INSURANCE PROVISIONS IN CONTRACTS AND PERMITS FOR OUTDOOR ORGANIZATIONS

or

How to Navigate the Wilderness With a Lawyer and an Insurance Policy!
(Be sure to dress appropriate to the terrain and weather, bring a GPS or compass, a topographic map and an insurance agent!)

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Disclaimer of Content

- This course is intended to explain the basic concepts of the use of insurance provisions in contracts, permits and other written agreements or legal documents entered into by outdoor organizations. This is not an exhaustive or definitive guide or template for the use of such terms or documents, and only a qualified attorney, along with a competent insurance agent or broker can advise you as to the wording of contract terms relating to insurance, with full knowledge of the details of your particular operations, business relationships, business partners and business arrangements or goals. Do not use the contents of this presentation in a legal document or agreement without first consulting one of those professionals.
What You Will Take Away From This Class

• Recognize and understand the basic insurance requirements found in many contracts, agreements, licenses and permits
• Understand how to negotiate insurance requirements of your contracts, agreements, licenses or permits with business partners and vendors
• Understand when and what insurance to require of independent contractors, licensees and others
Three Tangible Action Items

- Inventory your contracts, agreements, licenses and permits to analyze and assess insurance requirements.
- Have your attorney draw up contracts for vendors or contractors, for festivals, film production, rental agreements, clients, licensees, and construction or renovation work, with appropriate insurance requirements.
- Speak to your insurance agent/broker about the draft insurance provisions of your next contract or permit before you enter into it!
Topography of Insurance

- **Topographic Map as An Anology to an Insurance Policy**

- When used with a compass or GPS device, a topo map is helpful in navigating from one point to another, and serves as a database of information for this purpose.

- A topo map is useful and will show you the terrain, the ups and downs, possibly the best views, water courses and water bodies.

- A topo map is a snapshot in time and does not inform you of changing conditions, local weather patterns, hazards created by dynamics of the land or vegetation, wild animals, flood, fire, etc.

- An insurance policy can help your organization navigate from one point in time to the next while minimizing the risk of financial uncertainty in a constantly changing operational landscape.
Topography of Insurance (cont.)

• Topographic Map as An Analog to an Insurance Policy

• An insurance policy can help your organization navigate from one point in time to the next while transferring to the insurance company the risk of negative impacts from unforeseen events

• Like a topographic map, an insurance policy is one important tool in your quiver of risk management arrows

• Like a topographic map, you should always have an insurance policy on your organization’s trip from one point to the next, but you will need additional risk management/risk transfer tools to ensure that your organization successfully navigates to its goal
Topography of Contracts

• What is a legal contract? Short and simple definition from a layman...
  • Agreement: offer and acceptance
  • Parties have capacity to enter into contract
  • Contract Has a Legal purpose
  • Consideration is Exchanged

• Leadership Roles as an Anolog to Contracts
  • We assign responsibilities to staff or volunteers and expect them to carry out those responsibilities
  • When those staff or volunteers do not carry out assigned responsibilities, potential exists for problems from a degraded command structure
  • What can go wrong? The Frozen Boot...
Intro to Variety of Contracts/Permits/Licenses and Written Agreements for Outdoor Organizations

• Limited by my professional experience, discussions with colleagues and reading
• Please let us know if you have an example of a contract or agreement not mentioned
Contracts with Vendors

- Grantors (funding sources)
- Mortgagees
- Lessors of equipment
- Equipment vendors and donors of equipment used in programs
- Vendors of curriculum or training
- Vendors of travel services
  - *e.g. resorts, cruise lines, tour operators, parks & rec depts, etc.*
- Donors or suppliers of food and beverage (including alcohol)
- Equipment rentals
- Vendors at Festivals
- Miscellaneous – musicians, lecturers, demonstrations, etc.
Contracts with Subcontractors

- Guides & outfitters
- Facilitators
- Logistics/Drop Camps/Pack Trains
- Transportation providers
- Caterers/Food and Beverage Providers/Servers
- Lodging
- Alcohol Servers
- Challenge courses and zip line tours, or climbing gyms
- Film production
Contracts with Subcontractors (cont.)

- Professionals
  - Trainers/Teachers
    - Certification vs. Completion
  - Medical consultants
  - Architects or Engineers
  - Contract operations managers
  - Miscellaneous Consultants
- Construction or renovation projects
- Contracts with “employees” paid on a 1099
Contracts with Clients

- Nonprofit clients
- School systems
- Government entities
- Film production companies
- Government Agencies (Fee-for Service Projects)
Employment Contracts

- Contracts with W-2 Employees
- Employment contracts that masquerade as contracts with subcontractors!
Permits or Contracts with Land Managers and Venues, Government Regulators

- **Lease of Premises**
  - Variations (net leases, responsibility for charges, ability to find another, etc.) applicable to insurance
  - Comparable lease available if the premises are destroyed by a fire?

- **Private landowners**
  - Trail crossings
  - Venues for activities

- **Easements (license for use)**
  - Land use easements
  - Conservation Easements
  - Enforcement of easements by conservation organizations
Permits with Land Managers and Venues, Government Regulators (cont.)

- Government land use permits
  - Commercial Use Authorization Permits
  - Concession Contracts

- Government Regulatory Compliance
  - Permits and licenses
  - DOT and PUC Filings for Use of 12-15 Passenger Vans, etc.

- Challenge Courses and Zip Line Tours
- Climbing Gyms
Types of Insurance Typically Treated in Contracts, Agreements and Permits

- Commercial General Liability
- Commercial Automobile Coverage
- Property Coverage
- Inland Marine Coverage
- Energy Equipment Coverage (aka Boiler & Machinery)
- Professional Liability Coverages
- Crime Coverage
- Surety Bonds
- Workers’ Compensation & Employers’ Liability
- Excess Liability/Umbrella Liability
A Survey of Typical Coverages Found in Contracts, Permits & Agreements

- In the remained of the lecture, we will examine the use of each of these insurance coverages in contracts, agreements and permits entered into by outdoor organizations
  - A brief description of typical insurance coverage found in various contracts, agreements and permits, and how they are used
  - A more detailed analysis of the requirements for the most commonly included insurance coverages
  - An overview of insurance coverage you should require of others
- A classroom exercise analyzing sample insurance contracts, permits and agreements in small groups
- A question and answer period
Commercial General Liability

- Responds to claims based upon or arising out of bodily injury, tangible property damage, personal injury (libel, slander, defamation, invasion of rights of privacy, malicious prosecution), products liability, completed operations.
- Additional Insured
- Mortgagees and Lien Holders
- 33 various standard additional insured clauses
- Subtle language differences important
- Operations
- Completed Operations and Products Liability
- Subrogation
- Waiver of Subrogation
- Primary vs. Excess
- Primary wording
- Non-contributing wording
- ISO (Insurance Services Office) Form Numbers
- Pollution Liability
Commercial Automobile Coverage

- Automobile Liability
  - Additional Insured
  - Leased Autos
  - Rented or Borrowed Autos
  - Non-owned Autos (use of personal autos in business)
  - Federal and State Regulatory Filings for DOT/PUC

- Physical Damage Coverage
  - Lien Holders
  - Lessors of Vehicles
  - Time in Shop Charge on Rental Vehicles (gap in coverage)
  - Gap Insurance (difference between loan payments due and loss of vehicle)
Property Coverage

- Real Property
  - Mortgagee clause
- Personal Property
  - Lien holders
- Usually valued at replacement cost with no coinsurance
- Variations of scope of coverage (basic, broad, special forms)
  - Term “All Risks” no longer used
- Mortgagees and Lien Holders
  - Mortgagee Endorsement
  - Lender’s Loss Payable Endorsement
- Contractors
  - Film Production Companies
  - Guides & Outfitters
  - Logistics Companies (drop camps, rental equipment, ropes, etc.)
  - Caterers
  - Consultants
Inland Marine Coverage

• Moveable equipment used in your operations
• Moveable equipment of others in your care, custody or control
• Instrumentalities of communications or transportation
• Similar considerations to Personal Property
  • Usually valued at Actual Cash Value (fair market value or replacement cost less depreciation, whichever is less)
Energy Equipment Coverage
aka Boiler & Machinery Coverage

• “Engineered” coverage – subject to safety inspection
• Covers damage and lost income resulting from mechanical malfunction of machinery and equipment
• Often added to commercial property coverage as “Mechanical Breakdown Coverage”
• Sometimes written as a separate policy
Marine Insurance

- Protection & Indemnity (P&I)
  - Analagous to terrestrial-based commercial general liability insurance
- Hull Insurance on vessels
- Ocean Marine Cargo Insurance
- Workers’ Compensation
  - To be covered under discussion of Workers’ Compensation
  - Jones Act Coverage for master & members of a vessel’s crew, including rafting guides on federal navigable waters
  - Long Shoreman and Harbor Workers Coverage for certain ship yard workers (including maintenance and supply of vessels) and occupations over water that do not involve operation of a vessel
Professional Liability Coverage

- Based upon advice given to others
  - *Training or Teaching*
  - *Certification*
  - *Development and Implementation of Standards or Teaching Curriculum*
  - *Licensing of trainers or franchises*
  - *Contract Administration*
  - *Consulting Work*

- Often contains a bodily injury/property damage exclusion

- *If you have this professional liability contingent bodily injury/property damage exposure, ask your agent to include coverage in any proposal, if available*
Professional Liability (cont.)

- Publisher’s Liability
  - Copyright infringement
  - Personal injury (i.e. libel)
  - Difficult to include contingent bodily injury & property damage for publications involving outdoors activities
- Trademark/Patent Insurance
  - Prosecution and Defense Coverage Available
Professional Liability (cont.)

- **Consulting Work**
  - *Often classified “Miscellaneous Professional Liability”*
  - **Bodily Injury/Property Damage Exclusion**
    - Sometimes contingent bodily injury/property damage available
    - May depend on size of policy or nature of work
    - Usually available at additional cost
    - Sometimes included in policy form at no additional charge
  - *Often cannot add additional insured – can only offer evidence of insurance*
    - *Due to nature of coverage for professional errors & omissions, and the client is not qualified as a professional*
Professional Liability (cont.)

- **CyberRisk**
  - *Protection of private information or data*
  - *Check contracts and agreements with third party processors and third party registration services*
    - Look for hold harmless/indemnification clause in their favor
    - Even if a breach occurs at the large processor or registration serviced, in the contract, they may hold you responsible for their security breaches
  - You may want to carry CyberRisk coverage where the processing/registration service holds you responsible
  - Where your organization provides services to others, the contract may include hold harmless/indemnification in favor of your client
Professional Liability (cont.)

• Employment Practices Liability
  • Excluded on a Commercial General Liability Policy
  • Covers treatment of employees and sometimes of third parties
  • Third party discrimination
  • Wrongful termination
  • Hostile Work Environment
  • Discrimination (employees and third parties)
  • FLSA sublimit available on many policies
  • Occasionally required in a contract or agreement
    • Can become an issue in merger or acquisition agreements

• Directors & Officers Liability Policy
  • Indemnification agreements with board members
Crime Coverage

- Employee Dishonesty and Crime Coverage
  - Can be required in certain contracts or permits, including concession agreements
  - Easily obtained from your existing agent or broker
Surety Bonds

• What is a surety bond
  • **Surety (insurance company) stands in for principal (your organization) in the event that a financial obligation is owed to the obligee (government agency or company who is permitting you, or is contracting with you to perform work, to perform services, or provide goods)**

• License Bonds
  • Sometimes required for permits and licenses
  • **Penalty (dollar amount of the bond) is defined by statute and often shown in the permit or license**
  • Easy to obtain from your insurance agent or broker, and relatively inexpensive
Surety Bonds (cont.)

Bid/Payment/Performance Bonds

- **Written as a package**
  - Amounts and types of bonds specified in the contract for services or goods.
  - Bid/Payment/Performance Bonds underwritten *in toto*, as if the bid will be accepted
  - Bid bond filed with your bid and premium paid
  - Payment bond and Performance Bond only written and invoiced to you after a bid has been accepted
  - *Due to underwriting of the package in toto, the issuance of the Payment and Performance Bond is pro forma after the surety is informed the bid has been accepted*

- **Requires full financials**
- **Often requires personal guarantee**
- **For many contracts, a letter of credit can substitute for a Bid/Payment/Performance bond**
  - If finances allow, this can be less intensive process and less expensive option overall
Workers’ Compensation and Employers’ Liability

- Workers’ Compensation and Employers’ Liability
  - Never added as additional insured (except for a PEO)
  - Workers’ Compensation Coverage is a *statutory coverage* defined by law
  - Employers’ Liability is sometimes not limited, by statute (NY)
  - In states where workers’ compensation coverage is optional, the employer waives their three defenses if they opt out of covering employees (assumption of risk, contributory negligence of employee or co-employee)
  - Standard employers’ liability policy limit is $100,000/$500,000/$100,000 each employee disease/policy limit disease/each accident

- Employers’ Liability Stop Gap
  - Only in monopolistic states WA, WY, OH, ND
  - Available on a Commercial General Liability Policy

- Subrogation
  - A workers’ compensation insurance carrier can bring a lien against a negligent party for the benefits paid out to an employee of their policyholder
Excess/Umbrella Liability

- Provides increased limits per occurrence and/or per aggregate for specified underlying policies
- **Automobile liability limits are almost always per accident, and no aggregate limit** applies (on either the automobile policy, or on the excess/umbrella liability policy)
- In theory, an umbrella liability policy may cover a claim not otherwise covered on an underlying policy, subject to the **retention**; however, this is extremely rare.
  - The **self-insured retention only** applies to such claims not covered by an underlying policy (not as a policy deductible)
- **The per occurrence limits and the aggregate limits on an excess/umbrella liability policy are typically equal amounts.**
Important Insurance Provisions
Where do I look for Insurance Requirements in a Contract, Agreement, License or Permit?

