

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!)**

by Don Pachner

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Presenter: Don Pachner

- Worked for 25 years with respected New York City insurance brokerage firm Frenkel & Co., Inc.
- Turned his outdoor and conservation volunteer work into a specialty retail insurance brokerage firm in 2003:
Pachner & Associates, LLC
Insurance Brokers & Consultants
- Specializes in insuring wilderness recreation, nature & outdoor education, environmental conservation and research organizations
- Contact: dpachner@pachner.info
(888) 582-4884 [toll-free]

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 Analog 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**

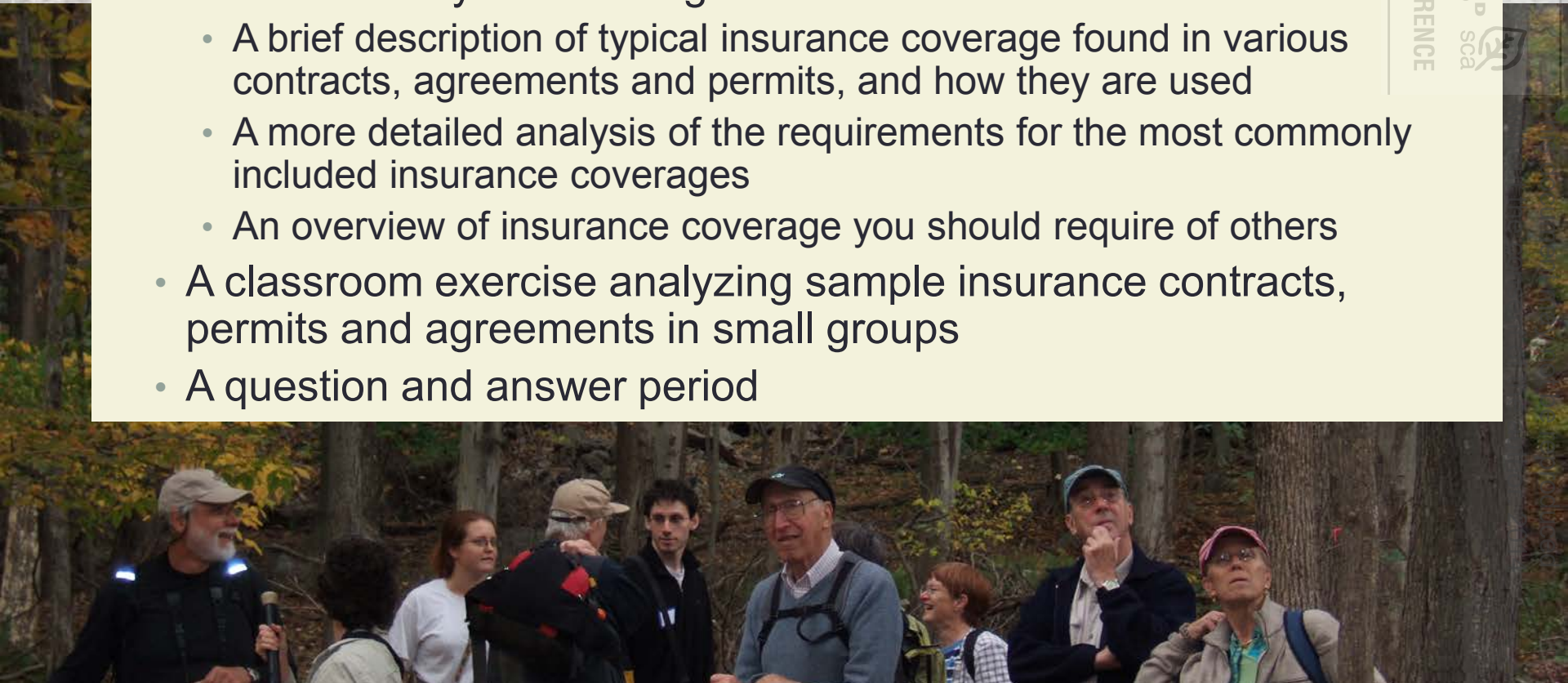


Types of Insurance Typically Treated in Contracts, Agreements and Permits

- 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 remainder 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**



Cedar Stump House, National Park Service – North Cascades National Park Visitor Center, WA

Marine Insurance

- Protection & Indemnity (P&I)
 - Analogous 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/\$1,000,000/\$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 for in depth articles on contractual liability issues and insurance through 2013 policy form revisions
- 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: \$3,000,000
Bodily Injury per Occurrence: \$3,000,000
Property Damage: \$3,000,000

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 leases and accepts from Landlord, that certain real property described in Paragraph 1 (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 on or before 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 1 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 onsite office, 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 expense obligations 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 obligations 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, Landlord may use, apply or retain 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 shall not be required to keep 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 judgement, 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 or 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 any and all other portions 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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6. Use, Access and Parking.

