the subject of U.S.-imposed economic sanctions or trade embargoes usually are violations of these laws and regulations. Fines for violating OFAC requirements can be substantial. CNA has established an OFAC compliance program part which includes the use of exclusionary policy language. We believe this makes good business sense for CNA and you.

The purpose of this letter is to advise you that your renewal policy includes OFAC exclusionary policy language, which may reduce or eliminate certain coverage. Specifically, if it is determined that your policy violates certain Federal or State laws or regulations, such as the U.S. list of Specially Designated Nationals or Blocked Persons (organizations or individuals associated with terrorist groups) any term or condition of your policy will be null and void to the extent it violates the applicable laws or regulations of the United States.

We're sure you share our commitment to compliance and thank you for your cooperation.

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Commercial Umbrella

Renewal Declaration

POLICY NUMBER B 5085135750	COVERAGE PROVIDED BY CONTINENTAL CASUALTY COMPANY 333 S. WABASH CHICAGO, IL. 60604	FROM - POLICY PERIOD - TO 06/01/2015 06/01/2016
INSURED NAME AND ADDRESS Yorkville Endoscopy, LLC 201 EAST 93RD STREET NEW YORK, NY 10128		
AGENCY NUMBER 060692	AGENCY NAME AND ADDRESS LOCKTON COMPANIES, LLC 444 W. 47TH ST., #900 KANSAS CITY, MO 64112 Phone Number: (816)960-9000	
BRANCH NUMBER 310	BRANCH NAME AND ADDRESS KANSAS CITY BRANCH 7400 COLLEGE BLVD. STE. 650 OVERLAND PARK, KS 66210 Phone Number: (913)661-2700	

This policy becomes effective and expires at 12:01 A.M. standard time at your mailing address on the dates shown above.

The Named Insured is a Limited Liability Company

Your policy is composed of this Declarations, with the attached Coverage Forms, and Endorsements if any. The Policy Forms and Endorsement Schedule shows all forms applicable to this policy at the time of policy issuance.

PREMIUM

Premium Basis	Estimated Exposure	Rate	Estimated Premium
Flat Charge			\$2,540

Minimum Premium: \$2,540 Annual Total Policy Premium: \$2,540.00

Your Premium includes the following amount for
Certified Acts of Terrorism Coverage \$25.00

Audit Period is Not Auditable

POLICY NUMBER

B 5085135750

INSURED NAME AND ADDRESS

Yorkville Endoscopy, LLC
 201 EAST 93RD STREET
 NEW YORK, NY 10128

ITEM 3: POLICY LIMITS OF LIABILITY

Each Incident: \$5,000,000 Aggregate: \$5,000,000

ITEM 4: RETAINED LIMIT

Retained Limit: \$10000

ITEM 5: SCHEDULE OF UNDERLYING INSURANCE

Underlying Insurer Policy Number Policy Period	Underlying Insurance	Coverages	Limit of Liability
Valley Forge Insurance Co. 5085135201 Eff: 06/01/2015 to 06/01/2016	General Liability	Each Occurrence Limit General Aggregate Limit Applies per location Doesn't apply per project Products/Completed Operations Aggregate Limit Personal and Advertising Injury Liability Limit	\$1,000,000 \$2,000,000 \$2,000,000 \$1,000,000
Valley Forge Insurance Co. 5085135201 Eff: 06/01/2015 to 06/01/2016	Automobile Liability	Combined Bodily Injury and Property Damage Liability: Each Accident Limit -----or----- Bodily Injury Liability: Each Person Limit Each Accident Limit Property Damage Liability: Each Accident Limit	\$1,000,000 ----- \$ \$ \$
National Fire Ins Co. Hartford 5085135229 Eff: 06/01/2015 to 06/01/2016	Employers Liability	Bodily Injury By Accident: Each Accident Limit Bodily Injury By Disease: Each Employee Limit Policy Limit	\$1,000,000 \$1,000,000 \$1,000,000
Valley Forge Insurance Co. 5085135201 Eff: 06/01/2015 to 06/01/2016	Employee Benefit Limit	Each Employee Limit Aggregate Limit	\$1,000,000 \$2,000,000

POLICY NUMBER


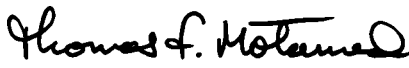
B 5085135750

INSURED NAME AND ADDRESSYorkville Endoscopy, LLC
201 EAST 93RD STREET
NEW YORK, NY 10128**FORMS AND ENDORSEMENTS SCHEDULE****Form Number**

Form Number		Form Title
G115922A	06/1995	Aircraft Limitation
G115928A	06/1995	UMB- Employment-Related Practices Exclusion
G116393A	06/1995	UMB-Contractual Liability Limitation
G144239A	01/2003	War Liability Exclusion
G144291A	03/2003	Economic And Trade Sanctions Condition
G146878A	05/2005	EXCLUSION - VIOLATION OF STATUTES
G147133A	01/2004	Amendment of Definitions Endorsement
G147135A	01/2004	Amendment of Property Damage Exclusion Endt
G147157A31	03/2005	Exclusion - Silica
G147232A	01/2005	LOSSES FROM ACTS OF TERRORISM - LIMITATION
G15057A	10/1989	Commercial Umbrella Plus Coverage Part
G16197B	07/1992	Amendatory Endorsement - New York
G16375E	01/2004	Contractor Limitation Endorsement
G16663A	10/1991	NY Changes-Transfer of Duties When Limit Used Up
G16912A31	09/1991	Amendatory Endorsement - Policy Territory
G17900A	01/1992	Personal Injury Liability Limitation Endorsement
G17902A	01/1992	Advertising Injury Liability Limitation Endorsemen
G17909A31	01/1992	Automobile Liability Limitation Endorsement - NY
G18132C31	02/2013	Amendment of Insuring Agreement - Employee Benefit
G300968A	06/2010	Medical Malpractice/Professional Liab Exclusion
IL0017	11/1998	Common Policy Conditions
P56015B	11/1991	Known or Continuing Injury or Damage

***** PLEASE READ THE ENCLOSED IMPORTANT NOTICES CONCERNING YOUR POLICY *******Form Number**

Form Number		Form Title
G138885A	04/2000	Important Information (Policyholder Notice)
G144233F	01/2008	Notice - Offer of Terrorism Disclosure of Premium
G145041A	05/2003	IMP INF Economic And Trade Sanctions Condition
G145661A	09/2003	Important Information - War Liability Exclusion

Countersignature

Chairman of the Board
Secretary

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AIRCRAFT LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

It is agreed that exclusion **h.** of **SECTION I – COVERAGES** is deleted and replaced by the following:

This insurance does not apply to:

- h.** Liability arising out of the ownership, maintenance, operation, use, or “loading or unloading” of any “aircraft”.

However, this exclusion does not apply if liability for “aircraft” is scheduled in this policy’s Schedule of Underlying Insurance for the full limits shown, and then only for such liability for which coverage is afforded under the “scheduled underlying insurance”.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
EMPLOYMENT – RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

1. The following exclusion is added to part 2. **Exclusions.** of **SECTION I – COVERAGES**:

This insurance does not apply to:

“Bodily injury” or “personal injury” arising out of any:

- a. Refusal to employ;
- b. Termination of employment;
- c. Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, or other employment-related practices, policies, acts, or omissions; or
- d. Consequential “bodily injury” or consequential “personal injury” as a result of a. through c. above.

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

2. The definition for “personal injury” in **SECTION V – DEFINITIONS** is deleted and replaced by the following:

“Personal injury” means injury, other than “bodily injury” or injury excluded by 1. above or Exclusion 2.r. of

SECTION I – COVERAGES, arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- 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 by or on behalf of its owner, landlord or lessor;
- d. Discrimination, unless such insurance is prohibited by law;
- e. Humiliation;
- f. Libel;
- g. Slander or defamation of character; or
- h. Invasion of rights of privacy,

all of which are committed in the conduct of an insured’s business, except for coverage that is afforded under “Advertising Injury”.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

This insurance does not apply to any liability assumed by an insured under any contract or agreement. Accordingly:

1. **SECTION V – DEFINITIONS** is amended to delete the definition of “insured contract”.
2. Exclusion **d., e., g., and j.** of **SECTION I – COVERAGES** are amended to remove any coverage for liability assumed under an “insured contract” or sidetrack agreement.