- Indemnification provisions
- Insurance clause
- Responsibilities, Operations or Required Services
- Waiver of subrogation
- Use, access and parking
- Maintenance, repairs and alterations
- Damage or destruction
- Utilities
- Environmental
- Assignment and subletting (lease of premises)
Commercial General Liability

• We’ll start with an analysis of the provisions that are easy and relatively inexpensive to comply with, or at no additional charge on most insurance policies

  • **Additional insured** on a Commercial General Liability Policy
    • 33 different additional standard insured endorsements published by the Insurance Services Office, which adopts wording and files endorsement wording with state regulators on behalf of member insurance companies
      • *This does not include additional non-standard wording for non-admitted insurers*
Confusion With “Named Insured”

• Named Insured vs. Insured vs. Additional Insured
  
  - Named insured has right to pay premium & receive return premium, to cancel coverage, to request changes to policy and receive notices
  
  - Insureds are defined in the “who is insured” section of the policy and often include automatically persons such as directors, officers, employees and volunteers
  
  - A property manager is automatically included as an insured, but not the fee owner, mortgagee or super lessor
  
  - Additional insured is status granted a third party such as land owner, land manager or vendor of travel services by a separate endorsement to the Commercial General Liability Policy
Coverage for Written Contract or Agreement

- **Beware contracts/permits that specify “additional named insured”, this will not be feasible and is usually due to an error of the attorney or risk manager who drew up the contract language**
- **Beware of clauses that leave a gap between the liability assumed in a contract and your insurance coverage (e.g. “must insure against any and all…”)**
  - The final wording is often determined by the amount of leverage you can exert in the transaction
- **Beware of proprietary forms that only cover written contracts, not agreements**
Always Add Exposed Entities & Individuals

- Insurance policy additional insured endorsements grant coverage only for the entity named, so it should read “name of your organization, its directors, officers, employees and volunteers”
  - Sometimes you will want to add contractors or agents to the list, depending on your needs. Consult your insurance agent/broker and attorney.
  - It is reasonable for a contract or permit to require this of your insurance policy. Common for government entities to require it.

- Business entity (or entities)
- Directors & Officers
- Members, if a Limited Liability Company or variation thereof
- Partners, if a partnership
- Employees
- Volunteers
- Agents or contractors (check with your attorney)
Written Contracts vs. Written Agreements

- **Standard insurance policies on an Insurance Services Office published policy form include status conferred in both a written contract and in a written agreement.**

- **According to insurance industry expert Donald S. Malicki:**
  - An agreement is considered broader than a contract
  - An agreement does not require consideration
  - An agreement can be a letter of intent
  - A certificate of insurance showing a party as an additional insured can be evidence of an agreement
Contractual Liability Limitations and Extensions

- Certain proprietary insurance policy forms outside of the standard Insurance Services Office forms will limit insurance coverage only to **written contracts**, which must include all legal requirements of a contract (agreement, capacity, legal purpose, consideration)
  - Also, watch for proprietary “contractual limitation” endorsements

- **Standard policy forms do not cover oral contracts**
  - Coverage for oral contracts is sometimes granted through proprietary broadening endorsements that enhance coverage
NY Work At Height Laws

- In New York only, many contracts will require that you delete the *employee exclusion* on the Commercial General Liability Policy due to their labor laws allowing employees to sue their employer or a building owner if working at height in lieu of collecting workers’ compensation benefits.
- Please note that this will generally not apply to an outdoor organization, unless they are working at height in or on a structure.
- I have been advised by attorneys handling these cases that the initial route setting on a climbing wall may be subject to the labor laws, but not subsequent route setting activity.
- Most Rock climbing and other activity at height would not be subject to the law according to these sources.
- *Rope access work and training may be subject to the NY labor laws.*
- Finding an insurance carrier willing to delete the *employee exclusion* is an expensive proposition for most organizations, and you should try to negotiate this provision out of the contract or permit.
- Where an exposure exists in NY, failure to delete the *employee exclusion* leaves a significant gap in liability insurance coverage.
“Primary” Wording

- In the liability insurance world, the order in which insurance policies pay claims is described as “primary” or “excess”
- One insurance policy is described as excess over another
- Modern versions of the standard Commercial General Liability Policy Form CG0001 since 2004 have automatically included coverage on a primary basis when required by written contract that states another policy will be excess over yours
- In the absence of this contract term denoting primary coverage, both policies would share in the indemnification until the limit is exhausted, or “by limits” (ratio of your limit to all available limits) depending on policy terms of others
- Requirement of “primary coverage” is easy to comply with
Non-contributory Wording

• Non-contributory wording in a contract means that your insurance policy will be the only recourse in the event of a claim made against the additional insured. The additional insured’s insurance will not contribute at all toward any claim made against them resulting from your negligence.

• Common in contracts with some school systems and many government agencies

• Sometimes included when a party has leverage

• Also seen in construction contracts

• Not all insurance companies will grant this wording

• Normally, insurance companies charge a significant additional premium for adding this wording
Waiver of Subrogation (Liability)

- As noted earlier, an insurance company is subrogated to your right to recover from a negligent party.
- When you waive this right against a third party, the insurance company cannot sue to recover from the additional insured for their negligence, after the insurance company pays a covered claim on your behalf or indemnifies you for a covered loss.
- Not all insurance companies will grant this provision.
- Normally, insurance companies charge an additional premium for this.
  - Some Commercial General Liability broadening endorsements automatically grant coverage for this, particularly for nonprofits.
Miscellaneous Liability Provisions

• Pollution Liability
  • Sometimes found in government agency land manager or resort concession contracts
  • Many liability insurers will not grant this exception and a separate policy is required

• Aggregate Limits Apply Per Location
  • Sometimes found in government agency land manager or resort concession contracts to ensure aggregate policy limits (per policy year) are not exhausted by claims at another location
  • Can be simply met if an “aggregate limits per location endorsement” is added, or by issuing a separate policy for the location. Sometimes automatically granted through a general liability broadening endorsement

• Aggregate Limits Apply Per Project (CG2144)
  • Commonly found in contracts for construction projects
  • Used by outdoor recreation underwriters to specify covered activities
  • Can be simply met if an “aggregate limits per project endorsement” is added, and sometimes automatically granted through a general liability broadening endorsement
Miscellaneous Liability Provisions (cont.)

• Premises Medical Payments Coverage
  • Covers a small amount of emergency medical expense of a visitor who is injured on your premises, excess of their own personal health insurance or workers’ compensation coverage. No-fault basis (regardless of negligence).

• Participant Medical Payments
  • Covers a small amount of emergency medical expense of a participant in your activities on a no-fault basis (regardless of negligence). Can be found on either an excess basis or on a primary basis.

• Excluded medical payments
  • Does not mean that medical expense is not indemnified in a settlement or judgment involving a covered claim involving negligence!
  • Normally excludes premises medical payments coverage only
  • Some government land managers find this exclusion problematic
Workers’ Compensation

- Evidence of insurance only
  - Additional interests cannot be added as “additional insured” or “named insured” to a Workers’ Compensation Policy
  - Only exception is a PEO for leased employees, a rare situation in the outdoor recreation/outdoor education field
Employers’ Liability

- Standard policy limits on a Workers’ Compensation Policy are $100,000/$500,000/$100,000 each employee disease/policy limit for disease/each accident
- Monopolistic states (WA, WY, OH, ND) provide workers’ compensation coverage through the state, but may not include employers’ liability
- Many contracts or permits require Employers’ Liability with minimum limits
- Workers’ Compensation carriers charge a percentage of the standard premium to increase the limit to $500,000/$500,000/$500,000 or $1,000,000/$1000,000/$1,000,000, the most common employers’ liability limit requirements
- Contracts or permits for work in Monopolistic States (WA, WY, OH, ND) may require a Stop Gap Employers’ Liability endorsement on your Commercial General Liability Policy
- Not all Commercial General Liability insurers will add Employers’ Liability Stop Gap coverage
- Cost varies widely, from $50 to $500 or more
Waiver of Subrogation (Workers’ Compensation)

- A workers’ compensation carrier who pays out benefits on a workers’ compensation claim (for injury to a worker) is subrogated to the rights of the employer to collect from a negligent party.
  - e.g. A participant who is an independent contractor or who works for your client or business partner is injured during the activity, then puts in a workers’ compensation claim for lost wages and medical expense. The workers’ compensation insurer then puts a lien on your organization for the benefits they paid out to the worker, alleging you negligently caused or contributed to the worker’s injury.

- Some contracts and permits will require a waiver of subrogation on the Workers’ Compensation Policy in favor of the permitor/contracting party

- Workers’ compensation carriers charge a percentage of payroll to add a waiver of subrogation, usually ranging from 2% to 10%

- Workers’ Compensation carriers can often apply the waiver of subrogation to payrolls at a single location, for operations with multiple locations, reducing the cost of adding this feature.
Waiver of Subrogation  
Workers’ Compensation (cont.)

- **Similar to Commercial General Liability**, when requesting a waiver of subrogation for your own interest (e.g. from a contractor) always request that the waiver of subrogation be worded to include “waiver of subrogation in favor of”

  - Business entity (or entities)
  - Directors & Officers
  - Members, if a Limited Liability Company or variation thereof
  - Partners, if a partnership
  - Employees
  - Volunteers
  - Agents or contractors (check with your attorney)
Property Coverage

• Often requires a detailed reading of lease to determine insurance exposures
• Look for sections spelling out responsibility for the building, improvements & betterments, trade fixtures, common areas, building HVAC or electrical systems, sprinkler systems, alarm systems, window glass, signs
  • Pay attention to responsibility for cost of sprinkler tests
  • Policy Protective Safeguards Warranties may require landlord to maintain, even where you are not responsible for the systems
    • If warranties are violated, insurer may consider coverage null & void
• When renting to others, make sure that all additional interests required on your policy are also reflected on the policy of your tenant or sub-tenant
• Watch for lease requirements to insure loss of income
• If you are responsible for HVAC electrical or automated systems, make sure that *mechanical breakdown coverage* is included or that you have a separate Energy Equipment Policy
When You Must Require Insurance of Others

- Examples of common situations that may require that you obtain evidence of insurance from others
  - Rental of your premises (for parties, fundraisers, races, etc.)
  - Construction or renovation projects
  - Festivals with outside vendors and/or equipment demonstrations
  - Fundraisers
  - Film Production Work
  - Catered Events
  - Avalanche education programs using ski areas for venue or access
Requiring Commercial General Liability

- Have your insurance agent/broker or risk manager and attorney help you assess your exposure to a claim.
- You should ask for a reciprocal certificate of insurance when asked to add a business partner to your insurance, if they may have a separate exposure due to their operations.
  - An example of this is a guide service that must access the back country through a ski area. The ski area asks to be named on the guide service’s policy. Conversely, the guide service must ask the ski area for a certificate of insurance naming the guide service for liability arising out of ski area operations (this will be required by your insurance underwriter).
Requiring Commercial General Liability (cont.)

- Bodily Injury & Property Damage Liability
  - Commonly written with combined single limit each occurrence
  - Use multiples of $1,000,000 for the required limit
    - If $1,000,000 unavailable, use your discretion and find out from your insurance agent/broker whether you will have a gap in coverage if a contractor carries a lower limit than your organization carries, or a lower limit than your mortgagee/lien holder/landlord requires
    - Check for policy warranties that all contractors will carry the same or equal limits and coverage as your policy’s.
  - Require that your organization and its directors, officers, volunteers and employees are included as additional insured
    - This may vary according to the project (“exposure”)
Requiring Commercial General Liability (cont.)

• Remember to take into account any cross liability exclusion when adding categories as additional insured
  • If you add a contractor as additional insured, you may have no coverage for a claim brought by that contractor against you or your organization

• Remember that claims based upon or arising out of intangible property damage (financial harm) are normally not covered on a Commercial General Liability Policy.
  • If the insurance clause or indemnification agreement states “any and all claims for damage to property…” you may have a gap in coverage
  • These types of claims might properly be covered on a professional liability policy, or a directors & officers liability policy or other professional liability/executive risk coverage, depending on exposure

• Always insist on an “occurrence form” with “defense costs outside the limit” and no “sublimit per person”
• Insert clause with minimum acceptable rating and that insurers must be acceptable to your organization
Requiring Commercial General Liability (cont.)

- **Personal & Advertising Injury Limit $1,000,000**
  - Should be included as a requirement in most but not all instances. Contractor or vendor could have implied authority to libel or slander, wrongfully detain an intruder, etc.

- **Products & Completed Operations $1,000,000**
  - Important where products are provided, sold or rented, demo days, donations of product by vendors, caterers, food or product vendors at festivals, work done by a contractor
  - For sale or distribution of products of others by your organization, you should ask for *Additional Insured on a Vendor’s Endorsement* for products liability.
  - Sometimes distributors/manufacturers will not do this for a small vendor.
  - Products liability claims may occur in the future, so you will want to require products liability coverage for a period equal to the statute of limitations.
Property Damage Legal Liability

- Commercial General Liability Policies generally exclude coverage for damage to property in your care, custody and control, but provide a separate limit of liability for fire damage, or, sometimes, for property damage to rented premises caused by the alleged negligence of the policyholder.
- When renting out facilities/venues, make sure this limit is adequate to protect your real property.
- To protect against claims for damage to the property of others, you should require inland marine coverage for property of others (see Inland Marine Coverage).
Medical Payments Coverage

- Premises medical payments is a small amount (usually $5000 to $10,000) granted on a no-fault basis (regardless of negligence) for accidents to third parties coming onto your premises.
- This coverage is generally not important when negotiating a contract or permit.
- Outdoor activity organizations or competitive sports organizations often have policies that exclude this coverage. This is acceptable from the standpoint of negotiating a contract or agreement.
Professional Liability Coverage

- For professionals, consultants, or for organizations that train or certify your employees, you should insist on evidence of Professional Liability coverage as well as Commercial General Liability coverage.

- Depending on your organization’s operations and nature of the training, you should ask for evidence that this professional liability coverage includes contingent bodily injury or property damage.

- If the trainer is a licensed instructor (but not employed by the certification and standards organization providing the curriculum), you should ask for evidence that the professional liability policy covers contractors.
Automobile Coverage

• Require a Commercial Automobile Policy for any contract involving an organization that needs to load or unload people, materials or equipment, or needs to drive a vehicle onto your premises.

• Require a Commercial Automobile Policy for any ground transportation provider that moves your participants, clients, or customers.

• Request a limit commensurate to the risk.
  • The most common limit is $1,000,000 each accident.
  • Carriers transporting persons and subject to USDOT or state PUC filings may have to carry higher limits of liability by law.

