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2 for Mainstay Business Solutions
3 13389 Folsom Blvd., #300-189
4 Folsom, CA 95630
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ENDORSED-FILED

JUN 23 2011
CLERK OF THE TRIBAL COURT
BLUE LAKE RANCHERIA
[Signature]

6 Attorney for Plaintiff
7 Mainstay Business Solutions

10 IN THE TRIBAL COURT OF
11 BLUE LAKE RANCHERIA

13 MAINSTAY BUSINESS SOLUTIONS,

14 Plaintiff

15 v.

16 WOOD'S ROOFING, Inc, a California
17 Corporation, and DOES 1-10

18 Defendants

FIRST AMENDED COMPLAINT FOR
DAMAGES FOR BREACH OF
WRITTEN CONTRACT, MONEY ON
AN OPEN BOOK ACCOUNT,
BREACH OF COVENANT OF GOOD
FAITH AND FAIR DEALING, GROSS
NEGLIGENCE AND ORDINARY
NEGLIGENCE

23 Plaintiff alleges as follows:

24 PARTIES

- 25 1. Plaintiff, Mainstay Business Solutions, is and at all times mentioned was, a division of Blue
26 Lake Rancheria Economic Development Corporation, a federally chartered corporation
27 pursuant to Section 17 of the Indian Reorganization Act (25 U.S.C. §477), wholly owned
28

1 by the Blue Lake Rancheria, a federally recognized Indian tribe. Mainstay's principal
2 place of business and residence is Blue lake Rancheria, Blue Lake, California.

3 2. Plaintiff is informed and believes and based upon such information and belief alleges that
4 Defendant, Wood's Roofing, Inc., is and was a corporation duly formed and organized
5 within the State of California with its principal place of business in the City of Torrance,
6 Los Angeles County, California.

7 3. Plaintiff is unaware of the true names and/or capacities of defendants sued as Does 1 -10,
8 inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend
9 this complaint to allege their true names and capacities when ascertained.

10 4. Plaintiff is informed and believes and base upon such information and belief allege that all
11 times relevant herein mentioned, the acts and omissions of the various defendants, and each
12 of them, contributed to the various acts and omissions of the other defendants in
13 proximately causing the injuries, and damages herein alleged.

14 VENUE/JURISDICTION

15 5. Plaintiff hereby incorporates by this reference the allegations set forth in paragraphs 1 to 5,
16 inclusive, of this complaint as though set forth in length herein.

17 6. The acts and events which give rise to Mainstay's claims concerns transactions with a
18 wholly-owned entity of the Blue Lake Rancheria. The California state courts lack
19 jurisdiction over this matter and the Blue Lake Rancheria Tribal Court has jurisdiction over
20 the subject matter and parities, and venue is proper pursuant to the laws of the Blue Lake
21 Rancheria.

22 FACTUAL BACKGROUND

23 7. On or about June 15, 2007 plaintiff and defendant Wood's Roofing, Inc. entered into a
24 written agreement ("Agreement") a copy of which is attached as Exhibit 1 and made a part
25 of this pleading by this reference. Said Agreement was renewed on June 1, 2008, a copy of
26 which is attached as Exhibit 2 and made a part of this pleading by this reference.

27 8. Under the Agreement, Plaintiff assigned its employees to Wood's to work at various
28 Wood's worksites in exchange for consideration provided in the Agreement. The

1 Agreement established a co-employment relationship between the parties with respect the
2 assigned employees.

- 3 9. Defendant Wood's Roofing, Inc. (Wood's) was required to ensure a safe workplace,
4 comply with state, federal, and Plaintiff's rules, regulations, and policies to ensure a safe
5 workplace, allow Plaintiff access to its worksites to ensure compliance with said rules,
6 regulations, and policies.
- 7 10. Upon entering into the Agreement, Plaintiff provided material to Wood's relating to
8 workplace safety requirements.
- 9 11. On October 24, 2007, one of Plaintiff's assigned employees was injured while at a Wood's
10 worksite.
- 11 12. On December 12, 2007, another of Plaintiff's assigned employees was injured while at a
12 Wood's worksite.
- 13 13. In January 2008 Plaintiff and its agents sought to gain access to Wood's and its agents in
14 order to provide additional workplace safety materials, training, and assistance in meeting
15 codes, and regulations, and criteria designed to protect Plaintiff's employees assigned to
16 Wood's. Plaintiff's efforts were rebuffed, or ignored, until May 2008 when Wood's agent
17 finally responded. However, the response was less than cooperative in that neither Wood's
18 nor its agents allowed access, met with Plaintiff or its representatives, or demonstrated a
19 willingness to cooperate with Plaintiff's efforts at ensuring a safe workplace.
- 20 14. On, or about June 20, 2008, Plaintiff's representative provided safety material to Wood's
21 and its agents with instruction to be distributed to assigned employees. This material
22 included fall protection requirements. No response or acknowledgement was forthcoming
23 from Wood's or its agents.
- 24 15. Plaintiff's representatives met with Wood's and its agents in August 2008 at Wood's main
25 place of business. However, subsequent attempts by Plaintiff and its representatives were
26 unsuccessful and resulted in no response from Wood's or its agents. Plaintiff and its
27 representatives continued to attempt contact with Wood's and its agent until Wood's and
28 its agent agreed to another meeting to be held on November 19, 2008.

1 16. On September 15, 2008, Plaintiff's representative again provided fall protection
2 requirements to Wood's and its agent.

3 17. On November 10, 2008 third assigned employee fell from a roof at a Wood's worksite and
4 suffered serious injury.

5 18. Plaintiff was notified by Wood's of the accident and injury on November 13, 2008. After
6 learning of the accident and injury, Plaintiff and its representative conducted an accident
7 investigation. The investigation concluded there was a failure to implement fall protection
8 at the worksite which led to the fall and injuries of the assigned worker.

9
10 FIRST CAUSE OF ACTION

11 BREACH OF WRITTEN CONTRACT

12 19. Plaintiff hereby incorporates by this reference the allegations set forth in paragraphs 1 to
13 19, inclusive, of this complaint as though set forth in length herein.

14 20. On or about June 15, 2007 plaintiff and defendant Wood's Roofing, Inc. entered into a
15 written agreement ("Agreement") a copy of which is attached as Exhibit 1 and made a part
16 of this pleading by this reference. Said Agreement was renewed on June 1, 2008, a copy of
17 which is attached as Exhibit 2 and made a part of this pleading by this reference.

18 21. Plaintiff has performed all conditions, covenants, and promises required on its part to be
19 performed in accordance with the terms and conditions of the agreement.

20 22. On or about November 13, 2008, and continuing thereafter, defendants breached the
21 contract by failing to pay sums dues as per the provisions of the Agreement.

22 23. As a result of defendants' breaches of the Agreement, Plaintiff has suffered damages,
23 including but not limited to loss of fees as per the agreement to its damage in the sum of
24 \$203,932.75 plus interest and attorney's fees in amount according to proof.

25 SECOND CAUSE OF ACTION

26 24. Plaintiff hereby incorporates by this reference the allegations set forth in paragraphs 1 to
27 24, inclusive, of this complaint as though set forth in length herein.
28

1 25. Within the last year, defendants became indebted to Plaintiff on an open book account for
2 money due in the sum of \$203,932.75 for services performed, and/or goods delivered by
3 Plaintiff to defendants at defendants' request and for which defendants agreed to pay the
4 above sum. A copy of this account is attached hereto as Exhibit 3 and made part hereof.

5 26. Plaintiff has demanded payment from defendants. Such demand was last made on or about
6 January 20, 2009.

7 27. Neither the whole nor any part of the above sum has been paid although demand therefor
8 has been made, and there is now due, owing, and unpaid the sum of \$200,289.60 with
9 interest in amount according to proof.

10 THIRD CAUSE OF ACTION

11 BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

12 28. Plaintiff hereby incorporates by this reference the allegations set forth in paragraphs 1 to
13 28, inclusive, of this complaint as though set forth in length herein.

14 29. The Agreement between defendants and plaintiff includes an implied covenant of good
15 faith and fair dealing.

16 30. By engaging in the conduct described herein, defendants have breached the implied
17 covenant of good faith and fair dealing and have unfairly deprived plaintiff of the benefits
18 which it bargained for.

19 31. As a direct and proximate result, plaintiff has suffered damages in an amount according to
20 proof.

21 FOURTH CAUSE OF ACTION

22 GROSS NEGLIGENCE

23 32. Plaintiff hereby incorporates by this reference the allegations set forth in paragraphs 1 to
24 32, inclusive, of this complaint as though set forth in length herein.

25 33. At all times herein mentioned, Plaintiff was acting in a reasonable, prudent manner.

26 34. Defendants have a duty to provide a safe and healthful work environment and to undertake
27 all reasonable action to facilitate Plaintiffs efforts ensure the work environment to which its
28

1 employees are assigned is safe and free from recognized hazards that are causing or are
2 likely to cause death or serious physical harm to employees. Defendants also have a duty of
3 care to comply with the terms of the Agreement where such terms are designed to ensure
4 employee safety.

5 35. Defendants, through their gross negligence, breached their duties of care by, among other
6 things, action with reckless disregard for or failing to exercise slight care in failing to
7 provide adequate fall protection at its worksites; failing to comply with applicable safety
8 rules, regulations, and policies; failing to implement policies and procedures provided and
9 prescribed by Plaintiff; acting to deny Plaintiff and its representatives access to the
10 worksite and to itself and its agents in order to ensure implementation of adequate safety
11 rules, regulations, policies, and procedures; and failing to take action to prevent the
12 occurrence and re-occurrence of any unsafe worksite practices.

13 36. As a direct and proximate result of Defendants' gross negligence, Plaintiff suffered the
14 damages to be proven at trial.

15 FIFTH CAUSE OF ACTION

16 ORDINARY NEGLIGENCE

17 37. Plaintiff hereby incorporates by this reference the allegations set forth in paragraphs 1 to
18 37, inclusive, of this complaint as though set forth in length herein.

19 38. At all times herein mentioned, Plaintiff was acting in a reasonable, prudent manner.

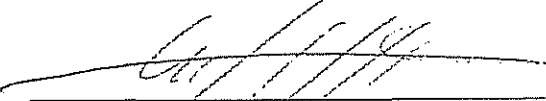
20 39. Defendants have a duty to exercise the degree of care, skill, and diligence that ordinarily
21 prudent person in like positions would use under similar circumstances in order to provide
22 a safe and healthful work environment and to undertake all reasonable action to facilitate
23 Plaintiffs efforts ensure the work environment to which its employees are assigned is safe
24 and free from recognized hazards that are causing or are likely to cause death or serious
25 physical harm to employees. Defendants also have a duty to exercise the degree of care,
26 skill, and diligence that ordinarily prudent person in like positions would use under similar
27 circumstances in order to comply with the terms of the Agreement where such terms are
28 designed to ensure employee safety.

1 40. As a direct and proximate result of Defendants' negligence, Plaintiff suffered the damages
2 to be proven at trial.
3

4 WHEREFORE, Mainstay demands judgment against Wood's Roofing, Inc.:

- 5 a. For the sum of \$203,932.75;
6 b. For interest on this sum from November 13, 2008 according to proof;
7 c. For the costs of suit herein incurred;
8 d. For reasonable attorney's fees and costs; and,
9 e. For such other and further relief as the Court deems proper.
10

11
12 Dated: 6/22/11
13

14
15 
16 Michael A. Peart
17 for Mainstay Business Solutions
18 13389 Folsom Blvd., #300-189
19 Folsom, CA 95630
20 Telephone (916) 223-0657
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Handwritten initials: K.E.N.



STANDARD CLIENT AGREEMENT

This Standard Client Agreement ("Agreement") is made, effective as of this 15th day of June, 2007 by and between Mainstay Business Solutions ("MAINSTAY"), a division of Blue Lake Rancheria Economic Development Corporation, a federally chartered corporation pursuant to Section 17 of the Indian Reorganization Act (25 U.S.C. §477), wholly owned by the Blue Lake Rancheria, a federally recognized Indian tribe, and:

Wood's Roofing ("Client"), with its principal place of business located at:

18675 Adams Court, Suite E

Morgan Hill, Ca 95112

and whose type of business is:

Roofing

MAINSTAY agrees to provide, and Client agrees to subscribe for the services of MAINSTAY personnel ("MAINSTAY Employees") and MAINSTAY supporting services upon the following terms and conditions:

A. MAINSTAY RESPONSIBILITIES

MAINSTAY or its authorized agents (agents who are not employees of MAINSTAY or who are MAINSTAY employees assigned to provide services to Client must be authorized by MAINSTAY in writing) shall:

- 1. Recruit, screen, interview, and select applicants for the type of work described in Attachment B. N/A INITIAL IF APPLICABLE
2. Review candidates who are identified by Clients for possible employment by MAINSTAY and assignment to Client, and shall hire as MAINSTAY Employees those individuals who are satisfactory to MAINSTAY.
3. Assign workers who have been hired as MAINSTAY Employees to perform the type of work described in Attachment B, under Client's supervision at the locations specified in Attachment B.
4. Be responsible for managing the employment relationship of MAINSTAY Employees consistent with responsibilities generally required of employers;
5. Pay MAINSTAY Employees wages and such other compensation as determined by MAINSTAY and provide such benefits as required by law or offered by MAINSTAY;
6. Pay, withhold, and transmit payroll taxes related to compensation paid by MAINSTAY;
7. Provide unemployment benefits coverage and administration and provide and workers' compensation benefits and administration in accordance with applicable laws;
8. Upon request of the Client, provide appropriate certification that Workers' Compensation coverage is in effect and waive and release its ability to pursue subrogation against Client (subject to Client's payment of

Handwritten initials/signature



that an authorized Client representative review, approve and sign or verify time records and requests for expense reimbursements.

C. CLIENT'S RIGHT TO REFUSE SERVICES

Client may refuse the services of a MAINSTAY Employee by providing advance notice or in the case of employee misconduct such immediate notice as is feasible based on the circumstances. Client shall provide the reasons and documentation supporting Client's decision and Client must direct the MAINSTAY Employee to contact MAINSTAY. Client warrants that no assignment will be terminated for unlawful reasons. MAINSTAY has the sole authority to terminate MAINSTAY Employees' employment. If requested by MAINSTAY, Client agrees to communicate to MAINSTAY's Employees termination decisions.

D. COMPLIANCE WITH LAWS AND MAINSTAY STANDARDS

Client shall ensure that Client's employment practices and actions affecting MAINSTAY Employees are in full compliance with federal, state and local laws.

E. INSURANCE

Client shall maintain commercial general liability and property damage insurance with limits of liability not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate covering itself and MAINSTAY. If applicable (i.e., approval has been granted permitting MAINSTAY Employees to operate vehicles), Client will also maintain in full force and effect appropriate automobile insurance as necessary to cover the provision of services by Client, and as otherwise required by law.

F. CONTROLLING LAW

This Agreement and the performance of the parties of their respective duties and obligations are subject to and governed by the laws of the Blue Lake Rancheria Tribe of California. Any claim arising under this Agreement must be brought in the Tribal Court of the Blue Lake Rancheria Tribe of California and the laws of the Tribe shall be controlling and binding on the parties. Nothing in this Agreement is intended to be nor shall be interpreted to be a waiver of sovereign immunity of MAINSTAY or the Tribe, including any and all of its enterprises, officers, agents, or employees in any tribal, federal or state court. MAINSTAY has agreed to a limited waiver of its sovereign immunity with respect to claims under the Worker's Compensation laws of California with the California Department of Industrial Relations.

G. FEES

Payment of Fees - All Invoices must be paid in accordance with the provisions of Attachment D - Payment Instructions. Failure by Client to pay on dates due shall be a material breach of this Agreement and subject to the provisions of Section I of this Agreement. Client shall pay any and all costs and attorney fees that MAINSTAY may incur in collection of these monies. MAINSTAY may in its sole discretion grant Client a limited extension for payment of amounts due. Fees are due and payable pursuant to the terms below and Fee Schedule (Attachment C) and Payment Instructions (Attachment D)

1. **Fees -** In order to achieve mutually beneficial cost efficiencies, Client shall pay fees, as set forth in Attachment C, within twenty-four (24) hours of MAINSTAY's transmission of the invoice to Client. Even if Client transmits its payment within twenty-four (24) hours of MAINSTAY's transmission of the invoice, Client's

LEW.



payment shall be deemed late if transmitted any later than one (1) day prior to date of payroll delivery for ordinary deposits to Employee accounts, or any later than (2) days prior to the date of payroll delivery for direct deposits to Employee accounts. **FOLLOWING NOTICE OF TERMINATION BY EITHER PARTY, ALL CLIENT PAYMENTS MUST BE MADE BY WIRE TRANSMISSION.**

- 2. **Additional Fees** - All additional fees, e.g., reimbursable costs, benefits fees, finance charges, etc., shall be governed by terms set forth in the this Agreement.
- 3. **MAINSTAY'S Right to Increase Fees** - Client acknowledges that certain costs may fluctuate during the term of this Agreement, which may affect overall pricing. These costs include, but are not limited to, administration, healthcare benefit premiums, state unemployment insurance reserve rates, Workers' Compensation reserve rates, or retirement plan administration fees. MAINSTAY shall endeavor to provide a thirty (30) day notice of any increase in rates, in writing, to the address provided by Client for such correspondence.

H. INDEMNIFICATION

Except as provided below, each party shall indemnify and hold harmless the other party, and each of their respective officers, directors, partners, shareholders, agents and employees to the extent allowed by law, from and against any and all demands, claims, losses, damages, liability, costs, expenses (including but not limited to the payment of attorney fees and costs actually incurred), judgments or obligations, actions or causes of action whatsoever, to the extent arising directly from the failure to perform obligations of this Agreement by the party (Indemnifying party), its officers, partners, employees, subcontractors or agents, but only to the extent resulting from indemnifying acts or failure to act.

Notwithstanding any other provision of the Agreement, Client shall also indemnify MAINSTAY for any and all damages resulting from Client's gross negligence or intentional act in failing to comply with MAINSTAY Safety and Risk Management program, including non-compliance with job classification guidelines and losses resulting from misrepresented, unapproved, and misclassified employees or job descriptions. MAINSTAY will not indemnify Client for losses resulting from Client's own actions or omissions or those of its officers, directors, partners, shareholders, agents, or MAINSTAY employees while under Client's supervision. Client shall be liable to MAINSTAY for any loss (except workers' compensation losses not subject to the foregoing) resulting from Client's failure to maintain safe working conditions.



I. TERMINATION

1. *This Agreement may be cancelled, by either party, without cause upon 30 days (or as soon thereafter as permitted by law) written notice to the other, or such alternative date as agreed to by the parties. On or before the termination date, each of the parties shall do all things necessary or requisite to conclude the business relationship and comply with the employee payment obligations and reporting requirements.*
2. *Notwithstanding the termination provisions above, this Agreement may be cancelled, at the election of MAINSTAY, immediately and without advance notice, upon the occurrence of any of the following by Client:*
 - a. *Failure to provide a work environment with adequate safety, including but not limited to violations of state or federal law, or failure to comply with directives of MAINSTAY's safety and risk management program.*
 - b. *Misrepresentation of duties performed by or to be performed by Mainstay Employees or providing information causing the misclassification of MBS Employees workers under Workers' Compensation class codes.*
 - c. *Use of Employees to perform duties: (1) under Ineligible Workers' Compensation class codes and/or (2) outside the scope of MAINSTAY-approved Workers' Compensation class codes or job descriptions upon which the MAINSTAY class codes are based.*
 - d. *Interference with or failure to cooperate in investigations or audits conducted by MAINSTAY or its agents pertaining to Client's compliance with the obligations of this Agreement or work-related claims.*
 - e. *Failure to comply with applicable law.*
 - f. *Failure to pay MAINSTAY Invoices within the required time-frame.*
 - g. *Failure to comply with any MAINSTAY policy or procedure of which Client was aware or reasonably should have been aware.*
3. *Notwithstanding the termination of this Agreement MAINSTAY remains responsible for all of its obligations related to its employees.*
4. *Provisions of this Agreement, which by their terms extend beyond the termination or nonrenewal of this Agreement, will remain effective after termination or nonrenewal.*

J. TRADEMARKS & TRADE DRESS

MAINSTAY hereby grants to Client the nonexclusive revocable right and license to use the MAINSTAY trademarks and trade dress, which include and is not limited to the term MAINSTAY, and MAINSTAY & Design, for the term of this Agreement in connection with the use of MAINSTAY'S Employees on the terms and subject to the conditions of this Agreement, and in the Client Service Guide, as those may be amended from time to time. MAINSTAY retains the right to disapprove all advertising and sales promotion materials created or distributed by Client in which any of the Trademarks or Trade Dress are used.

Handwritten initials/signature



N. MODIFICATION AND WAIVER

Any modifications to this Agreement must be made in writing and must be signed by both parties in order to be effective.

O. SECTION HEADINGS

Title and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

P. COOPERATION

The parties will cooperate with each other in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. Client agrees that MAINSTAY's performance is dependent on Client's timely and effective cooperation with MAINSTAY. Accordingly, Client acknowledges that any delay by Client may result in MAINSTAY being released from an obligation or scheduled deadline or in Client having to pay extra fees for MAINSTAY's agreement to meet a specific obligation or deadline, despite the delay.

Q. WARRANTIES

No representations, express or implied, and no warranties or guarantees, are included or intended in this Agreement or in any MAINSTAY report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed. THIS SECTION SETS FORTH ONLY THE WARRANTIES PROVIDED BY MAINSTAY CONCERNING ITS SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR OTHERWISE.

R. CONFLICT

In the event of any inconsistency or conflict between the main body of this Agreement or any other related document including but not limited to the MAINSTAY Client Service Guide, the terms of the main body shall govern, unless modified by a written document signed by both parties that post-dates this Agreement.

S. INABILITY TO PERFORM

Neither party will be responsible for failure or delay in performance of this Agreement if the failure or delay is due to labor disputes, strikes, fire, riot, war, terrorism, acts of God, or any other causes beyond the control of the nonperforming party.

Handwritten signature/initials



ATTACHMENT B COVERED CLASS CODES AND JOB DESCRIPTIONS

Class Code	Class Code Description	Tier 1	Tier 2
8810	CLERICAL OFFICE EMPLOYEES - N.O.C.	15.63%	18.23%
8742	SALESPERSONS - outside	18.74%	18.34%
5553	RODGING - employees whose regular hourly wage equals or exceeds \$20.00 per hour.	29.61%	26.21%

Second Rate Tier becomes effective for each employee after they reach \$7,000 in subject wages.