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 use or permit the use of the Premises in any manner that will 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 this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. The Premises have not undergone an inspection by a Certified Access Specialist (CASp), pursuant to California Civil Code §55.51 et seq. Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Tenant's specific use of the Premises, Landlord makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. Tenant shall be solely responsible for any costs of, or liabilities resulting from failure to comply with, the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and Title 24 of the State of California or related requirements or regulations. Tenant acknowledges that neither Landlord nor Landlord's agents has made any representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, or the permissibility of such business at such Premises under applicable federal, state and local laws, ordinances, rules and regulations, and that 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" or which is or becomes similarly 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, ordinance or regulation 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 breach of the foregoing covenants, Landlord shall not be liable for any claims, damages or losses due 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 by counsel 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 each agree to promptly notify the other party of, and provide copies of, any communication received from any governmental entity concerning Hazardous Materials or the violation of Hazardous Materials Laws that relate to the Premises. If Landlord requires testing to ascertain whether there has been any violation of Hazardous Materials Laws on the Premises, then upon prior written notice to Tenant, Landlord, may proceed with any such testing that is then customarily used for that purpose. The cost of such testing shall be an expense of Landlord if Tenant has not violated any Hazardous Material Laws. In the event that Tenant has violated any Hazardous Material Laws, then the cost of testing, together with all other costs for remediation or any other related liability, shall be borne by Tenant. Tenant acknowledges that, due to the nature of many industrial uses, exposure to hazardous materials (including noxious gases and liquids) from surrounding neighbors and properties may occur. Tenant agrees that Landlord shall not be held liable in any way for any such exposure. Further, to the extent that Landlord is required by the City, or any other entity with jurisdiction, to implement actions to protect the Premises from the aforementioned exposure(s), then Tenant shall participate to the fullest extent reasonably possible in implementing the protective actions required by the City, or other authority. The cost of installation and maintenance of any protective actions or systems shall be a maintenance expense and shall be reimbursable by Tenant to Landlord as provided in Paragraph 5.1 hereof. The covenants contained herein shall survive the expiration or earlier termination of the Lease.

6.5 Access and Parking.

(a) **Access.** Tenant and its employees, invitees, visitors and guests, Tenant's permitted successors and assigns, if any (collectively, "Tenant's Invitees"), shall be entitled to the non-exclusive use of the primary access road or roads from public rights of way now or hereafter existing across the business park, on which the Premises are located (the "Facility"), to the Premises. The parties understand that Landlord shall have the right to change the exact configuration and/or location of ingress and egress during the term so long as Tenant's operations are not materially adversely affected by such change.

(b) **No Obstruction.** Except as provided in Paragraph 6.5.a above, in its use of parking areas and ingress and egress areas on the Facility, Tenant and Tenant's Invitees shall not in any way interfere with the free flow of traffic on ingress, egress and parking areas on the Facility, or the ability of Landlord and other tenants and their employees, invitees, visitors and guests and their respective permitted successors and assigns, if any, to use the same for their intended use. Tenant shall have use on a non-exclusive basis of _____ % of the parking stalls on the Property where the Premises are located.

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. At Landlord's option, but without any requirement of the Landlord to do so, Landlord may take on the maintenance obligations, or any portion thereof, of Tenant outlined in the previous sentence, and Tenant shall reimburse Landlord upon demand for all costs incurred by Landlord. At the expense of Tenant, the landscaping shall be maintained by a professional gardener and the exterior of the building shall be repainted (with color and paint scheme to be approved by Landlord) at least once every four (4) years. Tenant shall, at Tenant's expense, procure and maintain contracts for quarterly service, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, (iii) clarifiers, and (iv) any other equipment located at or on the Premises. Tenant shall provide Landlord upon request with: (i) copies of the contracts; and (ii) quarterly service reports. However, Landlord reserves the right, upon notice to Tenant, to procure and maintain any or all of such service contracts and if Landlord so elects, Tenant shall reimburse Landlord, upon demand, for the cost thereof.