• Request that your organization, its directors, officers, volunteers and employees be added as additional insured.
Chartered Aviation or Boat

- When chartering an aircraft (including helicopters or bush flights) **always** require a certificate of insurance from the aviation company showing aviation liability insurance naming your organization, its directors, officers, employees and volunteers as additional insured.

- If you are chartering the aircraft for work with a client who has asked you to name them as additional insured on your own insurance, required that they also be included as an additional insured on the aviation company’s insurance.

- When chartering a boat, ask to be named on the firm’s Protection & Indemnity Insurance (P&I Insurance) same as with the aviation risks.
Property & Inland Marine Coverage

- Where a contractor has significant equipment on your trip or on your site, ask for evidence of insurance showing they are covered for exposures such as theft, damage or loss of equipment with appropriate coverage and limits.

- Include a waiver of subrogation in your contract in favor of your organization, its directors, officers, employees and volunteers (etc.)
  - These policies will honor a written waiver of subrogation if signed prior to a loss
Class Exercise
(Breakout Session In Small Groups)

- If you were given a contract or permit:
  - What insurance types are covered in the contract
  - What insurance types should be covered in the contract, but have been omitted
  - What are the insurance implications of adding the insurance types covered and of adding the types omitted

- If you were given a scenario
  - What insurance and limits will you require?
References/Links on Subject of Contractual Liability

- [www.MaleckiOnInsurance.com](http://www.MaleckiOnInsurance.com) for in depth articles on contractual liability issues and insurance through 2013 policy form revisions
- [www.irmi.com](http://www.irmi.com) International Risk Management Institute
- FC&S Bulletins (published by National Underwriter)
CONTRACT SCENARIO – 1

You are searching for a new campus for your growing outdoor education organization. Suddenly, a competitor decides to move out of state, and a lease on their campus becomes available (the attached draft Standard Industrial Lease).

Analyze the lease from an insurance standpoint. Assume the value of the building and insurable real property to be $15,000,000 and the contents you would move in at $800,000, including computer equipment and networks of $200,000.

1) Outline the insurance coverage and limits required of your organization by the lease
2) Outline the problematic provisions of the lease (from an insurance standpoint) and whether you might obtain insurance to comply, or would negotiate a change in terms prior to signing the lease

Your organization has a current insurance program with the following coverage and limits:

Commercial General Liability Insurance
$1,000,000 Each Occurrence Bodily Injury and Tangible Property Damage Combined
$1,000,000 Personal & Advertising Injury
$1,000,000 Products/Completed Operations Liability
$100,000 Property Damage Legal Liability
$2,000,000 General Aggregate Limit
$5,000 Premises Medical Payments

Commercial Property Insurance
$100,000 Contents at replacement cost and 80% coinsurance
$500 Deductible

INLAND MARINE INSURANCE

Covers your school’s outdoor equipment and computer equipment, including data computer virus, valuable papers & records, accounts receivable

COMMERCIAL AUTOMOBILE INSURANCE

WORKERS’ COMPENSATION INSURANCE

CYBER RISK COVERAGE

NONPROFIT DIRECTORS & OFFICERS LIABILITY WITH EMPLOYMENT PRACTICES LIABILITY

CRIME INSURANCE
**CONTRACT SCENARIO**

You are putting on a fund raising trail race to benefit the local search & rescue team.

This is not a sanctioned race, but a fun race by people of all ages.

The local craft brewery Louis XIV Ale is donating 10 kegs of its Marie Antoinette Lager, which your volunteers will sell by the glass as part of the fund raiser.

The local natural foods café Naturista will be preparing and serving hot and cold food and non-alcoholic beverages at a booth. Part of the proceeds benefit your fundraiser.

The sponsor Mega Sporting Goods will have a booth there manned by sales representative, with product demos including mounted car racks, taking orders and registration for its upcoming adventure trips to Pakistan, Argentina and Iceland.

The local National Audubon Chapter will have a booth promoting membership in its organization and its nature education programs, mostly bird walks and bird banding. They have limited resources and no liability insurance.

The local Sierra Club chapter will be there promoting its conservation issues (it is suing the real estate developer planning to put a luxury condo development in the location of today’s race course in the woods) with lawn signs and petitions, recruiting members and selling fundraising items such as re-usable shopping bags and re-usable water bottles with the Sierra Club logo.

The local Jeannie’s Sporting Goods store will have a booth with runner’s clothing and trail running shoes and accessories, as well as ERG protein smoothie packets.

A separate kiddie area will have inflatable attractions run by a local team building company, and face painting/balloon crafting by a clown hired to supervise the kids while their parents are racing.

You have event insurance in place on the race, including participant liability on the racers. Your limits of liability are $1,000,000 per occurrence/$2,000,000.
aggregate including bodily injury, tangible property damage, personal injury and products/completed operations liability. (over)

Your permit includes rental of a pavilion for the awards ceremony, a documentary film about trail running in your park, and a live bluegrass music concert.

**YOUR ASSIGNMENT**

1) Draw up the insurance requirements for a vendor contract that can be used for all vendors at this event
2) Which vendors will require special consideration and why? How would you accomplish this?
3) Would you revise the vendor contract or its requirements for any of these vendors? If so, please explain your decision.
STANDARD INDUSTRIAL LEASE

Dated (for reference) as of: 2014

1. Defined Terms. Each reference in this Lease to any of the following terms shall include the data for such term as stated below with any additional terms used in this Lease to have the meaning and definition given hereafter:

Tenant: 
Landlord: 

Tenant’s Address: 
Landlord’s Address: 

Description of the Premises: Street Address: 
Floor Area of Improvements: (see attached Exhibit “A”) 

Term: Thirty-six (36) months 
Scheduled Term Commencement Date: 2014

Rent:
Taxes, Insurance, and Maintenance Reserve Deposit: per month. Security Deposit:
Minimum Insurance Amounts to be carried by Tenant: Guarantors: 
Bodily Injury per Person: 
Bodily Injury per Occurrence: 
Property Damage: 

Uses:

Landlord’s Construction Representative: Tenant’s Construction Representative: 

Tenant’s Share of: Real Property Taxes %; Insurance Expenses 3 %; Maintenance Expenses % 

2. Preamble. Landlord hereby leases to Tenant, and Tenant hereby accepts and from Landlord, that certain real property described in Paragraph 4 (the “Premises”) for the Term and upon the covenants and conditions hereinafter specified. Any statement of square footage set forth in this Lease is an approximation which Landlord and Tenant agree is reasonable and the rental is not subject to revision whether or not the actual square footage is more or less. The Security Deposit and first month’s Rent and Reserve Deposit are due at execution of the Lease by Tenant.

3. Commencement. The term of this Lease shall commence upon the Scheduled Term Commencement Date.

4. Rent; Net Lease. Tenant agrees to pay Landlord at Landlord’s Address, or at such other place designated by Landlord by written notice to Tenant, the Rent, in lawful money of the United States, in advance, without demand, off-set or deduction, on the first day of each calendar month of the Term hereof. In the event the Term commences or the date of expiration of this Lease occurs other than on the first day or the last day of a calendar month, the Rent for such month shall be prorated. This Lease is what is commonly called a “triple net lease”; it being understood that Landlord shall receive the Rent free and clear of any and all impositions, taxes, liens, charges or expenses of any nature or kind whatsoever in connection with the ownership and operation of the Premises. In addition to the Rent, Tenant shall pay a fee in the amount of 3% of the Rent to compensate Landlord for property management services relating to the Premises. If Rent is not received as provided above and prior to the fifth day of each calendar month, a 6% late charge shall be payable by Tenant as provided in Paragraph 13.4 to compensate Landlord for expenses incurred by Landlord for recordkeeping and collection. In the event that a late charge is payable, whether or not collected, three times in any twelve month period, then, Rent shall automatically become due and payable quarterly in advance for the next twelve month period and, at Landlord’s option, Rent for the balance of the Term shall be paid by cash, money order, cashier’s check or federal funds wire transfer.

5. Deposits.

5.1 Taxes, Insurance and Maintenance Reserve. Tenant shall deposit with Landlord each month the amount set forth in Paragraph 13 as a Taxes, Insurance and Maintenance Reserve to be used to pay real property taxes, property maintenance expenses, management expenses (including the cost of maintaining an escrow account, and its personnel if applicable), and insurance expenses on the Premises, all of which are Tenant expenses to be paid under the terms of this Lease. Tenant’s payment obligation shall include a 3% management fee on Tenant expenses collected by Landlord. At least once annually Landlord shall provide Tenant with a written reconciliation of expenses. If the amounts deposited with Landlord by Tenant under the provisions of this Paragraph are insufficient to discharge the obligation of Tenant, Tenant shall deposit with Landlord, upon Landlord’s demand and within thirty (30) days of such demand, the additional sums necessary to fully satisfy such obligations. If Tenant’s deposits are in excess of the expenses, the excess shall be credited to the next month’s rent. For six (6) months following Landlord’s delivery of the expense reconciliation to Tenant, Tenant shall have the right to audit, at Tenant’s expense, the reconciliation provided by Landlord. Should Tenant fail to provide Landlord with written notification of Tenant’s audit, within the aforementioned six (6) month period, then the expense reconciliation provided by Landlord shall be deemed correct, and Tenant shall have no further right to object to or audit Landlord’s expense reconciliation. If upon Landlord’s reconciliation of expenses for any calendar year, the reconciled amount to be deposited with Landlord, or credited to Tenant, is greater than 5% of the total expenses, then, at Landlord’s option, the Reserve Deposit amount shall be adjusted to 1/12 of Tenant’s total expenses for the previous year. This new Reserve Deposit amount shall replace the Taxes, Insurance, and Maintenance Reserve Deposit amount called for in Paragraph 1 of this Lease. All monies deposited with Landlord under this Paragraph may be intermingled with other monies of Landlord and shall not bear interest.

5.2 Security Deposit. Tenant has deposited with Landlord the Security Deposit set forth in Paragraph 1 above as security for Tenant’s faithful performance of Tenant’s obligations hereunder. If Tenant fails to pay Rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, or if Landlord may use, apply or return all or any portion of said deposit for the payment of any Rent or other charge in default, or for the payment of any other sum to which Landlord may become obligated by reason of Tenant’s default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of said deposit, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore said deposit to the full amount stated in Paragraph 1, and Tenant’s failure to do so shall be a material breach of this Lease. Landlord may use, apply or return any portion of said deposit separate from its general accounts or to pay interest thereon. Within 90 days after the expiration or termination of this Lease, Landlord shall return that portion of the Security Deposit not used or applied by Landlord, except that Landlord has the right to retain all or any portion of the Security Deposit to cover Rents which will be due in the future or damages for unpaid future Rents (collectively, “Future Rent Damages”) until, at Landlord’s sole and absolute election, (1) the precise amount of such Future Rent Damages are determined by a final judgement in a court of law at which time Landlord may apply the Security Deposit toward payment of such sum; or (2) Landlord, in its sole and absolute judgment, has reasonably estimated the amount of such Future Rent Damages at which time it may apply the Security Deposit toward payment of such estimated Future Rent Damages. Tenant expressly waives any requirement in Civil Code section 1950.7 or successor similar statute for the accounting of or return to Tenant of the Security Deposit within any period shorter than specified by this Lease and further expressly waives all and any other provisions of Civil Code section 1950.7 or successor or similar statute that are inconsistent with the provisions of this Lease. No part of the Security Deposit shall be considered to be held in trust, to bear interest, or to be prepayment for any monies to be paid by Tenant under this Lease.

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Initials 

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6.1 Use. The Premises shall be used and occupied only for the uses stated in Paragraph 1.

6.2 Compliance with Law. Prior Restriction. Tenant shall, at Tenant's sole expense, comply promptly and continuously with all applicable statutes, ordinances, rules, regulations, orders, restrictions, of record and requirements in effect during the Term, or any part of the Term hereof, regulating the use of the Premises. Tenant shall also comply with all rules and regulations from time to time promulgated by Landlord for the safe and orderly use of all exterior or common areas. Tenant shall not cause the Premises in any manner to tend to create waste or a nuisance, or which would increase the existing rate of insurance on the Premises, or cause a cancellation of any insurance policy. Outside storage, fencing or exterior equipment shall not be allowed under any circumstances without Landlord’s written consent, which consent may be withheld at Landlord's sole and arbitrary discretion. Any such approved outside storage or exterior equipment shall be in full compliance with all City regulations.

6.3 Condition of Premises. Tenant hereby accepts the Premises in their condition existing as of the date of Lease execution, and subject to all applicable zoning, municipal, county and state laws, ordinances and regulations and any covenants or restrictions of record governing and regulating the use of the Premises; and accepts that subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. The Premises have not undergone an audit in accordance with standards set forth in the AICPA Guide to Audit Small Businesses, with the descriptions and schedules of the property and the cost of the property. Tenant is fully aware that the Premises have not undergone an audit in accordance with standards set forth in the AICPA Guide to Audit Small Businesses, with the descriptions and schedules of the property and the cost of the property. Tenant acknowledges that Landlord has not undertaken to do so, but has relied upon paragraph 6.2. Landlord has no responsibility for any costs, or liabilities resulting from failure to comply with, the Americans with Disabilities Act (Titles I, II and III). Tenant has made such legal and factual inquiries with respect thereto as it deems appropriate, and has relied solely thereon.

6.4 Hazardous Materials. Tenant shall not cause any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous", or a "pollutant" which is or becomes designated, classified, or regulated under any Hazardous Materials Law, including asbestos, petroleum and petroleum products (collectively "Hazardous Materials") to be used, generated, stored or disposed of on or about the Premises except in the ordinary course of Tenant's business, and then only in compliance with all Hazardous Materials Laws. "Hazardous Materials Laws" mean any law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environment including, without limitation, CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980) and RCRA (Resources Conservation and Recovery Act of 1976). Tenant shall be liable to Landlord for any and all damages caused by Tenant's breaches of the Hazardous Materials Laws, or any portion thereof, and any claim for damages, or losses, or to the effects of Hazardous Materials on the Premises that is caused by owners, tenants, licensees, and invitees of other properties or is not directly caused by Landlord. Tenant shall indemnify, defend at tolls acceptable to Landlord and hold Landlord harmless from and against any claims, damages or liabilities arising out of a breach of any provision of this Paragraph 6.4. Landlord and Tenant agree that the terms of this Article 6.4 shall be effective upon the execution of this Lease, and shall continue in full force and effect for the duration of this Lease.