SECOND AMENDMENT to the STANDARD CUSTOMER AGREEMENT

This Second Amendment is made this 15th day of June, 2007, and is attached to and incorporated into the Standard Customer Agreement (hereinafter "Agreement") as was signed on May 26th, 2007, by and between Mainstay Business Solutions (hereinafter "MBS"), a duly formed and organized Tribal body of the Blue Lake Rancheria Tribe of California (hereinafter "Tribe"), a Federally-recognized Indian Tribe, in its governmental capacity, pursuant to its authority granted under its respective Tribal Constitution pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984) (25 USC Section 476), as amended by the Act of June 15, 1935 (49 Stat 978), under the laws of the Tribe, and Wood's Roofing ("Customer")

WHEREAS, MBS and Customer desire to make certain amendments to the Agreement all as more fully described herein;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MBS and Customer hereby agree as follows:

Customer acknowledges that certain laws may require all employees working at a worksite to be covered by workers' compensation insurance coverage. Customer further acknowledges that Customer's failure to provide such workers' compensation insurance coverage for any worker may be a violation of such laws. Customer further acknowledges that MBS is the assumed employer for all workers providing services under this Agreement and therefore provides workers' compensation insurance coverage for all Employees (as defined in the Agreement), consistent with Section A.7 of the Agreement.

In recognition of the foregoing, Customer hereby agrees that it shall not hire, employ or otherwise instruct any non-MBS Employee(s) to perform services of any kind at its worksite(s), and that all persons performing services at Customer's worksite(s) shall be MBS Employees.

Customer acknowledges that any violation of the preceding paragraph may result in immediate termination of the Agreement, at MBS's sole discretion, pursuant to Section H of the Agreement. Notwithstanding such termination, Customer further acknowledges that Customer shall be liable for any MBS losses including but not limited to liability for personal injuries, regulatory consequences and judicial penalties, resulting from violation of this amendment, consistent with Section G of the Agreement.

All other terms and conditions of the Agreement, and of the First Amendment to the Agreement, remain in full force and effect except as modified herein.

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the date first written above and acknowledge that they are authorized to enter into this amendment.

Dated: 6-20-07

CUSTOMER
By: [Signature]
Name: Harry Wood
Title: Owner/Proprietor
Business Name: Wood's Roofing

Dated: 6/20/07

MAINSTAY BUSINESS SOLUTIONS
By: [Signature]
Title: General Manager

Handwritten initials: *fev*



ALTERNATE EMPLOYER ENDORSEMENT CERTIFICATE


In regards to all work where Mainstay Business Solutions (Mainstay) employees are being used, this endorsement to the certificate affirms that employees assigned to the alternate employer have statutory Workers' Compensation coverage in the state of California. Pursuant to California Labor Code section 3602.D the transfer of Workers' Compensation liability between two employers is allowed to occur when the two employers enter into an enforceable agreement, and where one employer has secured Workers' Compensation coverage for all the workers. A copy of the agreement between Mainstay and the Alternate Employer may be requested by any individual named as an Interested Party in Item 4 of the Schedule. If an entry is shown in Item 3 of the Schedule, the coverage afforded by this endorsement applies only to work performed until the expiration date, or notice of termination of the agreement.

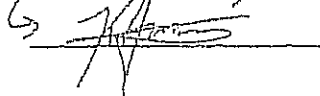
As the General Employer, Mainstay will pay out compensation and benefits entitled to workers as covered under California's Workers' Compensation laws. Employees assigned to the Alternate Employer named in Item 1 of the schedule are covered under Mainstay's Certificate of Consent to Self-Insure, Certificate #2518, issued by the Department of Industrial Relations. This coverage is effective for the life of the agreement between Mainstay and the Alternate Employer. Upon notice from Mainstay or the Alternative Employer of intent to cancel such contract, Mainstay will send out notifications to all entities listed as Interested Parties in Item 4 of the schedule.

The Alternative Employer is required to secure statutory Workers' Compensation coverage for all employees not specifically assigned by Mainstay. Proof of this coverage must be provided to all listed Interested Parties named in Item 4 of the Schedule. Any changes to the status of this coverage must also be sent to all Interested Parties.

Schedule

- 1. Alternate Employer Wood's Roofing
- 2. State of General or Temporary Employment CA
- 3. Endorsement Expiration March 1, 2008
- 4. Interested Parties California Contractor State License Board

Mainstay Business Solutions 

Alternate Employer 

Date 6/29/07

Date 6/20/07

Jun 12 07 03:45p WOOD ROOFING INC
05-14-2007 09:11PM FAX

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7-410 P.001/002 F-000

INDIVIDUAL PERSONAL GUARANTY
(hereinafter "Guaranty")

I, Lawrence L. Wood (hereinafter referred to as "Guarantor")
residing at 18675 ADAMS CT STE E MORGAN HILL CA 95023
for and in consideration of your extending credit at my request to Wood's Roofing,
Inc. (hereinafter referred to as "Company"), of which I am
President (and the owner of a direct or indirect interest in
Company such that this guaranty may reasonably be expected to benefit me directly
or indirectly), hereby personally guarantee to MAINSTAY BUSINESS SOLUTIONS
located at 4180 Iron Point Road, Suite 210, Folsom, CA 95530 any and all
obligations of the Company of every kind and character, irrespective of the amount
of said obligations, whether now existing or hereafter arising, including interest on
any of the obligations and any and all costs, attorney's fees, and expenses suffered
by MBS or its assigns by reason of Company's or Guarantor's default in payment of
any of the foregoing indebtedness, and any renewal, extension or rearrangement of
the indebtedness, costs, or expenses associated with such default.

Guarantor hereby agrees to pay Mainstay Business Solutions promptly on demand
any sum which may become due to Mainstay Business Solutions by the Company
whenever the Company shall fail to pay the same. It is understood that this guaranty
shall be a continuing, unconditional, and irrevocable guaranty and indemnity for such
indebtedness of the Company. Guarantor hereby agrees with Mainstay Business
Solutions that all rights, remedies and recourses afforded to Mainstay Business
Solutions by reason of this Guaranty or otherwise are separate and cumulative and
may be pursued separately, successively or concurrently, as occasion therefore shall
arise, and are nonexclusive and shall in no way limit or prejudice any other legal or
equitable right, remedy or recourse which Mainstay Business Solutions may have.

~~This Guaranty is for the benefit of Mainstay Business Solutions its successors and
assigns, and in the event of an assignment of the Guaranteed Indebtedness, or any
part thereof, the rights and benefits hereunder, to the extent applicable to the
indebtedness so assigned, may be transferred with such indebtedness. Guarantor
hereby waives notice of default, nonpayment, and notice thereof, and consent to any
modification or renewal of the credit agreement hereby guaranteed. This Guaranty is
binding on Guarantor and Guarantor's heirs, personal representatives, successors
and assigns. If any provision of this Guaranty or the application thereof to any
person or circumstance shall, for any reason and to any extent, be invalid or
unenforceable, neither the remainder of this Guaranty nor the application of such
provision to any other person or circumstances shall be affected thereby, but rather
the same shall be enforced to the greatest extent permitted by law.~~

Witness: AD HOUTER CALIFORNIA Date day of 11, 2007
Name: LAWRENCE L. WOOD
Signature: [Signature]
Social Security #: 325-10-4728
Address: 18675 ADAMS CT STE E
MORGAN HILL CA 95023

Jun 12 07 03:45p WOODROOFING INC
05-24-097 01:11PM FAX

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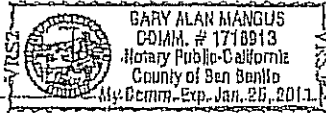
Name(Second Guarantor): Barbara E Wood
Signature: Barbara E. Wood
Social Security #: 548-58-1335
Address: 18675 Adams Ct Ste E
Morgan Hill, CA 95023

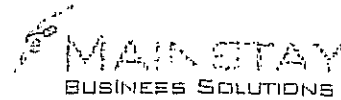
NOTARIES AS FOLLOWS:

STATE OF CALIFORNIA
COUNTY OF SAN BENITO

Subscribed and sworn to before me this 11 day of February,
2012

Gary Alan Mangus Notary Public
My commission expires 1-26-2011 Residing at:
18675 Adams Ct Ste E





CLIENT SERVICE AGREEMENT

Renewal

This Client Service Agreement ("Agreement") is made, effective as of this 1 day of June 2008 by and between Mainstay Business Solutions ("MAINSTAY"), a division of Blue Lake Rancheria Economic Development Corporation, a federally chartered corporation pursuant to Section 17 of the Indian Reorganization Act (25 U.S.C. §477), wholly owned by the Blue Lake Rancheria, a federally recognized Indian tribe, and:

Wood's Roofing ("Client"), with its principal place of business located at:

17700 Serene Drive
Morgan Hill, CA 95037

and whose type of business is:

Roofing

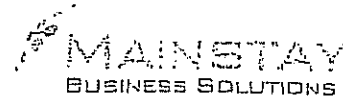
In no event shall MAINSTAY'S Certificate of Workers' Compensation Coverage that is provided to Client to confirm that MAINSTAY's employees are covered by MAINSTAY's Self-Insurance Workers' Compensation Program as evidenced by the Certificate of consent to Self-Insure, issued by the State of California, be relied upon as evidence of Client's compliance with workers' compensation laws before persons working in Client's operations become MAINSTAY employees. The effective date of coverage shall be determined by the date contained in MAINSTAY's payroll system.

MAINSTAY agrees to provide, and Client agrees to subscribe for the services of MAINSTAY personnel to work directly on Client's business ("MAINSTAY Employee") and MAINSTAY supporting services upon the following terms and conditions:

A. MAINSTAY RESPONSIBILITIES

MAINSTAY shall:

- 1. Hire as MAINSTAY Employees those individuals who have been identified by Client and who are satisfactory to MAINSTAY. Client shall ensure that all referred candidates have all licenses and certifications required by law.
2. Assign workers who have been hired as MAINSTAY Employees to perform the type of work described in Attachment B, under Client's supervision at the locations specified in Attachment B.
3. Be responsible for managing the employment relationship of MAINSTAY Employees consistent with responsibilities generally required of employers;
4. Pay MAINSTAY Employees wages and other such compensation as determined by Client, subject to MAINSTAY's minimum requirements, and provide such benefits as required by law or offered by MAINSTAY;
5. Pay, withhold, and transmit payroll taxes related to compensation paid by MAINSTAY;
6. Provide workers' compensation and unemployment benefits coverage and administration in accordance with applicable laws;
7. Upon request of the Client, provide appropriate certification that Workers' Compensation coverage is in effect and waive and release its ability to



pursue subrogation against Client (subject to Client's payment of certification waiver fee), except pursuant to Paragraph H(2) of this Agreement;

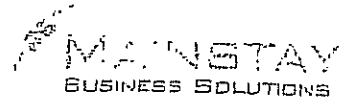
8. If requested by Client, require MAINSTAY Employees to sign agreements acknowledging that they are not entitled to holidays, vacations, disability benefits, insurance, pensions, or retirement plans, or any other benefits offered or provided by Client, except benefits provided by a MAINSTAY sponsored plan in which Client participates as an Adopting Employer. MAINSTAY may require Client to obtain MAINSTAY Employee's signatures;
9. If requested by Client, require MAINSTAY Employees to sign confidentiality agreements. MAINSTAY may require Client to obtain MAINSTAY Employee's signatures.
10. Ensure the completion and retention of a Federal Employment Eligibility Verification Form (I-9) for each Employee assigned to Client. MAINSTAY may require Client to assist in completion of Form I-9;
11. Provide Client with an itemized invoice identifying each MAINSTAY Employee provided to Client's for each pay period; and
12. Notwithstanding anything to the contrary in this Agreement, MAINSTAY retains the right to control all aspects of employment that are customary of a common law employer's obligations. In the event, Client is dissatisfied with a decision made by MAINSTAY regarding MAINSTAY employees, Client has the right upon 30 days' notice and assumption of all obligations under any applicable laws dealing with termination or layoff of employees, to terminate this Agreement.

13. CONTRACTORS STATE LICENSING BOARD COMPLIANCE

Notwithstanding any other provision of this Agreement, MAINSTAY agrees to provide California Workers' Compensation coverage through a certificate of self-insurance or a qualified insurance carrier for all persons working for Client who may be deemed employees of MAINSTAY and/or Client, as defined by California Workers' Compensation laws.

The CSLB has agreed to accept contracts between licensed Contractors and a PEO, which includes this language, as compliance with CSLB requirements for California Workers' Compensation coverage.

MAINSTAY must also provide Notice of Termination to the CSLB within seven (7) days of terminating a Client's coverage.

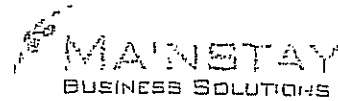


B. CLIENT'S RESPONSIBILITIES

Client shall:

1. Comply with all MAINSTAY directives as contained in the client service guide and other written policies and procedures (collectively referred as "client service guide"). Directives may be changed at any time upon reasonable notice to client. Notwithstanding the foregoing, MAINSTAY may not change financial terms without client's consent, except as otherwise permitted by this agreement.
2. Keep their Client Service Guide current by inserting all distributed/ revised materials provided by MAINSTAY. Policies and procedures include, but are not limited, to directives that require Client to:
 - (a) Notify MAINSTAY of any complaint, concern or incident involving a MAINSTAY Employee that requires employer attention;
 - (b) Notify MAINSTAY regarding any request for any type of leave communicated to Client by a MAINSTAY Employee; and
 - (c) Notify MAINSTAY of any injury to a MAINSTAY Employee, no matter how minor.
3. Properly supervise MAINSTAY Employees while MAINSTAY Employees are assigned to provide services to Client.
4. Advise each MAINSTAY Employee of the Client supervisor who is responsible for directing MAINSTAY's Employee's work tasks;
5. Allow MAINSTAY Employees to engage only in the duties of the approved workers' compensation code and not change MAINSTAY Employees' job duties without MAINSTAY's express prior written approval;
6. Retain full responsibility for Client's business operations, equipment, products, services, and intellectual property;
7. Designate a representative who will be responsible for communication with MAINSTAY regarding matters related to MAINSTAY Employees and this Agreement;
8. Properly supervise, control, and safeguard its premises, processes, or systems, and not permit MAINSTAY Employees to operate any vehicle or mobile equipment, or entrust them with unattended premises, cash, checks, keys, credit cards, merchandise, confidential or trade secret information, negotiable instruments, or other valuables without MAINSTAY's express prior written approval or as strictly required by the job description provided to MAINSTAY;
9. At Client's expense, provide MAINSTAY Employees with a safe work site in compliance with all applicable health and safety laws and regulations and provide appropriate information, training, and safety equipment, including, but not limited to, personal protective equipment.

Client will further comply, at its own expense, with the directives of MAINSTAY's safety and risk management program or any governmental agency, as they relate to conditions in the workplace that are intended to provide a healthier and safer work environment for MAINSTAY Employees.



Client shall be the sole responsible party for any and all violations and/or citations, including payment of all monetary penalties, except those resulting from MAINSTAY's direct actions or failure to act when there is a duty to act. MAINSTAY shall have the right to inspect Client's premises at any time to ensure that a safe workplace is being provided for MAINSTAY Employees;

- 10. Unless otherwise agreed to by MAINSTAY, exclude MAINSTAY Employees from Client's benefit plans, policies, and practices, and not make any offer or promise relating to MAINSTAY Employees' compensation or benefits.
- 11. If MAINSTAY and Client agree to provide benefits under MAINSTAY sponsored plans, execute all necessary documents for participation in the Multiple Employer Welfare Arrangement;
- 12. Report payroll information to MAINSTAY not later than two (2) days after the end of the scheduled payroll period. A signed payroll report must be submitted for each payroll period including those periods in which no hours were worked;
- 13. Ensure that only MAINSTAY timecards or authorized time recording procedures are used by MAINSTAY Employees; and
- 14. Ensure that (a) the MAINSTAY Employee accurately records their time and sign the timecards (or complies with other authorized time recording procedures) and properly reports reimbursable expenses, and (b) ensure that an authorized Client representative review, approve, sign and/or verify time records and requests for expense reimbursements. Ensure that all hours worked are timely reported to MAINSTAY.

C. CLIENT'S RIGHT TO REFUSE SERVICES

Client may refuse the services of a MAINSTAY Employee by providing advance notice or in the case of employee misconduct such immediate notice as is feasible based on the circumstances. Client shall provide the reasons and documentation supporting Client's decision and direct the MAINSTAY Employee to contact MAINSTAY. Client warrants that no assignment will be terminated for unlawful reasons. MAINSTAY has the sole authority to terminate MAINSTAY Employees' employment. If requested by MAINSTAY, Client agrees to communicate to MAINSTAY's Employees termination decisions.

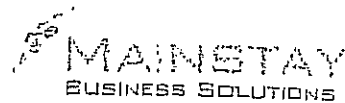
D. COMPLIANCE WITH LAWS AND MAINSTAY STANDARDS

Client shall ensure that Client's employment practices and actions affecting MAINSTAY Employees are in full compliance with federal, state and local laws.

E. INSURANCE

1. Client shall maintain commercial general liability and property damage insurance with limits of liability not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate covering itself and MAINSTAY. If applicable (i.e., approval has been granted permitting MAINSTAY Employees to operate vehicles), Client will also maintain in full force and effect appropriate vehicle insurance as necessary to cover the provision of services by Client, and as otherwise required by law.

2. Subject to the following conditions, MAINSTAY agrees to assume responsibility for the defense of and damages associated with claims, except such claims as are

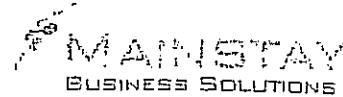


commonly covered by the type of insurance specified in subsection E.1 above, but only to the extent claims are covered under MAINSTAY's insurance policies, and to share the deductible under such policies with Clients as follows:

- (a) Client must advise MAINSTAY of a claim or matter potentially giving rise to a claim as soon as practicable.
- (b) Client must be truthful and must fully cooperate with MAINSTAY in the investigation and defense of the claim.
- (c) MAINSTAY's Insurer must approve the asserted claim as a covered claim.
- (d) Except for the deductible and co-payments, as specified below, MAINSTAY shall have no liability for any amount not covered by its insurance.
- (e) MAINSTAY will be responsible for 70% of any applicable deductible and co-payment and Client shall be responsible for 30% of any applicable deductible and co-payment. Client maximum liability shall be \$30,000 per claim. In the event Client has more than one claim in a six month period for the same type of conduct, Client shall be liable for the first \$2,000 and 30% of the remaining deductible as provided in this paragraph.
- (f) MAINSTAY shall consult with Client regarding the selection of counsel and the strategy and resolution of the claim. Subject to the conditions of its insurance policies, MAINSTAY shall have the right to select counsel and control the strategy and resolution of the claim.
- (g) In the event there is a conflict of interests between MAINSTAY and Client with respect to substantive issues related to the claim, each party shall have the right to separate counsel, to the extent the expenses of such counsel are covered by insurance. In the event insurance coverage is not applicable or available, each party shall be responsible for its own costs.
- (h) MAINSTAY, through legal counsel, when required by law, will assist client with non-complex administrative matters.
- (i) In the event MAINSTAY determines, in its sole discretion that Client's actions or operations present an unacceptable risk, MAINSTAY shall have the right to terminate all obligations under this provision for claims not asserted prior to providing termination notice, by giving Client 3 days' notice.

F. CONTROLLING LAW

This Agreement and the performance of the parties of their respective duties and obligations are subject to and governed by the laws of the Blue Lake Rancheria Tribe of California. Any claim arising under this Agreement must be brought in the Tribal Court of the Blue Lake Rancheria Tribe of California and the laws of the Tribe shall be controlling and binding on the parties. Nothing in this Agreement is intended to be nor shall be interpreted to be a waiver of sovereign immunity of MAINSTAY or the Tribe, including any and all of its enterprises, officers, agents, or employees in any tribal, federal or state court. MAINSTAY has agreed to a limited waiver of its sovereign immunity with respect to claims under the Workers' Compensation laws of California with the California Department of Industrial Relations.



G. FEES

1. **Payment of Fees** - All Invoices must be paid in accordance with the provisions of Attachment D - Payment Instructions. Failure by Client to pay on dates due shall be a material breach of this Agreement and subject to the provisions of Section I of this Agreement. Client shall pay any/all costs, including attorney fees that MAINSTAY may incur in collection of these monies. MAINSTAY may in its sole discretion grant Client a limited extension for payment of amounts due. Fees are due and payable pursuant to the terms below and Fee Schedule (Attachment C) and Payment Instructions (Attachment D)

2. TRANSMISSION OF PAYMENTS

In order to achieve mutually beneficial cost efficiencies, Client shall pay fees, as set forth in Attachment C, within twenty-four (24) hours of MAINSTAY's transmission of the invoice to Client. Even if Client transmits its payment within twenty-four (24) hours of MAINSTAY's transmission of the invoice, Client's payment shall be deemed late if transmitted any later than one (1) day prior to date of payroll delivery for ordinary deposits to Employee accounts, or any later than (2) days prior to the date of payroll delivery for direct deposits to Employee accounts. **FOLLOWING NOTICE OF TERMINATION BY EITHER PARTY, ALL CLIENT PAYMENTS MUST BE MADE BY WIRE TRANSMISSION.**

3. **Additional Fees** - All additional fees, e.g., reimbursable costs, benefits fees, finance charges, etc., shall be governed by terms set forth in this Agreement.

4. **MAINSTAY'S Right to Increase Fees** - Client acknowledges that certain costs may fluctuate during the term of this Agreement, which may affect overall pricing, and agrees that MAINSTAY shall have the right to increase its fees. These costs include, but are not limited to, administration, healthcare benefit premiums, state unemployment insurance reserve rates, Workers' Compensation reserve rates, or retirement plan administration fees. MAINSTAY shall endeavor to provide a thirty (30) day notice of any increase in fees, in writing, to the address provided by Client for such correspondence.

H. INDEMNIFICATION

Except as provided below, each party shall indemnify and hold harmless the other party, and each of their respective officers, directors, partners, shareholders, agents and employees to the extent allowed by law, from and against any and all demands, claims, losses, damages, liability, costs, expenses (including but not limited to the payment of attorney fees and costs actually incurred), judgments or obligations, actions or causes of action whatsoever, to the extent arising directly from the failure to perform obligations of this Agreement by the party (indemnifying party), its officers, partners, employees, subcontractors or agents, but only to the extent resulting from indemnifying party's acts or failure to act.

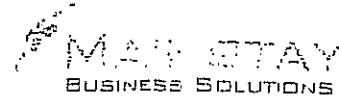
Notwithstanding any other provision of the Agreement, Client shall also indemnify MAINSTAY for any and all damages resulting from Client's gross negligence or intentional act in failing to comply with MAINSTAY Safety and Risk Management program, including non-compliance with job classification guidelines and losses resulting from misrepresented, unapproved, and misclassified employees or job descriptions. MAINSTAY will not indemnify Client for losses resulting from Client's own actions or omissions or those of its officers, directors, partners, shareholders, agents, or MAINSTAY Employees while under Client's supervision. Client shall be liable to



MAINSTAY for any loss (except workers' compensation losses not subject to the foregoing) resulting from Client's failure to maintain safe working conditions.