7.2 **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, clean and free of debris. Unless otherwise agreed to in writing by Landlord, Tenant's surrender obligations shall include removing all of Tenant's communication equipment and other equipment of any type, including all wiring and cabling installed for Tenant's use. Tenant shall repair any damage to the Premises occasioned by the removal of Tenant's trade fixtures, furnishings and equipment. Tenant shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing on the Premises in good operating condition.

7.3 **Landlord Rights.** If Tenant fails to perform Tenant's obligations under this Paragraph 7, or under any other paragraph of this Lease, Landlord may, at its option (but shall not be required to), enter upon the Premises, after ten (10) days' prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf and put the same in good order, condition and repair, and the cost thereof shall become due and payable as additional Rent to Landlord together with Tenant's next Rent payment.

7.4 **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 have no obligation, in any manner whatsoever, to repair and maintain the Premises nor the building located thereon nor the equipment therein, whether structural or non-structural, all of which obligations are intended to be that of the Tenant. Tenant hereby waives the provisions of California Civil Code Section 1941 and 1942 or any related or successor provision of law which would otherwise afford Tenant the right to make repairs at Landlord's expense, or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.

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) in cumulative costs, during the Term of this Lease. As used in this Paragraph 7.5, the term "Utility Installations" shall include carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing, and fencing. Tenant shall not, without Landlord's prior written consent, make any roof penetrations or structural alterations to the Premises. Landlord shall have the right at its sole and arbitrary discretion to approve or disapprove the location and form of any roof penetrations or structural alterations. For purposes of this Paragraph 7.5, any proposed Tenant Modifications shall 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 remove any or all of said Tenant Modifications at the expiration of the Term, and restore the Premises to their prior condition. Landlord may require Tenant to provide Landlord with, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Tenant Modification(s), to insure Landlord against any liability for mechanic's and materialmen's liens and to insure completion of work. In the event a mechanic's or materialmen's lien is filed against the Premises, or the Property of which the Premises are a part, Tenant shall be required to immediately provide a bond to remove the lien from title. Failure to immediately remove any type of mechanic's or materialmen's lien from the Premises shall be a material default of this Lease. Should Tenant make any Tenant Modifications without the prior approval of Landlord, Landlord may require that Tenant immediately remove any or all of the same and restore the Premises to their prior condition. The immediately preceding three sentences shall survive the termination of this Lease.

(b) Any Tenant Modifications in or about 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

a payment or performance bond as provided in Paragraph 7.5(a) 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 at or for use in or on the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Tenant shall give Landlord not less than ten (10) days' notice prior to the commencement of any work in or on the Premises, and Landlord shall have the right to post notices of non-responsibility in or on the Premises as provided by law.

(d) Unless Landlord requires their removal, as set forth in Paragraph 7.5(a), all Tenant Modifications (whether or not such Tenant Modifications constitute trade fixtures of Tenant), which may be made on the Premises, shall become the property of Landlord and remain upon and be surrendered with the Premises at the expiration of the Term. Notwithstanding the provisions of this Paragraph 7.5(d), Tenant's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of Paragraph 7.2.

7.6 Common Area Maintenance. Landlord, at Landlord's option, may arrange for any portion of the exterior or common area maintenance and repair. Tenant shall pay to Landlord upon demand a reasonable proportion as determined by Landlord of such exterior or common area maintenance and repair expenses and costs.

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) Insurance covering loss or damage to the Premises in the amount of the full replacement value thereof, as the same may exist from time to time, but in no event less than the total amount required by lenders having liens on the Premises, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended perils ("all risk" as such term is used in the insurance industry) and seismic events. Said insurance shall provide for payment of loss thereunder to Landlord or to the holders of mortgages or deeds of trust on the Premises. If such insurance coverage has a deductible clause, Tenant shall be liable for such deductible amount.

(b) Comprehensive general liability (Landlord's risk only including without limitation bodily injury, personal injury and property damage insurance) in the amount of _____ million dollars or such higher limits as Landlord may reasonably require.

(c) Insurance against abatement or loss of rent in case of fire or other casualty in an amount equal to the Rent, Real Property Taxes, maintenance costs and expenses, and insurance premium payments to be made by Tenant during one (1) year.

(d) Such other insurance as Landlord may deem desirable in its reasonable business judgment.

If the insurance premium(s) for the Facility do not break out the portion applicable to the Premises, then Tenant's portion shall be an equitable portion of the premium(s) as reasonably determined by Landlord. Landlord's reasonable determination thereof, in good faith, shall be conclusive.