7. Maintenance, Repairs and Alterations.

7.1 Tenant's Obligations. Tenant shall keep in good order, condition and repair the Premises and every part thereof (structural and nonstructural), including the walls, floor, roof, HVAC equipment, sidewalks, landscaping, utilities, driveways, parking lots, and fences located in the common areas which are hereby included in the Premises, and shall maintain in repair the structural and nonstructural parts of the Premises, and every item and part thereof, lost or damaged by Tenant, its employees, agents or invitees during the Term hereof, except for any expense of Tenant, the cost thereof shall become due and payable to Landlord. Tenant shall maintain or cause to be maintained the HVAC systems, lighting fixtures, space heaters, air conditioning, plumbing, and fencing. Tenant shall not, without Landlord's prior approval, make structural modifications to the Premises, or any portion thereof, or any portion of the Premises that is under Tenant's control, without Landlord's approval. Tenant shall not make any alteration of any kind or character which disapproves the location or form of any roof penetrations or structural alterations. For purposes of this Paragraph 7.1, any proposed Tenant Modifications may be deemed to be a structural alteration, if a structural engineer commonly used by Landlord objects to: i) the method of construction for the Tenant Modifications as proposed by Tenant; or ii) the Tenant Modifications' impact on the Premises when completed. Landlord may require that Tenant have not undergone an audit in accordance with standards set forth in the AICPA Guide to Audit Small Businesses, with the descriptions and schedules of the property and the cost of the property. Tenant shall have use on an non-exclusive basis of % of the parking stalls on the Property where the Premises are located.

7.2 Landlord's Obligations. Tenant's Obligations.

7.3 Use, Access and Parking. Tenant shall not, without Landlord's prior written consent, make any alterations, improvements, additions or Utility Installations (individually or collectively "Tenant Modifications") in, on or about the Premises, except for non-structural alterations not exceeding Ten Thousand Dollars ($10,000.00) per year, cumulative, due to the costs of the Premises. As used in this Paragraph 7.3, the term "Utility Installations" shall include cleaning, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing on the Premises in good operating condition.

7.4 Landlord's Rights. Tenant shall not, without Landlord's prior written consent, make any alterations, improvements, additions or Utility Installations (individually or collectively "Tenant Modifications") in, on or about the Premises, except for non-structural alterations not exceeding Ten Thousand Dollars ($10,000.00) per year, cumulative, due to the costs of the Premises. As used in this Paragraph 7.3, the term "Utility Installations" shall include cleaning, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing on the Premises in good operating condition.

7.5 Alterations and Additions. (a) Tenant shall not, without Landlord's prior written consent, make any alterations, improvements, additions or Utility Installations (individually or collectively "Tenant Modifications") in, on or about the Premises, except for non-structural alterations not exceeding Ten Thousand Dollars ($10,000.00) per year, cumulative, due to the costs of the Premises. As used in this Paragraph 7.3, the term "Utility Installations" shall include cleaning, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing on the Premises in good operating condition.

7.6 Landlord's Obligations. Tenant shall not, without Landlord's prior written consent, make any alterations, improvements, additions or Utility Installations (individually or collectively "Tenant Modifications") in, on or about the Premises, except for non-structural alterations not exceeding Ten Thousand Dollars ($10,000.00) per year, cumulative, due to the costs of the Premises. As used in this Paragraph 7.3, the term "Utility Installations" shall include cleaning, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing on the Premises in good operating condition.

7.7 Surrender. On the last day of the Term hereof, or upon any sooner termination, Tenant shall surrender the Premises to Landlord in the same condition as when received, free of charge and fees, without liability to Landlord for any expense of Tenant, other than that which would have been recoverable had Tenant remained in possession of the Premises, unless otherwise agreed to by Tenants and Landlord in writing. Tenant shall not be allowed under any circumstances without Landlord’s written consent, which consent may be withheld at Landlord's sole and arbitrary discretion. Any such approved outside storage or exterior equipment shall be in full compliance with all City regulations.

7.8 Landlord’s Obligations. Except for the obligations of Landlord under Paragraph 9 and Paragraph 14, it is intended by the parties hereto that Landlord shall not, at any time during the Term hereof, require the removal of any Type A Hazardous Materials located in, on or about the Premises or which would have been recoverable had Tenant remained in possession of the Premises, unless otherwise agreed to by Tenants and Landlord in writing. Tenant shall not be allowed under any circumstances without Landlord’s written consent, which consent may be withheld at Landlord's sole and arbitrary discretion. Any such approved outside storage or exterior equipment shall be in full compliance with all City regulations.

The immediately preceding three sentences shall survive the termination of this Lease.

(b) Any Tenant Modifications shall not cause the Premises, that Tenant shall desire to make, and which require the consent of the Landlord, shall be presented to Landlord in written form, with proposed detailed plans. If Landlord shall give its consent, the consent shall be deemed conditioned upon Tenant acquiring

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a payment or performance bond as provided in Paragraph 7.5a) and a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Landlord prior to the commencement of the work and the compliance by Tenant with all conditions of said permit in a prompt and expeditious manner.

(c) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant or on or in the Premises, which claims are both true and just, as determined by Landlord in its discretion. Tenant shall give Landlord no less than ten (10) days notice prior to the commencement of any work or in on the Premises, and Landlord shall have the right to give notice of non-compliance in or on the Premises as provided by law.

(d) If Tenant shall require Landlord’s consent to remove such fixtures, Tenant shall pay Landlord the reasonable cost of their removal, and Tenant shall, at the request of Landlord, provide Landlord with a copy of the notice mailed to Tenant by Landlord advising Tenant of his right to make such removal. Tenant shall pay Landlord no less than ten (10) days notice prior to the commencement of any work or in on the Premises, and Landlord shall have the right to give notice of non-compliance in or on the Premises as provided by law.

8. Insurance. Indemnity.

8.1 Landlord’s Insurance. Landlord shall obtain and maintain throughout the Term of this Lease the following insurance policies, and Tenant shall pay the cost thereof upon demand as additional rent:

(a) A commercial general liability insurance policy, including insurance against assumed or contractual liability under this Lease or for property damage, in the amounts set forth in Paragraph 8.2, and a policy covering damage or any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere, and shall further indemnify and hold harmless Landlord and any of its agents, contractors, employees, officers, directors or agents, representatives, successors and assigns.

(b) Comprehensive general liability (Landlord’s risk only including liability to third persons or property and property damage) in the amount of One Million Dollars ($1,000,000).

(c) A worker’s compensation insurance policy with applicable statutory limits, including a waiver of subrogation in favor of Landlord.

(d) Automobile liability insurance with single limit coverage of not less than Two Million Dollars ($2,000,000).

(e) A policy providing pollution legal liability insurance of not less than One Million Dollars ($1,000,000).

(f) In the event Tenant will generate, handle or store hazardous material at the Premises, a policy providing liability insurance covering damage or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, warehouser’s legal liability or bailee’s legal liability in the amount of million dollars or such higher limits as Landlord may require.


9.1 Insurance Policies. Insurance required hereunder shall be with companies licensed to do business in California and holding a Best’s Insurance Guide not lower than Class “A”, and a rating not lower than “优良” as applicable statutory limits, including a waiver of subrogation in favor of Landlord.

9.2 In the event Tenant will generate, handle or store hazardous material at the Premises, a policy providing liability insurance covering damage or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, warehouser’s legal liability or bailee’s legal liability in the amount of million dollars or such higher limits as Landlord may require.

9.3 Indemnity. Tenant shall indemnify and hold harmless Landlord and any of its agents, contractors, employees, officers, directors or agents, representatives, successors and assigns from and against all claims arising from any breach or default in the performance of any obligation of Tenant under this Lease, or any negligence of Tenant, or any of Tenant’s agents, contractors, employees, or from and against any loss, damage, or injury to persons or property or to the Premises, whether such damage or injury results from the negligence of Tenant or any of Tenant’s agents, contractors, employees, or from and against any loss, damage, or injury to persons or property or to the Premises, warehouser’s legal liability or bailee’s legal liability in the amount of million dollars or such higher limits as Landlord may require.
continue in full force and effect, and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within such ten (10) day period, this Lease shall be canceled and terminated as of the date of the occurrence of such damage.

9.3 Total Destruction. If at any time during the Term of this Lease there is damage, whether or not an insured loss (including destruction required by any authorized public authority), to the building of which the Premises are a part to the extent that the cost of repair exceeds fifty percent (50%) of the then replacement cost of such building as a whole, then this Lease shall automatically terminate as of the date of such destruction. In the event, however, that the damage or destruction was caused by Tenant's gross negligence or willful misconduct, Landlord shall have the right to recover Landlord's damages from Tenant.

9.4 Damage Near End of Term. If the Premises are damaged during the last year of the Term of this Lease, Landlord may, at Landlord's option, cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of Landlord's election to do so within thirty (30) days after the date of occurrence of such damage.

9.5 Abatement of Rent. In the event of damage described in Paragraphs 9.1 or 9.2, and Landlord or Tenant repairs or restores the Premises, Rent for the period during which repairs or restoration are made shall be abated or reduced in an amount equal to the amount of damage or destruction less the amount of damage or destruction caused by Tenant as determined in Paragraph 9.3.

9.6 Waiver. Tenant and Landlord hereby waive the provisions of California Civil Code Paragraphs 1932 (2 and 3) and any related or successor provision of law which relate to termination of leases when the thing leased is destroyed and agree that such event shall be governed by the terms of this Lease.

10. Real Property Taxes; Personal Property Taxes.

10.1 Payment of Taxes. Tenant shall pay the Real Property Tax, as defined in Paragraph 10.2, applicable to the Premises during the Term of this Lease. If payment is required only by means of a bill mailed to Tenant, payment must be made upon receipt by Tenant. Tenant shall immediately provide Landlord with proof of payment. If deposits collected for such property taxes as provided in Paragraph 5.1 are not sufficient to discharge Tenant's obligations, payment of the balance shall be made at least ten (10) days prior to the delinquency date by depositing the balance in a bank acceptable to Landlord.

10.2 Definition of “Real Property Tax”. As used herein, the term Real Property Tax shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than interest, personal property or estate taxes) imposed on the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government; or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises are a part. The term Real Property Tax shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinafore included within the definition of Real Property Tax or (ii) the nature of which was hereinafore included within the definition of Real Property Tax.

10.3 Joint Assessment. If the Premises are not separately assessed, Tenant’s liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Landlord from the respective valuations assigned in the assessor’s work sheets or such other information as may be reasonably available. Landlord’s reasonable determination thereof, in good faith, shall be conclusive.

10.4 Personal Property Taxes. Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all personal property of Tenant contained in the Premises or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

11. Utilities.

11.1 Payment. Tenant shall pay for heat, water, gas, electricity, and any other utilities and services supplied to the Premises, together with taxes thereto. Tenant shall be responsible for any utility installation, hook-up charge, repairs or maintenance. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion, to be determined by Landlord, of all charges jointly metered with other premises.

11.2 Interruption of Service.

11.2.1 No damages, compensation, or claim shall be payable by Landlord, and this Lease and the obligations of Tenant to pay the Rent and to perform all other obligations imposed hereunder shall in no way be affected, impaired, reduced, or excused, in the event that there shall be an interruption, curtailment, or suspension of service of any nature whatsoever for any reason (including, without limitation, any event of force majeure, execution of legal process, or others approved by Landlord or required by Law) on the part of any utility, gas, electric, sanitary, elevator, water, telecommunications, security, or any other systems serving the Premises or any other services required of Landlord under this Lease (an “Interruption of Service”), by reason of: (i) any act of war, terrorism, or bioterrorism (separately or collectively a “Casualty”); (ii) an accident; (iii) an emergency; (iv) shortage of labor or materials; or (v) any cause whatsoever that may be beyond the control of Landlord, including, but not limited to: (a) Loss of access to the Premises (which include, but not be limited to, the lack of access to the Building or the Premises when it or there structural soundness, but inaccessible due to emotional trauma of the surrounding area damage or damage to nearby structures or public areas); (b) Interruption of service to the Premises; (c) Reduced air quality or other contaminants within the Premises that would adversely affect the Premises or its occupants (including, but not limited to, the presence of biological or other airborne ingredients within the Premises); (d) Disruption of mail or delivery of the Premises; (e) Interruption of services resulting from a Casualty; (f) Disruption of telecommunications services to the Premises resulting from a Casualty; (g) Blockages or any windows, doors, or walkways to the Premises resulting from a Casualty.

11.3 Landlord’s Interruption of Service. Landlord reserves the right, without any liability to Tenant, except as otherwise expressly provided in this Lease, and without giving in breach of any covenant of this Lease, to effect an Interruption of Service, as required by this Lease or by law, or as Landlord in good faith deems advisable, whenever and for so long as may be necessary, to make repairs, alterations, upgrades, changes, or for any other reason, to the HVAC, utility, sanitary, elevator, water, telecommunications, security, or other systems serving the Premises. In such instance, Landlord shall exercise reasonable diligence to eliminate the cause of the Interruption of Service, as soon as practically possible, if resulting from conditions within the Premises, and to conclude the Interruption of Service. Landlord shall give Tenant notice, when practicable, of the commencement and anticipated duration of such Interruption of Service.

11.4 No Remedies. The occurrence of an Interruption of Service pursuant to Paragraph 11.2 and 11.3 hereof shall not: (i) constitute an actual or constructive eviction of Tenant; (ii) entitle Tenant to any abatement or diminution of Rent, Additional Rent, or any other costs due from Tenant pursuant to this Lease; (iii) relieve or release Tenant from any of its obligations under this Lease; or (iv) entitle Tenant to terminate this Lease.

12. Assignment and Subletting: Options Personal.

12.1 Landlord’s Consent Required. Tenant shall not voluntarily or by operation of law assign, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent. Landlord shall not unreasonably withhold its consent to any attempted assignment, transfer, mortgage, encumbrance or subletting. Tenant shall not be deemed to have assigned or sublet the Premises for the purposes of any of the provisions of this Section unless Tenant has delivered to Landlord a writing, in a form reasonably satisfactory to Landlord, pursuant to which it consents to said assignment and subletting. If, in Tenant's possession or subletting and if it affirms, acknowledges and agrees that the guaranty will continue in full force and effect, and that such consent shall have been given in writing to be binding by this Lease and the terms, conditions and obligations hereunder, and to perform all obligations of Tenant required to be performed by Tenant hereunder. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall constitute a breach of this Lease and be voidable at Landlord’s election. Tenant shall pay to Landlord all of Landlord’s costs and expenses of convening and disbursing the $200 per hour for all Trimes as is if the lease were in default, and all personal property of Tenant contained in any personal property of Tenant in connection with any request by Tenant for Landlord's consent.