This exclusion does not apply:

1. If such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance for the full limits shown therein, and then only for such liability for which coverage is afforded under said underlying insurance; or
2. To liability for damages that the insured would have in the absence of the contract or agreement.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAR LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

- A.** Exclusion **i.** under Paragraph **2.**, **EXCLUSIONS** of **SECTION I – COVERAGES** is replaced by the following:

2. Exclusions

- i.** "Bodily injury", "property damage", "personal injury" or "advertising injury" arising, directly or indirectly, out of:

(1) War, including undeclared or civil war; or

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

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – VIOLATION OF STATUTES THAT
GOVERN COMMUNICATION OF INFORMATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART
EXCESS THIRD PARTY LIABILITY POLICY

This insurance does not apply to any liability arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a.** The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b.** The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c.** Any statute, ordinance or regulation, other than the TCPA or the CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

All other terms, conditions and exclusions of this policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**AMENDMENT OF DEFINITIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART**I. SECTION V – DEFINITIONS is amended as follows:****A.** The definition "property damage" is deleted and replaced by the following:

"Property damage" means:

1. 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
2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

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

B. Wherever they appear in the policy, the phrases "personal injury" and "advertising injury" are deleted and replaced with the phrase "personal and advertising injury." The definitions of "personal injury" and "advertising Injury" are deleted and replaced by the following:

"Personal and advertising injury" means injury, including consequential "bodily injury," arising out of one or more of the following offenses:

1. False arrest, detention or imprisonment;
2. Malicious prosecution;
3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

4. 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;
5. Oral or written publication, in any manner that violates a person's right of privacy;
6. The use of another's advertising idea in your "advertisement"; or
7. Infringing upon another's copyright, trade dress or slogan in your "advertisement."

C. The definition of "your product" is deleted and replaced by the following:

"Your product"

1. means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed, licensed by or disposed of by:

(1) You;

(2) Others trading under your name; or

(3) A person or organization whose business or assets you have acquired; and

- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

2. includes

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- b. The providing of or failure to provide warnings or instructions.

3. does not include vending machines or any other property rented to, or located for the use of others but not sold or licensed.

D. The definition "Advertisement" is added as follows:

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

1. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
2. Regarding web-sites, only that part of a web-site that is about your goods, products or

services for the purposes of attracting customers or supporters is considered an advertisement.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF PROPERTY DAMAGE EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART
EXCESS THIRD PARTY LIABILITY POLICY

SECTION I – COVERAGES, Exclusion **j.**, paragraph **(1)** is
deleted and replaced by the following:

- (1)** Property you own, rent or occupy,
including any costs or expenses
incurred by you or any other person,

organization or entity, for the 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;

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – SILICA

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART
EXCESS THIRD PARTY LIABILITY POLICY

The following is added to **SECTION I – COVERAGE, 2. Exclusions:**

This insurance does not apply to:

- a. “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. “property damage” arising in whole or in part out of the actual, alleged or threatened presence of particulate “silica.”
- c. “personal and advertising injury” arising in whole or in part out of the actual, alleged or threatened exposure at any time to or the presence of particulate “silica.”

As used in this endorsement, “silica” means the chemical compound silicon dioxide (SiO₂) in any form, including dust which contains “silica.”

All other terms, conditions and exclusions of this policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSSES FROM ACTS OF TERRORISM – LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

A. The following exclusion is added:

Except to the extent that coverage is provided by "scheduled underlying insurance" this insurance does not apply to:

"bodily injury" or "property damage" arising out of any act of terrorism;

COMMERCIAL UMBRELLA PLUS COVERAGE PART

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

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

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

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

SECTION I – COVERAGES

1. Insuring Agreement

We will pay on behalf of the insured all sums that the insured becomes legally obligated to pay as "ultimate net loss" because of:

- a. "Bodily Injury";
- b. "Property Damage";
- c. "Personal Injury"; or
- d. "Advertising Injury",

caused by an "incident" which takes place during the policy period and in the policy territory.

2. Exclusions

This Insurance does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. "Advertising injury" arising out of:
 - (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
 - (2) The failure of goods, products or services to conform with advertised quality or performance;
 - (3) The wrong description of the price of goods, products or services; or
 - (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.
- c. "Personal injury" or "advertising injury:"
 - (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;

- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;

- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured; or

- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

- d. Any obligation of the insured under a:

- (1) workers' compensation;
- (2) disability benefits; or
- (3) unemployment compensation,

law or any similar law. Paragraph (1) of this exclusion does not apply to liability of others assumed by the insured under a valid "insured contract" which is in force at the time of an injury.

- e. "Bodily injury" to:

- (1) An employee of the insured arising out of and in the course of employment by the insured; or
- (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

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

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or

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- (2) Claims covered by "scheduled underlying insurance".
- f. (1) "Bodily injury", "property damage" or "personal injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
 - (i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
 - (ii) 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.
 - (e) that are, or that are contained in property that is:
 - (i) being transported or towed by, or handled for movement into, onto or from a covered "automobile";
 - (ii) otherwise in the course of transit;
 - (iii) being stored, disposed of, treated or processed in or upon the covered "automobile";
 - (f) 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 "automobile"; or
 - (g) after the pollutants or property in which the pollutants are contained are moved from the covered "automobile" to the place where they are finally:

- (i) delivered;
 - (ii) disposed of; or
 - (iii) abandoned
- by the insured.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Subparagraph (e)(iii) 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 "automobile" or its parts if the pollutants escape or are discharged, dispersed or released directly from an "automobile" part designed by its manufacturer to hold, store, receive or dispose of such pollutants.

Subparagraphs (f) and (g) 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 "automobile" and the discharge, dispersal, release or escape of the pollutants is caused directly by such upset, overturn or damage.

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

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

- g. "Bodily injury" or "property damage" arising out of the:
- (1) ownership;
 - (2) maintenance;
 - (3) use; or
 - (4) entrustment to others

of a "watercraft" owned or operated by or rented or loaned to an insured. Use includes operation or "loading or unloading". This exclusion does not apply to:

- (1) a "watercraft" while ashore on premises you own or rent;
 - (2) a "watercraft" you do not own that is:
 - (a) less than 26 feet long; and
 - (b) not being used to carry persons or property for a charge; or
 - (3) liability assumed under an "insured contract" for the ownership, maintenance or use of "watercraft".
- h. The ownership, maintenance, operation, use, "loading or unloading" of aircraft:
- (1) owned by an insured; or
 - (2) chartered without crew by an insured or on an insured's behalf.
- i. "Ultimate net loss" due to:
- (1) war, whether declared or not;
 - (2) civil war;
 - (3) insurrection;
 - (4) rebellion; or
 - (5) revolution,
- or to acts or conditions of the foregoing with respect to liability assumed by an insured under contracts or agreements.
- j. "Property damage" to:
- (1) Property you own, rent, or occupy;
 - (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
 - (3) Property loaned to you;
 - (4) Personal property in the care, custody or control of an insured;
 - (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
 - (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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

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

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

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

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

- m. "Property damage" to "impaired property" or property that has not been physically injured, arising out of:
 - (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
 - (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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

- n. Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
 - (1) "Your product";
 - (2) "Your work"; or
 - (3) "Impaired property";

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

- o. Liability for alleged or actual violations of the Employees Retirement Income Security Act of 1974 or any amendments or additions thereto.
- p. Liability for a wrongful act, error, omission or breach of duty by an insured in the performance of the office of director or officer of an organization.
- q. Liability imposed on the insured under an uninsured/underinsured motorist law, a personal injury protection law, a reparations benefit law or other similar law.