8.2 Tenant's Insurance. Tenant shall, at its cost, obtain and maintain throughout the Term of this Lease the following insurance policies:

(a) a commercial general liability insurance policy, including insurance against assumed or contractual liability under this Lease, for liability arising out of Tenant's operations in, and the use, occupancy or maintenance of, the Premises and all areas appurtenant thereto, including any portion of the common areas used by Tenant, to afford protection with respect to bodily injury, death or property damage (including loss of use) with limits at least as high as the amounts respectively stated in Paragraph 1 or such higher limits as Landlord may reasonably require, and in the event property of Tenant's invitees or customers are kept in or about the Premises, warehouse's legal liability or bailee customers insurance for the full value of the property of such invitees or customers. If insurance with a general aggregate limit is used, the general aggregate limit shall apply separately to the Premises.

(b) an all-risks property and casualty insurance (special form building and personal property coverage) policy, including theft coverage, written at replacement cost value with replacement cost endorsements, covering all of the Tenant's property.

(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 at least \$1,000,000 for all owned, leased/hired or non-owned vehicles.

(e) an excess/umbrella liability policy "following form" of not less than Two Million Dollars (\$2,000,000), including a "drop down" feature in case the limits of the primary policy are exhausted.

(f) in the event Tenant will generate, handle or store hazardous material at the Premises, pollution legal liability insurance of not less than One Million Dollars (\$1,000,000).

8.3 Insurance Policies. Insurance required hereunder shall be with companies licensed to do business in California and holding a Best's Insurance Guide "General Policyholder's Rating" of at least "A" and a "Financial Size Category" rating of at least Class VII. Insurance policies shall not be cancelable or subject to reduction in coverage or other modification except after thirty (30) days' prior written notice to Landlord and mortgage holders to the extent required by any promissory note(s), loan agreement(s) or documents, or deed(s) of trust encumbering the Premises. Subject to the terms of any deeds of trust encumbering the Premises, the insuring party shall deposit with such mortgage holders as Landlord may require, policies, duplicates or certificates as such holders may require, and shall in all cases furnish the other party with policies, duplicates and certificates. Tenant shall not violate or permit to be violated any of the conditions or provisions of any policy provided for in Paragraph 8.1, and Tenant shall so perform and satisfy the requirements of the companies writing such policies so that at all times companies of good standing reasonably satisfactory to Landlord shall be willing to write and/or continue such insurance.

8.4 Waiver of Subrogation. Tenant and Landlord each hereby release and relieve the other, and waive their entire right of recovery against the other for loss or damage arising out of or incident to the perils insured against hereunder, which perils occur in, on or about the Premises, whether due to the negligence of Tenant or Landlord or their agents, employees, contractors and/or invitees. Tenant and Landlord shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

8.5 Indemnity. Tenant shall indemnify and hold harmless Landlord from and against any and all claims arising from Tenant's use of the Premises, or from the conduct of Tenant's business or from 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 from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence of Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorneys' fees and disbursements, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon including such costs and expenses arising from discovery and trial whether or not Landlord is a party to such action; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord. As used in this Paragraph 8.5 and in Paragraph 8.6, the term "Landlord" shall include Landlord, Landlord's lenders, property manager, partners, members, directors, officers, agents, employees, representatives, successors and assigns, and each of their respective partners, members, directors, officers, agents, employees, representatives, successors and assigns.

8.6 Exemption of Landlord from Liability. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom, or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers, guests, or any other person in or about the Premises; nor shall Landlord be liable to the person of Tenant, Tenant's employees, agents or contractors whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air-conditioning or lighting fixtures, or from any other cause, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, regardless of whether the cause of such damage or injury or the means of repairing same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the building or complex in which the Premises are located.

9. Damage or Destruction.

9.1 Partial Damage--Insured. Subject to the provisions of Paragraphs 9.3 and 9.4, if the Premises are damaged and such damage was caused by a casualty covered under an insurance policy, Landlord shall, or at Landlord's option, Tenant shall repair such damage to Landlord's satisfaction as soon as reasonably possible and this Lease shall continue in full force and effect. If the insurance proceeds received by Landlord are not sufficient to affect such repair, and Landlord elects to repair, Tenant shall pay to Landlord upon demand any costs incurred by Landlord not fully covered by insurance proceeds. If Tenant repairs the damage, Landlord shall reimburse Tenant for the costs of repair to the extent of insurance proceeds received by Landlord.