I. TERMINATION

1. This Agreement may be terminated, by either party, without cause upon 30 days (or as soon thereafter as permitted by law) written notice to the other, or such alternative date as agreed to by the parties. On or before the termination date, each of the parties shall do all things necessary or requisite to conclude the business relationship and comply with the employee payment obligations and reporting requirements.
2. In the event Client fails to maintain a weekly payroll of at least \$3,000, MAINSTAY shall have the right to terminate this Agreement upon 28 days' notice.
3. Notwithstanding the termination provisions above, this Agreement may be terminated, at the election of MAINSTAY, immediately and without advance notice, upon the occurrence of any of the following by Client:
 - a. Failure to provide a safe work environment, including but not limited to violations of state or federal law, or failure to comply with directives of MAINSTAY's safety and risk management program.
 - b. Misrepresentation of duties performed by or to be performed by MAINSTAY Employees or providing information causing the misclassification of MAINSTAY Employees under Workers' Compensation class codes.
 - c. Use of Employees to perform duties: (1) under ineligible Workers' Compensation class codes and/or (2) outside the scope of MAINSTAY-approved Workers' Compensation class codes or job descriptions upon which the MAINSTAY class codes are based.
 - d. Interference with or failure to cooperate in investigations or audits conducted by MAINSTAY or its agents pertaining to Client's compliance with the obligations of this Agreement or work-related claims.
 - e. Failure to comply with applicable law.
 - f. Failure to pay MAINSTAY invoices within the required time-frame.
 - g. Failure to comply with any MAINSTAY policy or procedure of which Client was aware or reasonably should have been aware.
4. Notwithstanding any other provision in this Agreement or MAINSTAY's failure to exercise any other right of termination it has under this Agreement, MAINSTAY's obligations (except those related to payment of wages to its employees and associated tax and benefit obligations for work performed prior to the effective time of such termination) under this Agreement shall automatically terminate (regardless of whether actual notice is given) on the date Client is in arrears for two consecutive payment dates or for any two invoices. MAINSTAY, pursuant to its sole discretion, may agree in writing to resume such obligations as it specifically determines.



IN THE EVENT OF SUCH AUTOMATIC TERMINATION, CLIENT AGREES TO COMMUNICATE TO MAINSTAY'S EMPLOYEES THAT THEIR MAINSTAY ASSIGNMENT IS TERMINATED AS OF THE EFFECTIVE DATE OF THE AUTOMATIC TERMINATION OF MAINSTAY'S OBLIGATIONS UNDER THIS AGREEMENT. In the event client has not provided MAINSTAY advance notice of the client's impending default in sufficient time to enable MAINSTAY to pay employees on their last day of assignment, Client agrees to reimburse MAINSTAY for any late wage and hour penalties MAINSTAY becomes obligated to pay.

- i) Notwithstanding the termination of this Agreement MAINSTAY remains responsible for all of its obligations related to its employees.
- ii) Provisions of this Agreement, which by their terms extend beyond the termination or nonrenewal of this Agreement, will remain effective after termination or nonrenewal.

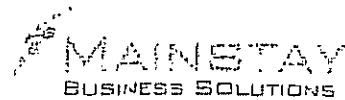
J. TRADEMARKS AND TRADE DRESS

MAINSTAY hereby grants to Client the nonexclusive, revocable right and license to use the MAINSTAY trademarks and trade dress, which include and is not limited to the term MAINSTAY, and MAINSTAY & Design, for the term of this Agreement in connection with the use of MAINSTAY'S Employees subject to the terms and conditions of this Agreement, and in the Client Service Guide, as those may be amended from time to time. MAINSTAY retains the right to disapprove all advertising and sales promotion materials created or distributed by Client in which any of the Trademarks or Trade Dress are used. Each and every item upon which Client places a MAINSTAY trademark shall include the legend "[Identify Trademark] is a trademark of MAINSTAY BUSINESS SOLUTIONS and is used under license." Client shall not register nor attempt to register any rights in any of MAINSTAY'S trademarks, nor shall it use any of MAINSTAY'S trademarks, or any similar term or symbol in a confusing manner thereto, as its corporate name, as or in its domain name, or as a trading name. Upon termination of this Agreement, Client shall immediately cease and desist in the use of all MAINSTAY trademarks and trade dress. Client is not authorized to use the MAINSTAY trademarks or trade dress on any materials for distribution to MAINSTAY Employees without the express permission of MAINSTAY.

K. SEVERABILITY AND ENTIRE AGREEMENT

Should any provision of this Agreement be declared or determined to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be part of this Agreement. If the remainder of this Agreement is not affected by such declaration or findings and is capable of substantial performance, then each provision not so affected shall be enforced to the extent permitted by the laws of the Blue Lake Rancheria Tribe of California.

This Agreement, together with documents referenced herein, sets forth the entire agreement between the parties and fully supersedes any and all prior agreements or



understandings, written or oral, between the parties pertaining to the subject matter hereof.

MAINSTAY RESERVES THE RIGHT TO CHANGE ANY NONFINANCIAL TERM IN ATTACHMENTS A, B AND D AND TO MODIFY OR PROMULGATE NEW DIRECTIVES IN THE CLIENT SERVICE GUIDE.

L. NOTICES

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by a recognized delivery service:

If to Mainstay Business Solutions:

Attention: Client Agreements

605 Coolidge Drive, 2nd Floor

Folsom, CA 95630

If to Client, to the principal business location as shown on page one of this Agreement.

Either party may designate in writing a different address to which notices shall be sent.

M. INSECURITY AND ADEQUATE ASSURANCES

If reasonable grounds for insecurity arise with respect to Client's ability to pay for MAINSTAY's services in a timely fashion, MAINSTAY may demand in writing adequate assurances of Client's ability to meet its payment obligations. Unless Client provides the assurances in a reasonable time and manner acceptable to MAINSTAY, in addition to any other rights and remedies available, Mainstay may partially or totally suspend its performance while awaiting assurances, without liability to MAINSTAY.

N. MODIFICATION AND WAIVER

Any modifications to this Agreement must be made in writing and must be signed by both parties in order to be effective.

O. SECTION HEADINGS

Title and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

P. COOPERATION

The parties will cooperate with each other in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. Client agrees that MAINSTAY's performance is dependent on Client's timely and effective cooperation with MAINSTAY. Accordingly, Client acknowledges that any delay by Client may result in MAINSTAY being released from an obligation or scheduled deadline or in Client having to pay extra fees for MAINSTAY's agreement to meet a specific obligation or deadline, despite the delay.

Q. WARRANTIES

No representations, express or implied, and no warranties or guarantees, are included or intended in this Agreement or in any MAINSTAY report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed. THIS SECTION SETS FORTH ONLY THE WARRANTIES PROVIDED BY MAINSTAY CONCERNING ITS



SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR OTHERWISE.

R. CONFLICT

In the event of any inconsistency or conflict between the main body of this Agreement or any other related document including but not limited to the MAINSTAY Client Service Guide, the terms of the main body shall govern, unless modified by a written document signed by both parties that post-dates this Agreement.

S. INABILITY TO PERFORM

Neither party will be responsible for failure or delay in performance of this Agreement if the failure or delay is due to labor disputes, strikes, fire, riot, war, terrorism, acts of God, or any other causes beyond the control of the nonperforming party.

Dated: 5-23-09

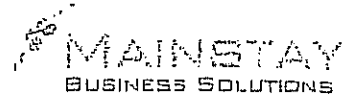
Wood's Roofing
License # 325131

By: [Signature]
Name: GARRY WOOD
Title: OWNER

MAINSTAY BUSINESS SOLUTIONS

Dated: 6/2/08

By: [Signature]
Name: Ken Harris
Title: Director of Risk Management



**ATTACHMENT A
ACKNOWLEDGEMENT OF RECEIPT OF BRANCH PROCEDURES AND TRIBAL STATUS**

On behalf of Wood's Roofing ("Company"), I hereby acknowledge receipt of the Mainstay Business Solutions ("MAINSTAY") Client Service Guide ("Guide") and understand that the Guide will be modified from time-to-time with new or updated policies and procedures, which shall be communicated to my Company by MAINSTAY. Such additional or modified policies and procedures shall be considered part of the Guide, as of the date communicated. I agree that all copies of the Guide will be returned to MAINSTAY upon the termination of Company's relationship with MAINSTAY.

Company acknowledges that it has been advised that MAINSTAY is a tribally-owned employer organization and is governed and managed according to applicable tribal policies and procedures of the Blue Lake Indian Tribe, a federally recognized Native American Tribe.

Company further agrees to ensure that all persons responsible for performing any obligation required by Company's contract with MAINSTAY Business Solutions shall review those provisions in the Guide as are applicable to the obligations they are performing and shall comply with them.

On the date indicated below, the following sections of the manual were reviewed by

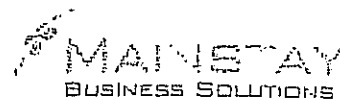
Larry Wood
PRINT NAME

Section	Client Initials
New Hire Procedures	<u>LEW</u>
Payroll Procedures	<u>LEW</u>
Termination Procedures	<u>LEW</u>
Unemployment Procedures	<u>LEW</u>
Employee Benefits	<u>LEW</u>
Employee Management Procedures	<u>LEW</u>
Safety Procedures	<u>LEW</u>
Workers' Compensation Procedures	<u>LEW</u>

Client Name: Wood's Roofing
Client Location 17700 Serene Drive
Morgan Hill, CA 95037

Signature [Signature]
Printed Name Larry Wood

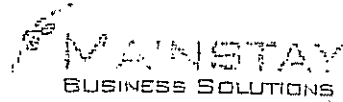
Date 5-23-08
Title OWNER



ATTACHMENT B COVERED CLASS CODES AND JOB DESCRIPTIONS

Class Code	Class Code Description	Tier 1	Tier 2*
6553	Roofing — equals or exceeds \$21.00	38.55%	35.15%
6742	Salespersons — Outside	16.74%	13.34%
6810	Clerical Office Employees	16.63%	13.23%

*Rates above Decrease by 3.4% for each individual employee when they reach \$7,000 in taxable wages



Attachment C

Fee Schedule

Payroll Fees: Payroll fees are calculated based on the gross payroll for Workers' Compensation classification code for each Employee. Fees are subject to change, consistent with Section C of this Agreement. The approved class codes and corresponding fees are as follows:

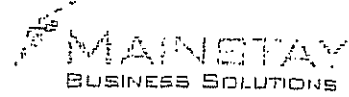
Class Code:

- 1. Enrollment Fee: Walved
- 2. Delivery Fee: \$15.00 per delivery or redelivery for each location
- 3. NSF Fee: 4% of the total invoice

Additional Fees and Discounts:

- 1. All fees contained in this Agreement have been discounted by 3% based on an assumption that payment will be by wire transfer or ACH. If Client chooses to pay by check or credit card, the discount shall not apply and the amount paid must include the 3% undiscounted amount.
- 2. Late Payment Fee: 4% of the total invoice
- 3. Interest Rate on Late Payments: 18% per annum
- 4. Late Reporting of Hours: \$250.00 per event
- 5. Late Reporting of Injury: \$500.00 per event
- 6. Credit Card Handling Fee 2.5% per transaction
- 7. Subrogation Waiver Fee** \$250
- 8. In Addition to ordinary payments Client agrees to pay MAINSTAY up to \$2500 per Workers Compensation claim.

** \$250 fee is required to be paid in advance if issuance of the waiver of subrogation. Total fee due will be separately calculated and invoiced. Contact your Client Service Manager for more information.



Authorized Forms of Payment

ACH / Direct Debit

Payment for payroll can be by direct debit. You will be required to sign the Direct Debit Authorization Form.

The deduction will transpire electronically 48 hours before your payroll is delivered. Once payroll has been processed and invoiced, an invoice noting the total will be faxed OR emailed to you for notification of the amount to be deducted from your designated account.

Wire Transfer Information:

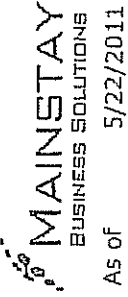
Beneficiary Bank:	Bank of America
Beneficiary Name:	Mainstay Business Solutions
ABA (Routing) #:	026009593
Account #:	4970719207

Credit Card Payments

Payment for payroll can be made with a credit card.

MAINSTAY accepts Visa, MasterCard and American Express. The transactions would transpire 24 hours before your payroll is delivered, 48 hours if you have direct deposit. Once payroll has been processed an invoice will be sent to you for notification of the amount owed.

Mainstay Business Solutions
Wood's Roofing Loss Run Report



As of 5/22/2011

Claim Num:	07-040864	Claimant:	Flores, Danilo	Status:	C				
DOI:	10/24/2007	Claim Type:	Minor Perm Dis	Litigated:	No	Medical	\$22,858.81	Incurred	\$22,858.81
Reported:	11/1/2007	Class Code:	5553			Indemnity	\$29,453.14		\$29,453.14
Worksite Location	Woods Roofing, Inc.					Legal	\$100.00		\$100.00
Body Part:	Foot					Other	\$1,350.00		\$1,350.00
Cause of Injury	Fall, Slip or Trip, NOC					Total	\$53,761.95		\$53,761.95
Accident Description:	EE claims that he attempted to regain balance and was close to the power pole ee claims that he had to jump and landed on wood instead of grass.								
Claim Num:	08-041812	Claimant:	Rubio, Sergio	Status:	C				
DOI:	12/14/2007	Claim Type:	Medical Only	Litigated:	No	Medical	\$481.81	Incurred	\$481.81
Reported:	1/3/2008	Class Code:	5553			Indemnity	\$0.00		\$0.00
Worksite Location	Woods Roofing, Inc.					Legal	\$0.00		\$0.00
Body Part:	Finger(s)					Other	\$0.00		\$0.00
Cause of Injury	Cut, Punctured, Scraped, NOC					Total	\$481.81		\$481.81
Accident Description:	Ee claims that he cut his index finger when he was cutting a material bundle with a utility knife								
Claim Num:	0800000927	Claimant:	Rubio, Sergio	Status:	O				
DOI:	11/10/2008	Claim Type:	Minor Perm Dis	Litigated:	Yes	Medical	\$78,053.92	Incurred	\$79,850.00
Reported:	11/13/2008	Class Code:	5553			Indemnity	\$51,861.66		\$69,476.66
Worksite Location	Woods Roofing, Inc.					Legal	\$15,723.41		\$15,833.95
Body Part:	Multiple Body Parts					Other	\$4,050.00		\$4,050.00
Cause of Injury	Fall or Slip Injury From Different Level (Elevation)					Total	\$149,688.99		\$169,210.61
Accident Description:	Ee fell off of a roof, landing on his side.								

Mainstay Business Solutions
Wood's Roofing Loss Run Report



Mainstay SIP

Number of Claims

3

	As of	Paid	Incurred
	5/22/2011		
Medical		\$101,394.54	\$103,190.62
Indemnity		\$81,314.80	\$98,929.80
Legal		\$15,823.41	\$15,933.95
Other		\$5,400.00	\$5,400.00
Total		\$203,932.75	\$223,454.37

Created By MBS\Ken.Farrar

2 of 2

PROOF OF SERVICE

I declare that: I am a resident of the County of Sacramento, California.

I am over the age of eighteen years and not a party to the within entitled cause; my business address is 13389 Folsom Blvd., #300-265, Folsom, CA 95630.

On June 27, 2011, I served the attached:

FIRST AMENDED COMPLAINT FOR DAMAGES FOR BREACH OF WRITTEN CONTRACT, MONEY ON AN OPEN BOOK ACCOUNT, BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING, GROSS NEGLIGENCE AND ORDINARY NEGLIGENCE

on the parties or attorneys for the parties in said cause:

BY MAIL by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Folsom, California, addressed as shown below.

BY HAND DELIVERY by causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the addressees shown below.

BY FACSIMILE TRANSMISSION by transmitting a true copy thereof by facsimile transmission to the interested parties to said action at the facsimile number[s] shown below.

BY OVERNIGHT DELIVERY using a commonly-known overnight delivery service with fees thereon fully prepaid, in Folsom, California, addressed as shown below.

**Attorney for Defendant
WOOD'S ROOFING, Inc.**

Eric F. Hartman, Esq.
Law Offices of Eric F. Hartman
300 S. First Street, Suite 210
San Jose, CA 95113
Telephone: (408) 297-7254
Facsimile: (408) 297-0608

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 27, 2011 at Folsom, California.



Brad Johnson

ERIC F. HARTMAN, ESQ. (SB # 083571)
LAW OFFICE OF ERIC F. HARTMAN
300 S. FIRST STREET, #210
SAN JOSE, CA. 95113
(408) 297-7254 / Fax (408) 297-0608

Attorney for Cross-Complainant, Wood's Roofing Inc., a California Corporation

ENDORSED-FILED

SEP 07 2011
CLERK OF THE TRIBAL COURT
BLUE LAKE RANCHERIA
[Signature]

IN THE TRIBAL COURT OF
BLUE LAKE RANCHERIA

MAINSTAY BUSINESS SOLUTIONS,)
)
)
Plaintiff,)

vs.)

WOOD'S ROOFING INC., a California)
Corporation, DOES 1-10.)
)
Defendants.)

CASE NO. C-09-0612-LJM
C-09-0612A-LJM

CROSS-COMPLAINT FOR DAMAGES
FOR BREACH OF IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING
REFUSAL OF INSURER TO DEFEND
ACTION AGAINST INSURED AND
INDEMNIFY AND TO WRONGFULLY
REFUSAL TO SETTLE

WOOD'S ROOFING INC., a California)
Corporation;)
)
Cross-Complainant,)

vs.)

UNITED CONTRACTORS INSURANCE)
COMPANY INC.; ADMIRAL)
INSURANCE COMPANY; ROES 1-100.)
)
Cross-Defendants.)

Exhibit B

1 Cross-Complainant Wood's Roofing Inc. (hereinafter "Wood's Roofing") alleges:

2 1. Cross-Defendant **United Contractors Insurance Company Inc.** was and is
3 a corporation organized and existing under the laws of the State of California with its
4 principal place of business in this State located at 45-110 Club Drive, Suite D&E, Indian
5 Wells, California 92210 and authorized to transact business in this State as an insurer.

6 2. Cross-Defendant **Admiral Insurance Company** was and is a corporation
7 organized and existing under the laws of the State of California with its principal place of
8 business in this State located at 1255 Caldwell Road, Cherry Point, New Jersey 08034 and
9 authorized to transact business in this State as an insurer.

10 3. On or about September 28, 2008 for a period of 3 years to September 28, 2011
11 Cross-Defendant **United Contractors Insurance Company Group** (hereinafter "**United**
12 **Contractors**") insured a policy of liability insurance - Policy No. GL-CA010804 to its
13 insured Cross-Complainant Wood's Roofing. On/about November 10, 2008 the insured's
14 hired temporary employee for Plaintiff Mainstay Business Solutions to assist in Wood's
15 Roofing's work was injured during the course and scope of their roofing work (Sergio
16 Flores).

17 4. On or about September 28, 2007 for a period of one year to September 28,
18 2008 Cross-Defendant **Admiral Insurance Company** (hereinafter "**Admiral**") insured a
19 policy of liability insurance - Policy No. CA00000104306 to its insured Wood's Roofing.
20 On or about October 24, 2007 the insured's hired temporary employee from Plaintiff
21 Mainstay Business Solutions to assist in Wood's roofing work was injured during the course
22 and scope of their roofing work (Daniel Flores).

23 5. On or about the above dates in consideration of the payments of periodic full
24 premiums, Cross-Defendants insurance companies delivered to Cross-Complainant Woods'
25 Roofing policies of insurance in which Cross-Defendants would and did insure Cross-
26 Complainant Wood's Roofing Inc. against any and all liability and agreed to pay on behalf
27 of the insured Cross-Complainant Wood's Roofing Inc. All sums which their insured Cross-
28

1 Complainant Wood's Roofing shall become obligated to be to a maximum of \$1,000,000 -
2 \$2,000,000 per occurrence during the policy period. At all times Cross-Complainant Woods'
3 Roofing had a reasonable expectation of full coverage, indemnification and without dispute.
4 The policies further provided that Cross-Defendants insurance companies "shall defend any
5 action against the insured cross-complainant Wood's Roofing" alleging such damages,
6 property damages, bodily injury and other covered damages even if any such actions is
7 groundless, false, or fraudulent or meritless. The policies took effect as see forth above and
8 remained in full force and effect and all times hereinafter mentioned. The policies are
9 attached as Exhibit #A and Exhibit #B.

10 6. On/about July 12, 2009 a written Complaint was filed by plaintiff Mainstay
11 Business Solutions against Defendant Wood's Roofing Inc. alleging that defendant Wood's
12 Roofing Inc. caused harm and injury to Plaintiff Mainstay Business Solutions' employees
13 while doing roofing work caused by allegedly Wood's Roofing negligence.

14 7. On/about June 12, 2009 Defendant Woods' Roofing was served with a
15 Complaint for damages and First Amended Complaint on June 23, 2011 to include causes
16 of action for negligence by Wood's Roofing Inc. causing Plaintiff Mainstay Business
17 Solutions to proximately suffer damages.

18 8. Cross-Complainant Wood's Roofing Inc. at all times herein mentioned had and
19 has performed all of the terms of the policies on its part to be performed.

20 9. Notwithstanding Cross-Complainant Wood's Roofing Inc. requests all Cross-
21 Defendants denied all liability and refused to undertake the defense of the action against
22 Defendant Wood's Roofing Inc. by Plaintiff Mainstay Business Solutions and refused to
23 indemnify and pay any reasonable settlement as set forth in Exhibit #C and Exhibit #D.

24 10. Prior to Cross-Defendants' refusal to defend and indemnify cross-complainant
25 in the Plaintiff Mainstay Business Solutions /Defendant Wood's Roofing action and at all
26 relevant times Cross-Defendants insurance companies failed to undertake a complete and
27 adequate investigation of the claim. Specifically, Cross-Defendants insurance companies
28

1 failed to undertake an adequate investigation of the claim. Specifically cross-defendants'
2 asserted in their denial of coverage and indemnification letters that the losses were excluded
3 under the policy but failed to, inter alia, specify which legally correct policy premiums
4 excluded the losses. Despite repeated attempts by Defendant/Cross-Complainant Wood's
5 Roofing Inc. to insurance companies as to ascertain the grounds for its assertions, the cross-
6 defendants insurance companies failed and refused to communicate with cross-complainant
7 Wood's Roofing Inc. to answer Woods' Roofing Inc.'s inquiries.

8 11. On/about August 2009 Plaintiff Mainstay Business Solutions communicated
9 a reasonable settlement offer of \$100,000 which amount is within the policy limits to
10 Defendant/Cross-Complainant Wood's Roofing Inc. At all times and that time and at all
11 relevant, Cross-Defendants insurance companies refused to consider or accept the offer.

12 12. As a proximate result of Cross-Defendants insurance companies in their
13 refusal to defend, indemnify and settle as herein alleged, Defendant/Cross-Complainant
14 Wood's Roofing was compelled to engage counsel to defend in the action Plaintiff Mainstay
15 Business Solutions vs. Defendant Woods' Roofing Inc. and is incurring fees and costs in its
16 defense in a sum to be ascertain.

17 13. As a proximate result of the tortious conduct of Cross-Defendants insurance
18 companies, Cross-Complainant Woods' Roofing has suffered other damages including
19 emotional distress and loss of business.