- r. To any alleged or actual discrimination by you against a past, present or prospective employee and to discrimination committed intentionally against a person.
- s. (1) "Bodily Injury", "property damage", "personal injury" or "advertising injury" arising out of the actual, alleged or threatened exposure at any time to asbestos; or
- (2) Any loss, cost or expense that may be awarded or incurred:
 - (a) by reason of a claim or "suit" for any such injury or damage; or
 - (b) in complying with a governmental direction or request to test for, monitor, clean up, remove, contain or dispose of asbestos.

As used in this exclusion asbestos means the mineral in any form whether or not the asbestos was at any time:

- (1) airborne as a fiber, particle or dust;
- (2) contained in or formed a part of a product, structure or other real or personal property;
- (3) carried on clothing;
- (4) inhaled or ingested; or
- (5) transmitted by any other means.

SECTION II – WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- 2. Each of the following is also an insured:
 - a. Your employees, other than your executive officers and directors, but only for acts within the scope of their employment by you. However, none of these employees is an insured for:
 - (1) "Bodily injury" or "personal injury" to you or to a co-employee while in the course of his or her employment; or

- (2) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).
- b. Your subsidiary companies in existence at policy inception.
- c. A person or organization for which you are required, by virtue of a written contract entered into prior to an "incident", to provide the insurance that is afforded by this policy. This insurance applies only with respect to operations by you or on your behalf or to facilities you own or use, but only to the extent of the limits of liability required by such contract, not to exceed the limits of liability in this policy.
- d. A corporation or organization, other than partnerships and joint ventures, that you form, acquire or gain control of during the policy period, but only with respect to "incidents" taking place after you form, acquire or gain control of such corporation or organization.
- e. Any other persons or organizations included as an insured under the provisions of the "scheduled underlying insurance" in Item 5. of the Declarations and then only for the same coverage, except for limits of liability, afforded under such "scheduled underlying insurance".

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

If you are designated in the Declarations as an individual, this policy shall not apply to liability arising out of your domestic or non-business activities. This does not apply to the ownership, maintenance, use or "loading or unloading" of any "automobile", nor to the Personal Umbrella Liability Coverage Part.

SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought;
 - c. Persons or organizations making claims or bringing "suits".
 - d. "Automobiles", "aircraft" or "watercraft" to which this policy applies; or
 - e. Coverages under which loss is insured in this policy.
- 2. Our aggregate limit of liability will be the amount in Item 3. of the Declarations for "ultimate net loss" arising

ing out of all "incidents" with respect to the following exposures insured by this policy:

- a. The "Products-Completed Operations Hazard";
- b. Occupational disease sustained by all employees of an insured; or
- c. A hazard, other than in **a.** or **b.** above, for which an "underlying insurer" affords coverage subject to an aggregate limit and to which this policy applies.

This aggregate limit of liability applies separately to **a.** through **c.** above.

- 3. We shall only be liable for the "ultimate net loss" in excess of:

- a. The applicable limits of "scheduled underlying insurance" in Item 5. of the Declarations, for "incidents" covered by "scheduled underlying insurance", plus the limits of any "unscheduled underlying insurance" which also provides coverage for such "incidents";
- b. The "unscheduled underlying insurance" or the "retained limit", whichever is greater, for "incidents" covered by "unscheduled underlying insurance" and by this policy only; or
- c. The "retained limit" for "incidents" covered by this policy only:

but only up to the amount of our limits of liability in Item 3. of the Declarations, because of a single "incident".

- 4. In the event of reduction or exhaustion of the aggregate limits of liability under "scheduled underlying insurance" solely by reason of payments of a combination of covered:
 - a. expenses;
 - b. settlements; or
 - c. judgments

paid thereunder as a result of "incidents" taking place during this policy period (which would, except for the amount thereof, be covered under this policy); this policy shall, subject to this limit of liability provision and to the remaining terms and provisions and conditions of this policy:

- a. apply in excess of such reduction of "scheduled underlying insurance"; or
- b. apply in place of the exhausted amount of "scheduled underlying insurance".

Nothing in **a.** or **b.** above shall serve to increase the limits of liability in Item 3. of the Declarations.

- 5. The limits of this policy shall apply separately to:
 - a. each consecutive annual period; and

- b. remaining periods of less than 12 months;

starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the limits of liability.

SECTION IV – CONDITIONS

1. Financial Impairment

Bankruptcy, rehabilitation, receivership, liquidation or other financial impairment of you or an "underlying insurer" shall neither relieve nor increase any of our obligations under this policy.

In the event there is diminished recovery or no recovery available to you as a result of such financial impairment of an insurer providing "scheduled underlying insurance", the coverage under this policy shall apply only in excess of the limits of liability stated in the "scheduled underlying insurance". Under no circumstances shall we be required to drop down and replace the limits of liability, or assume the obligations of a financially impaired insurer.

2. Duties of the Insured

- a. In the Event of an Occurrence or Offense Which Has Not Resulted in a Claim or Suit

Whenever you have information of an occurrence or offense which involves injuries or damages likely to involve this policy, written notice shall be given by or for you to us or to our authorized agent as soon as practicable. The notice shall contain:

- (1) Particular information sufficient to identify the insured;
- (2) Such information as can be reasonably obtained with respect to time, place and circumstances of the occurrence or offense; and
- (3) Names and addresses of the insured and of available witnesses.

- b. In the Event of Claims or Suit

Immediate written notice shall be given by you to us whenever:

- (1) A claim is made or "suit" is brought against you;
- (2) You receive notice that a right to bring claim or "suit" against you will be asserted; or
- (3) You obtain information that the obligation of "underlying insurers" to:
 - (a) investigate;
 - (b) defend;

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(c) pay on behalf of; or

(d) indemnify

you has ceased.

Every demand, notice, summons, amended complaint or other process received by you or your representative shall be forwarded with each notice.

3. Legal Action Against Us

No legal action shall be brought against us unless you have fully complied with all the terms of this policy and the amount of your obligation to pay has been finally determined either by:

- a. Judgment against you after actual trial; or
- b. Written agreement between us, you and the claimant.

4. Other Insurance

Whenever you are covered by other:

- a. primary;
- b. excess; or
- c. excess-contingent

insurance not scheduled on this policy as "scheduled underlying insurance", this policy shall apply only in excess of, and will not contribute with, such other insurance. This policy shall not be subject to terms, conditions or limitations of other insurance. In the event of payment under this policy where you are covered by such other insurance, we shall be subrogated to all of your rights of recovery against such other insurance and you shall execute and deliver instruments and papers, including assignment of rights, and do what is necessary to secure such rights.

5. Premium Audit

- a. Premiums for this policy shall be stated in the Declarations and computed in accordance with our manual rules. If this policy is issued for a period in excess of one year, the premium may be revised on each annual anniversary in accordance with our manual rules in effect during that time.
- b. Premium shown on the Declarations page as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to you. If the sum of the advance and audit premiums paid for the policy term are greater than the earned premium, we will return the excess to you.
- c. You must keep records of the information we need for premium computation, and send us copies at such times as we request.

- d. We may audit your books and records during the term of this policy and up to three years afterwards.

6. Cancellation

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is canceled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

7. Severability of Interests

The insurance afforded applies separately to each insured against whom claim is made or "suit" is brought. However, the inclusion of more than one insured shall not operate to increase the limits of liability.

8. Assignment

Your rights and duties under this insurance may not be transferred without our written consent, except if you die; then your rights and duties will be transferred to:

- a. your legal representative, but only while acting within the scope of their duties as such; or
- b. anyone having temporary custody of your property until your legal representative has been appointed.

9. Changes

This policy may be changed only by an endorsement issued by us, to form a part of this policy, signed by our duly authorized representative. Notice to you or to our agent, or knowledge possessed by us, our agent or any other person shall not effect a waiver or a change in any part of this policy nor prevent us from asserting any right under the terms of this policy.

10. "Scheduled Underlying Insurance"

Material change in premium for "scheduled underlying insurance" shall be promptly reported to us. Premium for this policy may be adjusted to reflect changes in underlying insurance in accordance with our manuals in effect at the time of the change.