9.2 Partial Damage--Uninsured. Subject to the provisions of Paragraphs 9.3 and 9.4, if at any time during the Term hereof the Premises are damaged, except by a negligent or willful act of Tenant (in which event Tenant shall make the repairs at its expense), and such damage was caused by a casualty not covered under an insurance policy required to be maintained pursuant to Paragraph 8.1, Landlord may, at Landlord's option, either (a) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (b) give written notice to Tenant, within thirty (30) days after the date of the occurrence of such damage, of Landlord's intention to cancel and terminate this Lease as of the date of the occurrence of such damage. In the event Landlord elects to give such notice of Landlord's intention to cancel and terminate this Lease, Tenant shall have the right within ten (10) days after the receipt of such notice to give written notice to Landlord of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this Lease shall

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 such damage, repair or restoration continues shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired, but only to the extent of any proceeds received by Landlord from rental abatement insurance described in Paragraph 8.1. Except for the abatement of Rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration.

9.6 Waiver. Tenant and Landlord hereby waive the provisions of California Civil Code Paragraphs 1932 (2) and 1933 (4) or 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 made directly by Tenant, then, upon payment by Tenant, Tenant shall immediately provide Landlord with proof of payment. If deposits collected for real 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 with Landlord. If any such taxes paid by Tenant shall cover any period of time after the expiration of the Term hereof, Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Lease shall be in effect, and Landlord shall reimburse Tenant to the extent required within thirty (30) days following expiration of the Term. If Tenant shall fail to pay any such taxes, Landlord shall have the right to pay the same, in which case Tenant shall repay such amount to Landlord with Tenant's next Rent installment, together with interest at the maximum rate then allowable by law.

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 inheritance, personal income 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, as against Landlord's right to rent or other income therefrom, and as against Landlord's business of leasing the Premises. 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 hereinabove included within the definition of Real Property Tax or (ii) the nature of which was hereinbefore 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 thereon. 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. No damages, compensation, or claim shall be payable by Landlord, and this Lease and the obligations of Tenant to perform all of its covenants and agreements hereunder shall in no way be affected, impaired, reduced, or excused, in the event that there shall be an interruption, curtailment, or suspension of the Premises' HVAC, utility, sanitary, elevator, water, telecommunications, security (including equipment, devices, and personnel), or 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 other causes of any kind whatsoever that are beyond the control of Landlord, including, but not limited to:

- (a) Lack of access to the Premises (which shall include, but not be limited to, the lack of access to the Building or the Premises when it or they are structurally sound, but inaccessible due to evacuation of the surrounding area or damage to nearby structures or public areas);
- (b) Any cause outside 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 agents within the Premises);
- (d) Disruption of mail and deliveries to the Premises resulting from a Casualty;
- (e) Disruption of telephone and telecommunications services to the Premises resulting from a Casualty; or
- (f) 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 being 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, in whole or in part; (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 an assignment or sublet, provided the proposed assignee or subtenant is satisfactory to Landlord as to credit, reputation and responsibility and will occupy and use the Premises for the same purposes specified in Paragraph 1 and; provided that such assignment or subletting shall not be effective unless and until the guarantors of Tenant's obligations under this Lease, if any, have delivered to Landlord a writing, in a form reasonably satisfactory to Landlord, pursuant to which it consents to the assignment and subletting and it affirms, acknowledges and agrees that the guaranty will continue in full force and effect notwithstanding such assignment or subletting, and such successor of Tenant shall have agreed in writing to be bound 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, including, without limitation, actual attorneys' 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.

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 primary 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 other 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. In connection with any proposed assignment or sublease, Tenant shall submit to Landlord in writing (a) the name of the proposed assignee or subtenant, (b) such information as to its credit history, financial responsibility and standing as Landlord may require, and (c) all of the terms and conditions upon which the proposed assignment or subletting 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 such 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 is

the subject of the option. If this Lease is canceled as to a portion of the Premises only, the Rent after the date of cancellation shall be reduced in the proportion that the floor area of the canceled portion bears to the total floor area of the Premises.

12.4 Excess Sublease Rental. 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.

12.5 Additional Security Deposit. 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.

13. Defaults; Remedies.

13.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

(a) The vacating or abandonment of the Premises by Tenant.
(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, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant.

(c) The failure by Tenant to perform any of the covenants, conditions or provisions of this Lease to be performed by Tenant for which a time for performance after delivery of written notice is specified, other than described in Paragraph 13.1(b), where such failure continues after the expiration of the time period specified in such notice.