20 14. In committing the acts described set forth above of this Cross-Complaint,
21 Cross-Defendant insurance companies acted in conscious disregard of the rights of Cross-
22 Complainant Wood's Roofing Inc. and was guilty of malice or oppression or fraud. The
23 conduct of Cross-Defendants insurance companies warrants an assessment of punitive
24 damages in an amount appropriate to punish Cross-Defendants insurance companies and
25 deter others from engaging in similar wrongful conduct.

26 WHEREFORE, Cross-Complainant prays judgment from Cross-Defendants jointly
27 and severally as follows:
28

1. For the sum of \$500,000 as attorney's fees and the sum of \$100,000 as costs and expenses incurred by this cross-complainant in defending the action against it.
2. For the sum of \$200,000 as reimbursement of the amount to be paid by this Cross-Complainant in settlement of the Plaintiff Mainstay Business Solutions action or satisfaction of the judgment in favor of Plaintiff Mainstay Business Solutions and against this Cross-Complainant Wood's Roofing Inc.
3. For general damages in excess of \$1,000,000 according to proof.
4. For exemplary and punitive damages.
5. For reasonable attorney fees and costs.
6. For costs of suit herein incurred.
7. For such other and further relief as the court may deem proper.

Dated: September 6, 2011

By: _____



Eric F. Hartman
Attorney for Cross-Complainant
Wood's Roofing Inc.

UNITED CONTRACTORS INSURANCE COMPANY, INC.
A RISK RETENTION GROUP
1250 H Street, N.W., Suite 902
Washington DC 20005

COMMON POLICY DECLARATIONS

Policy Number: GL-CA010804

Renewal of: NEW

INSURED'S NAME & ADDRESS

Wood's Roofing Inc.

P.O. Box 1453
Morgan Hill CA 95038

POLICY PERIOD: From: 09-28-08 To: 09-28-09

AT 12:01 a.m. Standard Time at your mailing address shown above.

IN RETURN FOR THE PAYMENT OF PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

FORM OF NAMED INSURED'S BUSINESS:

Individual Partnership Joint Venture Corporation Limited Liability Corporation Organization (other than Partnership or Joint Venture)

Business Description:

Roofing

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PART FOR WHICH A MINIMUM AND DEPOSIT PREMIUM IS INDICATED. 20 PER CENT OF THIS DEPOSIT PREMIUM IS FULLY EARNED AT THE INCEPTION DATE OF THIS POLICY. THIS POLICY IS SUBJECT TO AUDIT.

COVERAGE PART	MINIMUM & DEPOSIT PREMIUM
---------------	---------------------------

COMMERCIAL GENERAL LIABILITY	\$ 16,140.00
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ENDORSEMENTS ATTACHED TO THIS POLICY AT TIME OF ISSUE:

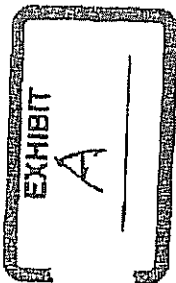
ISSUED BY:

United Contractors Insurance Agency
45-110 Club Drive, Suite D & E
Indian Wells, CA 92210

By: *[Signature]*

THIS COMMON POLICY DECLARATION AND THE SUPPLEMENTAL DECLARATION TOGETHER WITH THE COVERAGE PART, COVERAGE FORMS AND ENDORSEMENTS ISSUED TO AND FORMING A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance



SCHEDULE OF FORMS AND ENDORSEMENTS

Attached to Policy number: GL-CA010804

Date: 9-28-08

FORM NUMBERS

FORM TITLES

UCIC-CGL-BIA 080106	BLANKET ADDITIONAL INSURED ENDORSEMENT
UCIC-CGL-CW 080106	CONTRACTORS WARRANTY ENDORSEMENT
UCIC-CGL-DED 080106	PER CLAIM DEDUCTIBLE ENDORSEMENT
UCIC-CGL-SOS(1/05) EDITION 080106	SERVICE OF SUIT UNITED CONTRACTOR INSURANCE COMPANY INC.
CG75B4 (01-06)	COMMERCIAL GENERAL LIAB COVERAGE FORM MOBILE EQUIPMENT/AUTO AMENDMENT

POLICY NO GL-CA010804

EFFECTIVE DATE: 9-28-08

THIS ENDORSEMENT CHANGES THE POLICY
PLEASE READ IT CAREFULLY

BLANKET ADDITIONAL INSURED ENDORSEMENT

IT IS AGREED COVERAGE IS EXTENDED AS FOLLOWS:

1. PARAGRAPH 3. OF SECTION II - WHO IS AN INSURED IS AMENDED TO INCLUDE AS AN INSURED ANY PERSON OR ORGANIZATION THAT THE NAMED INSURED HAS AGREED IN AN INSURED CONTRACT TO NAME AS AN ADDITIONAL INSURED.
2. THIS EXTENSION OF COVERAGE APPLIES ONLY TO COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE LIABILITY, AND ONLY IF:
 - (a) THE BODILY INJURY OR PROPERTY DAMAGE FIRST TAKES PLACE AFTER THE EXECUTION OF THE INSURED CONTRACT; AND
 - (b) THE BODILY INJURY OR PROPERTY DAMAGE ARISES FROM YOUR WORK PERFORMED FOR THE ADDITIONAL INSURED(S) DURING THE POLICY PERIOD.
3. THIS EXTENSION OF COVERAGE FOR AN ADDITIONAL INSURED IS LIMITED TO TORT LIABILITY THAT IS VICARIOUSLY IMPOSED UPON THE ADDITIONAL INSURED THAT ARISES OUT OF THE NEGLIGENCE, ACTS, ERRORS, OMISSIONS OF, OR BREACH OF A STATUTORY OBLIGATION COMMITTED BY, THE NAMED INSURED. NO COVERAGE IS AFFORDED TO AN ADDITIONAL INSURED FOR TORT LIABILITY THAT ARISES OUT OF THE ADDITIONAL INSURED'S NEGLIGENCE, ACTS, ERRORS, OMISSIONS OR BREACH OF A STATUTORY OBLIGATION, OR THE NEGLIGENCE, ACTS, ERRORS, OMISSIONS OR BREACH OF A STATUTORY OBLIGATION BY ANYONE ELSE FOR WHOM THE ADDITIONAL INSURED IS LEGALLY LIABLE.
4. OUR DUTY TO INDEMNIFY THE ADDITIONAL INSURED(S) SHALL BE LIMITED TO THAT SUM DERIVED BY APPLYING THE PERCENTAGE OF FAULT OF THE NAMED INSURED AS DETERMINED BY THE TRIER-OF-FACT TO THE TOTAL DAMAGE SUM ALLOCATED BY THE TRIER-OF-FACT TO THE ADDITIONAL INSURED(S). UNDER NO CIRCUMSTANCES SHALL WE PAY MORE THAN THIS PROPORTIONATE INDEMNITY SHARE.
5. THE APPLICABLE LIMIT OF OUR LIABILITY SHALL NOT BE INCREASED BY THE INCLUSION OF ADDITIONAL INSUREDS UNDER THE POLICY.

ALL OTHER TERMS, PROVISIONS, CONDITIONS AND EXCLUSIONS IN THIS POLICY REMAIN UNCHANGED.

UCIC-CGL-BIA (08/01/05)

ORIGINAL Copy

(OMNI 7 EFQL04-060922/0810071242)

POLICY NO. GL-CAL010804

EFFECTIVE DATE: 09-28-08

THIS ENDORSEMENT CHANGES THE POLICY
PLEASE READ IT CAREFULLY

CONTRACTORS WARRANTY ENDORSEMENT

IT IS AGREED THAT THIS POLICY DOES NOT APPLY TO BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY OR ADVERTISING INJURY ARISING OUT OF:

- (1) THE ACTS OR OMISSIONS OF INDEPENDENT CONTRACTORS WHILE WORKING ON BEHALF OF ANY INSURED;
- (2) THE NEGLIGENT:
 - (I) HIRING OR CONTRACTING;
 - (II) INVESTIGATION;
 - (III) SUPERVISION;
 - (IV) TRAINING;
 - (V) RETENTION;

OF ANY INDEPENDENT CONTRACTOR FOR WHOM ANY INSURED IS OR EVER WAS LEGALLY RESPONSIBLE AND WHOSE ACTS OR OMISSIONS WOULD BE EXCLUDED BY (1) ABOVE.

THIS EXCLUSION DOES NOT APPLY PROVIDED THAT YOU OBTAINED THE FOLLOWING PRIOR TO THE COMMENCEMENT OF YOUR WORK:

- (1) A WRITTEN INDEMNITY AGREEMENT FROM SUCH INDEPENDENT CONTRACTOR PERFORMING SERVICES ON YOUR BEHALF, SPECIFICALLY AGREEING TO INDEMNIFY, DEFEND AND HOLD YOU HARMLESS; AND
- (2) CERTIFICATES OF INSURANCE EVIDENCING YOUR ADDITIONAL INSURED STATUS AND LIMITS OF INSURANCE WITH EQUAL OR GREATER LIMITS THAN PROVIDED UNDER THIS POLICY FROM SUCH INDEPENDENT CONTRACTOR PERFORMING SERVICES ON YOUR BEHALF; AND
- (3) LICENSURE OF SUCH INDEPENDENT CONTRACTOR PERFORMING SERVICE ON YOUR BEHALF IF SUCH LICENSE IS REQUIRED BY THE LOCAL, REGIONAL OR STATE AUTHORITY REGULATING SUCH INDEPENDENT CONTRACTORS.

IF YOUR ADDITIONAL INSURED STATUS IS DENIED BY ANY INDEPENDENT CONTRACTOR'S COMMERCIAL GENERAL LIABILITY INSURER, THEN WE SHALL HAVE NO DUTY TO DEFEND OR INDEMNIFY YOU FOR THE WORK PERFORMED BY SUCH INDEPENDENT CONTRACTOR, REGARDLESS OF YOUR COMPLIANCE WITH PARAGRAPHS (1) THROUGH (3), ABOVE.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED

POLICY NO. GL-CA010L

EFFEC ATE 09-28-08

THIS ENDORSEMENT CHANGES THE POLICY
PLEASE READ IT CAREFULLY

PER CLAIM DEDUCTIBLE ENDORSEMENT

IN CONSIDERATION OF THE PREMIUM FOR WHICH THIS POLICY IS WRITTEN, IT IS AGREED THAT A PER CLAIM DEDUCTIBLE IN THE AMOUNT STATED IN THE DECLARATIONS SHALL APPLY TO EACH AND EVERY CLAIM UNDER COVERAGE A OR B. THE DEDUCTIBLE WILL APPLY SEPARATELY TO EACH CLAIM REGARDLESS OF THE NUMBER OF CLAIMS MADE OR SUITS BROUGHT, OR THE NUMBER OF PERSONS OR ORGANIZATIONS MAKING CLAIMS OR BRINGING SUITS, AND REGARDLESS OF THE NUMBER OF CLAIMS THAT ARE JOINED IN ANY ONE SUIT OR ANY OTHER FORM OF LEGAL PROCEEDING OR DISPUTE RESOLUTION.

THIS ENDORSEMENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

(A) THE PER CLAIM DEDUCTIBLE APPLIES TO ALL COSTS OR EXPENSES WE INCUR AS DESCRIBED IN SECTION I: SUPPLEMENTARY PAYMENTS – COVERAGES A AND B AND TO ANY PAYMENT(S) WE MAKE ON BEHALF OF ANY INSURED TO SETTLE, OR SATISFY A JUDGMENT IN, ANY CLAIM OR SUIT.

(B) THE PER CLAIM DEDUCTIBLE APPLIES SEPARATELY TO EACH INSURED SEEKING COVERAGE UNDER THIS POLICY AND MUST BE PAID BY THE NAMED INSURED. THE DEDUCTIBLE AMOUNT(S) MAY NOT BE INSURED AGAINST OR SATISFIED BY PAYMENTS BY OTHERS, INCLUDING CONTRIBUTIONS TO OR ON BEHALF OF AN INSURED BY INSURERS OR ANYONE ELSE. HOWEVER, IF MORE THAN ONE NAMED INSURED OR INSURED DEFINED IN PARAGRAPH 1. OF SECTION II – WHO IS AN INSURED, SEEKS COVERAGE FOR THE SAME OCCURRENCE OR IN CONNECTION WITH THE SAME SUIT OR CLAIM ALL SUCH NAMED INSUREDS AND DEFINED INSUREDS SHALL BE DEEMED TO BE A SINGLE INSURED.

(C) THE TERMS AND PROVISIONS OF THIS INSURANCE, INCLUDING THOSE WITH RESPECT TO:

- (I) OUR RIGHT AND DUTY TO INVESTIGATE, DEFEND OR SETTLE ANY CLAIMS OR SUITS FALLING UNDER COVERAGE A OR B; AND
- (II) YOUR DUTIES IN THE EVENT OF AN OCCURRENCE, CLAIM OR SUIT;

APPLY IRRESPECTIVE OF THE APPLICATION OF THE DEDUCTIBLE AMOUNT(S).

(D) WE MAY, BUT OR NOT OBLIGATED TO, PAY ANY PART OR ALL OF THE DEDUCTIBLE AMOUNT(S) FOR COSTS OR EXPENSES WE INCUR ON BEHALF OF ANY INSURED, OR TO EFFECT SETTLEMENT OF ANY CLAIM OR SUIT. UPON NOTIFICATION OF THE ACTION TAKEN YOU SHALL REIMBURSE US FOR THE FULL AMOUNT OF THE DEDUCTIBLE(S).

E) OUR RIGHT TO SEEK REIMBURSEMENT OF THE PER CLAIM DEDUCTIBLE IS NOT WAIVED, BUT IS PRESERVED, SHOULD THERE BE A DELAY OR FAILURE ON OUR PART IN REQUESTING PAYMENT FROM YOU.

(F) IF DAMAGES ARE CLAIMED FOR CARE, LOSS OF SERVICES OR DEATH RESULTING AT ANY TIME FROM BODILY INJURY, A SEPARATE DEDUCTIBLE AMOUNT WILL BE APPLIED TO EACH PERSON MAKING A CLAIM FOR SUCH DAMAGES.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED

THIS ENDORSEMENT CHANGES THE POLICY
PLEASE READ IT CAREFULLY

SERVICE OF SUIT

It is agreed that in the event of the failure of the United Contractors Insurance Company, Inc., A Risk Retention Group, (herein called the Company) to pay any amount claimed to be due hereunder, the Company hereon at the request of the Insured will submit to the Jurisdiction of any Court of competent Jurisdiction within the State of California and will comply with all requirements necessary to give such court Jurisdiction and service of process in such suit may be made upon United Contractors Insurance Agency and that any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any Appellate court in the event of an Appeal.

The above named are authorized and directed to accept service of process on behalf of the company in any such suit and/or upon the request of the insured to give a written undertaking to the insured that they will enter a general appearance upon the company's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of the State of California which makes provisions therefore, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his Successors in office, as its true and lawful attorney upon whom may be served any lawful process in action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance and hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

All other terms, conditions and exclusions remain unchanged

UCIC-CGL-SOS(01/01/05)

ORIGINAL Copy

(OMNI 7 EFQA01-050722/0810071242)

UNITED CONTRACTORS INSURANCE COMPANY, INC.,
A Risk Retention Group

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR YOUR RISK RETENTION GROUP.

VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED. THIS POLICY MAY BE MORE RESTRICTIVE THAN COVERAGE AFFORDED UNDER YOUR PREVIOUS OR OTHER POLICIES AVAILABLE TO YOU.

PLEASE READ THE ENTIRE FORM CAREFULLY AND DISCUSS THE COVERAGE PROVIDED BY THE POLICY WITH YOUR INSURANCE AGENT/BROKER.

Throughout this policy the words **you** and **your** refer solely to the **named insured** shown in the Declarations, and any other person or organization qualifying as a **named insured** under this policy. The words **we**, **us** and **our** refer to United Contractors Insurance Company, Inc.

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

Other words and phrases that appear in bold face type have special meanings as set forth in SECTION V - DEFINITIONS of this policy.

SECTION 1 - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. INSURING AGREEMENT

- a. We will pay those sums that an **insured** becomes legally obligated to pay as damages because of **bodily injury** or **property damage** to which this insurance applies. Our duty to indemnify the **insured** is expressly limited by the terms of this policy.

Notwithstanding the preceding paragraph, we have the right and duty to defend only those **insureds** as defined paragraphs 1. or 2. of SECTION II - WHO IS AN INSURED against any **suit** seeking damages to which this insurance applies. We have the right, but not the duty, to defend any other **insureds**. We have no duty to defend any **insured** against any **suit** when any other insurer is obligated to defend the **insured**.

We, may at our sole discretion, investigate any **occurrence** and settle any **claim** or **suit** that may result
But:

- (1) The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE; and
(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or Medical Expenses under Coverage C.

- b. This insurance applies to **bodily injury** and **property damage** only if:
- (1) The **bodily injury** or **property damage** is caused by an occurrence that takes place in the coverage territory; and
 - (2) The **bodily injury** or **property damage** is caused by an occurrence that takes place during the policy period whether or not such occurrence is known to any insured; and
 - (3) The **bodily injury** or **property damage** resulting from such occurrence first takes place during the policy period; and

All **bodily injury** or **property damage** arising out of an occurrence, or series of related occurrences, shall be deemed to take place at the time of the first such **bodily injury** or **property damage**, regardless of when the **bodily injury** or **property damage** becomes manifest or apparent to anyone. If any **bodily injury** or **property damage** takes place prior to the inception of this policy, then all **bodily injury** or **property damage** will be deemed to first take place prior to the inception of this policy even though the occurrence giving rise to such damage may be continuous or repeated exposure to the same generally harmful conditions, and even though the nature, type or extent of such **bodily injury** or **property damage** may be continuous, progressive, cumulative, changing or evolving, and even though the **bodily injury** or **property damage** continues into this policy period.

c. Our duty to defend is further limited as follows:

- (1) We shall have no duty to defend any claim or suit in which it is alleged or claimed, in whole or in part, that any **bodily injury** or **property damage** is continuous or progressive in nature or results from continuous or repeated exposure to the same generally harmful conditions, unless the claim or suit specifically alleges that all of the **bodily injury** or **property damage** for which damages are sought first took place during the policy period.
- (2) We shall have no duty to defend any claim or suit filed before the policy period, regardless of whether the insured seeking coverage was a party to such claim or suit at the time it was filed. This provision includes suits that are amended, consolidated or refiled, among some or all of the same parties, and the filing date of the first suit will determine whether the suit was filed before the inception date of this policy.
- (3) When we have no duty to defend, we retain the right, but not the duty, at our sole election and discretion, to defend an insured or to intervene in any claim or suit for which a defense or indemnity has been requested by any insured under this policy.
- (4) If we defend an insured against a claim or suit and your indemnitee is also named as a party to the claim or suit, we retain the right, but not the duty, to defend your indemnitee. The decision concerning whether to defend any such indemnitee shall be at our sole election and discretion.
- (5) We shall have no duty to defend any insured that does not qualify as an insured as defined in paragraphs 1. or 2. of SECTION II – WHO IS AN INSURED. We have no duty to defend an insured as defined in paragraph 3. of SECTION II – WHO IS AN INSURED.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A AND B.

2. EXCLUSIONS:

The following exclusions apply regardless of whether any other cause or causes contributed, in whole or in part, directly or indirectly, jointly or concurrently or in any sequence, with the excluded matters to cause **bodily injury** or **property damage**, and regardless of whether any other contributing or concurrent cause or causes of the **bodily injury** or **property damage** are covered by this policy.

A. EXPECTED OR INTENDED INJURY OR CRIMINAL OR FRAUDULENT ACT OR OMISSION EXCLUSION

Bodily Injury or **Property Damage**:

- (1) Expected or intended from the standpoint of any insured, or

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- (2) Arising out of or resulting from a criminal or fraudulent act or omission committed by or at the direction of any **insured**.

B. CONTRACTUAL LIABILITY EXCLUSION

Bodily injury or property damage for which any **insured** is obligated to pay damages by reason of the assumption of liability in a contract or agreement. However, this exclusion does not apply to liability for **bodily injury or property damage**:

- (1) That **you** would have in the absence of the contract or agreement; or
- (2) That **you** assumed in a contract or agreement that is an **insured contract** provided that the **bodily injury or property damage** occurs subsequent to the execution of the contract or agreement and further provided that the **bodily injury or property damage** arises out of **your work** performed or **your product** sold during the policy period.

In the event that paragraph (2) above, is satisfied, and subject to all other policy terms and conditions, **our** duty to indemnify **you** for any liability for **bodily injury, property damage, attorney fees** or the costs of litigation under an **insured contract** shall be limited by the principles of comparative fault and shall not exceed the amount derived by multiplying the percentage of fault allocated to **you** by the trier-of-fact to the total damage sum awarded against **you** by the trier-of-fact to **your** indemnitee. Under no circumstances shall we pay more than this proportionate share of any damages awarded against **you** even if **your** liability under the **insured contract** is greater.

Solely for the purposes of liability assumed in an **insured contract**, and subject to the immediately preceding paragraph, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **insured** are deemed to be damages because of **bodily injury or property damage** provided that:

- (1) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same **insured contract**;
- (2) Such attorney fees and litigation expenses are for the defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are recovered; and
- (3) Payments made to **you** or on **your** behalf for such liability, including the payment of attorney fees and litigation expenses on behalf of the indemnitee, shall reduce the applicable limits of insurance as set forth in Section III - LIMITS OF INSURANCE on a dollar for dollar basis.

We have no duty or obligation to make any payment to **you** or on **your** behalf for attorney fees and/or the costs of litigation ordered, awarded or declared to be owing pursuant to an **insured contract** unless and until **your** percentage of comparative fault has been determined by the trier-of-fact after an actual and contested trial. We have no duty or obligation to provide a defense for, or participate in the defense of, **your** indemnitee that qualifies as such under an **insured contract**.

Except as specifically set forth above, any attorney fees or litigation expenses incurred by an **insured** in the defense of another are not covered.

C. LIQUOR LIABILITY EXCLUSION

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

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

D. WORKERS COMPENSATION AND SIMILAR LAWS EXCLUSION

Any obligation of any **insured** under a workers' compensation, disability benefits, unemployment compensation law or any similar law.

E. EMPLOYEE, OWNER AND WORKER'S LIABILITY EXCLUSION

Bodily injury to:

- (1) An **employee** of any **insured** arising out of:
 - (a) Employment by any **insured**; or
 - (b) Performing duties related to the conduct of any **insured's** business.
- (2) A subcontractor or independent contractor of any **insured** including the subcontractor's or independent contractor's employees, leased employees, volunteer worker's, borrowed servants or temporary employees.
- (3) The **named insured**.
- (4) A spouse, child, parent, brother or sister of an **employee** of any **insured**, or the employee of any subcontractor or independent contractor retained by any **insured**, as a consequence of paragraphs (1), (2) or (3) above.