11. Maintenance of "Scheduled Underlying Insurance"

While this policy is in force you agree that the policies listed in the Declarations as "scheduled underlying insurance" and their renewals and replacements 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 aggregate limits of liability in the "scheduled underlying insurance", provided that such reduction or exhaustion is solely the result of "incidents" taking place during this policy period, and not before. If you fail to maintain "scheduled underlying insurance", this condition shall not invalidate this policy. However, in the event of such failure, we will only be liable to the same extent as if you had complied with this condition.

12. Inspection

We have the right, but are not obligated to:

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

Inspections, surveys, reports or recommendations relate only to insurability and the premiums charged. We do not make safety inspections. We do not undertake to perform the duty of persons or organizations to provide for the health or safety of workers or the public. We do not warrant that conditions:

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

This condition applies not only to us, but to rating, advisory, rate service or similar organizations which make inspections, surveys, reports or recommendations.

13. Appeals

If you or your "underlying insurers" elect not to appeal a judgment in excess of the limits of liability afforded by the:

- a. "scheduled underlying insurance";
- b. "unscheduled underlying insurance"; or
- c. "retained limit";

we may elect to appeal. Our limit of liability shall not be increased because of such appeal. We will, however, pay the following costs and expenses:

- a. All premium bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy;
- b. All premiums on appeal bonds required in such defended "suit", but without obligation to apply for or furnish such bonds;
- c. Court fees;
- d. Costs and expenses taxed against you by the appellate court and interest accruing after entry of a judgment against you and before we have:
 - (1) paid;
 - (2) offered to pay; or
 - (3) deposited in court

the part of the judgment that is within the applicable limit of insurance. Where the "underlying insurers" terminate their liability to pay interest on the judgment by an offer to pay their limits, you 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".

14. Subrogation

In the case of any payments by us under the coverages of this policy, we shall be subrogated to all rights of recovery against any other party which you may have and will cooperate with you and all other interests. Amounts recovered shall be apportioned in the following order:

- a. Amounts paid in excess of the payments under this policy shall first be reimbursed up to the amount paid by those, including you, who made such payments;
- b. We are then to be reimbursed up to the amount we paid;
- c. Any remainder shall be available to the interests of those over whom this coverage is in excess and who are entitled to claim such remainder.

Expenses necessary to the recovery of such amounts shall be divided between the interests concerned, including you, in the ratio of their respective recoveries as finally settled.

15. Settlement of Claims or Suit

We may pay, but are not obligated to pay, any part or all of the amount of the "retained limit" to effect settlement of a claim or "suit". Upon notification of the action taken you shall promptly reimburse us for such part of the "retained limit" that we had paid. All Named Insureds are jointly and severally responsible for our reimbursement and agree to make such reimbursement within 30 days after we give you written notice or demand for payment.

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16. Sole Agent

The insured first named in the Declarations is authorized to act on behalf of all Named Insureds and other insureds with respect to:

- a. the giving and receiving of notice of cancellation; and
- b. receiving return premium that may be payable under this policy.

The insured first named in the Declarations is responsible for the payment of premiums, but the other Named Insureds jointly and severally agree to make such payments in full if the insured first named fails to pay the amount due within 30 days after we give written notice or demand.

SECTION V – DEFINITIONS

1. **"Advertising injury"** means injury arising out of one or more of the following offenses:

- a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- b. Oral or written publication of material that violates a person's right of privacy;
- c. Misappropriation of advertising ideas or style of doing business; or
- d. Infringement of copyright, title or slogan.

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

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

4. **"Aircraft"** means a vehicle designed to transport persons or property in the air.

5. **"Impaired property"** means tangible property, other than "your product" or "your work," that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

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

6. **"Insured contract"** means:

- a. A lease of premises;
- b. A sidetrack agreement;
- c. An easement of license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. The part of other contracts or agreements pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contracts or agreements are made prior to the "bodily injury" or "property damage".

Tort liability means liability that would be imposed by law in the absence of contracts or agreements.

An "insured contract" does not include that part of a contract or agreement:

- a. That indemnifies an architect, engineer or surveyor for an injury or damages arising out of:
 - (1) preparing, approving or failing to prepare or approve:
 - (a) maps;
 - (b) drawings;
 - (c) opinions;
 - (d) reports;
 - (e) surveys;
 - (f) change orders;
 - (g) designs; or
 - (h) specifications; or
 - (2) giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- b. Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **a.(1)** above and supervisory, inspection or engineering services; or
- c. That indemnifies a person or organization for damage by fire to premises rented or loaned to an insured.

7. **“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 “automobile”;
- b. While it is in or on an “aircraft,” “watercraft” or “automobile”; or
- c. While it is being moved from an “aircraft,” “watercraft” or “automobile” to the place where it is finally delivered;

but “loading or unloading” does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the “aircraft,” “watercraft” or “automobile”.

8. **“Mobile equipment”** means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

- (1) Power cranes, shovels, loaders, diggers or drills; or

- (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

- e. Vehicles not described in **a**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

- (2) Cherry pickers and similar devices used to raise or lower workers;

- f. Vehicles not described in **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

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

- (1) Equipment designed primarily for:

- (a) Snow removal;

- (b) Road maintenance, but not construction or resurfacing;

- (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.

9. **“Incident”**

- a. With respect to claims which are covered, in whole or in part, by the immediate “scheduled underlying insurance” policy (whether or not the limits thereof become reduced or exhausted), “incident” means either an occurrence or offense, depending upon which term triggers coverage in your immediate “scheduled underlying insurance” policy.

- (1) The trigger of coverage, with respect to “bodily injury” and “property damage”, is an occurrence. When coverage is triggered by an occurrence, then “incident” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, that take place during this policy period.

- (2) The trigger of coverage, with respect to “personal injury” and “advertising injury”, is an offense.

- (a) For “personal injury”, when coverage is triggered by an offense, then “incident” means an act or series of acts of the same or similar nature committed during this policy period. All loss arising out of such act or series of acts, regardless of the frequency thereof or the number of claimants, shall be deemed to arise out of one offense.

- (b) For “advertising injury” when coverage is triggered by an offense, then “incident” means an act or series of acts in which the same or similar advertising material is used, regardless of the number or kind of media used, committed during this policy period. All damages involving the same injurious material or act, regardless of the:

- (i) frequency or repetition thereof;

- (ii) number or kind of media used; or

- (iii) number of claimants;

shall be deemed to arise out of one offense.

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- b. With respect to claims which are covered by this policy, but which are not covered by the immediate "scheduled underlying insurance", "incident" means either an occurrence or offense.

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

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. Wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premise that a person occupies by or on behalf of its owner, landlord or lessor;
- d. discrimination, unless such insurance is prohibited by law;
- e. humiliation;
- f. libel;
- g. slander or defamation of character; or
- h. invasion of rights of privacy,

all of which are committed in the conduct of an insured's business; except for coverage that is afforded under "Advertising Injury".

11. a. **"Product-completed operations hazard"** includes "bodily injury" and "property damage" occurring away from premises an insured owns or rents and arising out of "your product" or "your work" except:

- (1) Products in your physical possession; or
- (2) Work not yet completed or abandoned.

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

- (1) When all work called for in the "insured contract" has been completed;
- (2) When all of the work to be done at the site has been completed if the "insured's contract" calls for work at more than one site; or
- (3) When that part of the work done at a job site has been put to its intended use by a person or organization other than another contractor or subcontractor working on the same project. Work that may need:

- (a) service;
- (b) maintenance;
- (c) correction;
- (d) repair; or
- (e) replacement;

but which is otherwise complete, will be treated as completed.

c. This hazard does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it; or
- (2) The existence of:
 - (a) tools;
 - (b) uninstalled equipment; or
 - (c) abandoned or unused materials.

12. **"Property damage"** means:

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

13. **"Suit"** means a civil proceeding in which damages because of:

- a. "bodily injury";
- b. "property damage";
- c. "personal injury"; or
- d. "advertising injury";

to which this insurance applies are alleged. "Suit" includes:

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

14. **"Your product"** means:

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

"Your product" includes warranties or representations made with respect to the fitness, quality, durability, performance or use of "your product" and the providing of or failure to provide warnings or instructions.