(d) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in Paragraph 13.1 (b) and 13.1(c), where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(e) (i) The making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant 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 sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; (iv) commencement of proceedings seeking the winding up or dissolution of Tenant; or (v) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

(f) 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 or any guarantor of Tenant's obligations hereunder was materially false.

(g) (i) The making by any guarantor of Tenant's obligations hereunder of any general arrangement or assignment for the benefit of creditors; (ii) the filing by or against any such 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 such guarantor, the same is dismissed within sixty (60) days); (iii) the revocation or attempt to revoke any guaranty by any guarantor of Tenant's obligations under this Lease; or (iv) the winding up or dissolution or commencement of any proceeding therefore with respect to any such guarantor.

13.2 Remedies. In the event of any material default or breach by 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 this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. 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, actual attorneys' fees and disbursements, and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid Rent for the balance of the Term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; that portion of the leasing commission actually paid by Landlord applicable to the unexpired Term of this Lease; and all other damages available to Landlord under California Civil Code Section 1951.2. Unpaid installments of Rent or other sums shall bear interest from the date due at the maximum rate then allowable by law.

(b) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event, Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the Rent as it becomes due hereunder. Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations).

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of California.

No act of Landlord shall be construed as an election to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, or operate to release Tenant in whole or in part from any of Tenant's obligations under this Lease, unless express written notice of such intention is sent by Landlord to Tenant. Tenant hereby irrevocably waives any right to redeem or reinstate this Lease.

13.3 Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within thirty (30) days after written notice by Tenant to Landlord, and to the holder of any mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligations; provided however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within thirty (30) days of written notice of default and thereafter diligently prosecutes the same to completion.

13.4 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "Condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the building or the Premises, or more than twenty-five percent (25%) of the land area of the Premises which is not occupied by any building, is taken by Condemnation; then Tenant may, at Tenant's option to be exercised in writing only within ten (10) days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession), terminate this Lease as of the date the condemning authority takes such possession. If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Rent shall be reduced in the proportion that the floor area taken bears to the total floor area of the building situated on the Premises. No reduction in Rent shall occur if the only area taken is that which does not have a building located thereon; nor shall Landlord be under any obligation or liable to provide any replacement of any exclusive parking, if any, assigned to Tenant, located on any condemned land area. Any award for the taking of all or any part of the Premises under the power of eminent domain, or any payment made under threat of the exercise of such power, shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award for loss or damage to Tenant's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such Condemnation, Landlord shall, to the extent of severance damages received by Landlord in connection with such Condemnation, repair any damage to the Premises caused by such Condemnation, except to the extent that Tenant has been reimbursed therefore by the condemning authority. Tenant shall pay any amount in excess of such severance damages required to complete such repair.

15. Examination of Lease. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of, or option to, lease. This instrument is not effective as a lease or otherwise until execution and delivery by Landlord and Tenant.

16. Estoppel Certificate.

(a) Tenant shall, at any time during the Term, upon ten (10) days prior written notice from Landlord or its lenders, execute, acknowledge and deliver to Landlord a statement in writing in the form attached hereto as Exhibit "B" (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification, and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder.

specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any of Landlord's lenders, 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 be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) 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 Landlord 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 such financial statements of Tenant as may be reasonably required 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 interest in the Premises, Landlord shall be automatically released from all liability as respects the further performance of covenants on the part of Landlord herein contained provided the assignee executes an assumption agreement agreeing to assume all of Landlord's 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 it will not 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 by Tenant 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. Notice by certified mail shall be deemed served on the date of delivery as shown on the postal receipt. Either party may, by notice to the other, specify a different address for notice purposes, except that, upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for notice purposes. A copy of all notices to be given to Landlord hereunder shall be concurrently transmitted by Tenant to such party or parties at such addresses as Landlord may hereafter designate by notice to Tenant.

23. Waivers. No waiver by Landlord of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of Rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant or of any provision hereof, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. Partial or incomplete payments accepted by Landlord shall not be a waiver or considered an accord and satisfaction of any amounts due.

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 occupancy shall be a tenancy from month to month at a rental equal to the Rent during the last month of the Term increased by one hundred percent (100%) and upon all the terms hereof applicable to a month-to-month tenancy. If Tenant fails, at the expiration, or earlier termination, of the Term, to surrender the Premises or any part thereof immediately and in the condition required by the Lease, 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 surrender.

25. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law, in equity, or hereunder.