This exclusion applies:

- (1) Whether any **insured** may be liable as an employer or in any other capacity;
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury; and
- (3) To liability assumed in an **insured contract**, or any **claim** or **suit** for contribution by any **insured** against any other **insured** or by any third party against any **insured** when such **claim** or **suit** arises out of or as a consequence of paragraphs (1), (2), (3) or (4) of the immediately preceding section.

F. ABSOLUTE POLLUTION EXCLUSION

- (1) **Bodily injury** or **property damage** arising out of, caused by, resulting from, attributable to, contributed to, or aggravated by the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape, existence of, presence of or exposure to **pollutants** at any time and in any form whatsoever.
- (2) This exclusion applies not only to traditional environmental contamination or pollution, but also to bodily injury or property damage arising out of pollutants in common and everyday situations or involving only ordinary acts of negligence.
- (3) This exclusion applies to any loss, cost or expense arising out of:
 - (a) Any request, demand, order or requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
 - (b) Any **claim** or **suit** for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

G. AIRCRAFT, AUTO OR WATERCRAFT EXCLUSION

Bodily injury or **property damage** arising out of the ownership, maintenance, use or entrustment to others of any aircraft, **auto** or watercraft. Use includes operation and **loading** or **unloading**.

This exclusion applies even if the **claims** against any **insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **insured**, if the **occurrence** which caused the **bodily injury** or **property damage** involved the ownership, maintenance, use or entrustment to others of any aircraft, **auto** or watercraft.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises **you** own or rent.
- (2) A watercraft **you** do not own that is:

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- (a) Less than 26 feet long; and
- (b) Not being used to carry persons or property for a charge;
- (3) Parking an auto on, or on the ways next to, premises you own or rent, provided the auto is not owned by or rented or loaned to any insured;
- (4) Liability assumed under an insured contract for the ownership, maintenance or use of aircraft or watercraft; or
- (5) Bodily injury or property damage arising out of the operation of any of the machinery or equipment listed in paragraph f.(2) or f.(3) of the definition of mobile equipment.

H. MOBILE EQUIPMENT EXCLUSION

Bodily injury or property damage arising out of:

- (1) The transportation of mobile equipment by an auto owned or operated by or rented or loaned to any insured; or
- (2) The use of mobile equipment in, or while in practice for, or while being prepared for, any prearranged racing, speed or demolition contest or in any stunting activity; or
- (3) Transporting or moving, or the use of, presence of or existence of, mobile equipment on any public street or highway, except this exclusion does not apply to:
 - (a) Mobile equipment while being transported or moved from one part of a jobsite where your work is being performed to another part of the same jobsite on any public street or highway immediately adjoining the jobsite
 - (b) The use of mobile equipment on a public highway or street but only if the public street or highway is the jobsite and your work is the construction, repair, maintenance or improvement of the public street or highway. This exception does not apply while mobile equipment is being moved to or from the jobsite on any public highway or street.

I. WAR EXCLUSION

Bodily Injury or property Damage, however caused, arising, directly or indirectly, or in whole or in part, out of:

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

J. DAMAGE TO PROPERTY EXCLUSION

Property Damage to:

- (1) Property that any insured has ever owned, rented, or occupied at any time, including any costs or expenses incurred by any insured, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises the insured sells, gives away or abandons, if the property damage arises out of any part of those premises;
- (3) Property, real or personal, loaned to any insured;
- (4) Personal property in the care, custody or control of any insured, regardless of whether the insured exercised the exclusive care, custody or control of the personal property when the property damage occurred.
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the property damage arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed.

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

Under paragraphs (5) and (6) of this exclusion **you**, or any contractors or subcontractors working directly or indirectly on **your** behalf, shall be deemed to be performing operations from the time when **you** or any such contractors or subcontractors began work or operations at the property to such time as the work or operations are complete as set forth in the definition of **products-completed operations hazard**.

Under paragraphs (5) and (6) of this exclusion, if **you** are a general contractor, developer, construction manager or construction supervisor the entire job site or project on or at which **your work** is being performed, or **your services** are being provided, shall be deemed to be "that particular part" of real or other property.

Paragraphs (5) and (6) of this exclusion apply to any property, real or personal, which must be demolished, removed, repaired, replaced, altered, modified, or damaged in order to remove, restore, repair or replace **your work or your product**.

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

K. DAMAGE TO YOUR PRODUCT EXCLUSION

Property damage to your product.

This exclusion applies to any property, real or personal, which must be demolished, removed, repaired, replaced, altered, modified, or damaged in order to remove, restore, repair or replace **your product**.

L. DAMAGE TO YOUR WORK EXCLUSION

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

If **you** are a general contractor or developer, this exclusion does not apply if the damaged work or the work out of which the damage arises was performed on **your** behalf by a subcontractor of **yours**.

This exclusion applies to any property, real or personal, which must be demolished, removed, repaired, replaced, altered, modified, or damaged in order to remove, restore, repair or replace **your work or your product**.

M. DAMAGE TO IMPAIRED PROPERTY AND PROPERTY NOT PHYSICALLY INJURED EXCLUSION

Property damage to impaired property or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**; or
- (2) A delay or failure by **you** or anyone acting on **your** behalf to perform a contract or agreement in accordance with its terms.

This Exclusion applies to any property, real or personal which must be demolished, removed, repaired, replaced, altered, modified, or damaged in order to remove, restore, repair or replace **your work or your product**.

N. RECALL OF PRODUCTS OR WORK EXCLUSION

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

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

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

This exclusion applies to any property, real or personal, which must be demolished, removed, repaired, replaced, altered, modified, or damaged in order to remove, restore, repair or replace **your work, your product or impaired property.**

O. EMPLOYMENT-RELATED PRACTICES EXCLUSION

Bodily injury or property Damage arising in whole or in part out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination or other employment-related practices, policies, acts or omissions;
- (4) Consequential injury as a result of any of the above; or
- (5) **Claim or suit** by a spouse, child, parent, brother or sister of any **employee** or **insured** arising out of, or as a consequence of paragraphs (1), (2), (3), or (4) above.

This exclusion applies:

- (1) Whether any **insured** may be liable as an employer or in any other capacity;
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the **bodily injury or property damage;** or
- (3) To any **insured** against whom a **claim** is made or **suit** is brought as a consequence of paragraphs (1), (2), (3), (4) or (5) of the immediately preceding section whether by or on behalf of an **employee** of that **insured** or any other **insured.**

P. ATHLETIC OR SPORTS PARTICIPANTS EXCLUSION

Bodily Injury or property damage arising out of, in whole or in part, practicing for, participating in or officiating at any sports or athletic contest.

Q. LEAD EXCLUSION

Bodily injury or property damage arising out of or resulting from, in whole or in part, the disposal, existence, presence, handling, ingestion, inhalation, installation, sale, encapsulation, storage, transportation, use or removal of lead, lead pipes, lead based paint or any material containing lead.

This exclusion applies:

- (1) Equally to any **bodily injury or property damage** arising out of exposure to lead or any substance with a lead derivative or any substance with a similar formulation, structure or function, regardless of the name by which it is manufactured, sold or distributed.
- (2) Regardless of whether any alleged defects or claimed negligence in design, construction or materials, or any other conduct or misconduct, may have or is claimed to have precipitated, caused in whole or in part, or acted jointly, concurrently, or in any sequence with lead in whatever form in causing or contributing to **bodily injury or property damage.**
- (3) To any loss, cost or expense arising out of any:

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- (a) Request, demand, order or requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of lead or any derivatives or similar substances; or
- (b) **Claim** or **suit** for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of lead or any derivatives or similar substances.

R. ASBESTOS EXCLUSION

Bodily injury or **property damage** arising out of or resulting from, in whole or in part, the disposal, existence, presence, handling, ingestion, inhalation, installation, sale, encapsulation, storage, transportation, use or removal of asbestos, asbestos fibers, asbestos dust, asbestos particles or any material containing asbestos.

This exclusion applies

- (1) Equally to any **bodily injury** or **property damage** arising out of exposure to asbestos or any substance with an asbestos derivative or any substance with a similar formulation, structure or function, regardless of the name by which it is manufactured, sold or distributed.
- (2) To any loss, cost or expense arising out of any:
 - (a) Request, demand, order or requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of asbestos or any derivatives or similar substances; or
 - (b) **Claim** or **suit** for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of asbestos or any derivatives or similar substances.

S. FORMALDEHYDE OR UREA FORMALDEHYDE EXCLUSION

Bodily injury or **property damage** arising out of or resulting from, in whole or in part, the disposal, existence, presence, handling, ingestion, inhalation, installation, sale, encapsulation, storage, transportation, use or removal of formaldehyde or urea formaldehyde or any material containing formaldehyde or urea formaldehyde or derivative or similar substance.

This exclusion applies:

- (1) Equally to any **bodily injury** or **property damage** arising out of exposure to formaldehyde or urea formaldehyde or any substance with a formaldehyde or urea formaldehyde derivative or substance with a similar formulation, structure or function, regardless of the name by which is manufactured, sold or distributed.
- (2) To any loss, cost or expense arising out of any:
 - (a) Request, demand, order or requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of formaldehyde or urea formaldehyde or any derivatives or similar substances; or
 - (b) **Claim** or **suit** for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of formaldehyde or urea formaldehyde or any derivatives or similar substances.

T. MOLD, FUNGI, VIRUS, BACTERIA, AIR QUALITY, OR OTHER CONTAMINATION RELATED LOSS EXCLUSION

- (1) The existence, presence, growth, spread, dispersal, release, or escape of mold, fungi, lichen, virus, bacteria, pollen or other living or dead organisms, including any by-products that have toxic, hazardous, noxious, pathogenic, irritating or allergenic qualities or characteristics. This exclusion applies to all such **claims** or **suits** or causes of action, including allegations that any **insured** caused or contributed to conditions that encouraged the growth, depositing or establishment of such colonies of mold, lichen, fungi, virus, bacteria or other living or dead organism;

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- (2) Any toxic, hazardous, noxious, irritating, pathogenic or allergen qualities or characteristics of indoor air regardless of cause; or
- (3) Any substance, material, mineral, or other product that is either alleged or deemed to be hazardous, toxic, irritating, pathogenic or noxious in any way, or contributes in any way to an allergic reaction.
- (4) This exclusion applies to any loss, cost or expense arising out of any:
 - (a) Request, demand, order or requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of the matters addressed in paragraphs (1), (2) or (3) above; or
 - (b) **Claim** or **suit** for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of the matters addressed in paragraphs (1), (2) or (3) above.

U. CONCRETE SULFATES EXCLUSION

Bodily injury or property damage arising out of or resulting from, in whole or in part, the exposure of concrete to, or the absorption by concrete products of, sulfates, sulfides or other acids in whatever form.

This exclusion applies:

- (1) Equally to any **bodily injury or property damage** arising out of exposure to sulfates, sulfides or other acids or any substance with a sulfate, sulfide or acid derivative or any substance with a similar formulation, structure or function, whether naturally occurring or man made, regardless of the name by which it is manufactured, sold or distributed.
- (2) To any loss, cost or expense arising out of any:
 - (a) Request, demand, order or requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of sulfates, sulfides, other acids or any derivatives or similar substances; or
 - (b) **Claim** or **suit** for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of sulfates, sulfides, other acids or any derivatives or similar substances.

V. ELECTROMAGNETIC RADIATION EXCLUSION

Bodily injury or property damage arising out of or resulting from, in whole or in part, the exposure to or existence of harmful levels or frequencies of electromagnetic radiation, magnetic fields or high voltages regardless of whether such are naturally occurring or artificially created, and regardless of whether such electromagnetic radiation, magnetic fields or high voltages acted or are alleged to have acted in any sequence or combination with any other cause or causes of **bodily injury or property damage**. This exclusion shall apply without regard to the source or sources of such electromagnetic radiation, magnetic fields or high voltages or the basis of liability against any insured.

This exclusion applies to any loss, cost or expense arising out of any:

- (1) Request, demand, order or requirement that any insured or others test for, monitor, remove, contain, neutralize, or in any way respond to or assess the effects of electromagnetic radiation, magnetic fields or high voltages or any derivatives or similar substances; or
- (2) **Claim** or **suit** for damages because of testing for, monitoring, removing, containing or neutralizing, or in any way responding to or assessing the effects of electromagnetic radiation, magnetic fields or high voltages or any derivatives or similar substances.

W. NUCLEAR ENERGY EXCLUSION

Bodily injury or property damage arising out of or resulting from, in whole or in part, the hazardous properties of radioactive material, including but not limited to nuclear material, radioactive isotopes, radionuclides, the use of x-rays, gamma rays or alpha and beta particles, or any derivative or similar substance or property

This exclusion applies:

- (1) Equally to any **bodily injury** or **property damage** arising out of exposure to any derivative or any substance with a similar formulation, structure or function, regardless of the name by which it is manufactured, sold or distributed.
- (2) To any loss, cost or expense arising out of any:
 - (a) Request, demand, order or requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of radioactive material, nuclear material, radioactive isotopes, radionuclides, x-rays, gamma rays or alpha and beta particles or any derivatives or similar substances; or
 - (b) **Claim** or **suit** for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of radioactive material, nuclear material, radioactive isotopes, radionuclides, x-rays, gamma rays or alpha and beta particles or any derivatives or similar substances.

X. COMMUNICABLE DISEASE EXCLUSION

Bodily injury or **property damage** arising out of or resulting from the transmission, alleged transmission or presence of any communicable or contagious disease or any medical condition or syndrome, including but not limited to, any sexually transmitted disease or any other disease transmitted by bodily fluids, secretions or excretions.

This exclusion applies:

- (1) Equally to any **bodily injury** or **property damage** arising out of exposure to any communicable or contagious disease or any medical condition or syndrome regardless of the name by which it is referred;
- (2) To any loss, cost or expense arising out of any:
 - (a) Request, demand, order or requirement that any **insured** or others test for, monitor, remove, contain, treat, neutralize, prevent or in any way respond to or assess the effects of any communicable or contagious disease or any medical condition or syndrome; or
 - (b) **Claim** or **suit** for damages because of testing for, monitoring, removing, containing, treating, neutralizing, or preventing or in any way responding to or assessing the effects of any communicable or contagious disease or any medical condition or syndrome.

Y. PUNITIVE, EXEMPLARY OR TREBLE DAMAGES OR MULTIPLIERS OF ATTORNEY'S FEES EXCLUSION

Any awards of punitive or exemplary damages, damages that are multipliers of compensatory damages including any multiplier of attorney's fees, or any fine or penalty imposed by or under any law, statute or ordinance of any federal, state or municipal entity

Z. ABUSE, MOLESTATION OR NEGLIGENCE EXCLUSION

Bodily injury or **property damage** arising out of:

- (1) An actual, alleged or threatened abuse or molestation by anyone;
- (2) The failure of anyone to prevent or suppress abuse or molestation;
- (3) Any harmful or offensive touching of a person by anyone; or
- (4) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) training;
 - (e) reporting to the proper authorities, or failure to so report; or
 - (f) retention;

of a person for whom any insured is or ever was legally liable or responsible and whose conduct would be excluded by (1), (2) or (3) above.

AA. ASSAULT AND BATTERY EXCLUSION

Bodily Injury or Property Damage arising out of:

- (1) An actual, alleged or threatened assault or battery by anyone; or
- (2) The failure of anyone to prevent or suppress assault or battery;
- (3) Any harmful or offensive touching of a person by anyone; or
- (3) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) training;
 - (e) reporting to the proper authorities, or failure to so report; or
 - (f) retention;of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (1), (2) or (3) above.

BB. PROFESSIONAL SERVICES EXCLUSION

Bodily injury or property damage arising out of the rendering of or failure to render any professional services by or on behalf of any insured.

CC. FINANCIAL SERVICES EXCLUSION

Bodily injury or property damage arising out of the rendering of or failure to render any financial Services by or on behalf of any insured.

DD. EARTH MOVEMENT EXCLUSION

Bodily injury or property damage arising, in whole or in part, out of earth movement, whether or not the earth movement occurs in conjunction with any other cause. This exclusion includes earth movement of any nature, whether naturally occurring or not, and includes, but is not limited to, loss of lateral support, cave in collapse, landslide, avalanche, subsidence, earthquake, tremors, aftershocks, mud flows, sink hole activity, erosion, or any change in the level of the soil by whatever cause, including shifting, expanding, contracting, sinking, heaving, rising, topsoil removal or any other movement of earth or soil.

This exclusion applies:

- (1) To any earth movement, including but not limited to, any defects in materials, construction methods, negligence in performance, design, construction, selection of materials or any other activity which is alleged to have caused the earth movement solely, jointly, concurrently or in any other sequence the earth movement; or
- (2) To any claim or suit or expense associated with the prevention, mitigation or repair of any earth movement.

EE. CONDOMINIUM AND TOWNHOUSE EXCLUSION

Bodily injury or property damage arising out of your work or your product, or out of the work or product of any insured which is incorporated into or forms a part of or is in any other manner connected or associated with any condominium or townhouse project including the common areas of such projects. This exclusion includes apartments and any other existing structure(s) being converted or already converted into a condominium or townhouse project, whether the work or product of any insured was performed, incorporated or supplied before or after the conversion.

This exclusion applies:

- (1) Regardless of whether any individual dwellings within a condominium or townhouse project or converted project are owner occupied or rented or leased in whole or in part, or whether the condominium or townhouse or converted project is used for any other purpose;
- (2) To any **claim** or **suit** filed on behalf of any condominium or townhouse homeowner's association;
- (3) To any **claim** or **suit** that includes in any form any **claim** for **bodily injury** or **property damage** to any property belonging to a member of a condominium or townhouse homeowner's association;
- (4) To **your work** or **your product**, or for the work or product of any **Insured**, performed for any condominium or townhouse homeowner's association.

This exclusion does not apply to **your work** for, or **your product** supplied to, an Individual unit owner within a condominium or townhouse development or converted project pursuant to a contract providing that:

- (1) **Your work** for individual unit owners does not exceed ten percent of the total units within the project; and
- (2) **Your work or your product**:
 - a. Was performed or supplied after the original construction or conversion was completed and the premises had been occupied; and
 - b. Was not related to, in connection with or involving the repair, renovation or replacement of **your work** or **your product** that was performed or supplied prior to the issuance of a certificate of occupancy;

FF. COURSE OF ROOFING OPERATIONS EXCLUSION

Bodily injury or **property damage** that occurs during the course of **your work** to repair, install, construct, remove or replace all, or any portion of, the roof or other covering of any building or structure, or damage to personal property within such building or structure resulting from, caused by or arising out of water, including but not limited to the influx of rain, hail, sleet, snow, flood or any other form of water or precipitation.

This exclusion does not apply to **bodily injury** or **property Damage** falling within the **products-completed operations hazard**.

GG. EXPLOSIVES/BLASTING EXCLUSION

Bodily injury or **property damage** arising out of or resulting from the existence, handling, storage, transportation sales, distribution or use of explosives or explosive devices.

HH. DESIGNATED WORK EXCLUSION

Bodily injury or **property damage** arising out of **your work**, **your product** or **your operations** not disclosed in **your** application.

II. WORK OR PREMISES SPECIFICALLY INSURED ELSEWHERE EXCLUSION

Bodily injury or **property damage** included within the **products-completed operations hazard** arising out of, resulting from, occurring at or connected with any location or premises which is or was at any time covered under any Consolidated Insurance Program (CIP), Owner Controlled Insurance Program (OCIP), Contractor Controlled Insurance Program (CCIP), Wrap-Up or similar insurance program.

This exclusion applies regardless of whether the CIP, OCIP, CCIP, Wrap-Up or similar insurance program provides coverage that is more restrictive than or identical to this policy, has limits adequate to cover all **claims** or remains in effect during the period of this policy.

JJ. PREVIOUSLY COMPLETED WORK OR PRODUCTS EXCLUSION

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Property damage falling within the **products-completed operations hazard** and arising out of, caused by, or in any way related to **your work** that was performed prior to the inception date of this policy or **your product** that was supplied or incorporated into any work of real property improvement prior to the inception date of this policy, including all associated common areas. This exclusion applies even though the nature, type or extent of such **property damage** may be continuous, progressive, cumulative, changing or evolving.

If this is a renewal policy and coverage has been continuous with us without interruption, and for the purpose of this exclusion only, the policy inception date shall be deemed to be the inception date of the first continuous policy issued by us.

KK. EXTERIOR INSULATION AND FINISH EXCLUSION

Bodily injury or property damage arising out of:

- (1) The design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair including remodeling, service, correction or replacement, of an "exterior insulation and finish system" (EIFS), (commonly referred to as synthetic stucco,) or any part thereof or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or
- (2) Any work or operations with respect to any exterior component, fixture or feature of any structure if EIFS is used in or on any part of that structure.

"Exterior Insulation and finish system" means an exterior cladding or finish system used on any part of any structure, and consisting of:

- (1) A rigid or semi-rigid insulation board made of expanded polystyrene or other materials;
- (2) The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
- (3) A reinforced base coat;
- (4) A finish coat providing surface texture and color; and
- (5) Any flashing, caulking or sealant used with the system for any purpose.

LL. BREACH OF CONTRACT EXCLUSION

Bodily injury or property damage arising out of a breach of any contract, agreement or warranty of any kind or nature.

MM. PRIOR LITIGATION, INFORMAL RESOLUTION OR OTHER DISPUTE RESOLUTION PROCEEDING EXCLUSION

Any **claim** or **suit** involving or arising out of any work of real property improvement which was, in whole or in part, subject to any prior litigation, informal resolution effort, such as mediation, non-binding arbitration, or other alternative dispute method or any legislatively imposed proceeding related to constructional defect **claims** such as right to cure laws, prior to the inception of this policy.

This exclusion applies:

- (1) Regardless of whether new, different or additional allegations of defective, inadequate or non-performing construction and resulting **bodily injury or property damage** are made or arise during or after the inception of this policy; and
- (2) Even though the **occurrence** giving rise to such damage may be continuous or repeated exposure to the same generally harmful conditions, and even though the nature, type or extent of such **bodily injury or property damage** may be continuous, progressive, cumulative, changing or evolving.

NN. ATTORNEY FEES AND EXPERT FEES OF OTHERS EXCLUSION

(OMNI 7 FFOL0013-080403/0810071242)

Any **claim, suit, demand, request or award** against any **insured** comprised in whole or in part, of any defense fees and costs, expert fees and costs, sanctions or any other cost or expense incurred by any other party to the **claim or suit**, including any other **insured** under this policy. This exclusion applies regardless of whether any of the costs described above were awarded in a **suit** as damages.

This exclusion does not apply to our obligations under an **insured contract**.

OO. TORCH DOWN OR HOT TAR ROOFING EXCLUSION

A This insurance does not apply to **bodily injury, property damage, personal injury or advertising injury** arising out of:

1 The handling, storage, transportation or use of hot tar or any other heated substance. However, this exclusion does not apply if coverage for this exposure has been added to the policy and the appropriate additional premium charged.

B This insurance does not apply to **property damage** to any building or structure caused by fire if caused by the applying of an open flame or torch to roofing materials or to roofs whether removing roofs or roofing material or installing roofs or roofing material. However, this exclusion does not apply if coverage for this exposure has been added to the policy and the appropriate additional premium charged.