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

15. "Your work" means:

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

"Your work" includes warranties or representations made with respect to the fitness, quality, durability, performance or use of "your work" and the providing of or failure to provide warnings or instructions.

16. "Retained limit" means the amount stated in Item 4. of the Declarations.

17. "Scheduled underlying insurance" means the insurance policies listed in the Schedule of Underlying Insurance including renewal or replacement of such contracts which are not more restrictive than those listed in the aforementioned Schedule of Underlying Insurance.

18. "Ultimate net loss"

- a. "Ultimate net loss" means the actual damages the insured is legally obligated to pay, either through:
 - (1) final adjudication on the merits; or
 - (2) through compromise settlement with our written consent or direction;

because of "incident(s)" covered by this policy.

However, it includes the above mentioned sums only after deducting all other recoveries and savings.

- b. "Ultimate net loss" does not include the following:
 - (1) costs or expenses related to:
 - (a) litigation,
 - (b) settlement;
 - (c) adjustment; or
 - (d) appeals;

nor costs or expenses incident to the same which an "underlying insurer" has paid, incurred or is obligated to pay to or on behalf of the insured;
 - (2) pre-judgment interest;
 - (3) office costs and expenses and salaries and expenses of the employees of an insured;

- (4) our office costs and expenses and salaries of our employees; or
- (5) general retainer and/or monitoring fees of counsel retained by the insured.

19. "Underlying insurer" means an insurer whose policy covers an "incident" also covered by this policy but does not include insurers whose policies were purchased specifically to be in excess of this policy. It includes all insurers providing:

- a "unscheduled underlying insurance"; and
- b. "scheduled underlying insurance".

20. "Unscheduled underlying insurance"

- a. "Unscheduled underlying insurance" means insurance policies available to an insured, whether:
 - (1) primary;
 - (2) excess;
 - (3) excess-contingent; or
 - (4) otherwise;

except the policies listed in the Schedule of Underlying Insurance.
- b. "Unscheduled underlying insurance" does not include insurance purchased specifically to be excess of this policy.

21. "Watercraft" means a vehicle designed to transport persons or property in or on water.

SECTION VI – DEFENSE PAYMENT AND RELATED DUTIES

- 1. If a claim or "suit" alleges damages covered by underlying policies and the obligation of all "underlying insurers" either to:
 - a. investigate and defend the insured; or
 - b. pay the cost of such investigation and defense;

ceases solely through exhaustion of all underlying limits of liability through payment of a combination of covered expenses, settlements or judgments for "incidents" taking place during our policy period, then we will either:

 - a. assume the investigation and defense of the insured against "suits" seeking damages; or
 - b. if we elect not to assume the investigation and defense in 1.a. above, we will reimburse the insured for reasonable defense costs and expenses incurred with our written consent. However, such reimbursement excludes:
 - (1) office expenses of the insured;
 - (2) salaries and expenses of employees; and

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(3) general retainer fees of counsel retained by the insured.

2. We will investigate and defend "suits" brought against an insured for a claim or "suit" that alleges damages from an "incident" not covered under:

- a. "scheduled underlying insurance"; and
- b. "unscheduled underlying insurance";

but which seeks damages arising out of an "incident" otherwise covered under this policy. Costs and expenses of such investigation and defense are not subject to the "retained limit".

3. We will investigate and defend an insured or reimburse an insured for such costs of investigation and defense described in either 1. or 2. above, even if the allegations of a "suit" are:

- a. groundless;
- b. false; or
- c. fraudulent;

but only until we make payment or offer to pay or deposit in court that part of judgment(s) not exceeding our limit of liability.

4. We shall also have the sole right to make settlement of a "suit" as we deem expedient.

5. If not permitted by law or otherwise to perform these duties, we will pay an insured for defense costs and expenses incurred with our prior written consent.

6. Amounts we pay or incur pursuant to the obligation to defend or pay the costs and expenses of defense are in addition to, and not subject to, the limits of liability stated in the Declarations.

7. In addition to our limits of liability, we will pay prejudgment interest awarded against an insured on that part of a judgment covered by this policy. We will not pay prejudgment interest on that period of time after we offer to pay:

- a. our limit of liability; or
- b. that portion of our limit of liability which equals the amount of a settlement demand when combined with the limits of "underlying insurers."

8. We will pay interest on a judgment that accrues after entry of that judgment, but before we have:

- a. paid;
- b. offered to pay; or
- c. deposited in court

that part of the judgment that is within the limit of insurance of this policy. The amount of interest we pay

will be in direct proportion that amount we pay as damages bears to the total amount of judgment. We will not pay additional interest that accrues after we have:

- a. paid;
- b. offered to pay;
- c. deposited in court

that part of the judgment that is within the limit of insurance of this policy.

9. We will pay all reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit." This includes actual loss of earnings up to \$100 a day because of time off from work.

SECTION VII – POLICY TERRITORY

Policy Territory means anywhere in the world provided such liability is covered by valid and collectible Underlying Insurance as listed in the Schedule of Underlying Insurance, for the full limit shown therein, and then only for such liability for which coverage is afforded under said Underlying Insurance.

With respect to claims made or suits instituted in courts elsewhere than within:

- 1. the United States of America (including its territories and possessions);
- 2. Puerto Rico; or
- 3. Canada,

we shall have the right, but not the duty to defend such suits and to make such:

- 1. investigation;
- 2. negotiation; and
- 3. settlement

of such claims or suits as we deem expedient; provided in cases in which we elect not to investigate, settle or defend, you, under our supervision, will make or cause to be made, such investigation and defense as may be reasonably necessary and, subject to prior authorization by us, will effect to deem prudent. We shall reimburse you for the reasonable cost of such:

- 1. investigation;
- 2. settlement; or
- 3. defense

in the currency of the United States at the rate of exchange prevailing on the date of payment.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

It is agreed that:

I. This policy does not apply:

A. Under Liability Coverage to "ultimate net loss":

1. With respect to which you, under this policy, are also an insured under a nuclear energy liability policy issued by the:

- a. Nuclear Energy Liability Insurance Association;
- b. Mutual Atomic Energy Liability Underwriters; or
- c. Nuclear Insurance Association of Canada;

or would be an insured under such policy but for its termination upon exhaustion of its limit of liability; or

2. Resulting from the "hazardous properties" of "nuclear material" and with respect to which:

- a. a person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or a law or amendment thereof; or
- b. the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or an agency thereof, under an agreement entered into by the United States of America, or any agency thereof, with a person or organization.

B. Under any Medical Payment Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to "ultimate net loss" resulting from the "hazardous properties" of "nuclear material", and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "ultimate net loss" resulting from the "hazardous properties" of "nuclear material," if:

1. The "nuclear material":

- a. is at a "nuclear facility" owned by, or operated by or on behalf of, an insured; or
- b. has been discharged or dispersed therefrom;

2. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, han-

dled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

3. The loss arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the:

- a. planning;
- b. construction;
- c. maintenance;
- d. operation; or

use of a "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **C.3.** applies only to "ultimate net loss" to such "nuclear facility" and any property threat.

II. As used in this endorsement:

A. "Hazardous properties" include radioactive, toxic or explosive properties.

B. "Nuclear material" means "source material", "special nuclear material" or "byproduct material".

C. "Source material", "special nuclear material" and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

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

E. "Waste" means waste material:

1. containing "byproduct 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" content; and
2. resulting from the operation, by a person or organization, of a "nuclear facility" included within paragraphs 1. and 2. of the definition of "nuclear facility".

F. "Nuclear facility" means:

1. a "nuclear reactor";
2. any equipment or device designed or used for:
 - a. separating the isotopes of uranium or plutonium;

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
AMENDATORY ENDORSEMENT – NEW YORK

For policies issued or delivered in New York, the policy terms and conditions are amended by the following:

I. Exclusion q. (SECTION I) is replaced by the following:

- q.** Liability imposed on the insured under a personal injury protection law, a reparations benefits law or other similar law.