12.2 No Release of Tenant. Regardless of Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligation, or alter the present liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

12.3 Recapture of Premises. If any attempted assignment or sublease, Tenant shall submit to Landlord in writing (a) the name of the proposed assignee or sublessee, (b) such information as to its credit history, financial responsibilities and standing as Landlord may require, and (c) all of the terms, conditions and covenants upon which the proposed assignment or sublease is to be made. Landlord shall have an option to cancel and terminate this Lease with respect to all, or such portion, of the Premises which is to be assigned or sublet. Landlord may exercise said option in writing within thirty (30) days after its receipt from Tenant of request to assign or sublease the Premises. If Landlord shall exercise its option, Tenant shall surrender possession of the entire Premises, or the portion thereof which

-Initials-
13.1 Default. If, on account of or in connection with any assignment or sublease, Tenant receives rent or other consideration in excess of the Rent called for hereunder, or in the case of the sublease of a portion of the Premises, in excess of the pro rata Rent based on the floor area of such portion, after adjustments to assure all other payments called for hereunder are taken into account, Tenant shall pay to Landlord seventy-five percent (75%) of the excess of such payment of rent or other consideration received by Tenant promptly after its receipt.

13.2 Remedies. In the event of any material default or breach by Landlord or Tenant, Landlord may at any time thereafter, with or without notice or demand, and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach:

(a) Terminate Tenant's right to possession of the Premises, in which case Tenant's right to possession of the Premises shall terminate and Tenant shall immediately surrender possession of the Premises. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting including necessary renovation and alteration of the Premises; accounts of attorneys for Landlord; and any court costs or collection costs actually paid, the worth at the time of award of the sum of money having the same present value as the amount finally recovered by Landlord, which sum shall be paid by Tenant for the benefit of Landlord within sixty (60) days.

(b) The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, as and when due, shall entitle Landlord to recover from Tenant for the benefit of Landlord, the cost of recovering possession of the Premises; expenses of reletting including necessary renovation and alteration of the Premises; accounts of attorneys for Landlord; and any court costs or collection costs actually paid; the worth at the time of award of the sum of money having the same present value as the amount finally recovered by Landlord, which sum shall be paid by Tenant for the benefit of Landlord within sixty (60) days.

(c) The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

(i) The making by any of Tenant's guarantors of an assignment of such guarantor's interest in this Lease.

(ii) The discovery by Landlord that any financial statement given to Landlord by Tenant, any assignee of Tenant, any subtenant of Tenant, any successor in interest by Tenant of the Premises, or any other person in connection with any assignment or sublease, is materially false or misleading.

(iii) The making by any guarantor of Tenant's obligations hereunder of any general assignment or arrangement for the benefit of creditors; or

(iv) The filing by or against any guarantor of a petition to have guarantor adjudged a bankrupt or insolvent, for an order for relief, or a petition for reorganization, arrangement or liquidation under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days).

(d) (i) If, on account of or in connection with any assignment or sublease, Tenant receives a security deposit, Tenant shall not be deemed to be in default if Tenant confines such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(ii) The discovery by Landlord that any financial statement given to Landlord by Tenant, any assignee of Tenant, any subtenant of Tenant, any successor in interest by Tenant of the Premises, or any other person in connection with any assignment or sublease, is materially false or misleading.

13.3 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within thirty (30) days after the due date; and Tenant shall not be in default if Landlord fails to perform such obligations; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be in default if Landlord commences performance within thirty (30) days of written notice thereof.

13.4 Condemnation. If, on account of or in connection with any assignment or sublease, Tenant receives a security deposit, Tenant shall deposit such security deposit received from any assignee or sublessee with Landlord as further security for Tenant's obligations under this Lease.

12.6 Options Personal. Any options granted to Tenant under this Lease shall be personal to the original Tenant/signatory to the Lease. Options shall not be exercisable by any assignee or subtenant of Tenant. Further, upon assignment or subletting by Tenant, any option granted to Tenant shall immediately lapse and no longer be exercisable by Tenant.


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specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any of Landlord’s lessors, prospective purchasers or encumbrancers of the Premises.

(b) At Landlord's option, Tenant's failure to deliver such statement, within ten (10) days of receipt of written notice, shall be a material breach of this Lease or shall constitute a default; and Tenant (i) shall promptly pay to Landlord all sums due and (ii) shall be in default and may be represented by Landlord, (iii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's Rent has been paid in advance.

(c) If Tenant desires to finance, refinance or sell the Premises, or any part thereof, Tenant hereby agrees, upon ten (10) days prior written notice to deliver to Landlord an indemnity statement containing such information as Landlord may reasonably require by a lender or purchaser. Such statement shall include the past three years' financial statements of Tenant. All such financial statements shall be received by Landlord in confidence and shall be used only for the purposes herein set forth.

17. Landlord's Liability. Whenever Landlord conveys its interests in the Premises, Landlord may automatically be released from all liability as respects the further performance of covenants on the part of Landlord herein contained provided that such release is evidenced by an agreement signed by Tenant and by the intended purchaser of Tenant's interest. Tenant hereby agrees to release Landlord from all liability and duties hereunder and all other obligations with respect to this Lease. If requested, Tenant shall execute a form of release and such other documentation as may be required to further effect these provisions. Tenant agrees to look solely to Landlord's estate and interest in the Premises for the satisfaction of any liability, duty or obligation of Landlord in respect to this Lease, or the relationship of Landlord and Tenant hereunder, and no other assets of Landlord shall be subject to any liability therefore. Tenant agrees at all times not to seek, and hereby waives, any recourse against the individual partners, members, directors, officers, employees or shareholders of Landlord, or any of their personal assets, for such satisfaction.

18. Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

19. Interest On Past Due Obligations. Except as expressly herein provided, any amount due to Landlord not paid when due, shall bear interest at the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default byTenant under this Lease.

20. Time of Essence. Time is of the essence in this Lease and every provision thereof.

21. Additional Rent. Any monetary obligations of Tenant to Landlord under the terms of this Lease shall be deemed to be Rent.

22. Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal service, overnight courier or by certified mail, return receipt requested. Real property of which the Premises are a part, and all advances made on the security thereof, and to all amendments, renewals, modifications, consolidations, restructurings, replacements and extensions thereof. Landlord's election to subordinate this Lease to any mortgage, deed of trust or any other security, other than a security that the acceptance of Rent hereunder by Landlord shall not be a waiver of any of the provisions of Landlord contained herein, Tenant shall indemnify and hold harmless Landlord from all liability, costs, expenses and damages thereby suffered or incurred by Landlord, including, without limitation, any claim made by any succeeding tenant resulting from Tenant's failure to perform.

24. Holding Over. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Term without the express written consent of Landlord, such possession shall be to the monthly rental equal to the Rent then current for the last one hundred percent (100%) of the requested by a lender or purchaser and shall not be a waiver or considered an accord and satisfaction of any amount due.

26. Covenants and Conditions. Each provision of this Lease performable by any party shall be deemed both a covenant and a condition.

27. Binding Effect; Choice of Law. Subject to the provisions of Paragraphs 12 and 17, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives. This Lease shall be governed by the laws of the State of California and any litigation between Landlord and Tenant shall be held in the county in which the Premises are located.

28. Subordination.

(a) This Lease shall be subordinate to any mortgage, deed of trust or any other hypothecation or security now of record or, at Landlord's option, hereafter placed upon the Premises or any part thereof, and the party or parties thereunder and all advances made on the security thereof, and to all amendments, renewals, modifications, consolidations, restructurings, replacements and extensions thereof. Landlord's election to subordinate this Lease to any mortgage, deed of trust or any other security, other than a security that the acceptance of Rent hereunder by Landlord shall not be a waiver of any of the provisions of Landlord contained herein, Tenant shall indemnify and hold harmless Landlord from all liability, costs, expenses and damages thereby suffered or incurred by Landlord, including, without limitation, any claim made by any succeeding tenant resulting from Tenant's failure to perform.

(b) Tenant agrees to execute any documents required by Landlord or its lenders to effectuate an attornment, a subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a default by Tenant hereunder, and at Landlord's option, Landlord shall execute such documents on behalf of Tenant as Tenant's attorney-in-fact. Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead to execute such documents.

29. AS IS. Except for the express representations and warranties of Landlord contained herein, Tenant is leasing the Premises “AS IS” without warranty of Landlord, express or implied, as to the nature or condition of, title to the Premises, or its fitness for any purpose. Tenant is relying solely upon its own independent inspection, investigation and analysis of the Premises as it deems necessary or proper (including, without limitation, any and all matters concerning the condition, use or suitability of the Premises) in so leasing the Premises from Landlord. Tenant is not relying in any way upon any representation, statement, agreements, warranties, studies, plans, reports, descriptions, guidelines or other information or material furnished by Landlord or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any of the foregoing matters.

30. Landlord's Access. Landlord and Landlord's agents shall have the right to enter the Premises upon reasonable notice and at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or tenants, and making such tests, alterations, repairs, improvements or additions to the Premises, and any part thereof, as Landlord may deem necessary or desirable; provided, however, that the right of access and entry without notice at any time as result of an emergency. Landlord may, at any time during the last one hundred eighty (180) days of the Term hereof, place on or about the Premises any ordinary “For Sale” or “For Lease” signs, all without rebate of Rent or liability to Tenant.

31. Auctions. Tenant shall not conduct any auction without Landlord's prior written consent.

32. Signs. Any sign placed on the Premises shall contain only Tenant's name or the name of any affiliate of Tenant actually occupying the Premises, but no advertisement matter. No such sign shall be erected until Tenant has obtained Landlord's written approval of the location, materials, size, design, and content thereof and any necessary permit therefore. Tenant shall remove any such sign upon termination and return the Premises to their condition prior to the placement of said sign.

33. Merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not work a merger and shall not create any encumbrance or lien of any party or parties thereto in the Premises, or to the building or structure of which the Premises are a part, or to the fixtures or any part thereof, and shall not be deemed to constitute a merger, or be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by any subsequent act by Tenant. The acceptance of Rent hereunder by Landlord shall not be a waiver of any of the provisions of Landlord contained herein, Tenant shall indemnify and hold harmless Landlord from all liability, costs, expenses and damages thereby suffered or incurred by Landlord, including, without limitation, any claim made by any succeeding tenant resulting from Tenant's failure to perform.

34. Easements, Boundary Changes. Landlord reserves to itself the right, from time to time, to grant such easements, rights, dedications and enact boundary and platting changes in and to the Premises or to the building or structure of which the Premises are a part, so long as they do not unreasonably interfere with the use of the Premises by Tenant and are used only for the purposes herein set forth.
36. Guarantor. It shall constitute a material default by Tenant under this Lease if any Guarantor fails or refuses, within fifteen (15) business days of written request by Landlord: (a) to provide evidence of the due execution of the Guaranty called for by this Lease, including the authority of the Guarantor (and of the party signing on Guarantor's behalf to obligate such Guarantor on said Guaranty), and including in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing such Guarantor's execution of such Guaranty, together with a certificate of incumbency showing the signature of the person(s) authorized to sign on its behalf; (b) to provide current financial statements of Guarantor as may from time to time be requested by Landlord; (c) to provide written confirmation that the Guaranty is still in effect; or (d) to comply with Guarantor's obligations under Guarantor's Guaranty of the Lease within the time periods required by the Guaranty, or to the extent Guarantor is required to fulfill Lease obligations, within the time periods required by the Lease.

37. Landlord's lien. As security for Tenant's payment of rent, damages and all other payments required to be made pursuant to this Lease, Tenant hereby grants Landlord a lien upon all property of Tenant now, or subsequently located upon the Premises. If Tenant abandons or vacates any substantial portion of the Premises, or is in default in the payment of any rental, damage or other payments required to be made pursuant to this Lease, Landlord may enter upon the Premises by force if necessary, and take possession of any of all the personal property, and may sell all or any part of the personal property at a public or private sale, in one successive sales, or without notice, to the highest bidder for cash, and, on behalf of Tenant, sell and convey all or any part of the personal property to the highest bidder, delivering to the highest bidder all of Tenant's title and interest in the personal property sold. The proceeds of the sale of the personal property shall be applied by Landlord toward the cost of the sale and then toward the payment of all sums then due by Tenant to Landlord pursuant to the terms of this Lease.

38. Uniform Commercial Code. To the extent, if any, this Lease grants Landlord any lien or lien rights greater than provided by the laws pertaining to "Landlord's Lien," this Lease is intended as, and constitutes a security agreement within the meaning of the Uniform Commercial Code of the state in which the Premises are located, and, Landlord, in addition to the rights prescribed in this Lease, shall have all of the rights, titles, liens and interests in and to Tenant's property now, or hereafter coming, if any, that are greater than those which are granted by this Lease, as that term is defined under the Uniform Commercial Code of the state in which the Premises are located, to secure the payment to Landlord of the various amounts required to be paid by Landlord pursuant to the terms of this Lease. Tenant will, upon request, execute and deliver to Landlord a financing statement for the purpose of protecting Landlord's security interest under this Lease; or Landlord may file this Lease or Memorandum of Lease as a security agreement.

39. No Recording of Lease. Other than as otherwise specifically provided in this Lease, the parties agree that this Lease shall not be recorded by either party.

40. Security Measures. Tenant hereby acknowledges that the Rent payable to Landlord hereunder does not include the cost of guard service or other security measures, and that Landlord shall have no obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents, guests, customers, and invitees and its property from the acts of third parties.

41. Authority. If Tenant is a corporation, a limited liability trust, or partnership, each individual executing this Lease on behalf of such entity represents and warrants that it is duly authorized to execute and deliver this Lease on behalf of the entity named herein. Tenant is a corporation and such entity is duly authorized to execute and deliver this Lease on the entity's behalf and in its name, and Tenant is a limited liability trust or partnership and Tenant shall, within thirty (30) days after execution of this Lease, deliver evidence of such authority satisfactory to Landlord.