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 venue 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 real property of which the Premises are a part, and to any 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 hypothecation or security hereafter placed upon the real property of which the Premises are a part shall not be effective unless the mortgagee or trustee shall execute with Tenant a subordination, non-disturbance and attornment agreement recognizing, among other things, that Tenant's right to quiet possession of the Premises shall not be disturbed, if Tenant is not in default, and so long as Tenant shall pay the Rent and observe and perform all the provisions of this Lease. If any mortgagee or trustee shall elect to have this Lease prior to the lien of its mortgage or deed of trust, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage or deed of trust, whether this Lease is dated prior or subsequent to the date of said mortgage or deed of trust or the date of recording thereof.

(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, or 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 any warranty of Landlord, express or implied, as to the nature or condition of, or title to the Premises, or its fitness for Tenant's intended use of same. Tenant is relying solely upon its own independent inspection, investigation and analysis of the Premises as it deems necessary or appropriate (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 representations, statements, 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, or to the building of which they are a part, as Landlord may deem necessary or desirable; provided, however, that Landlord and Landlord's agents shall have such rights 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 advertising 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, at the option of the Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such tenancies.

34. Easements, Boundary Changes. Landlord reserves to itself the right, from time to time, to grant such easements, rights, dedications and enact boundary and common area configuration adjustments which Landlord deems necessary or desirable and to cause the recordation of parcel maps and restrictions, so long as they do not unreasonably interfere with the use of the Premises by Tenant. Tenant shall sign any of the aforementioned documents upon request of Landlord and failure to do so shall constitute a material breach of this Lease by Tenant.

35. Quiet Possession. Upon Tenant's paying the Rent, additional rent and other sums provided hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire Term hereof, subject to the provisions of this Lease.

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 the making of such Guaranty, together with a certificate of incumbency showing the signature of the persons 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 or all of the personal property, and may sell all or any part of the personal property at a public or private sale, in one successive sales, with or without notice, to the highest bidder for cash, and, on behalf of Tenant, sell and convey all or 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 Liens," 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 located, upon the Premises which are granted a secured party, 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 their property from the acts of third parties.

41. Authority. If Tenant is a corporation, limited liability entity, trust or partnership, each individual executing this Lease on behalf of such entity represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said entity. If Tenant is a corporation, limited liability entity, trust or partnership, 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 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, restructure, 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 and costs, whether incurred by in-house counsel or outside counsel, all its expert witness and/or consultant's fees and costs, all its 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 without limitation all the Fees 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 hereto 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 by 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 an original counterpart or a copy of this Paragraph with any court as written evidence of the consent of Tenant and Landlord hereto to the waiver of their right to trial by jury.

49. Captions. The headings and captions included in this Lease are for convenience only and do not limit its provisions.

50. Rent Increases. The Rent as called for in Paragraph 1 shall commence at _____ per month. The Rent shall increase according to the following schedule:

Effective Date	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 COMMERCIALY 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 BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE

AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE. 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: _____

By: _____

Dated:

Dated:

"Tenant"

By:

By:

Dated:

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)

Prop Mgt/Leases/BJI 703 Investors/California Canoe/Lease First RL 8-28-14



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EXHIBIT "A"
(To be provided)

EXHIBIT "B"
TENANT ESTOPPEL CERTIFICATE
(on company letterhead)

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.

rely on them and that these statements are

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)



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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. _____

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.) each occurrence/aggregate, where applicable. _____

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[Redacted text]

B. Aircraft Hull Insurance. Aircraft hull insurance covering the aircraft hull and engines and all aircraft equipment against

[Redacted text]

C. [Redacted text]

[Redacted text]

(ii) [Redacted] and shall provide that the coverage there under may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to

(iii) [Redacted], its parents, and any subsidiaries, related and affiliated companies of each, and the officers, directors, shareholders, employees, agents and assigns of each.

(iv) [Redacted]

(v) [Redacted]

[Redacted]

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

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

b. [Redacted] (if required by [Redacted] and with counsel selected by [Redacted]), indemnify and hold [Redacted], 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 [Redacted] demands, suits, judgments, losses, or expenses [Redacted] from or out of:

(i) any act, error, or omission of [Redacted], 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 [Redacted] in furtherance of [Redacted]'s services hereunder; and/or

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

(iv) any breach of [Redacted]'s representations, warranties or agreements as set forth herein.

c. [Redacted] 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 [Redacted]'s Trademarks

[Redacted] 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 [Redacted] or the fact that [Redacted] 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 [Redacted]'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 _____, 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.