II. Condition 2. (Section IV) is amended by the addition of the following:

- 2. c.** Notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant to any agent of ours in New York State, with particulars sufficient to identify the insured, shall be considered notice to us. Failure to give such notice shall not invalidate any claim made by the insured or by any other claimant if it was not reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

III. Condition 3. (SECTION IV) is replaced by the following:

3. Legal Action Against Us

No legal action shall be brought against us unless you have fully complied with all the terms of this policy and the amount of your obligation to pay has been finally determined either by:

- a.** Judgment against you;
- b.** Written agreement between us, you and the claimant; or
- c.** Judgment against you remains unsatisfied at the expiration of 30 days from the serving of notice of entry of judgment upon you, your attorney or us.

IV. Condition 5.d. (SECTION IV) is replaced by the following:

- 5. d.** We shall audit your books and records within 180 days after the expiration of this policy.

V. Paragraphs b., c. and e. of Condition 6. Cancellation (SECTION IV) are replaced by the following:

- b. (1) Cancellation For Policies In Effect 60 Days or Less**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (a)** 30 days before the effective date of cancellation if we cancel for any reason not included in paragraph **(b)** below.

- (b)** 15 days before the effective date of cancellation if we cancel for any of the following reasons:

- (i)** Nonpayment of premium;
- (ii)** Conviction of a crime arising out of acts increasing the hazard insured against;

- (iii)** Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim thereunder;

- (iv)** After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;

- (v)** Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, that results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, that causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;

- (vi)** Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors, or the public;

- (vii)** A determination by the Superintendent that the continuation of the policy would violate, or would place us in

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violation of any provision of the Insurance Code; or

- (viii) Where we have reason to believe, in good faith and sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds.

(2) Cancellation Of Policies In Effect For More Than 60 Days:

If this policy has been in effect for more than 60 days, or if this policy is a renewal or continuation of a policy we issued, we may cancel this policy only for any of the reasons listed in paragraph **(1)(b)** above provided we mail the first Named Insured written notice of cancellation at least 15 days before the effective date of cancellation.

- c. We will mail or deliver our notice including the reason for cancellation to the first Named Insured at the address shown in the policy and the authorized agent or broker.
- e. If this policy is canceled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata.

However, when the premium is advanced under a premium finance agreement, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

VI. The following Conditions (SECTION IV) are added and supersedes any other provisions to the Contrary:

1. Nonrenewal

If we decide not to renew this policy we will send notice as provided in paragraph **3.** below along with the reason for nonrenewal.

2. Conditional Renewal

If we conditionally renew this policy subject to a:

- a. Change of limits;
- b. Change in type of coverage;
- c. Reduction of coverage;
- d. Increased deductible;
- e. Addition of exclusion; or
- f. Increased premiums in excess of 10% exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of ex-

perience rating, loss rating, retrospective rating or audit;

we will send notice as provided in paragraph **3.** below.

3. Notices of Nonrenewal and Conditional Renewal

- a. If we decide not to renew this policy or to conditionally renew this policy as provided in paragraph **1.** and **2.** above, we will mail or deliver written notice to the first Named Insured shown in the Declarations at least 60 but not more than 120 days before:

- (1) the expiration date; or
- (2) the anniversary date if this is a continuous policy.

- b. Notice will be mailed or delivered to the First Named Insured at the address shown in the policy and the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

- c. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insured of yours mails or delivers notice that the policy has been replaced or no longer desired.

- 4. If we send the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice as provided for in paragraph **3.** above, coverage will remain in effect at the same terms and conditions of this policy and at the lower of the current rates or the prior period's rates, until 60 days after such notice is mailed or delivered, unless the first Named Insured has replaced the coverage or elects to cancel, in which case such cancellation shall be on a pro rata premium basis. If, however, the insured elects to renew on the basis of the conditional renewal notice, then such terms, conditions and rates shall govern the policy upon expiration of such 60 day period unless such notice was provided at least 30 days prior to the expiration date of the policy; in which case the terms, conditions and rates set forth in the conditional renewal notice shall apply as of the renewal date.

If we send the first Named Insured a late conditional renewal notice or a late nonrenewal notice on or after the expiration date of the policy, coverage shall remain in effect on the same terms and conditions of this policy for another policy period, and at the lower of the current rates or the prior period's rates unless the insured, during the additional policy period, has replaced the coverage or elects to cancel, in which case such cancellation shall be on a pro rata premium basis.

5. The aggregate limits of this policy as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with paragraph 4. above.

VII. The last sentence of SECTION III – LIMITS OF INSURANCE does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice.

VIII. Paragraph 2.b. of SECTION IV – CONDITIONS is deleted and replaced by the following:

2. b. In the Event of the Claims or Suit

Notice shall be given by you to us whenever:

- (1) A claim is made or "suit" is brought against you;
- (2) You receive notice that a right to bring claim or "suit" against you will be asserted; or
- (3) You obtain information that the obligation of "underlying insurers" to:
 - (a) investigate;
 - (b) defend;
 - (c) pay on behalf of; or
 - (d) indemnifyyou has ceased.

Every demand, notice, summons, amended complaint or other process received by you or your representative shall be forwarded with each notice.

IX. Paragraph d. of Definition 10. "Personal injury" (SECTION V) is deleted and not replaced.

X. Definition 7. "Loading and unloading" (SECTION V) does not apply, nor does any reference to it apply.

XI. Paragraph 1. of SECTION VI – DEFENSE PAYMENT AND RELATED DUTIES is replaced by the following:

1. If a claim or "suit" alleges damages covered by underlying policies and the obligation of all "underlying insurers" either to:

- a. investigate and defend the insured; or
- b. pay the cost of such investigation and defense;

ceases solely through exhaustion of all underlying limits of liability through payment of a combination of covered expenses, settlements or judgments for "incidents" taking place during our policy period, then we shall assume the investigation and defense of the insured against "suits" seeking damages. If we are not permitted, by law or otherwise, to assume the investigation and defense in 1.a. above, we will reimburse the insured for reasonable defense costs and expenses incurred with our written consent. However, such reimbursement excludes:

- (1) office expenses of the insured;
- (2) salaries and expenses of employees; and
- (3) general retainer fees of counsel retained by the insured.

XII. Paragraph 4. of SECTION VI – DEFENSE PAYMENT AND RELATED DUTIES is amended by the addition of the following:

With regard to claims or "suits" covered by "unscheduled underlying insurance" or covered by this policy only, we shall, with your consent, have the right to make settlement. However, if you refuse to consent to any settlement mutually agreed upon by us and the plaintiff, recommended in writing by us, and you elect to contest or continue any legal proceedings, our liability shall not exceed the amount for which the claim or "suit" could have been settled plus the cost and expenses incurred up to the date of such refusal.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTOR LIMITATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

I. The following paragraphs are added to SECTION I – COVERAGES, 2. Exclusions:

This insurance does not apply:

1. to "bodily injury," "property damage," or "personal and advertising injury" arising out of the rendering of or failure to render any "professional services" by or on behalf of any insured;
2. to "bodily injury," "property damage," or "personal and advertising injury" arising out of any operation performed by or on behalf of any insured which is or was insured under an Owner Controlled Insurance Program (O.C.I.P.), or Contractor Controlled Insurance Program (C.C.I.P.), otherwise referred to as a wrap-up;
3. to "bodily injury," "property damage," or "personal and advertising injury" arising out of the design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair, including remodeling, service, correction, or replacement, of an "exterior insulation and finishing system" (EIFS) or any part thereof, or any substantially similar system or any part thereof, by or on behalf of any insured;
4. to "property damage" arising out of the "explosion hazard," the "collapse hazard" or the "underground property damage hazard;"
5. to "bodily injury," "property damage" or "personal and advertising injury" arising out of the "subsidence" of land;
6. to "bodily injury," "property damage" or "personal and advertising injury" arising out of "your work" on any "residential structure."

Paragraphs 3., 4., 5., and 6. of this exclusion do not apply if such "bodily injury," "property damage" or "personal injury and advertising injury" is covered by "scheduled underlying insurance."