42. Disclaimers On Authorship. Landlord and Tenant have contributed to the final form of this Lease. Therefore, neither Landlord or Tenant should be considered to be the author of this Lease or should authorship affect the interpretation of this Lease by any tribunal.

43. Amendments. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the Rent or other amounts payable under this Lease. As long as they do not materially change Tenant's obligations hereunder, Tenant agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by an institutional, insurance company, or pension plan lender in connection with the obtaining of normal financing or refinancing of the property of which the Premises are a part. Tenant shall pay to Landlord all of Landlord's costs and expenses, including, without limitation, reasonable attorney's fees and disbursements, reasonable fees, costs and expenses of consultants, and $200 per hour for the services and time of Landlord's personnel in connection with any request by Tenant for Landlord's consent, for any waiver or any amendment, modification, renewal, replacement, restructuring, extension or workout of this Lease.

44. Legal Fees. The prevailing party (the "Prevailing Party") in any litigation, arbitration, bankruptcy proceeding, or other formal or informal resolution (collectively, a "Proceeding") of any claims brought by any party to this Lease against any other party to this Lease based upon, arising from, or in any way related to this Lease or the transactions contemplated herein, including, without limitation contract claims, tort claims, breach of duty claims, and all other common law statutory claims (collectively, the "Claims") shall be entitled to recover from such other party all its fees and costs incurred in connection with the Proceeding, including without limitation all its attorneys' fees, costs, paralegal fees and costs, and all its other costs and expenses, regardless of whether such costs are otherwise statutorily recoverable (collectively, the "Fees and Costs"), and including in the Fee and Costs incurred by the Prevailing Party in connection with proceedings in bankruptcy for relief from and/or modification of automatic stay, for order of nondischargeability, and/or regarding use of cash collateral, claims, and/or plans. The Prevailing Party shall also be entitled to recover from such other party all its costs incurred in enforcing the judgment or award giving rise to the Prevailing Party's status as the Prevailing Party. Each party hereby acknowledges that it is on notice that, in the event that the other party retains the services of one or more experts in connection with the Proceeding, such other party will seek to recover the fees and costs of such expert or experts hereunder, and that, if such party becomes the Prevailing Party in the Proceeding, such party shall be entitled to recover such fees and costs hereunder, whether such fees and costs are sought before trial, during trial, or post-trial motion or memorandum of costs. The parties to this Agreement waive the provisions of civil code section 1717(b)(2), and agree that, in the event of a unilateral voluntary dismissal, the dismissed party shall be deemed the Prevailing Party entitled to the recovery of all of its Fees and Costs.

45. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

46. Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with the preparation and execution of this Lease.

47. Further Assurances. Promptly after request by either party, the other party shall execute such documents and take such actions as reasonably requested by the first party to effectuate the intent of the parties as contemplated hereunder.

48. Waiver of Jury Trial. To facilitate the desire of Landlord and Tenant to resolve disputes in an efficient and economical manner, Landlord, by its acceptance of this Lease, and Tenant, by its execution hereof, expressly waive any right to trial by jury of any claim, demand, action or cause of action: (A) arising under this Lease, or (B) in any way connected with or related or incidental to the dealings of Landlord and Tenant, or either of them, with respect to this Lease, or the transactions related hereto or thereto, in each case whether now existing, or hereafter arising, and whether arising in contract or tort or otherwise. ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY. Tenant or Landlord may file any action or cause of action arising out of or relating to this Lease in a court of competent jurisdiction in either state or federal court located, if any such claims hereunder, and that, if such party becomes the Prevailing Party in the Proceeding, such party shall be entitled to recover such fees and costs hereunder, whether such fees and costs are sought before trial, during trial, or post-trial motion or memorandum of costs. The parties to this Agreement waive the provisions of civil code section 1717(b)(2), and agree that, in the event of a unilateral voluntary dismissal, the dismissed party shall be deemed the Prevailing Party entitled to the recovery of all of its Fees and Costs.

49. Memorandum of Lease as a security agreement.

50. Rent Increases. The Rent as called for in Paragraph 1 shall commence at

Effective Date: [Insert effective date]

Monthly Rent: [Insert monthly rent]

51. Entire Agreement. LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIAL REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY FLEMING BUSINESS PARK LLC OR ANY PERSON AUTHORIZED TO SIGN THIS LEASE OR MAKE ANY MODIFICATIONS TO THIS LEASE AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES ARE FOR THE PARTIES HEREBY AGREED TO.

1. SEEK LEGAL COUNSEL AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES.


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This Lease supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

The Parties hereto have executed this Lease on the dates below their respective signatures.

"Landlord"

By:____________________________________________

Dated:__________________________

By:______________________________________

Dated:__________________________

"Tenant"

By:________________________________________

Dated:__________________________

By:________________________________________

Dated:__________________________

Tenant’s signature is required to be notarized

ACKNOWLEDGMENT

State of ________________________________
County of ________________________________

On ________________________________ before me, ________________________________, (insert name and title of the officer)

personally appeared ________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ________________________________ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature__________________________ (Seal)
EXHIBIT “A”
(To be provided)
DATE: __________________
To: ______________________

RE: Tenancy at __________________

Gentlemen:

The undersigned, as Lessee/Tenant, hereby confirms and represents to you the following:

1. That it has accepted possession of the Premises demised pursuant to the terms of the aforesaid Lease.
2. That the building(s), improvements and space required to be furnished according to the aforesaid Lease have been satisfactorily completed in all respects.
3. That the Lessor/Landlord has fulfilled all of its duties of an inducement nature, true to the best of our knowledge and belief.

Sincerely,

By: ____________________________
(sign in blue ink)
Officer’s Name: ____________________
Officer’s Title: _____________________

Estoppel Certificate must be notarized

ACKNOWLEDGMENT

State of 
County of _______________________

On ______________________ before me, _____________________________
(insert name and title of the officer)

personally appeared ________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature __________________________   (Seal)
AGREEMENT

This Agreement (this "Agreement"), dated __________, is between

and

WHEREAS, _______ will produce a segment to air on the program wherein _______ shall take one of the anchors on a trip into the _______ (the "Segment");

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Obligations of Parties

shall provide all equipment, training, services and materials in connection with the Segment, as set forth in Exhibit A and attached hereto and made a part hereof.

2. Term

The term of this Agreement is from __________ through __________. The period may be modified or extended by _______ if there are changes in the production schedule or delays due to weather conditions.

3. Ownership

shall own all right, title and interest in and to the Segment and all footage shot in connection with the Segment, it being understood that the Segment and elements thereof may be used and exploited by _______ or its designees in perpetuity in any manner and in any and all media throughout the world, as _______ determines.

4. Insurance and Indemnification

a. (i) shall, at its sole expense, throughout the performance of its services pursuant to the Agreement and for such additional time as may be specified below, maintain:

A. Aircraft Liability Insurance. Aircraft Liability insurance (including War, Hi-jacking and Other Perils write-back), including bodily injury (including passengers) and property damage liability with a combined single limit of not less than Fifty Million Dollars ($50,000,000.00) each occurrence/aggregate, where applicable. Such liability policies shall name Charterer (Entity) and Company and their respective parent, subsidiary and affiliated companies and the directors, officers and employees of each, as additional insureds, as their respective interests may appear, and shall include cross liability and a clause stating that such insurance is primary with respect to the aircraft or substitute or replacement aircraft used in performing this Agreement and
such insurance shall not be contributory with or exceed over any insurance carried by Charterer and Company and their respective parent, subsidiary and affiliated companies and the directors, officers and employees of each.

B. Aircraft Hull Insurance. Aircraft hull insurance covering the aircraft hull and engines and all aircraft equipment against "All Risks" of loss or damage for the full replacement value of the aircraft. Such insurance shall contain by endorsement a waiver of subrogation in favor of Charterer and Company and their respective parent, subsidiary and affiliated companies and the directors, officers and employees of each, and all deductibles under such insurance shall be for the account of OPERATOR and/or AIRCRAFT OWNER.

C. Worker's Compensation and Employer's Liability Insurance. Worker's Compensation and employer's liability insurance covering statutory benefits for all of OPERATOR's and/or AIRCRAFT OWNER's employees with a minimum employer's liability limit of $1,000,000 per occurrence.

(ii) All insurance required in this Article shall be with companies and on forms acceptable to and shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted written notice thereof is furnished to

(iii) All insurance required in this Article shall be primary and not contributory with regard to any other available insurance to its parents, and any subsidiaries, related and affiliated companies of each, and the officers, directors, shareholders, employees, agents and assigns of each.

(iv) All insurance required in this Article shall be written by companies with a BEST Guide rating of B+ VII or better.

(v) Certificates of insurance (or copies of policies, if required by ) shall be furnished to . All insurance required in this Article shall include its parents, and any subsidiaries, related and affiliated companies of each, and the officers, directors, shareholders, employees, agents and assigns of each as additional insureds and contain a waiver of subrogation in their favor. (The additional insured requirement applies to all
coverages except Workers’ Compensation, Employers Liability and Professional Liability. The waiver of subrogation applies to all coverages).

(vi) ’s failure to request, review or object to the terms of such certificates or insurance shall not be deemed a waiver of ’s obligations or the rights of .

(vii) The minimum limits of the insurance required in this Article shall in no way limit or diminish ’s liability under other provisions of this Agreement.

b. (if required by and with counsel selected by ,), indemnify and hold , its parent company, or any subsidiaries, related and affiliated companies of each, and the officers, directors, shareholders, agents, employees and assigns of each, harmless from and against any and all claims, demands, suits, judgments, losses, or expenses of any nature whatsoever (including attorneys’ fees) arising directly or indirectly, in whole or in part, from or out of:

(i) any act, error, or omission of , its sub-consultants or their respective officers, directors, agents, subcontractors, invitees or employees; and/or

(ii) any occupational injury or illness sustained by an employee or agent of , in furtherance of ’s services hereunder; and/or

(iii) any failure of to perform its services hereunder in accordance with the highest generally accepted professional standards; and/or

(iv) any breach of ’s representations, warranties or agreements as set forth herein.

c. The indemnification obligations shall not be limited by the insurance requirements and shall extend to claims occurring after the Agreement has terminated as well as while the Agreement is in force. The provisions of this Article shall survive the expiration or early termination of the Agreement.

5. Use of ‘s Trademarks

shall not in any way or in any form publicize or advertise in any manner the fact that it is providing materials and services for or the fact that is using materials and services provided by them or their respective divisions, subsidiaries, contractors, subcontractors or suppliers. The foregoing prohibition includes, but is not limited to, the use of ’s trademarks or copyrights in client lists, news releases, promotional materials, advertisements, or other displays or materials released to the media.
6. **Confidentiality**

   This Agreement shall be treated as confidential by both parties and shall not be disclosed to any third-party without the other party's prior written consent, except as needed to enforce either party's rights hereunder.

7. **Choice of Law and Forum**

   This Agreement and performance hereunder shall be governed by the laws of the State of [State], without giving effect to the principles of conflict of laws. The parties agree on behalf of themselves and any person claiming by or through them that the sole and exclusive jurisdiction and venue for any litigation which may arise hereunder shall be an appropriate federal or state court located in the City.

8. **Force Majeure**

   Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to cause(s) beyond its reasonable control. Performance times shall be considered extended for a period of time equivalent to the time lost because of such delay.

9. **No Waiver**

   The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.

10. **Severability**

   In the event that any one or more of the provisions of this Agreement should for any reason be held to be invalid or nonenforceable, the remaining provisions of the Agreement shall remain enforceable.

11. **Amendment**

   No modification or amendment of this agreement shall be binding upon any party unless such modification is in writing and signed by all parties hereto.

12. **Entire Agreement**

   This Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written agreements among them.
### COVERAGES

**GENERAL LIABILITY**

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<tr>
<th>INSURER A</th>
<th>Insurance Company</th>
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**INJURY TO PERSONS / PROPERTY DAMAGE**

| INSURER F |

**A GENERAL LIABILITY**

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<th>COVERAGES</th>
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**A AUTOMOBILE LIABILITY**

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**A UMBRELLA LIABILITY**

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<td>THIRD PTY PROP DAMAGE</td>
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<td>MISC. EQUIPMENT (M.E.)</td>
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**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES**

This certificate applies only to television programs produced on behalf of Network US, Network International.

The certificate holder is included as an additional insured under the general liability or auto liability policies & loss payee under the production package policy but only as respects their agreement with the named insured in connection with the production entitled:

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**CERTIFICATE HOLDER**

CANCELLATION

**AUTHORIZED REPRESENTATIVE**

Insurance Services

**ACORD 25 (2010/05)** 1988 – 2010 © ACORD CORPORATION All rights reserved.
[Name & Address of Contractor]

RE: [Job Description and Date]

Dear [Contractor],

When contracting to perform work for or on behalf of My Organization, we require certain minimum insurance standards for legal liability arising out of work performed by independent contractors and their subcontractors. These requirements must be met before you or your subcontractors are permitted to work on the premises.

You may wish to forward the attached requirements for insurance certificates to your insurance agent or broker, and they will assist you in complying with our request. The best way for them to contact us is via email should they have any questions.

Feel free to call should you have any questions.

Poo Bah
Executive Director
My Organization,
We prefer that you email the evidence of insurance as a PDF file, but snail mailed documents will also be accepted. Faxed certificates can also be accepted if the originals are snail mailed to our office.

1. A valid Certificate of Workers' Compensation Insurance, including employers’ liability. Subrogation must be waived against My Organization, LLC, its directors, officers, members, employees and volunteers

2. A valid Certificate of Insurance for Commercial General Liability Coverage
   a. The limits should at least equal $1,000,000 Each Occurrence and $2,000,000 Aggregate Bodily Injury & Property Damage combined
   b. The coverage must include Products/Completed Operations Coverage with at least a $1,000,000 aggregate limit and CG2037 Ed 07/2004 Additional Insured naming My Organization, LLC, its directors, officers, members, employees and volunteers as additional insured person(s) for this work.
   c. The coverage should include Insurance Services Office contractual liability coverage on form CG0001 Ed 12/2007 or more recent including CG2010 Additional Insured endorsement naming My Organization, LLC, its directors, officers, members, employees and volunteers as additional insured
   d. The coverage must include Personal Injury Coverage with at least a $1,000,000 limit each occurrence/aggregate
   e. The certificates of insurance must name My Organization, LLC, its directors, officers, members, employees and volunteers as an additional insured for liability arising out of the specific project/event and must indicate the location of the project (e.g. Stone Mountain Park, GA; “Premises of My Organization, 1 Chestnut Hill Road, Anywhere, USA”, etc.) on Insurance Services Office Form Numbers CG2010 07/2004 and CG2037 Ed. 07/2004 or equivalent
   f. The certificate must indicate that the aggregate limit of liability applies on a “per job” basis.