PP. CHROMATED COPPER ARSENATE

Bodily injury or property damage arising out of or resulting from, in whole or in part, the disposal, existence, presence, handling, ingestion, inhalation, installation, sale, encapsulation, storage, transportation, use or removal of chromated copper arsenate ("CCA") or any material containing CCA.

This exclusion applies:

- (1) Equally to any **bodily injury or property damage** arising out of exposure to CCA or any substance with a derivative of CCA or any substance with a similar formulation, structure or function, regardless of the name by which it is manufactured, sold or distributed.
- (2) To any loss, cost or expense arising out of any:
 - (a) Request, demand, order or requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of CCA or any derivatives or similar substances; or
 - (b) **Claim or suit** for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of CCA or any derivatives or similar substances.

QQ. CROSS LIABILITY

To any **claim or suit** by any **insured** against any other **insured**, except this exclusion does not apply to **suits** by an **insured** as defined in paragraph 3. of SECTION II – WHO IS AN INSURED against you.

RR. SILICA

Bodily injury or property damage arising out of or resulting from, in whole or in part, the disposal, existence, presence, handling, ingestion, inhalation, installation, sale, encapsulation, storage, transportation, use or removal of silica or any material containing silica.

This exclusion applies:

- (1) Equally to any **bodily injury** or **property damage** arising out of exposure to CCA or any substance with a derivative of silica or any substance with a similar formulation, structure or function, regardless of the name by which it is manufactured, sold or distributed.
- (2) To any loss, cost or expense arising out of any:
 - (a) Request, demand, order or requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of silica or any derivatives or similar substances; or
 - (b) **Claim** or **suit** for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of silica or any derivatives or similar substances.

Exclusions C. through N do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limit of Insurance.

COVERAGE B. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY

1. INSURING AGREEMENT

- a. We will pay those sums that the **insured** becomes legally obligated to pay as damages because of **personal injury** or **advertising injury** to which this insurance applies. Our duty to indemnify the **insured** is expressly limited by the terms of this policy.

Notwithstanding the preceding paragraph, we have the right and duty to defend only those **insureds** as defined in paragraphs 1. or 2. of SECTION II – WHO IS AN INSURED against any **suit** seeking damages to which this insurance applies. We have the right, but not the duty, to defend any other **insureds**. We have no duty to defend any **insured** against any **suit** when any other insurer is obligated to defend the **insured**.

We may at our sole discretion, investigate any offense and settle any **claim** or **suit** that may result. But:

- (1) The amount we will pay for damages is limited as described in SECTION III – LIMITS OF INSURANCE; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expenses under Coverage C.

- b. This insurance applies to **personal injury** or **advertising injury** caused by an offense arising out of your business, but only if
 - (1) The offense was committed in the **coverage territory**; and
 - (2) The offense first took place during the policy period.

All **personal injury** or **advertising injury** arising out of a series of related offenses shall be deemed to first take place at the time of the first such offense regardless when the **personal injury** or **advertising injury** first became apparent or known by any person.

- c. Our duty to defend is further limited as follows:

- (1) When we have no duty to defend, we retain the right, but not the duty, at our sole election and discretion, to defend an **insured** or to intervene in any **claim** or **suit** for which a defense or indemnity has been requested by any **insured** under this policy.
- (2) We shall have no duty to defend unless the **claim** or **suit** specifically alleges that all of the **personal injury** or **advertising injury** for which damages are sought first took place during the policy period.
- (3) We shall have no duty to defend any **claim** or **suit** for **personal injury** or **advertising injury** filed before the policy period, regardless of whether the **named insured** or any other **insured** seeking coverage was a party to such **claim** or **suit** at the time it was filed. This provision includes **suits** that

are amended, consolidated or refiled among some or all of the same parties, and the filing date of the first **suit** will determine whether the **suit** was filed before the inception date of this policy.

- (4) We shall have no duty to defend any **Insured** that does not qualify as an **insured** as defined in paragraphs 1. or 2. of SECTION II – WHO IS AN INSURED. We have no duty to defend an **insured** as defined in paragraph 3. of SECTION II – WHO IS AN INSURED

- d. **Advertising injury** applies only to offenses committed in the course of advertising **your goods, products** or services in an **advertisement**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A and B

2. EXCLUSIONS:

This insurance does to apply to:

(A) MATERIAL PUBLISHED WITH KNOWLEDGE OF ITS FALSITY EXCLUSION

Personal injury or **advertising injury** arising out of oral or written publication of material, if done by or at the direction of any **insured** with knowledge of its falsity.

(B) MATERIAL PUBLISHED PRIOR TO THE POLICY PERIOD EXCLUSION

Personal injury or **advertising injury** arising out of oral or written publication of the same or similar material whose first publication took place before the inception date of the policy, even if the publication continued after the inception of the policy.

(C) QUALITY OR PERFORMANCE OF GOODS – FAILURE TO CONFORM TO STATEMENTS EXCLUSION

Personal injury or **advertising injury** arising out of the failure of goods, products or services to conform to any statement of quality or performance made in any **advertisement** by any **insured**.

(D) WRONG DESCRIPTION OF PRODUCTS, SERVICES OR PRICES EXCLUSION

Personal injury or **advertising injury** arising out of the wrong description of the price of goods, products or services or any wrong description of the goods, products or services stated in any **advertisement** by any **insured**.

(E) INFRINGEMENT OF COPYRIGHT, PATENT, TRADEMARK OR TRADE SECRET EXCLUSION

Personal injury or **advertising injury** arising out of the infringement of copyright, patent, trademark, trade name, trade dress, trade secret, advertising slogans or other intellectual property rights including, but not limited to infringement of another's architectural plans, drawings, or similar designs.

(F) INTERFERENCE WITH CONTRACT, DISPARAGEMENT AND ECONOMIC ADVANTAGE EXCLUSION

Personal injury or **advertising injury** arising out of the negligent or tortious interference with contract or prospective economic advantage.

(G) CRIMINAL, ADMINISTRATIVE AND CIVIL PENALTIES EXCLUSION

Personal injury or **advertising injury** committed by any **insured** which results in criminal, administrative or civil penalties or other fines or sanctions.

(H) WILLFUL VIOLATION EXCLUSION

Personal injury or advertising injury arising out of any violation of any penal statute or ordinance committed by any **insured** or done at any **insured's** direction.

(I) MEDIA AND INTERNET EXCLUSION

Personal injury or advertising injury committed by any **insured** arising out of:

- (a) Designing or determining the content of any web-site; or
- (b) The placing of frames, borders or links, or advertising for anyone anywhere on the Internet.

(J) ELECTRONIC CHAT ROOMS OR BULLETIN BOARDS EXCLUSION

Personal injury or advertising injury arising out of an electronic chat room or bulletin board any **insured** hosts, owns, or over which any **insured** exercises control.

(K) UNAUTHORIZED USE OF ANOTHER'S NAME OR PRODUCT EXCLUSION

Personal injury or advertising injury arising out of the unauthorized use of another's name or product in any way, including but not limited to use in any e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers. Use of another's product includes but is not limited to use of architectural plans, drawings, or similar designs.

(L) ADVERTISING, PUBLISHING, BROADCASTING OR TELECASTING EXCLUSION

Personal injury arising out of advertising, publishing, broadcasting or telecasting done by or for **you**.

(M) ORAL OR WRITTEN DISPARAGEMENT EXCLUSION

Personal injury or advertising injury arising out of the oral or written publication of material that disparages a person's or organization's goods, products or services, except this exclusion does not apply to an actual and actionable libel or slander.

(N) KNOWING VIOLATION OF RIGHTS OF ANOTHER EXCLUSION

Personal injury and advertising injury caused by or at the direction of the **insured** with the knowledge that the act would violate the rights of another and would inflict **personal injury and advertising injury**

(O) BREACH OF CONTRACT EXCLUSION

Personal injury and advertising injury arising out of a breach of contract.

(P) ABUSE, MOLESTATION OR NEGLIGENCE EXCLUSION

Personal injury or advertising injury arising out of:

- (1) An actual, alleged or threatened abuse or molestation by anyone,
- (2) The failure of anyone to prevent or suppress abuse or molestation;
 - (3) Any harmful or offensive touching of a person by anyone
- (4) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) training;
 - (e) reporting to the proper authorities, or failure to so report; or
 - (f) retention;

of a person for whom any **insured** is or ever was legally responsible and whose conduct would be excluded by (1), (2) or (3) above.

(Q) ASSAULT AND BATTERY EXCLUSION

Personal injury or Advertising injury arising out of

- (1) An actual, alleged or threatened assault or battery by anyone; or
- (2) The failure of anyone to prevent or suppress assault or battery; or
- (3) Any harmful or offensive touching of a person by anyone.
- (4) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) training;
 - (e) reporting to the proper authorities, or failure to so report; or
 - (f) retention;of a person for whom any **insured** is or ever was legally responsible and whose conduct would be excluded by (1), (2) or (3) above.

(R) UNSOLICITED ADVERTISING OR COMMUNICATE EXCLUSION

Personal injury or advertising injury arising directly or indirectly out of any unsolicited advertising or communication, including but not limited to, telephone, telefax, or e-mail, or any action or omission that violates or is alleged to violate:

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

(S) EMPLOYMENT-RELATED PRACTICES EXCLUSION

Personal injury or advertising arising in whole or in part out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination or other employment-related practices, policies, acts or omissions, or
- (4) Consequential injury as a result of any of the above; or
- (5) **Claim or suit** by a spouse, child, parent, brother or sister of any **employee** or **insured** arising out of, or as a consequence of paragraphs (1), (2), (3), or (4) above.

This exclusion applies:

- (1) Whether any **insured** may be liable as an employer or in any other capacity;
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the **personal injury or advertising injury**; or
- (3) To any **insured** against whom a **claim** is made or **suit** is brought as a consequence of paragraphs (1), (2), (3), (4) or (5) of the immediately preceding section whether by or on behalf of an **employee** of that **insured** or any other **insured**.

(T) PUNITIVE, EXEMPLARY OR TREBLE DAMAGES OR MULTIPLIERS OF ATTORNEY'S FEES EXCLUSION

Any awards of punitive or exemplary damages, damages that are multipliers of compensatory damages including any multiplier of attorney's fees, or any fine or penalty imposed by or under any law, statute or ordinance of any federal, state or municipal entity.

COVERAGE C. MEDICAL PAYMENTS

1. INSURING AGREEMENT

a. We will pay medical expense as described below for **bodily injury** caused by an accident on premises **you** own or rent or on ways next to premises **you** own or rent provided that:

- (1) The accident takes place in the **coverage territory** and during the policy period;
- (2) The expenses are incurred within the policy period and reported to us in writing within thirty (30) days of the expiration date of the policy; and
- (3) The injured person submits to examination, at **our** expense, by physicians of **our** choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable Limit of Insurance. We will pay reasonable expenses for:

- (1) First aid at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. EXCLUSIONS

We will not pay expenses for **bodily injury**:

A. ANY INSURED OR HIRED PERSON EXCLUSION

To any **insured** or to any person hired to do work for or on behalf of any **insured** or a tenant of any **insured**.

B. INJURY ON OCCUPIED PREMISES EXCLUSION

To a person injured on that part of premises any **insured** owns or rents that the person occupies.

C. WORKERS COMPENSATION AND SIMILAR LAWS EXCLUSION

To a person, whether or not an **employee** of any **insured**, if benefits for the **bodily injury** are payable or must be provided under a workers compensation or disability benefits law or a similar law.

D. ATHLETICS ACTIVITIES EXCLUSION

To a person injured while practicing, instructing or participating in any physical exercises, games, sports or athletic contests of any kind.

E. COVERAGE A EXCLUSIONS

Excluded under Coverage A.

F. PRODUCTS-COMPLETED OPERATIONS HAZARD EXCLUSION

Included within the **products-completed operations hazard**.

SUPPLEMENTARY PAYMENTS— COVERAGES A AND B

1. We will pay, with respect to any **claim** that we investigate or settle, or any **suit** against an **insured** that we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the **bodily injury** liability coverage applies. We do not have to furnish these bonds nor provide security, financial guarantee or collateral for such bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds or provide security, financial guarantee or collateral for such bonds.
 - d. All reasonable expenses incurred by the **insured** at our request to assist us in the investigation or defense of the **claim** or **suit**, including actual loss of earnings up to \$250 a day because of time off from work.
 - e. Prejudgment interest awarded against the **insured** on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - f. All interest on that part of any judgment against the **insured** that we pay and which accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
 - g. Costs taxed against the **insured** in the **suit**, but only if awarded in connection with causes of action for damages covered under this policy. However, except as provided in Exclusion B. in paragraph 2. **EXCLUSIONS: COVERAGES A BODILY INJURY and PROPERTY DAMAGE**, we shall have no obligation to, and shall not, pay for any costs that are attorney's fees, expert fees or other litigation expenses incurred by any other party to the **suit**, whether payable as sanctions, or by reason of statute, ordinance, regulation, court rule or a contractual obligation, or on any other basis or ground.

Payments made as Supplementary Payments shall not reduce the applicable Limits of Insurance

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, **you** and **your** spouse are **insureds**, but only with respect to the conduct of a business of which **you** are the sole owner and which is designated in the Declarations as the **named insured**.
 - b. A partnership or joint venture, **you** are an **insured**. **Your** members, **your** partners, and their spouses are also **insureds**, but only with respect to the conduct of **your** business. However, the members, partners and spouses of **your** members or **your** partners are not **insureds**.
 - c. A limited liability company, **you** are an **insured**. **Your** members are also **insureds**, but only with respect to the conduct of **your** business. **Your** managers are **insureds**, but only with respect to their duties as **your** managers. However, the members and managers of **your** members or **your** managers are not **insureds**.
 - d. An organization other than a partnership, joint venture or limited liability company, **you** are an **insured**. **Your** executive officers and directors are **insureds**, but only with respect to their duties as **your** officers or directors. **Your** stockholders are also **insureds**, but only with respect to their liability as stockholders.
 - e. A trust, **you** are an **insured**. **Your** trustees are also **insureds** but only with respect to their duties as trustees.
2. Each of the following is also an **insured**:
 - a. **Your** general or direct employees, but not including **your** executive officers (if you are an organization other than a partnership, joint venture or limited liability company), **your** managers (if you are a limited liability company); a leased worker, temporary worker, or volunteer worker; or anyone who may be

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determined to be an **employee** of any **insured** or an **employee** of an **employee** of any **insured**, under any equitable theory or doctrine. **Your** general or direct **employees** are **insureds** only for acts within the scope of their employment by **you** or while performing duties related to the conduct of **your** business. However, no **employee** is an **insured** for:

(1) **Bodily injury, personal injury or advertising injury:**

- (a) To **you**, or to **your** partners or members (if **you** are a partnership or joint venture), to **your** members (if **you** are a limited liability company), or to any other **employee** while that **employee** is either in the course of his or her employment or performing duties related to the conduct of **your** business,
- (b) To the spouse, child, parent, brother or sister of that **employee** as a consequence of paragraph (1) (a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) **Property damage** to property:

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control of, or over which physical control of any nature or extent is being exercised for any purpose by;

you, any of **your** **employees**, any partner or member (if **you** are a partnership or joint venture), or any member (if **you** are a limited liability company).

b. Any person or organization having proper temporary custody of **your** property if **you** die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until **your** legal representative has been appointed

c. **Your** legal representative if **you** die, but only with respect to duties as such. That representative will have all **your** rights and duties under this Coverage Part.

3. Any other person, organization or entity qualifying as an **insured** by way of an endorsement(s) to this policy is an **insured**, subject to the limitations set forth in the policy and in the endorsement(s).
4. No person, organization or entity is an **insured** under this policy by virtue of the acquisition of all or any part of the assets of an **insured** under this policy.
5. No person, entity or organization is an **insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **named insured** in the Declarations
6. **You** are not an **insured** for any liabilities arising out of your acquisition of all or any part of another entity, organization, limited liability company, partnership or joint venture, whether by purchase, merger or otherwise, that occurred or arose prior to **your** acquisition of the entity or organization.

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. **Insureds**,
 - b. **Claims** made or **suits** brought; or
 - c. Persons or organizations making **claims** or bringing **suits**; or
2. The General Aggregate Limit is the most we will pay for the sum of:

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- a. Damages under Coverage A except damages because of **bodily injury** or **property damage** included in the **products-completed operations hazard**.
 - b. Damages under Coverage B;
 - c. Medical expenses under Coverage C.
3. The **products-completed operations Aggregate Limit** is the most we will pay under Coverage A for damages because of **bodily injury** and **property damage** included in the **products-completed operations hazard**.
4. Subject to 2. above, the **Personal Injury and Advertising Injury Limit** is the most we will pay under Coverage B for the sum of all damages because of all **personal injury** and **advertising injury** sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the **Each Occurrence Limit** is the most we will pay for the sum of:
- a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C;
- because of all **bodily injury** or **property damage** arising out of any one **occurrence**.
6. Subject to 5. above, the **Medical Expense Limit** is the most we will pay under Coverage C for all medical expenses because of **bodily injury** sustained by any one person.
7. Subject to 5. above, the **Damage To Premises Rented To You – Fire Damage Limit**, as shown in the Declarations page of this policy, is the most we will pay under Coverage A for **Property Damage** caused by fire to any one premises while rented to **you** or temporarily occupied by **you** with permission of the owner
8. All **bodily injury** or **property damage** caused or alleged to have been caused by **your work** or **your product** which is incorporated into a project of construction, including a development of multiple distinct units, shall be deemed to have been caused by a single **occurrence**
9. When a single **occurrence** as defined in the policy, or as modified in paragraph 8. above, causes **bodily injury** or **property damage** during the period of more than one policy issued by **us** or any another Insurer or Insurers, no additional policies issued by **us** may be added or stacked to increase the **Each Occurrence Limit** available for any one **occurrence**. Only one policy issued by **us** shall apply to any one **occurrence**, even though the **occurrence** or the resulting **bodily injury** or **property damage** may continue into successive policy periods and even though the nature, type or extent of such **bodily injury** or **property damage** may be continuous, progressive, cumulative, changing or evolving.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

The Conditions of this policy are material terms to our obligations under the policy. We will have no duty to provide a defense or indemnity to any **insured** unless **you** or any other involved **insured**, as a condition precedent to coverage, have fully complied with the conditions contained herein.

1. BANKRUPTCY

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

2. **INSURED'S DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT**

- a. **You** or any other **insured** seeking coverage under this policy must, as a condition precedent to coverage, see to it that **we** are notified as soon as possible of an **occurrence** or an offense which may result in a **claim** or **suit**. To the extent possible, notice should include:
- (1) How, when and where the **occurrence** or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the **occurrence** or offense.

Notice of an **occurrence** or offense is not notice of a **claim** or **suit**.

- b. If a **claim** is made or **suit** is brought against any **insured**, **you** must, as a condition precedent to coverage:
- (1) Immediately record the specifics of the **claim** or **suit** and the date received; and
 - (2) Provide written notice to **us** within than thirty (30) days of **your** receipt of the **claim** or **suit**, regardless of whether **you** believe that the **claim** or **suit** is covered under this policy.
 - (3) Immediately send **us** copies of any demands, notices, summonses or legal papers received in connection with the **claim** or **suit**.

Failure to provide notice as required to **us** in this section shall be presumed to prejudice **us** and will void coverage for the **claim** or **suit**.

- c. **You** and any other involved **insured** must, as a condition of recovery under this policy:
- (1) Authorize **us** to obtain records and other information;
 - (2) Cooperate with **us** in the investigation, settlement or defense of the **claim** or **suit**;
 - (3) Assist **us**, upon **our** request, in the enforcement of any right against any person or organization which may be liable to any **insured** because of injury or damage to which this insurance may also apply.
- d. No **insured** will, except at that **insured's** own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without **our** consent, and **we** shall not pay any attorney fees or litigation expenses incurred prior to **our** receiving actual notice of the **claim** or **suit**.
- e. No coverage is afforded under this policy for any default judgment, settlement, determination of liability or ruling from any judge, arbitrator, mediator or other trier-of fact when entered or obtained before notice of the **claim** or **suit** was given to **us**.

3. **LEGAL ACTION AGAINST US.**

No person or organization has a right under this insurance :

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

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

4. **OTHER INSURANCE**

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

(OMNI 7 EFQL 0323-080403/0810071242)

a. Excess Insurance

- (1) This insurance is excess over any other insurance, deductibles or self-insured amounts that indemnify an **insured** for a **claim** or **suit** whether the other insurance is stated to be primary, pro rata, contributory, excess, contingent, umbrella or on any other basis, unless the other insurance is issued to the **named insured** and is specifically written to apply in excess of the Limits of Insurance of this policy.
- (2) When this insurance is excess over other insurance, we will pay only our share of the amount of loss, if any, that exceeds the sum of
 - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.

b. Method of Sharing

If both this policy and any other policy applies to the same loss, the method of sharing for **bodily injury** or **property damage** is subject to paragraphs 8. and 9. in SECTION III – LIMITS OF INSURANCE for all **claims** or **suits** involving continuous and progressive damages. If another insurer provides concurrent coverage to the **insured** for **bodily injury** or **property damage**, the method of sharing is as follows:

- (1) If all of the other insurance permits contribution by equal shares, we will follow this method, also. Under this approach the other insurer contributes equal amounts until it has paid its applicable limits of insurance or none of the loss remains, whichever comes first.
- (2) If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of the insurer.

5. PREMIUM AUDIT

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. The premium shown for this Coverage Part is a **deposit premium** only. At the close of each audit period we will compute the **audit premium** for that period. The **audit premium** will be based upon **your gross receipts**.
- c. **Audit premium** is due and payable immediately upon notice to the first **named insured**. The **deposit premium** is the minimum premium to be paid for the policy term and is computed at the inception of the policy. If the **audit premium** is more than the **deposit premium**, you will also pay us the difference between the **audit premium** and the **deposit premium**.
- d. Regardless if an **audit premium** is a lesser amount than **deposit premium**, we have the right to retain the **deposit premium** in full.
- e. The first **named insured** must keep records of the information we need for premium computation, send us copies of the records at such times as we may request and make available original documents for inspection. In addition, the **named insured** must provide the following upon request:
 - (1) All checking account records, general ledgers and payroll records.
 - (2) All tax returns, including partnership and corporate tax returns, as well as all payroll tax returns, including quarterly payroll tax returns.
 - (3) All payroll records for all **employees** of the first **named insured**.
 - (4) A record including original and summaries of accounts receivable, accounts payable, contracts, invoices and any and all financial documents of the first **named insured**.
- f. If the first **named insured** does not allow us access to its records and make available information as provided for in paragraph e., then at our sole discretion, we may pursue any of the following courses of action:
 - (1) Initiate a legal and/or equitable proceeding in a court to force an audit or disclosure of records necessary to complete an audit or to secure an accounting; or

(OMN) 7 EFQL0824-080403/081007 1242)

(2) Invoice the first **named insured** for an additional premium equal to one hundred percent (100%) of the original **deposit premium** shown on the Declarations Page of this policy.