II. The following definitions are added to SECTION V – DEFINITIONS:

"Collapse hazard" includes "structural property damage" and any resulting "property damage" to any other property at any time.

"Explosion hazard" includes "property damage" arising out of blasting or explosion. The "explosion hazard" does not include "property damage" arising out of the explosion of air or steam vessels, piping under

pressure, prime movers, machinery or power transmitting equipment.

"Exterior insulation and finishing system" (EIFS) means an exterior wall cladding system consisting of an insulation material attached to a substrate, a base coat on the surface of the insulation material, and a protective finish applied to the base coat and any accessories thereto, including but not limited to conditioners, primers, accessories, flashings, coatings, caulking or sealants.

"Professional services" means the preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications, or supervisory or inspection activities performed as part of any architectural, engineering or surveying activities. "Professional services" do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

"Residential structure" means a structure where 30% or more of the square footage area is used or intended to be used for human habitation.

"Structural property damage" means the collapse of or structural injury to any building or structure due to:

1. Grading of land, excavating, borrowing, filling, back-filling, tunneling, pile driving, cofferdam work or caisson work; or
2. Moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support of that building or structure.

"Subsidence" means earth movement including but not limited to:

- a. Landslide;
- b. Mudflow;
- c. Earth sinking;
- d. Earth rising;
- e. Collapse or movement of fill;
- f. Earth settling, slipping, falling away, caving in, eroding or tilting;
- g. Earthquake; or
- h. Any other movement of land or earth.

"Underground property damage hazard" includes "underground property damage" and any resulting "property damage" to any other property at any time.

"Underground property damage" means "property damage" to wires, conduits, pipes, mains, sewers,

tanks, tunnels, any similar property, or any apparatus used with them, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**NEW YORK CHANGES – TRANSFER OF DUTIES WHEN
THE LIMIT OF INSURANCE IS USED UP**

For policies issued or delivered in New York, the policy terms and conditions are amended by the following:

The following Condition is added to Section IV., **CONDITIONS**:

Transfer of Duties When the Limit of Insurance Is Used Up

- a. If we conclude that, based on occurrences, offenses, claims or "suits" which have been reported to us and to which this insurance may apply, the aggregate limit of liability insurance, as stated in Item 3. of the Declarations, is likely to be used up in the payment of judgments or settlements, we will notify the first Named Insured, in writing, to that effect.
- b. When the aggregate limit of liability insurance, as stated in Item 3. of the Declarations, has actually been used up in the payment of judgments or settlements:
 - (1) We will notify the first Named Insured, in writing, as soon as practicable, that:
 - (a) Such limit has actually been used up; and
 - (b) Our duty to defend "suits" seeking damages subject to that limit has also ended.
 - (2) We will initiate, and cooperate in, the transfer of control, to any appropriate insured, of all claims and "suits" seeking damages which are subject to the limit of liability insurance and which are reported to us before that limit is used up. The insured must cooperate in the transfer of control of said claims or "suits".

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is com-

pleted, provided the appropriate insured is cooperating in completing such transfer.

We will take no action whatsoever with respect to any claim or "suit" seeking damages that would have been subject to the limit, had it not been used up, if the claim or "suit" is reported to us after that limit of liability has been used up.

- (3) The first Named Insured, and any other insured involved in a "suit" seeking damages subject to the limit, must arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.
- c. The first Named Insured will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with paragraph b.(2) above.

The duty of the first Named Insured to reimburse us will begin on:

 - (1) The date on which the aggregate limit of liability insurance is used up, if we sent notice in accordance with paragraph a. above; or
 - (2) The date on which we sent notice in accordance with paragraph b.(1) above, if we did not send notice in accordance with paragraph a. above.
- d. The exhaustion of the aggregate limit of liability insurance by the payments of judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**AMENDATORY ENDORSEMENT – POLICY TERRITORY**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

Section **VII., POLICY TERRITORY** is deleted in its entirety and replaced by the following:

VII. POLICY TERRITORY

Policy Territory means:

1.
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, provided that the injury or damage does not occur in the course of travel or transportation to or from any place not included in **a.** above, or
 - c. All parts of the world if:
 - (1) The injury or damage arises out of:
 - (a) Goods or products made or sold by you in the territory described in **a.** above; or
 - (b) The activities of a person who home is in the territory described in **a.** above, but is away for a short time on your business; and
 - (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in **a.** above or in a settlement we agree to.
2. Anywhere else in the world (other than **1.** above) provided such liability is covered by valid and collectible Underlying Insurance as listed in the Schedule of Underlying Insurance, for the full amount shown therein, and then only for such liability for which coverage is afforded under said Underlying Insurance.

With respect to claims made or "suits" instituted in courts elsewhere than within:

- a. The United States of America (including its territories and possessions);
- b. Puerto Rico; or
- c. Canada;

we will investigate, negotiate and defend such claims or "suits". We shall, with your consent, have the right to make settlement. However, if your refuse to consent to any settlement mutually agreed upon by us and the plaintiff, recommended in writing by us, and you elect to contest or continue any legal proceedings, our liability shall not exceed the amount for which the claim or "suit" could have been settled plus the cost and expenses incurred up to the date of such refusal. If we are not permitted, by law or otherwise, to investigate, settle and defend, or if we do not have the expertise to provide a proper defense in such foreign country, you, under our supervision, will make or cause to be made, such investigation and defense as may be reasonably necessary and, subject to prior authorization by us, will effect to deem prudent. We shall reimburse you for the reasonable cost of such:

- a. investigation;
- b. negotiation; and
- c. settlement,

in the currency of the United States at the rate of exchange prevailing on the date of payment.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
PERSONAL INJURY LIABILITY LIMITATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

It is agreed that the following paragraph is added to **Exclusions** (SECTION I):

This insurance does not apply to any liability arising out of "personal injury" as defined in SECTION V – **DEFINITIONS**. However, this exclusion does not apply if said "personal injury" is scheduled in the "scheduled underlying insurance" for the full limits shown and then only for such liability for which coverage is provided in the "scheduled underlying insurance".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
ADVERTISING INJURY LIABILITY LIMITATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

It is agreed that the following paragraph is added to **Exclusions** (SECTION I):

This insurance does not apply to any liability arising out of "advertising injury" as defined in SECTION V – **DEFINITIONS**. However, this exclusion does not apply if said "advertising injury" is scheduled in the "scheduled underlying insurance" for the full limits shown and then only for such liability for which coverage is provided in the "scheduled underlying insurance".

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
AUTOMOBILE LIABILITY LIMITATION ENDORSEMENT – NEW YORK

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

It is agreed that this insurance applies to liability arising out of the ownership, maintenance or use of any "automobile" but only to the extent that such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance for the full limits shown therein, and then only for such liability for which coverage is afforded under said underlying insurance.

AMENDMENT OF INSURING AGREEMENT - EMPLOYEE BENEFITS LIABILITY - NEW YORK

It is understood and agreed that this endorsement amends the **COMMERCIAL UMBRELLA PLUS COVERAGE PART** as follows:

1. SECTION I – COVERAGES is amended to add the following to Paragraph 1. **Insuring Agreement**:

We will also pay on behalf of the insured those sums in excess of “scheduled underlying insurance”, that the insured becomes legally obligated to pay as “ultimate net loss” because of a negligent act, error or omission committed in the administration of your “employee benefit program”, but only if and to the extent such “ultimate net loss” is covered by “scheduled underlying insurance”.

2. Only for the purpose of the coverage provided by this endorsement:

- a. “Employee benefit plan” means the same as it does in “scheduled underlying insurance”.
- b. “Incident” means a negligent act, error or omission committed by you or on your behalf in the administration of your “employee benefit program”.
- c. Condition **11. Maintenance of Scheduled Underlying Insurance** is amended to delete its requirement that aggregate reduction or exhaustion result solely from “incidents” taking place during this policy period and not before.