Where Umbrella Liability or Excess Liability coverage exists, please include this on the Certificate of Insurance with the company, policy information and limits

3. Automobile Liability, including non-owned and borrowed/hired automobile coverage must be included with a $1,000,000 combined single limit, or $1,000,000 each person/$1,000,000 each accident. My Organization, LLC, its directors, officers, members, employees and volunteers must be included as additional insured for the job.
4. *All subcontractors also must supply valid certificates of insurance conforming to these requirements or they will not be permitted on the premises (or payment will not be made)*

5. The description of operations should indicate that Subrogation has been waived in favor of My Organization, LLC, its directors, officers, members, employees and volunteers.

Any request for exceptions to these requirements must be addressed in writing, fax or email to us in writing, with an explanation. We will make all reasonable efforts to work with your insurance program if your insurance underwriter cannot comply with some of these requirements.
[Name & Address of Contractor]

RE:: [Movie Shoot Description, location and Date]

Dear [Contractor],

When contracting with My Organization, LLC, we require certain minimum insurance standards for legal liability arising out of work performed by you and your subcontractors. These requirements must be met before we can supply you with a certificate of insurance naming you as additional insured.

You may wish to forward the attached requirements for insurance certificates to your insurance agent or broker, and they will assist you in complying with our request. The best way for them to contact us is via email should they have any questions.

Feel free to call should you have any questions.

Sincerely,

Apple Jack
Managing Member
We prefer that you email the evidence of insurance as a PDF file or faxed, but snail mailed documents will also be accepted. Faxed certificates can also be accepted if the originals are snail mailed to our office.

1. A valid Certificate of Workers' Compensation Insurance, including employers’ liability. Subrogation must be waived against My Organization, LLC, its members, officers, employees and volunteers

2. A valid Certificate of Insurance for Commercial General Liability Coverage
   a. The limits should at least equal $1,000,000 Each Occurrence/$2,000,000 Aggregate Bodily Injury & Property Damage combined
   b. The coverage must include Products/Completed Operations Coverage with at least a $1,000,000 aggregate limit and CG2037 Ed 07/2004 Additional Insured naming My Organization, LLC, its members, officers, employees and volunteers as additional insured person(s) for this production.
   c. The coverage should include Insurance Services Office contractual liability coverage on Form CG0001 Ed 12/2007 or more recent including CG2010 Additional Insured endorsement naming My Organization, LLC, its members, officers, employees and volunteers as additional insured
   d. The coverage must include Personal Injury Coverage with at least a $1,000,000 limit each occurrence/aggregate
   e. The certificates of insurance must name My Organization, LLC, its members, officers, employees and volunteers as an additional insured for liability arising out of the project and must indicate the location of the project on Insurance Services Office Form Numbers CG2010 07/2004 and CG2037 Ed. 07/2004 or equivalent
   f. The certificate must indicate that the aggregate limit of liability applies on a “per job” basis.

Where Umbrella Liability or Excess Liability coverage exists, please include this on the Certificate of Insurance with the company, policy information and limits

g. Insurance company must be accorded an A.M. Best Company’s financial strength rating of A- or better and financial size category VI or larger.

3. Automobile Liability, including non-owned and borrowed/hired automobile coverage must be included with a $1,000,000 combined single limit, or $1,000,000 each person/$1,000,000 each accident. My Organization, LLC, its members, officers, employees and volunteers et al. must be included as additional insured for the project.

4. All subcontractors also must supply valid certificates of insurance conforming to these requirements or they will not be permitted on the production site.
5. The description of operations must include a waiver of Subrogation in favor of My Organization, LLC, its members, officers, employees and volunteers on all policies.

6. Evidence of inland marine insurance covering all equipment used for the project. Client must agree to waive all rights of subrogation against My Organization, LLC, its members, officers, employees and volunteers prior to the trip for damage to property or equipment and hold My Organization, LLC, its members, officers, employees and volunteers harmless for any loss to property or equipment.

Any request for exceptions to these requirements must be addressed in writing, fax or email to us in writing, with an explanation. We will make all reasonable efforts to work with your insurance program if your insurance underwriter cannot comply with some of these requirements.
EXHIBIT “A”

Phase 2 of Rehabilitation

LIST OF DRAWINGS (All dated __________ , except as noted)

Architectural:

T1 Cover Sheet
T2 Symbols + Notes
D1 Crawl Space, First Floor, Second Floor Demolition Plans and Floor Repair Notes
A1 Crawl Space Plan
A2 First Floor Construction Plan + Parking Requirements
A2.1 First Floor Reflected Ceiling Plan
A2.2 First Floor Finish Plan
A3 Second Floor Construction Plan
A3.1 Second Floor Reflected Ceiling Plan
A3.2 Second Floor Finish Plan
A4 Attic Floor Plan
A5 Roof Plan and Bell Tower Detail
A5.1 Roof Details
A6 Elevation A – side
A6.1 Elevation B – side/exterior stair & deck details
A6.2 Elevations C + D – rear + cross
A6.3 Elevations E + F + Fa – cross
A6.4 Cross Sections G + G1 + H
A6.5 Longitudinal Section J
A7 Part Plans + Sections – Stair + Lula Lift
A7.1 Stair + Lula Lift Details
A8 Wall Sections 1 + 2
A8.1 Wall Sections 3 + 4
A8.2 Wall Sections 5, 6 + 7
A8.3 Wall Sections 8 + 9
A8.4 Details
A9 Partition Types + Details
A9.1 Door Schedule + Details
A9.2 Window Schedule + Details
A10 Part Plans, Interior Elevations and Accessories
A11 Millwork Details

Structural:

S-1 Foundation Plan and Sections
S-2 Main Level + 2nd Floor Framing Plan + Sections
S-3 Attic Framing Plan + Roof Framing Plan
S-4 Typical Details + Notes
SW-1 Main Level + 2nd Floor Shear Wall Plans

M/E/P/F:
P1 Plumbing: Symbols, Notes, Riser and Specification
P-2 Plumbing: Riser Diagrams
P-3 Plumbing: Site Plan
P-4 Plumbing: First Floor Plan
P-5 Plumbing: Second Floor Plan
P-6 Plumbing: Attic Plan
P-7 Plumbing: Crawl Space Plan
M-1 Mechanical: Symbols, Notes and Specifications
M-2 Mechanical: Crawl Space Plan – New Work
M-3 Mechanical: First Floor Plan – New Work and Air Balance
M-4 Mechanical: Second Floor Plan – New Work and Air Balance
M-5 Mechanical: Attic Plan – New Work and Demolition
FP-1 Fire Protection: Symbols, Notes and Details
FP-2 Fire Protection: Crawl Space
FP-3 Fire Protection: First Floor Plan – New Work
FP-4 Fire Protection: Second Floor Plan – New Work
FP-5 Fire Protection: Attic Plan – New Work
FA-1 Fire Alarm: Symbols, Notes and Riser
FA-2 Fire Alarm: First Floor Plan
FA-3 Fire Alarm: Second Floor Plan
FA-4 Fire Alarm: Attic Plan
E-1 Electrical: Symbols, Notes, Riser, Details, and Specification
E-2 Electrical: First Floor Part Plan, Revised
E-3 Electrical: Second Floor Part Plan, Revised
E-4 Electrical: Attic Plan and Crawl Space Plan
E-5 Lighting Schedule
G-1 Geothermal Site Plan

Site: (Dated September)

SD-1 Construction Plan
SD-2 Details and Soil Erosion and Sediment Control Plan
SD-3 Details and Soil Movement Plan
EXHIBIT "B"

Phase 2 of Rehabilitation of the

SPECIFICATION

Project Manual and Specifications, Phase 2 Rehabilitation and Addition to the Headquarters for the

ADDENDA

Addendum No. 1, dated September 16
Addendum No. 2, dated September 19
Addendum No. 3, dated September 23
Addendum No. 4, dated September 26
Addendum No. 5, dated September 30
Addendum No. 6, dated October 1
Addendum No. 7, dated October 2
Addendum No. 8, dated October 1

CHANGE MEMORANDUM

Changes to Reduce Cost following Receipt of Bids, incorrectly dated November 24,

PROPOSAL

Revised proposal of dated October 28
EXHIBIT “C”

Phase 2 of Rehabilitation of the

I. INSURANCE REQUIREMENTS

A. Contractor shall, at all times during the period which this Contract is in force, provide and maintain and require all Subcontractors and Sub-subcontractors to provide and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and to which the Owner has no reasonable objection, such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor’s operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

4. claims for damages insured by usual personal injury liability coverage;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

7. claims for bodily injury or broad form property damage arising out of completed operations; and

8. claims involving contractual liability insurance applicable to the Contractor's obligations.

B. The insurance required by Section A shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverage will be the standard ISO CG 00 01 terms and conditions (most recent version but at least the 2007 version). Coverages, written on an occurrence basis, shall be maintained without interruption from date of
commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

C. Certificates and endorsements of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates, endorsements and the insurance policies required herein shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire or a reduction in limits until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

D. Minimum Insurance Requirements.

1. Workers Compensation
   a. Statutory Limits – in the jurisdiction in which the work is to be performed.
   b. Employer’s Liability
      
      $1,000,000 each accident.
      $1,000,000 disease – per employee.
      $1,000,000 disease – policy limit.

2. Comprehensive General Liability (Broad Form)
   
   $1,000,000 Combined Bodily Injury and Property Damage each Occurrence
   $2,000,000 Aggregate

   The General Liability policy shall include coverage for excavation, collapse, and underground work and broad form property damage, including completed operations/products. If the General Liability policy includes a General Aggregate, such General Aggregate shall be not less than $2,000,000.

   Products and Completed Operations Insurance shall be maintained for a minimum period of 2 years from completion of the project.

   Aggregate limit shall apply on a per project basis or limits shall be certified as unimpaired, at the time of issuing the certificate of insurance.
3. Blanket Contractual Liability (Broad Form)

Bodily Injury:
$1,000,000 Each Occurrence

Property Damage:
$1,000,000 Each Occurrence
$2,000,000 Annual Aggregate

4. Automobile Liability – Owned, Nonowned and Hired

Bodily Injury:
$1,000,000 Each Person
$1,000,000 Each Accident

Property Damage:
$1,000,000 Each Occurrence

5. Umbrella Excess Liability

$10,000,000 Over primary insurance
$10,000 Retention

E. Additional Insurance Requirements

1. Additional Insureds.

Trail Conference, The Township

County and the Architect and their respective directors, officers, employees and volunteers shall be named as Additional Insureds on insurance provided by Contractor and any Subcontractors or Sub-subcontractors as specified herein. The Additional Insureds shall be named as Additional Insureds on all policies of insurance required by this Contract (except for Workers Compensation Insurance). General Liability coverage maintained by Contractor and Subcontractors or Sub-subcontractors shall contain Additional Insured endorsement CG 20 10 11/85 or equivalent. The Commercial General Liability Policy and any Excess or Umbrella Liability Policy shall stipulate that the insurance afforded the Additional Insureds shall apply as primary insurance and that any other insurance carried by the Additional Insureds will be excess only and not contribute with Contractor's, Subcontractor's or Sub-subcontractor's insurance. The Commercial General Liability and any Excess or Umbrella Liability Policies shall contain the usual cross liability wording indicating that except for its limits of liability, the policies shall operate as though separate policies were issued to each insured. Contractor shall provide Owner with evidence of compliance with this...
paragraph prior to commencement of the Work. Failure of Owner to receive this evidence of compliance of Contractor’s obligations under this paragraph shall not constitute a waiver of the Contractor’s obligations under this paragraph.

2. Company(s) providing insurance must be licensed or “admitted” in the State and acceptable to Owner.

3. Contractor shall provide to Owner a minimum of 30 days certified mail notice prior to cancellation, expiration, reduction of limits or material change to all policies.

4. All renewals shall be evidenced by a renewal binder, certificate or endorsements at least 15 days prior to the expiration of coverage.

5. Waiver of Subrogation.

The Owner and Contractor waive all rights against each other, their subcontractors of every tier, any separate contractors of the Owner (if any), their agents and employees, the Architect and any of their subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by insurance obtained pursuant to Section 2, or other property insurance applicable to the Work, except with respect to their rights to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar waivers of the Architect, Architect’s consultants, and their subcontractors of every tier by appropriate agreements in favor of each of the parties enumerated herein.

F. If a Commercial General Liability form is used for this insurance, ACORD Form 25-S (Sept. 2009) is written specifically to list required coverages under those policies.

G. Insurance Requirements for Subcontractors and Sub-subcontractors.

Except as modified by the Owner in writing, the insurance requirements set forth above, including, without limitation, the requirement to name Trail Conference, The Township, County and the Architect and their respective directors, officers, employees and volunteers as additional insureds and that insurance shall be primary and non-contributory, shall also apply to Subcontractors and their Sub-subcontractors. The Contractor shall be responsible for supervision of the filing with the Owner of insurance certificates and endorsements, satisfactory to the Owner, evidencing the insurance and waivers of subrogation required to be furnished by Subcontractors and Sub-subcontractors commencing any portion of the Work or furnishing equipment or materials and, at least 15 days prior to the expiration of any such policies, shall cause to be filed with the Owner, certificates and endorsements, satisfactory to the Owner, of renewal or replacement policies.
II. PERFORMANCE AND PAYMENT BOND REQUIREMENTS

A. Contractor's proposal must be accompanied by a Bid Bond issued by a surety company which shall insure the Owner to the extent of ten percent (10%) of the bid amount.