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Accepted and Agreed to:

Accepted and Agreed to:

By: _____

Title: _____

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

Date (MM/DD/YYYY)
/13

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

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

PRODUCER	INSURANCE SERVICES,	Contact Name _____		
		Phone (A/C, No. Ext) _____	Fax (A/C, No) _____	
INSURED	BURBANK CA	Email Address _____		
		Insurer's Affording Coverage		NAIC # _____
		NSURER A: _____	nsurance Company	
		NSURER B: _____		
		NSURER C: _____		
		NSURER D: _____		
		NSURER E: _____		
		NSURER F: _____		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

TYPE OF INSURANCE	A			(MM/DD/YYYY)	(MM/DD/YYYY)		
A							
X COMMERCIAL GENERAL LIABILITY	X		CP	13	/14	EACH OCCURRENCE	\$ 1,000,000
CLAIMS MADE <input checked="" type="checkbox"/>						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 1,000,000
						Medical Expenses Limit	\$ 5,000
A AUTOMOBILE LIABILITY	X		CP0	/13	/14	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
						BODILY INJURY (Per person)	\$
X ALL OWNED AUTOS	X		PHYSICAL DAMAGE			BODILY INJURY (Per accident)	\$
X HIRED AUTOS	X		\$5,000,000 PER OCC			PROPERTY DAMAGE (Per accident)	\$
X PHYSICAL DAMAGE*			DED 10%/Min \$2,500 /Max \$7,500				
A Umbrella Liab	X		EX0	0 /13	14	EACH OCCURRENCE	\$ 4,000,000
X						AGGREGATE	\$ 4,000,000
DEDUCTIBLE							\$
RETENTION \$							\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY							\$
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					Other	\$
If yes, describe under DESCRIPTION OF OPERATIONS below							\$
A OTHER -			D10	/13	0 /14	\$1,000,000 L MIT / \$1,500 DEDUCTIBLE	
PROPS/SETS/WARDROBE						\$1,000,000 L MIT / \$1,500 DEDUCTIBLE	
THIRD PTY PROP DAMAGE						\$5,000,000 L MIT / \$2,500 DEDUCTIBLE	
MISC. EQUIPMENT (M.E.)							

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

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: "

CERTIFICATE HOLDER	Cancellation
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Insurance Services

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MY ORGANIZATION
1 CHESTNUT HILL ROAD
ANYWHERE, USA 99999

September 29, 2014

[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,

WILDERNESS RISK MANAGEMENT CONFERENCE

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MY ORGANIZATION
1 CHESTNUT HILL ROAD
ANYWHERE, USA 99999

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**
- 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 directors, officers, members, employees and volunteers must be included as additional insured for the job.**

MY ORGANIZATION
1 CHESTNUT HILL ROAD
ANYWHERE, USA 99999

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 can not comply with some of these requirements.

MY ORGANIZATION, LLC
PO BOX 999
ANYWHERE USA 99999

September 29, 2014

[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

WILDERNESS RISK MANAGEMENT CONFERENCE

WPRMIG



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MY ORGANIZATION, LLC
PO BOX 999
ANYWHERE USA 99999

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.**

MY ORGANIZATION, LLC
PO BOX 999
ANYWHERE USA 99999

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 can not 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

, dated

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

EXHIBIT "D-2"

Phase 2 of Rehabilitation

**SUBCONTRACTOR, SUB-SUBCONTRACTOR AND
SUPPLIER ACKNOWLEDGEMENT 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 _____, together with all related site improvements (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



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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.

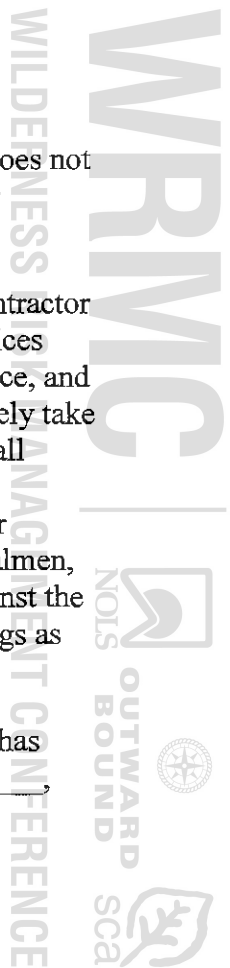
WITNESS my hand and official seal hereto affixed the day and year first as above written.

Name: _____

NOTARY PUBLIC in and for the State of New Jersey

My appointment expires:

[NOTARY SEAL]



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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 (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



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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 _____ Road, _____ (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 Releasees") 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 of or resulting from the assertion by Subcontractor, or any of its Sub-Subcontractors or materialmen,



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