All other terms and conditions of the Policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Medical Malpractice/Professional Liability Exclusion

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART
EXCESS THIRD PARTY LIABILITY POLICY

The following exclusion is added to **SECTION I – COVERAGE, 2. Exclusions:**

This insurance does not apply to any liability arising out of the rendering of or failure to render the following professional services:

- (a) Medical, surgical, dental, x-ray or nursing treatment, service, advice, or instruction, including the furnishing of food or beverages in connection therewith;
- (b) Furnishing, prescribing, applying, injecting or dispensing of drugs or medical, dental or surgical supplies or appliances;
- (c) Handling of or performing postmortem examinations or procedures on human bodies;
- (d) Organ donation;
- (e) Health or therapeutic service, treatment, advice or instruction; or
- (f) Service by any person as a member of a formal accreditation or similar professional board or committee of the named insured or as a person charged with the duty of executing directives of any such board or committee.
- (g) Any service, treatment, procedure, advice or instruction for the purpose of appearance or skin enhancement, hair removal, extension, weave or replacement, or personal grooming, relaxation or therapy.

All other terms, conditions and exclusions of this policy remain unchanged.



CHANGE ENDORSEMENT

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

THIS ENDORSEMENT IS A PART OF YOUR POLICY AND TAKES EFFECT ON THE EFFECTIVE DATE OF YOUR POLICY, UNLESS ANOTHER EFFECTIVE DATE IS SHOWN BELOW.

AMENDMENT OF INSURING AGREEMENT – KNOWN OR CONTINUING INJURY OR DAMAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

I. Paragraph 1. Insuring Agreement of SECTION I – COVERAGES is replaced by the following:

1. Insuring Agreement

We will pay on behalf of the insured all sums that the insured becomes legally obligated to pay as “ultimate net loss” because of “bodily injury”, “property damage”, “personal injury”, and “advertising injury” to which this insurance applies.

a. This insurance applies to “bodily injury” and “property damage” only if:

- (1)** The “bodily injury” or “property damage” is caused by an “incident” that takes place in the policy territory;
- (2)** The “bodily injury” or “property damage” occurs during the policy period; and
- (3)** With respect to “bodily injury” or “property damage” that continues, changes or resumes so as to occur during more than one policy period, both of the following conditions are met:

(i) Prior to the policy period, no “authorized insured” knew that the “bodily injury” or “property damage” had occurred, in whole or in part; and

(ii) During the policy period, an “authorized insured” first knew that the “bodily injury” or “property damage” had occurred, in whole or in part.

For purposes of this Paragraph **(1)a.(3)** only, if **(a)** “bodily injury” or “property damage” that occurs during this policy period does not continue, change or resume after the termination of this policy period; and **(b)** no “authorized insured” first knows of this “bodily injury” or “property damage” until after the termination of this policy period, then such first knowledge will be deemed to be during this policy period.

b. “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

POLICY CHANGE NO.

EFFECTIVE DATE OF THIS POLICY CHANGE

COUNTERSIGNED _____
(DATE)

BY _____
(AUTHORIZED REPRESENTATIVE)

P-56015-B (11/91 ED.)



CHANGE ENDORSEMENT

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

THIS ENDORSEMENT IS A PART OF YOUR POLICY AND TAKES EFFECT ON THE EFFECTIVE DATE OF YOUR POLICY, UNLESS ANOTHER EFFECTIVE DATE IS SHOWN BELOW.

any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "authorized insured":
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand, claim or "suit" for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. This insurance applies to "personal injury" and "advertising injury" caused by an "incident" that takes place during the policy period and in the policy territory.

II. The following changes are made to SECTION V – DEFINITIONS:

1. Definition 9. "Incident" is deleted in its entirety and replaced by the following:

9. "Incident"

- a. With respect to "bodily injury" and "property damage", "incident" means an occurrence. An occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- b. With respect to "personal injury" and "advertising injury", "incident" means an offense arising out of your business.

2. The following definition is added:

"Authorized insured" means any insured listed under Paragraph 1.a. through c. of **SECTION II – WHO IS AN INSURED**, or any employee authorized by such an insured to give or receive notice of an "incident", claim or "suit".

POLICY CHANGE NO.	EFFECTIVE DATE OF THIS POLICY CHANGE
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COUNTERSIGNED _____
(DATE)

BY _____
(AUTHORIZED REPRESENTATIVE)

IMPORTANT INFORMATION

FROM THE MEMBER COMPANIES OF CNA INSURANCE (CNA)

An endorsement, Amendment of Insuring Agreement – Known or Continuing Injury or Damage, has been added to your Commercial Umbrella policy renewal.

This endorsement, Amendment of Insuring Agreement – Known or Continuing Injury or Damage, provides coverage for “bodily injury” and “property damage” which was not known by the insured to have occurred, in whole or in part, prior to the inception of this policy.

This endorsement, Amendment of Insuring Agreement – Known or Continuing Injury or Damage, also provides that “bodily injury” or “property damage” that continues, changes or resumes so as to occur during more than one policy period will constitute “bodily injury” or “property damage” under this policy only if, during the policy period, the insured first knew that the “bodily injury” or “property damage” had occurred, in whole or in part.

The Amendment of Insuring Agreement – Known or Continuing Injury or Damage endorsement has been added to your policy to clarify that this policy does not apply to known losses and to clarify when this policy will apply to injury or damage that continues, changes or resumes during more than one policy period.

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IMPORTANT INFORMATION

FROM THE MEMBER COMPANIES OF CNA INSURANCE (CNA)

An endorsement, **G-144239-A – War Liability Exclusion**, has been added to your Commercial Umbrella Plus Coverage policy.

G-144239-A – War Liability Exclusion

When this endorsement is attached to your policy:

- Coverage is excluded for bodily injury liability, property damage liability, personal injury liability, and advertising injury liability arising out of war, warlike action and similar events. Previously, the War exclusion under the Commercial Umbrella Plus Coverage Part applied only to contractually assumed liability arising out of such events.

Please contact your agent if you have any questions about your coverage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ECONOMIC AND TRADE SANCTIONS CONDITION

The following condition is added to the COMMON POLICY CONDITIONS:

ECONOMIC AND TRADE SANCTIONS CONDITION

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy is void **ab initio** (void from its inception) with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

1. Any insured, or any person or entity claiming the benefits of an insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to U.S. economic or trade sanctions;
2. Any claim or "suit" that is brought in a Sanctioned Country or by a Sanctioned Country Government, where any action in connection with such claim or suit is prohibited by U.S. economic or trade sanctions;
3. Any claim or "suit" that is brought by any Specially Designated National or Blocked Person or any person

or entity who is otherwise subject to U.S. economic or trade sanctions;

4. Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country Government, where any activities related to such property are prohibited by U.S. economic or trade sanctions; or
5. Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity who is otherwise subject to U.S. economic or trade sanctions.

As used in this endorsement a Specially Designated National or Blocked Person is any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury Department's Office of Foreign Asset Control (O.F.A.C.) as it may be from time to time amended.

As used in this endorsement a Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

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COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

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

C. Examination Of Your Books And Records

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

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

b. Give you reports on the conditions we find; and

c. Recommend changes.

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

a. Are safe or healthful; or

b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

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

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

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333 S Wabash
Chicago, Illinois 60604

Policy Number	From	Policy Period	To	Coverage Is Provided By	Agency
B5085135750	06/01/15	06/01/16		Continental Casualty Company	060692310
Named Insured And Address				Agent	
Yorkville Endoscopy, LLC 201 EAST 93RD STREET NEW YORK, NY 10128				LOCKTON COMPANIES, LLC 444 W. 47TH ST., #900 KANSAS CITY, MO 64112	

** PAYMENT PLAN SCHEDULE **

THE BILLING FOR THIS POLICY WILL BE
FORWARDED TO YOU DIRECTLY FROM CNA.

THE PREMIUM AMOUNT FOR THIS TRANSACTION
IS \$2,540.00 .

THIS PREMIUM WILL BE INVOICED BY CNA ON
A SEPARATE STATEMENT ACCORDING TO THE
PAYMENT OPTION YOU SELECT.

ISSUE DATE 04/17/15

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