B. Within 10 days of the award of the contract, Contractor shall obtain and deliver to the Owner, and shall maintain at all times during the performance of the Work, (1) an executed Performance Bond for 100% of the Contract Sum as surety for faithful performance of the Contract and (2) an executed Payment Bond for 100% of the Contract Sum as surety for the payment of all persons performing labor and furnishing materials in connection therewith. Such bonds shall be in form and substance satisfactory to Owner and shall be issued by an independent corporate surety of recognized financial standing with executive offices in the continental United States. The cost of the premiums for such bonds shall be included in the Contract Sum.
EXHIBIT “D-1”

Phase 2 of Rehabilitation

CONTRACTOR ACKNOWLEDGEMENT OF PROGRESS PAYMENT AND RELEASE OF LIENS AND CLAIMS

[Contractor Name] (“Contractor”) hereby acknowledges that upon receipt from Trail Conference (“Owner”) of the sum of $___________ (the “Progress Payment”), such Progress Payment constitutes payment in full of the amount presently due from Owner to Contractor for labor performed or materials furnished by Contractor, and any and all Subcontractors and Sub-subcontractors, pursuant to that certain Construction Contract between Owner and Contractor dated ____________, 20__, as modified by and including any and all change orders, extras, additions, substitutions and omissions through the date hereof (the “Contract”), in connection with Phase 2 of the Rehabilitation together with all related site improvements (the “Project”) located at (the “Property”).

The Progress Payment is more particularly described in the application for payment dated ____________, 20__ (the “Application”) previously submitted by Contractor to Owner, which Application is incorporated herein by this reference. Contractor hereby represents and warrants to Owner that, including the Progress Payment, through the date hereof Contractor has received from Owner payments totaling $___________ for labor performed or materials furnished pursuant to the Contract.

Contractor hereby represents and warrants to Owner that (i) except for retainage in the amount of $___________ (the “Retainage”), the Progress Payment constitutes payment in full of all amounts presently due from Owner to Contractor for labor performed and materials furnished pursuant to the Contract, (ii) no notice of unpaid balance and right to file lien or mechanic’s or materialman’s lien or claim has been filed against the Property by Contractor, (iii) to the best of Contractor’s knowledge, information and belief, no notice of unpaid balance and right to file lien or mechanic’s or materialman’s lien or claim has been filed against the Property by anyone who has performed labor or furnished materials with respect to the Project, (iv) there is no known basis for the filing of any mechanic’s or materialman’s lien, claim or notice with respect to the Project, (v) releases, in a form previously approved by Owner, have been obtained by Contractor from all Subcontractors and Sub-subcontractors who are entitled to receive a portion of the Progress Payment, and (vi) all Subcontractors and Sub-subcontractors who were entitled to receive a portion of any prior progress payment have been paid in full.

Contractor, on behalf of itself and all Subcontractors and Sub-subcontractors, for and in consideration of the Progress Payment, hereby forever waives, releases and relinquishes any and all liens, claims and demands whatsoever, which it now has or might or could have on or against the Project, the Property, Owner and Owner’s successors and assigns, for labor performed or materials furnished in connection with the Application; provided, however, that this release does
not apply to the Retainage or to any labor performed or materials furnished pursuant to the Contract after the date of this Acknowledgement and Release.

Contractor further declares that by signing and sealing this instrument, Contractor shall be completely estopped from filing or maintaining any and all liens and claims against the Project and the Property for or with respect to the work described in the Application, and that in the event that any lien or claim is filed, Contractor shall immediately take steps to cause any such lien to be discharged and satisfied. Contractor shall indemnify, defend and hold harmless Owner from and against all claims, damages, losses and expenses, including, but not limited to, attorney’s fees, arising out or resulting from the assertion of any mechanic’s lien or claim or the filing of any mechanic’s lien, claim, or notice against the Project or the Property or the failure to discharge mechanic’s liens, claims and other filings as aforesaid.

IN WITNESS WHEREOF, Contractor, intending to be legally bound hereby, has caused this instrument to be executed, under seal, as of this ____ day of ________, 20__. 

CONTRACTOR: 

[Contractor Name] 

By: ____________________________

STATE OF: ____________________

) ss. 

COUNTY OF _________________

On this ____ day of ____________, 20__, before me, a Notary Public in and for the State of New Jersey, personally appeared __________________ the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first as above written.

Name: _________________________

NOTARY PUBLIC in and for the State

My appointment expires:

[NOTARY SEAL]
EXHIBIT "D-2"

Phase 2 of Rehabilitation

SUBCONTRACTOR, SUB-SUBCONTRACTOR AND SUPPLIER ACKNOWLEDGMENT OF PROGRESS PAYMENT AND RELEASE OF LIENS AND CLAIMS

[Subcontractor, Sub-subcontractor, or Supplier Name] ("Subcontractor") hereby acknowledges that upon receipt from [Contractor Name] ("Contractor") of the sum of $_____________ (the "Progress Payment"), such Progress Payment constitutes payment in full of the amount presently due from Contractor to Subcontractor for labor performed or materials furnished by Subcontractor, and any and all of its Sub-subcontractors and materialmen, pursuant to that certain subcontract between Contractor and Subcontractor dated ______________, 20_, as modified by and including any and all change orders, extras, additions, substitutions and omissions through the date hereof (the "Contract"), in connection with Phase 2 of the Rehabilitation (the "Project") located at ______________, Road, (the "Property").

The Progress Payment is more particularly described in the invoice or application for payment, dated ______________, 20_ (the "Invoice") previously submitted by Subcontractor to Contractor, which Invoice is incorporated herein by this reference. Subcontractor hereby represents and warrants to Contractor and Trail Conference ("Owner") that, including the Progress Payment, through the date hereof Subcontractor has received from Contractor payments totaling $_____________ for labor performed or materials furnished pursuant to the Contract.

Subcontractor hereby represents and warrants to Contractor and Owner that (i) except for retainage in the amount of $_____________ (the “Retainage”), the Progress Payment constitutes payment in full of all amounts presently due from Contractor to Subcontractor for labor performed and materials furnished pursuant to the Contract, (ii) no notice of unpaid balance and right to file lien or mechanic’s or materialman’s lien or claim has been filed against the Property by Subcontractor, (iii) to the best of Subcontractor’s knowledge, information and belief, no notice of unpaid balance and right to file lien or mechanic’s or materialman’s lien or claim has been filed against the Property by any of its Sub-subcontractors or materialmen who performed labor or furnished materials with respect to the Project, (iv) there is no known basis for the filing of any mechanic’s or materialman’s lien, claim or notice with respect to the Project, and (v) all Sub-subcontractors and materialmen who were entitled to receive a portion of any progress payment previously paid to Subcontractor have been paid in full.

Subcontractor, on behalf of itself and all Sub-subcontractors and materialmen, for and in consideration of the Progress Payment, hereby forever waives, releases and relinquishes any and all liens, claims and demands whatsoever, which it now has or might or could have on or against the Project, the Property, Owner and Owner’s successors and assigns, for labor performed or
materials furnished in connection with the Invoice; provided, however, that this release does not apply to the Retainage or to any labor performed or materials furnished by Subcontractor pursuant to the Contract after the date of this Acknowledgement and Release.

Subcontractor further declares that by signing and sealing this instrument, Subcontractor shall be completely estopped from filing or maintaining any and all liens, claims and notices against the Project and the Property for or with respect to the work described in the Invoice, and that in the event that any such lien, claim or notice is filed, Subcontractor shall immediately take steps to cause such lien, claim or notice to be discharged and satisfied. Subcontractor shall indemnify, defend and hold harmless Contractor and Owner from and against all claims, damages, losses and expenses, including, but not limited to, attorney’s fees, arising out or resulting from the assertion by Subcontractor, or any of its Sub-subcontractors or materialmen, of any mechanic’s lien or claim or the filing of any mechanic’s lien, claim, or notice against the Project or the Property or the failure to discharge mechanic’s liens, claims and other filings as aforesaid.

IN WITNESS WHEREOF, Subcontractor, intending to be legally bound hereby, has caused this instrument to be executed, under seal, as of this ______ day of ____________, 20__.

SUBCONTRACTOR:

By: ________________________________

STATE OF )
 ) ss.
COUNTY OF _________________ )

On this ______ day of ____________, 20__, before me, a Notary Public in and for the State of _________________, personally appeared _________________________ the __________ of _________________, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first as above written.

Name: ________________________________

NOTARY PUBLIC in and for the State of New Jersey

My appointment expires:

[NOTARY SEAL]
EXHIBIT “E-1”

Phase 2 of Rehabilitation

CONTRACTOR’S ACCEPTANCE OF FINAL PAYMENT AND RELEASE OF LIENS AND CLAIMS

[Contractor Name] (“Contractor”) hereby acknowledges that upon receipt from Trail Conference (“Owner”) of the sum of $ , such payment constitutes full and final payment of any and all amounts due to Contractor for labor performed or materials furnished by Contractor, and any and all of its Subcontractors, Sub-Subcontractors, and materialmen, pursuant to contract, or otherwise, including any and all change orders, extras, additions, substitutions and omissions through the date hereof of the “Contract”), in connection with Phase 2 of the Rehabilitation of the Road, together with all related site improvements (the “Project”) located at the “Property”).

Contractor hereby represents and warrants to Owner that Contractor has received final payment in full of all amounts due for labor performed and materials furnished pursuant to the Contract, (ii) no notice of unpaid balance or right to file construction lien has been filed against the Property or served by Contractor, (iii) no notice of unpaid balance or right to file construction lien has been filed against the Property or served by any of its Subcontractors, Sub-Subcontractors, or materialmen who performed labor or furnished materials with respect to the Project, (iv) there is no known basis for the filing of any construction lien, any other claim, or notice with respect to the Project by Contractor or anyone acting through or under Contractor, and (v) all Subcontractors, Sub-Subcontractors, and materialmen who were entitled to receive a portion of any progress payment previously paid to Contractor have been paid in full.

Contractor, on behalf of itself, its predecessors, successors, affiliates, and all Subcontractors, Sub-Subcontractors, and materialmen, for and in consideration of payment made, hereby forever waives, releases, and relinquishes any and all liens, claims, and demands whatsoever, which it or they now have or might or could have on or against the Project, the Property, Owner and Owner’s successors and assigns, attorneys, affiliates, and lenders (collectively “Owner Releasees”) for labor performed or materials furnished in connection with the Project.

Contractor further declares that by signing and sealing this instrument, Contractor shall be completely estopped from filing or maintaining any and all liens, claims, and notices against the Project and the Property, and the Owner Releasees, and that in the event that any such lien, claim, or notice is filed or has been filed by Contractor or anyone acting through or under Contractor, Contractor shall immediately take steps to cause such lien, claim, or notice to be withdrawn, discharged, and satisfied. Contractor shall indemnify, defend, and hold harmless Owner Releasees from and against all claims, damages, losses and expenses, including, but not limited to, attorney’s fees, arising out or resulting from the assertion by Contractor, or any of its Subcontractors, Sub-Subcontractors, or materialmen, of any construction claim, lien, or notice or
the filing of any construction lien, claim, or notice against the Project or the Property or the failure to discharge mechanic's liens, claims and other filings as aforesaid.

IN WITNESS WHEREOF, Contractor, intending to be legally bound hereby, has caused this instrument to be executed, under seal, as of this ______ day of ______________, 20____ .

CONTRACTOR:
[Contractor Name]

By: ____________________________

Name: __________________________

Title: ____________________________

STATE OF: ) ) ss.
COUNTY OF __________ ) )

On this ______ day of ______________, 20____ , before me, a Notary Public in and for the State of ______________, personally appeared ______________________ the __________________ of ______________, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first as above written.

Name: __________________________

NOTARY PUBLIC in and for the State

My appointment expires:

[NOTARY SEAL]
EXHIBIT “E-2”

Phase 2 of Rehabilitation

SUBCONTRACTOR, SUB-SUBCONTRACTOR, AND SUPPLIER ACCEPTANCE OF FINAL PAYMENT AND RELEASE OF LIENS AND CLAIMS

[Subcontractor, Sub-subcontractor and or Supplier Name] (“Subcontractor”, “Sub-Subcontractor,” or “Supplier”) hereby acknowledges that upon receipt from [Contractor Name] (“Contractor”) and Trail Conference (“Owner”) of the sum of $_________, such payment constitutes full and final payment of any and all amounts due to Subcontractor for labor performed or materials furnished by Subcontractor, and any and all of its Sub-Subcontractors and materialmen, pursuant to contract, or otherwise, including any and all change orders, extras, additions, substitutions and omissions through the date hereof (the “Contract”), in connection with Phase 2 of the Rehabilitation together with all related site improvements (the “Project”) located at . . . . . . . . . (the “Property”).

Subcontractor hereby represents and warrants to Contractor and Owner that Subcontractor has received final payment in full of all amounts due for labor performed and materials furnished pursuant to the Contract, (ii) no notice of unpaid balance or right to file construction lien has been filed or served against the Property by Subcontractor, (iii) to the best of Subcontractor’s knowledge, information and belief, no notice of unpaid balance or right to file construction lien has been filed or served against the Property by any of its Sub-Subcontractors or materialmen who performed labor or furnished materials with respect to the Project, (iv) there is no known basis for the filing of any construction lien, any other claim, or notice with respect to the Project, and (v) all Sub-Subcontractors and materialmen who were entitled to receive a portion of any progress payment previously paid to Subcontractor have been paid in full.

Subcontractor, on behalf of itself, its predecessors, successors, affiliates, and all Sub-Subcontractors and materialmen, for and in consideration of payment made, hereby forever waives, releases, and relinquishes any and all liens, claims, and demands whatsoever, which it now has or might or could have on or against the Project, the Property, Owner and Owner’s successors and assigns, attorneys, affiliates, and lenders (collectively “Owner Releaseees”) for labor performed or materials furnished in connection with the Project.

Subcontractor further declares that by signing and sealing this instrument, Subcontractor shall be completely estopped from filing or maintaining any and all liens, claims, and notices against the Project and the Property, Contractor, and the Owner Releasees, and that in the event that any such lien, claim, or notice is filed or has been filed by Subcontractor or anyone acting through or under Subcontractor, Subcontractor shall immediately take steps to cause such lien, claim, or notice to be withdrawn, discharged, and satisfied. Subcontractor shall indemnify, defend, and hold harmless Contractor and Owner Releasees from and against all claims, damages, losses, and expenses, including, but not limited to, attorney’s fees, arising out or of resulting from the assertion by Subcontractor, or any of its Sub-Subcontractors or materialmen,