- g. All additional premiums invoiced under this policy are due and payable by the first **named insured** thirty (30) days after mailing of the invoice by **us** or **our** authorized representative.
- h. The first **named insured** further agrees to pay, upon demand, all reasonable attorney's fees, collection costs, and court costs required by **us** to enforce our rights and remedies under either option (1) or (2) set forth in Paragraph 5f. above.
- i. Any failure by **us** in auditing the policy or inspecting records or any waiver of **our** rights to inspection of books and records shall not act as a continuing or permanent waiver.
- j. We retain the right to audit the policy at anytime at **our** sole discretion for three (3) years after termination of the policy in question.

6. PREMIUMS & DEDUCTIBLES

The first **named insured** shown in the Declarations is responsible for the payment of all premiums and all applicable deductibles.

7. REPRESENTATIONS

By accepting this policy, **you** agree:

- a. The statements made in the declarations, questionnaire(s), inspection(s) audit(s) and application are accurate and complete;
- b. The policy was issued based upon representations **you** made to **us**;
- c. Any response **you** made to any question in any application, declaration or questionnaire was material to **our** decision to issue this policy;
- d. We have issued this policy in material reliance upon **your** representations; and
- e. Any False, misleading, inaccurate or incomplete statements or omissions made by **you** or **your** agents or representatives will, at **our** election and upon **our** returning any **deposit premium** or **audit premium**, result in the rescission of this policy as of its inception.

8. SEPARATION OF INSUREDS

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first **named insured**, this insurance applies:

- a. As if each **named insured** were the only **named insured**; and
- b. Separately to each **insured** against whom **claim** is made or **suit** is brought.

9. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US.

If any **insured** has rights to recover all or part of any payment we have made under the applicable Coverage Part, those rights are transferred to **us**. The **insured** must do nothing after loss to impair such rights. At our request, such **insured** will bring **suit** or transfer those rights to **us** and help **us** enforce them.

10. TRANSFER OF YOUR RIGHTS AND OBLIGATIONS UNDER THIS POLICY

You may not transfer **your** rights or **your** obligations under this policy without **our** express written consent. In the event of the death of an individual identified as the first **named insured**, **your** duties under this policy shall be transferred to the legal representative of the first **named insured**.

11. CANCELLATION

(OMNI 7 EFCL0825-000463/0810071212)

- a. The first **named insured** shown on the Declarations Page may cancel this policy by mailing or delivering to **us** ten (10) days advance written notice of cancellation.
- b. **We** may cancel this policy by mailing or delivering to the first **named insured** written notice of cancellation at least:
 - (1) Ten (10) days before the effective date of cancellation if we cancel for non-payment of premium; or
 - (2) Thirty (30) days before the effective date of cancellation if we cancel for any other reason.
- c. **We** will mail or deliver **our** written notice of cancellation to the first **named insured's** address shown in the declarations.
- d. Notice of cancellation will state the effective date of cancellation and the policy period will end on that date.
- e. If this policy is cancelled, we will send the first **named insured** or Premium Finance Company, if applicable, premium refund due as follows:
 - (1) If we cancel, the refund will be pro rata; or
 - (2) If the first **named insured** cancels, the refund may be less than pro rata and will be computed by the Company's customary short-rate cancellation procedure and subject to any applicable minimum premium for the issuance of a policy as reflected on the short-rate cancellation schedule.
 - (3) Cancellation by **us** will be effective even if we have not made or offered any refund that may be owing.
- f. Proof of mailing of the notice of cancellation and not the actual receipt of the notice is sufficient to effect cancellation.

SECTION V – DEFINITIONS

1. ADVERTISEMENT

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

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about **your** goods, products or services for the purposes of attracting customers or supporters is considered an **advertisement**.

2. ADVERTISING INJURY

Advertising Injury means Injury arising out the oral or written publication of material that slanders or libels a person or organization.

3. AUDIT PREMIUM

Audit Premium means the premium in addition to the **deposit premium**, if any, which is calculated at the end of the policy period and is determined to be owing following an audit of the first **named insured's** records, and a computation of **gross receipts** during the policy period based on the information provided to **us**.

4. AUTO

Auto means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. **Auto** does not include **Mobile Equipment**.

5. BODILY INJURY

Bodily Injury means **bodily injury**, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily injury** does not include any mental or emotional trauma or distress unless caused by a direct injury, physical sickness or physical disease that is itself covered by this policy.

6. CLAIM

Claim means a written or oral demand for payment of money or the performance of services because of **bodily injury, property damage, personal injury or advertising injury** received by any **insured**. **Claim** includes, but is not limited to, the service of **suit**, the institution of an arbitration, mediation, administrative or governmental action or proceeding against an **insured**.

7. COVERAGE TERRITORY

Coverage Territory means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by **you** in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a period of less than thirty (30) days on **your** business;
 - (3) **Personal injury or advertising injury** offenses that take place through the Internet or similar electronic means of communication.

Provided the **insured's** responsibility to pay damages is determined in a **suit** on the merits, in the territory described in a. above or in a settlement we agree to

8. DEPOSIT PREMIUM

Deposit premium means the minimum premium to be paid for the policy period and is computed at the inception of the policy. **Deposit premium** is the estimated annual premium determined at the time of the policy quote and issuance. The **deposit premium** may be paid in a lump sum or through an agreed payment schedule.

9. EMPLOYEE

Employee means all possible categories and types of **employees**, including but not limited to any **leased worker, temporary worker, volunteer worker** or anyone who may be determined to be an **employee** of any **insured** or an **employee** of an **employee** of any **insured**, under any legal or equitable theory or doctrine. **Employee** includes anyone that any **insured** may be found liable for or to as an employer.

But for the purpose of paragraph 2. in SECTION II - WHO IS AN INSURED **employees** include only **your** direct or general **employees** and does not include all other possible categories of **employees**.

10. EXECUTIVE OFFICER

Executive officer means person holding any of the officer positions created by **your** charter, constitution, by-laws or any other similar governing document.

11. FINANCIAL SERVICES

Financial services means services related to or arising out of any of the following

- a. Planning, administering, consulting, maintaining, supervising or advising on.
 - (1) Any investment, pension, annuity, savings, checking or retirement plan, fund or account;
 - (2) The issuance or withdrawal of any bond, debenture, stock or other securities;
 - (3) The sale or trading of securities, futures, commodities, or currencies;
- b. Acting as a stock portfolio transfer agent, dividend disbursing agent, fiscal or paying agent, tax withholding agent, escrow agent, clearing agent, electronic funds transfer agent, bailee, or the exercise of any other type of fiscal duties or activities;

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- c. Lending or arranging for the lending of money, including credit card, debit card, leasing or any mortgage operations or activities, including but not limited to, securing financing, refinancing, inter-bank transfers, letters of credit and escrow activities
- d. Repossessing of real or personal property or acting as an assignee for the benefit of creditors or as a trustee;
- e. Evaluating or reporting of credit in any form;
- f. Maintaining of financial accounts or records;
- g. Compliance with local, State or Federal tax laws including but not limited to tax planning, tax advising or the preparation of tax returns;
- h. Selling or issuing travelers checks, letters of credit, certified checks, cashier's checks, bank checks, money orders or advances on payroll checks.
- i. Administering any **employee** benefits program, securing any **employee** benefits program or maintaining any financial accounts or records of any kind for any **employee**.

12. GROSS RECEIPTS

Gross receipts means the total market value of:

- a. All goods or products sold, installed or distributed by **you** or on **your** behalf during the policy period,
- b. All of **your work**, services or operations performed during the policy term. Including labor, materials and equipment used in the execution **your work** performed during the policy period;
- c. Any land that comprises part of the total market value of a construction project; and
- d. Any other revenue generating activity performed during the policy period by **you** or on **your** behalf.

Gross receipts shall not be reduced by any costs, payments or expenses the **named insured** has or will pay or incur that nets down the total market value as stated in a., b., c., and d., above.

13. IMPAIRED PROPERTY

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

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

14. INSURED CONTRACT

Insured contract means:

- a. That part of any written contract or written agreement pertaining to **your business**, (including an indemnification of a municipality in connection with work performed for a municipality) under which **you** assume the tort liability of another party to pay a third party or organization for **bodily injury** or **property damage** which is not otherwise excluded under this policy. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An **insured contract** does not include that part of any written contract:

- a. That indemnifies anyone for damages by fire to premises, merchandise, inventory or equipment rented or loaned to or used by **you**;
- b. That indemnifies any architect, engineer, or surveyor for injury or damage arising out of:
 - (1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, field orders, change orders, drawings, designs, measurements or specifications; or
 - (2) Giving or failing to give directions or instruction;
- c. That arises from an easement or license agreement;

- d. That indemnifies anyone for any damages arising out of construction or demolition operations on or within 50 feet of a railroad property, including but not limited to any railroad bridge, trestle, tracks, road-beds, tunnel, underpass or crossing;
- e. That is, or is contained in, an elevator maintenance agreement; or
- f. Under which any insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in b. above and supervisory, inspection, architectural or engineering activities;

15. LEASED WORKER

Leased worker means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business.

16. LOADING OR UNLOADING

Loading or unloading means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or auto;
- b. While it is in or on an aircraft, watercraft or auto; or
- c. While it is being moved from an aircraft, watercraft or auto to the place where it is finally delivered;

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

17. MOBILE EQUIPMENT

Mobile equipment means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted.
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing;
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; or
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

Mobile equipment does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered autos.

18. NAMED INSURED

Named insured means the person or organization named in Item 1. on the Declarations Page of this policy

19. OCCURRENCE

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

20. PERSONAL INJURY

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

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The actual, complete and wrongful physical eviction by the **named insured**, through legal process, of a person from a dwelling that the person occupies; or
- d. Oral or written publication of material that slanders or libels a person or organization.

21. POLLUTANT

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, whether manufactured or naturally occurring, including but not limited to: smoke; vapor; soot; fumes; acids; alkalis; chemicals; pesticides; petroleum products including but not limited to gasoline, kerosene, diesel fuel, motor oils, hydraulic fluids and solvents; biological agents and allergens; noise; light; waste; or anything else which is injurious to human health or welfare, ecological systems or the environment. Waste includes biological waste or waste byproducts as well as materials to be recycled, reconditioned or reclaimed.

22. PRODUCTS-COMPLETED OPERATIONS HAZARD

Products-Completed Operations Hazard

- a. Includes all **bodily injury** and **property damage** occurring away from premises you own or rent and arising out of **your product or your work** except:
 - (1) Products that are still in **your** physical possession, or
 - (2) Work that has not yet been completed.
- b. **Your work** will be deemed completed at the earliest of the following times:
 - (1) When all of the work called for in **your** contract has been completed.
 - (2) When all of the work to be done at the job site has been completed if **your** contract calls for work at more than one job site.
 - (3) When that part of the work done at a job site has been put to its intended use by any person or organization.
 - (4) When **you** have been terminated from, or for any reason **you** have abandoned **your work** at, the project or job site that is the subject of **your** contract.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed, even if such service, maintenance, correction, repair or replacement is required under **your** contract.

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

(OMNI 7 EFQL0830-050403/0810071242)

- (1) The transportation of property, unless the **bodily injury** or **property damage** arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the **loading or unloading** of that vehicle by any **insured**;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that **products-completed operations** are subject to the General Aggregate Limit.

23. PROPERTY DAMAGE

Property damage means physical injury to tangible property, including all resulting loss of use of that physically injured property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it. Normal wear and tear of property is not **property damage**.

For the purposes of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts, or programs stored as or on, created or used on, or transmitted to or from, computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

24. SUIT

Suit means a civil proceeding in which damages because of **bodily injury**, **property damage**, **personal injury**, or **advertising injury** to which this insurance applies are alleged. **Suit** includes:

- a. An arbitration proceeding in which such damages are claimed and to which the **insured** must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in, which such damages are claimed and to which the **insured** submits with our consent.

25. TEMPORARY WORKER

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

26. VOLUNTEER WORKER

Volunteer worker means a person who is performing duties related to the conduct of **your** business without remuneration or other compensation.

27. YOUR PRODUCT:

Your product means:

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

Your product includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
- b. The providing of or failure to provide warnings or instructions.

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

28. YOUR WORK:

Your work means:

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

Your work includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your work; and
- b. The providing of or failure to provide warnings or instructions.

If you are a construction supervisor or a construction manager the entirety of the job site or project on or at which you or others on your behalf are providing supervision or management services shall be deemed to be your work or property on which you are performing operations.

COMMERCIAL GENERAL LIABILITY
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY
MOBILE EQUIPMENT/AUTO AMENDMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion g. of Section I – Coverage A – Bodily Injury and Property Damage Liability is replaced by the following:

g. Aircraft, Auto or Watercraft “Bodily injury” or “property damage” arising out of the ownership, maintenance, use or entrustment to others of any aircraft, “auto” or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and “loading or unloading”. This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the “occurrence” which caused the “bodily injury” or “property damage” involved the ownership, maintenance, use or entrustment to others of any aircraft, “auto” or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is: (a) Less than 26 feet long; and (b) Not being used to carry persons or property for a charge;
- (3) Parking an “auto” on, or on the ways next to, premises you own or rent, provided the “auto” is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any “insured contract” for the ownership, maintenance, or use of aircraft or watercraft; or
- (5) “Bodily injury” or “property damage” arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of “mobile equipment”.

B. SECTION II WHO IS AN INSURED is amended to add the following as Paragraph 4.:

4. With respect to “mobile equipment” registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. “Bodily injury” to a co-“employee” of the person driving the equipment; or
- b. “Property damage” to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

C. Paragraph 2. of SECTION V - DEFINITIONS is replaced by the following:

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

D. Paragraph 12. of SECTION V - DEFINITIONS is replaced by the following:

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment. a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types: (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or (2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for: (a) Snow removal; (b) Road maintenance, but not construction or resurfacing; or (c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

E. Paragraph 4. of Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended by the addition of the following:

Any coverage afforded to you under this Coverage Part will be excess over any other valid and collectible Automobile insurance available to you for "mobile equipment", whether that coverage is excess, contingent or on any other basis, and any other valid and collectible umbrella liability coverage available to you.



ADMIRAL INSURANCE COMPANY

A Stock Company



COMMERCIAL LINES POLICY

THIS POLICY IS NOT OBTAINED PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

THIS POLICY CONSISTS OF:

- DECLARATIONS
- COMMON POLICY CONDITIONS
- ONE OR MORE COVERAGE PARTS. A COVERAGE PART CONSISTS OF:
 - ONE OR MORE COVERAGE FORMS
 - APPLICABLE FORMS AND ENDORSEMENTS

ADMIRAL INSURANCE COMPANY



In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

Secretary

President and CEO

1255 Caldwell Road

Cherry Hill, NJ 08034

Telephone (856) 429-9200

Facsimile (856) 429-8611

JA1001 (01/02)

B

INSURED'S COPY



ADMIRAL INSURANCE COMPANY

A STOCK COMPANY
(herein called "the Company")

COMMON POLICY DECLARATIONS

Policy No.: CA000001043-05

Renewal/Rewrite of: CA000001043-04

Named Insured and Mailing Address

LARRY WOODS
DBA: WOODS ROOFING
P.O. BOX 1453
MORGAN HILL, CA 95037

Policy Period: From 09/28/2006 To 09/28/2007 At 12:01 A.M. Standard Time at the address of the Named Insured as stated herein

THE NAMED INSURED IS: Individual; Partnership; Corporation; Joint Venture; Other

BUSINESS DESCRIPTION: Roofing Contractor

AUDIT PERIOD: Annual; Other

IN RETURN FOR THE PAYMENT OF THE PREMIUM AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGES FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

Commercial Property Coverage	\$	
Commercial General Liability Coverage	\$	\$34,875.00
Products/Completed Operations Liability Coverage	\$	
Equipment Breakdown Coverage	\$	

_____ Coverage	\$	
	PREMIUM:	\$ 34,875.00
	TERRORISM PREMIUM:	\$
	TOTAL PREMIUM:	\$ 34,875.00

Form(s) and Endorsement(s) made a part of this policy at inception:
REFER TO SCHEDULE OF FORMS, AI 00 18 03 98

PREMIUM _____
CA STATE TAX: \$1,046.25
STAMPING FEE: 101.03

This policy is not binding unless countersigned by Admiral Insurance Company or it's authorized representative.

Countersigned On: 09/28/06
At: Seattle, WA

By: James S. Carey
Authorized Representative

THESE COMMON POLICY DECLARATIONS AND, IF APPLICABLE, THE COMMERCIAL PROPERTY COVERAGE, THE COMMERCIAL GENERAL LIABILITY DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART(S), FORM(S) AND ENDORSEMENTS, IF ANY, ISSUES TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBER POLICY.



COMMERCIAL GENERAL LIABILITY COVERAGE PART

DECLARATIONS

Policy No.: CA000001043-05

Effective Date: 09/28/2006 12:01 A. M., Standard Time

LIMITS OF INSURANCE

General Aggregate Limit (Other Than Products- Completed Operations)	\$	1,000,000	
Products - Completed Operations Aggregate Limit	\$	1,000,000	
Personal and Advertising Injury Limit	\$	1,000,000	
Each Occurrence Limit	\$	1,000,000	
Damage To Premises Rented To You Limit	\$	50,000	Any One Premises
Medical Expense Limit	\$	EXCLUDED	

RETROACTIVE DATES

Coverages A and B of this insurance does not apply to "bodily injury", "personal injury", "property damage" or "advertising injury" which occurs before the Retroactive Date, if any, shown here:

None
(Enter Date or None. No Retroactive Date Applies)

PREMIUM

Classification	Code No.	Remuneration Basis	Rate	Per	Advance Premium
OPERATIONS RATED AS: ROOFING - RESIDENTIAL	98678	1005.000(3)	34.70	\$1,000 Sales	\$34,875.00
Total Advanced Premium					\$34,875.00
Minimum Term Premium					\$34,875.00

ADMIRAL INSURANCE COMPANY

ADDITIONAL DECLARATIONS

When used as a Premium basis:

- (1) "remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the Named Insured other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation or remuneration rule applicable in accordance with the manuals in use by the Company;
- (2) "cost" means the total cost to the Named Insured with respect to operations performed for the Named Insured during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or sub-contractor, including all fees, allowances, bonuses or commissions made, paid or due.
- (3) "sales" means the gross amount of money charged by the Named Insured, his concessionaires, and others trading under his name, for goods and products sold or distributed, operations performed (installation, repair or servicing), dues or fees and rentals during the policy term, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

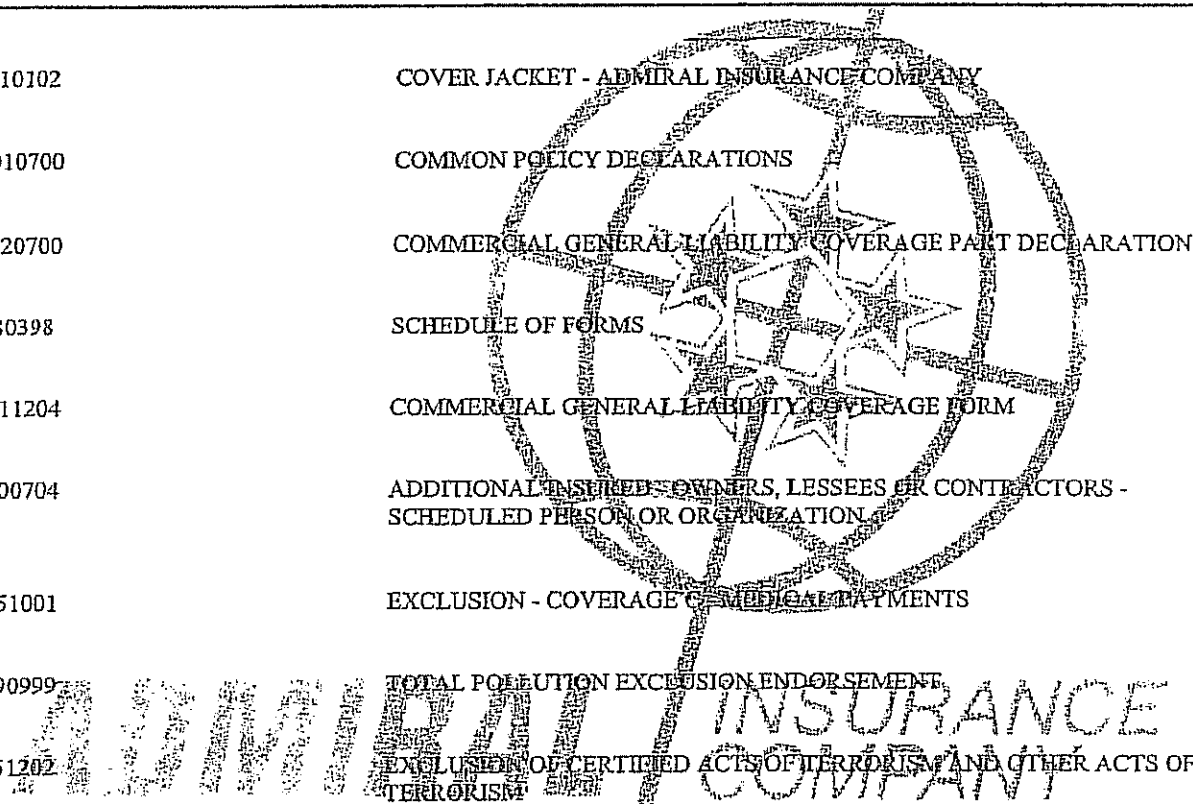
THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD

SCHEDULE OF FORMS

Named Insured: LARRY WOODS
DBA: WOODS ROOFING

Policy No.: CA000001043-05

FORM NUMBER	TITLE
JA10010102	COVER JACKET - ADMIRAL INSURANCE COMPANY
DE20010700	COMMON POLICY DECLARATIONS
DE20020700	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
AI00180398	SCHEDULE OF FORMS
CG00011204	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CG20100704	ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION
CG21351001	EXCLUSION - COVERAGE OF MEDICAL TREATMENTS
CG21490999	TOTAL POLLUTION EXCLUSION ENDORSEMENT
CG21751202	EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM
CG22430798	EXCLUSION - ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY
CG24260704	AMENDMENT OF INSURED CONTRACT DEFINITION
IL00171198	COMMON POLICY CONDITIONS
IL00210702	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
AD07440704	DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM EXCLUSION (ABSOLUTE)
AD08421204	BODILY INJURY REDEFINED
AD08431201	GENERAL LIABILITY AMENDATORY ENDORSEMENT - PRE-EXISTING DAMAGE EXCLUSION

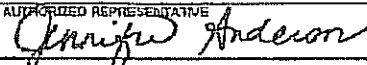


AD08701102	EIFS EXCLUSION
AD66000195	LEAD EXCLUSION (ABSOLUTE)
AD66040195	SERVICE OF SUIT STATE OF CALIFORNIA
AD66080705	ASBESTOS EXCLUSION (ABSOLUTE)
AD66090295	MINIMUM PREMIUM AND MINIMUM RETAINED PREMIUM AMENDATORY ENDORSEMENT
AD66110406	DEDUCTIBLE LIABILITY INSURANCE
AD66150195	BOOM WARRANTY
AD66620705	SILICA EXCLUSION (ABSOLUTE)
AD66801197	INDEPENDENT CONTRACTOR INSURANCE AGREEMENT
AD67190705	CONDOMINIUM CONVERSION EXCLUSION
AD67200705	BERYLLIUM EXCLUSION (ABSOLUTE)
AD67230805	EMPLOYMENT-RELATED PRACTICES EXCLUSION
AD67220805	RESIDENTIAL CONSTRUCTION ACTIVITIES EXCLUSION (EXCEPT APARTMENTS AND REPAIR OR REMODELING OF SINGLE-FAMILY DWELLINGS)
AI07340105	CALIFORNIA DISCLOSURE NOTICE
AI08350901	MICROORGANISMS, BIOLOGICAL ORGANISMS OR ORGANIC CONTAMINANTS EXCLUSION (GENERAL LIABILITY BROAD FORM)
AJ44020398	SERVICE OF SUIT

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID JE WOODS-1	DATE (MM/DD/YYYY) 09/24/07
PRODUCER Bozzuto & Associates Insurance One Almaden Blvd Suite 810 San Jose CA 95113 Phone: 800-989-8712 Fax: 408-288-7130	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
INSURED Hood's Roofing Company Larry PO Box 1453 Morgan Hill CA 95037	INSURERS AFFORDING COVERAGE INSURER A: Admiral Insurance Company INSURER B: State Compensation Fund INSURER C: Lincoln General Insurance INSURER D: INSURER E:	NAIC #	

INSR	RFDY	LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A			GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Owner/Cont Prot. GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CR00000104305	09/28/06	09/28/07	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) Excluded PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$1,000,000 PRODUCTS - COMP/OP AGG \$1,000,000
			AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
			GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
			EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B			WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	285-0001416-07	01/01/07	01/01/08	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C			Bond	661110076	01/01/07	01/01/08	CSLB Bond

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 *Except for 10 day notice for non-pay

CERTIFICATE HOLDER CALF IND Calfinder 2528 Heide Court El Sobrante CA 94803	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
--	---

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID RA WOODS-1	DATE (MM/DD/YYYY) 11/13/07
PRODUCER Bozzuto & Associates Insurance One Almaden Blvd Suite 810 San Jose CA 95113 Phone: 800-989-8712 Fax: 408-288-7130		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Wood's Roofing Inc. PO Box 1453 Morgan Hill CA 95038		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Admiral Insurance Company	
		INSURER B: State Compensation Fund	
		INSURER C: Lincoln General Insurance	
		INSURER D:	
		INSURER E:	

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSUR LTR	ADD'L HGRS	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Owner/Cont Prot. GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CA00000104306	09/28/07	09/28/08	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$1,000,000 PRODUCTS - COM/OP AGG \$1,000,000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	285-0001416-07	01/01/07	01/01/08	<input checked="" type="checkbox"/> WC STATO- TORY LIMITS <input type="checkbox"/> DIFF- ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C		Bond	661110076	01/01/07	01/01/08	CSLB Bond

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

EVIDENC
 *****Evidence of Insurance*****

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Janifer Anderson

W|M|F

WALSH MCKEAN FURCOLO LLP

625 BROADWAY SUITE 1402
SAN DIEGO CA 92101
T 619 232 8486
F 619 232 2691

WRITER'S EMAIL
LTRANC@WVFLLP.COM

OF COUNSEL
FOSTER FURCOLO JR

WWW.WMFLP.COM

Handwritten initials

August 4, 2011

VIA FACSIMILE AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Eric F. Hartman, Esq.
LAW OFFICES OF ERIC F. HARTMAN
300 S. First Street, Suite 210
San Jose, CA 95113

Re: **MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.**
Insured : Wood's Roofing, Inc.
Claim No. : C147653
Policy No. : CA000001403-06
Our File No. : ADM.11861-1

Dear Mr. Hartman:

As you know, we have been retained by Admiral Insurance Company in relation to the above referenced matter. It is our understanding that you represent the interests of Wood's Roofing, Inc. ("WRI"). Accordingly, this letter is addressed to you with a copy to WRI. Please let us know if there is anyone else to whom this letter should be directed. Thank you for tendering the above referenced litigation to Admiral. Please accept the following as Admiral's response to the same. Initially, we note that on July 14, 2011 we issued an investigation reservation of rights letter to you. The only response was notification that another mandatory settlement conference has been set by the court for August 16, 2011. Accordingly, please note that Admiral's position is subject to modification if additional or contrary information becomes available in the future.

Briefly, it is Admiral's position that the subject lawsuit is more akin to a breach of contract claim and thus is not a claim for "damages because of 'bodily injury'" as a result of the insured's actions to fall within the purview of the insuring agreement. Additionally, assuming there is a "bodily injury" claim, the facts indicate that the contractual liability and employers' liability exclusions are applicable to preclude coverage. Lastly, we note that of the three alleged incidents, the date of the final one falls outside of the Admiral policy period. We recommend tendering that claim, as well as the other two, to WRI's other carriers on the risk during the relevant time periods, if not already done.



Eric F. Hartman, Esq.
Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.
August 4, 2011 - Page 2

BACKGROUND FACTS/ALLEGATIONS

This matter arises out of a lawsuit filed by Mainstay Business Solutions ("MBS") against WRJ. The lawsuit is venued in the Tribal Court of Blue Lake Rancheria. The original complaint contained three causes of action for 1) breach of written contract, 2) money on an open book account and 3) breach of the covenant of good faith and fair dealing. On June 23, 2011, Plaintiff filed a first amended complaint which added causes of action for gross negligence and ordinary negligence.

The first amended complaint alleges that "[o]n or about June 15, 2007, Plaintiff and defendant...entered into a written agreement...[which] was renewed on June 1, 2008." These agreements are attached to the first amended complaint as exhibits 1 and 2, respectively. "Under the Agreement, Plaintiff assigned its employees to Wood's to work at various Wood's worksites in exchange for consideration provided in the Agreement. The Agreement established a co-employment relationship between the parties with respect to the assigned employees." Under this contract WRJ is obligated to "ensure a safe workplace" which included complying with MBS' workplace safety requirements. WRJ allegedly breached this obligation which resulted in injuries to three of MBS' employees on October 24, 2007, December 17, 2007 and November 10, 2008.

The first cause of action is for breach of written contract. It alleges that WRJ "breached the contract by failing to pay sums dues as per the provisions of the Agreement. As a result of defendants' breaches of the Agreement, Plaintiff has suffered damages, including but not limited to loss of fees as per the agreement to its damage in the sum of \$203,932.75."

The second cause of action alleges that WRJ is indebted to MBS "on an open book account for money due in the sum of \$203,932.75 for services performed, and/or goods delivered by Plaintiff." Attached to the complaint as attachment 3 is a copy of this open book account. Attachment 3 is a document entitled Wood's Roofing Loss Run Report. It lists three separate injury claims by Mainstay employees and identifies monies that Maintstay has allegedly spent in regards to these claims.

The third cause of action is for breach of the covenant of good faith and fair dealing. It alleges that the agreement between the parties "includes an implied covenant of good faith and fair dealing. By engaging in the conduct described herein, defendants have breached the implied covenant."

The fourth cause of action is for gross negligence. It alleges that "[d]efendants have a duty to provide a safe and healthful work environment and to undertake all reasonable action to facilitate Plaintiffs efforts to ensure the work environment to which its employees are assigned is safe... Defendants, through their gross negligence, breached their duties of care by, among other things, action with reckless disregard for or failing to exercise slight care in failing to provide adequate fall protection at its worksites... As a direct and proximate result of Defendants' gross negligence, Plaintiff suffered the damages to be proven at trial."

The fifth and final cause of action is for ordinary negligence. It similarly alleges that "[d]efendants have a duty to exercise the degree of care, skill and diligence that ordinarily

Eric F. Hartman, Esq.

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.

August 4, 2011 - Page 3

prudent people in like positions would use under similar circumstances in order to provide a safe and healthful work environment and to undertake all reasonable action to facilitate Plaintiff's efforts ensure the work environment to which its employees are assigned is safe... As a direct and proximate result of Defendants' negligence, Plaintiff suffered the damages to be proven at trial."

The first amended complaint concludes with MBS demanding judgment against WRI "for the sum of \$203,932.75" plus interest, costs of suit, attorney's fees and such other and further relief the Court deems proper.

ADMIRAL POLICY

Admiral issued a Commercial General Liability policy, number CA000001043-05, to Larry Woods DBA: Woods Roofing for the period of September 28, 2006 to September 28, 2007. This policy was renewed for another year under policy number CA000001043-06. The insured's business is described as "Roofing Contractor." Both policies have a general aggregate limit of \$1 million (other than products-completed operations), a products-completed operations aggregate limit of \$1 million, a personal and advertising injury limit of \$1 million, and a per occurrence limit of \$1 million. Coverage under the policies is subject to a deductible of \$5,000 per claim for Bodily Injury Liability and/or Property Damage Liability Combined, and \$5,000 per claim for Personal and Advertising Injury Liability.

Coverage A for the policies contains the following insuring agreement:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

I. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

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

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

Eric F. Hartman, Esq.

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.

August 4, 2011 - Page 4

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and

* * *

The Insuring Agreement of Coverage A is subject to the following exclusions:

2. Exclusions

This insurance does not apply to:

+ * *

b. Contractual Liability

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

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

d. Workers' Compensation and Similar Law

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

Eric F. Hartman, Esq.

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.

August 4, 2011 - Page 5

e. Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

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

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

* * *

Coverage under the Admiral policies, if applicable, are subject to the following conditions set forth in Section IV:

SECTION IV- COMMERCIAL GENERAL LIABILITY CONDITIONS

* * *

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

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

Eric F. Hartman, Esq.

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.

August 4, 2011 - Page 6

- b. If a claim is made or a "suit" is brought against any insured, you must:
- (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

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

- c. You and any other involved insured must:
- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

* * *

The Admiral policies are subject to the following definitions:

SECTION V – DEFINITIONS

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Lease worker" does not include a "temporary worker".
13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

Eric F. Hartman, Esq.

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.

August 4, 2011 - Page 7

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

* * *

The following endorsements to the Admiral policies are applicable in this matter:

EXCLUSION – COVERAGE C – MEDICAL PAYMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description And Location of Premises Or Classification:

ALL PREMISES AND ALL CLASSIFICATIONS

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any premises or classification shown in the Schedule:

1. Section I – Coverage C – Medical Payments does not apply and none of the references to it in the Coverage Part apply; and
2. The following is added to Section I – Supplementary Payments:
 - h. Expenses incurred by the insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

* * *

Eric F. Hartman, Esq.

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AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph 9. of the Definitions Section is replaced by the following:

9. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

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- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

* * *

BODILY INJURY REDEFINED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM (OCCURRENCE VERSION)
COMMERCIAL GENERAL LIABILITY COVERAGE FORM (CLAIMS-MADE)
PRODUCTS AND COMPLETED OPERATIONS LIABILITY COVERAGE FORM
(OCCURRENCE VERSION)
PRODUCTS AND COMPLETED OPERATIONS LIABILITY COVERAGE FORM
(CLAIMS-MADE VERSION)
LIQUOR LIABILITY COVERAGE (OCCURRENCE VERSION)
LIQUOR LIABILITY COVERAGE (CLAIMS-MADE VERSION)
OWNER'S AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM
RAILROAD PROTECTIVE LIABILITY COVERAGE FORM
EXCESS LIABILITY COVERAGE FORM
UMBRELLA LIABILITY COVERAGE FORM

The definition of "bodily injury" in DEFINITIONS is amended as follows:

"Bodily injury" means physical injury, physical sickness or physical disease sustained by any one person, including death therefrom. "Bodily injury" does not include shock or emotional, mental or psychological distress, injury, trauma or anguish or other similar condition, unless such condition results solely and directly from prior physical injury, physical sickness or physical disease otherwise covered under this insurance.

* * *

COVERAGE ANALYSIS

The insuring agreement of Coverage A Bodily Injury and Property Damage Liability of the Admiral policies obligates Admiral to pay those sums the insured is "legally obligated to pay as damages" to a third party. In order for coverage to be invoked under Coverage A of the Admiral policies, it must be established that the claim against the insured requests damages for "bodily injury" or "property damage" that occurs during the policy period, and that the "bodily injury" or "property damage" is caused by an "occurrence". Here, the entirety of MBS' complaint is centered around WRI's alleged failure to ensure the safety of persons it was

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contractually obligated to protect. WRI's failure to comply with the terms of its contract resulted in MBS having to pay workers compensation benefits for three separate injuries. It is settled that under California law, strictly economic losses are not "property damage" for liability insurance purposes. *Waller v. Truck Ins. Exch., Inc.* (1995) 11 Cal.4th 1, 26-27. "CGL policies do not provide coverage for intangible property losses, including economic losses." *Id.* "Strictly economic losses like lost profits, loss of goodwill, loss of the anticipated benefit of a bargain, and loss of an investment, do not constitute damage or injury to tangible property covered by a comprehensive general liability policy." *Giddings v. Industrial Indemnity Co.* (1980) 112 Cal.App.3d 213, 217. A breach of contract claim is essentially this, a claim for an economic loss. MBS had to pay monies as a result of WRI's alleged failure to follow the terms of its contract. There is no evidence that MBS is making a claim because of a bodily injury it suffered.

The California Supreme Court case of *Waller v. Truck Insurance Exchange* is instructive here. It held that "CGL policies do not provide coverage for economic losses that cause emotional distress. As we have observed, the CGL policy provides coverage for 'occurrences' that cause bodily injury or tangible property losses. These policies were never intended to cover emotional distress damages that flow from an uncovered occurrence,' and the parties could not reasonably have expected that coverage would be expanded merely because a claim of emotional or physical distress is alleged as a result of the economic loss." *Waller*, 11 Cal.4th at 23. Thus, there is no dispute that the injuries suffered by the employees flow from and are derivative of WRI's alleged breach of contract. MBS's claim against WRI does not fall within the provisions of the Admiral insuring agreement and Admiral respectfully denies coverage for the same.

Assuming, arguendo, this matter falls within the terms of the insuring agreement, there are two exclusions which apply to nevertheless preclude coverage. The first is the contractual liability exclusion. The exclusion states that there is no coverage for "'bodily injury'...for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement." As you know, Plaintiff seeks to have WRI reimburse it for monies it has already paid. The real issue here is whether WRI would have an obligation to pay those monies outside of the contract between the parties. The answer to that question is no.

MBS wears two hats in this scenario. First as a temporary staffing business, i.e. a party to the contract with WRI, and second, as a worker's compensation carrier since pursuant to information we have been provided, WRI was self-insured for workers compensation benefits. As a mere contracting party, MBS can only demand reimbursement from WRI pursuant to the terms of its contract. This avenue of recovery clearly falls within the provisions of the Contractual Liability exclusion.

As for MBS' claim as a self-insurer, the information we have indicates that MBS cannot maintain a suit in this capacity. First, we highlight the fact that MBS has waived its subrogation rights. See para. A.8. of the 2007 Contract and para. A.7 of the 2008 Contract. Second, even if MBS was pursuing subrogation, that claim is one derivative of what claim(s) the injured employee would be able to bring. In other words, if the injured employees have no standing to sue WRI, then MBS likewise cannot sue WRI. *Garofalo v. Princess Cruises, Inc.* (2000) 102 Cal.Rptr.2d 754. Based on California Labor Code section 3602, the injured parties here have no claim against WRI. WRI is considered an employer of the injured parties and thus they are limited to seeking workers' compensation benefits. They are barred from maintaining a separate

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action against WRI. *Watters Assoc. v. Sup Ct.* (1991) 278 Cal.Rptr. 417; *Santa Cruz Poultry, Inc. v. Sup. Ct.* (1987) 239 Cal.Rptr. 578. As the injured employees have no right to sue WRI. ✓ that means MBS has no subrogation rights against WRI.

Moreover, we note that the exceptions to this exclusion do not apply. The first exception is if WRI would be liable for MBS' claim in the absence of the contract. Second is if WRI's liability was one it assumed in an "insured contract." As explained above, this is not a liability WRI would have to MBS in the absence of the contract. So the issue comes down to whether WRI's liability is one assumed in an insured contract. The term "insured contract" is defined as "[t]hat part of any other contract...under which you assume the tort liability of another... Tort liability means a liability that would be imposed by law in the absence of any contract or agreement." So, the only way this exclusion would not apply is if the monies paid was a tort liability of MBS'.

We again turn to California Labor Code section 3602(d) which states that "an employer may secure the payment of [workers] compensation on employees provided to it by agreement by another employer...by entering into a valid...agreement with that other employer under which the other employee agrees to obtain...workers' compensation coverage for these employees." The terms of the contract, including the Alternate Employer Endorsement Certificate attached thereto, show that this is how the MBS and WRI agreed workers' compensation requirements would be met. The statute continues on to state that "[e]mployers who have complied with this subdivision shall not be subject to...tort liability in the event of employee injury." The logical conclusion here is since MBS and WRI complied with California Labor Code section 3602(d), neither party could be subject to tort liability. Without facing a tort liability, that means MBS' claim against WRI cannot fall under the exception to the Contractual Liability exclusion. ✓

The second applicable exclusion here is the Employer's Liability exclusion. It operates to preclude coverage for "'bodily injury' to an 'employee' of the insured." Based on the information we have been provided, it is apparent that the three injured parties were "employees" of WRI as that term is defined in the Admiral policies. Moreover, this exclusion equally applies "[t]o any obligation to share damages with or repay someone else who must pay damages because of the injury." Thus, the claim by MBS falls within the provisions of this exclusion. The only exception is for "liability assumed by the insured under an 'insured contract'." As explained above, the subject claim here is not an "insured contract" such that the exception to the exclusion can apply.

Lastly, we note that of the three injuries, the most recent one occurred on November 10, 2008. The Admiral policy expired on September 28, 2008. Accordingly, there is no coverage for this last injury. You may want to tender this claim to WRI's carrier(s) on the risk for November 2008, if not already done so. While it is unlikely that WRI's CGL carrier after Admiral will pick up coverage, for foregoing reasons, this is a claim which may be covered under an Employer's Liability or Workers' Compensation policy.

CONCLUSION

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For all of the reasons set forth in this letter and based on the terms, conditions, exclusions and provisions of the Admiral policies, under which all rights are reserved by Admiral, coverage is inapplicable. As such, Admiral is unable to defend or indemnify WRI in connection with the subject lawsuit as it currently stands. We respectfully request that you promptly advise us if other information or facts come to light which you believe bear upon whether Admiral has a coverage obligation in this matter. Admiral desires to extend coverage wherever it is due and welcomes the opportunity to consider such additional information.

Pursuant to the foregoing, Admiral reserves all rights available to it under the above terms of its policies and applicable law to dispute the application of its coverage to this matter. Admiral recognizes that WRI similarly reserves rights available to it to assert that coverage exists. Admiral reserves its rights to assert any and all terms, conditions, exclusions, endorsements, definitions and provisions of its policies and reserves its right to amend, supplement, or alter this disclaimer and reservation of rights at any time in the future should additional information be obtained. In addition, Admiral reserves the right to pursue a declaratory relief action to determine the rights and obligations of Admiral, its insured, and any other insurers potentially involved in this matter.

Neither this correspondence nor any other communications or actions taken by Admiral shall be deemed to constitute a waiver, relinquishment or abandonment of any rights available to Admiral pursuant to the subject insurance policies and applicable law, all of which rights are specifically reserved to it.

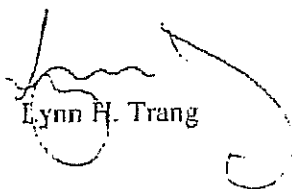
To the extent there are any disputes concerning Admiral's position in this matter, you may have the matter reviewed by the California Department of Insurance at the following address and telephone number:

California Department of Insurance
Claims Service Bureau
300 South Spring Street, South Tower
Los Angeles, CA 90013
(800) 927-4357

Should you have any questions regarding this letter or the insurance coverage position of Admiral, please do not hesitate to contact the undersigned. Thank you.

Very truly yours,

WALSH MCKEAN FURCOLO LLP


Lynn H. Trang

Eric F. Hartman, Esq.

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cc:

Mr. Larry Woods
WOOD'S ROOFING, INC.
P.O. Box 1453
Morgan Hill, CA 95037

Maryanne Kehoe, CPCU, ASLI
Claims Superintendent
ADMIRAL INSURANCE COMPANY
P.O. Box 5725
Cherry Hill, NJ 08034-3220

Fowler Law Group

10635 Santa Monica Blvd., Suite 305, Los Angeles, CA 90025 • 310 446 3900 • Fax 310 446 0030

July 29, 2011

VIA REGULAR AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Eric F. Hartman, Esq.
Law Offices of Eric F. Hartman
300 South First Street, Suite 210
San Jose, CA 95113

2011-07-29

Re: Insured: Wood's Roofing Inc.
Mainstay Business Solutions v. Woods Roofing, Inc., et al.
Case No.: C-09-0612 LJM
Policy No.: GL-CA010804 [09/28/08-09/28/09]
GL-CA013327 [09/28/09-09/28/10]
GL-CA015766 [09/28/10-09/28/11]
Our File No.: 82.411143

Dear Mr. Hartman:

As you are aware, we are the third-party administrator for United Contractors Insurance Company ("United Contractors"). United Contractors has received notice of a claim filed against Wood's Roofing Inc. ("Insured," "You," or "Your") by Mainstay Business Solutions involving allegations of breach of contract, breach of the covenant of good faith and fair dealing, gross negligence and ordinary negligence related to the alleged bodily injury of temporary employees supplied by the ("Claim"). United Contractors issued to the Insured commercial general liability policies as follows: Policy Number GL-CA010804, with effective dates from September 28, 2008 to September 28, 2009 ("Policy 1"); Policy Number GL-CA013327, with effective dates from September 28, 2009 to September 28, 2010 ("Policy 2"); and Policy Number GL-CA015766, with effective dates from September 28, 2010 to September 28, 2011 ("Policy 3") (collectively "Policies"). This correspondence will advise You of United Contractors' initial determination regarding application of the Policies to the Claim.

Based on the information currently available to United Contractors, United Contractors has determined that the Policy does not cover the Claim. United Contractors will not provide a defense to the Insured regarding the Claim and will not indemnify the Insured with regard to the Claim. United Contractors reserves the right to supplement or modify this letter as United Contractors deems necessary. All rights of United Contractors are hereby reserved. The bases and reasons for this denial and reservation of rights are more fully set forth below.



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ALLEGATIONS OF THE CLAIM

The Insured hired temporary employees from Mainstay Business Solutions to assist in their roofing work at various projects. Two of these employees were allegedly injured during the course of their employment with Mainstay Business Solutions at the Insured's work sites. Danilo Flores was injured on October 24, 2007 and Sergio Rubio was injured on December 12, 2007 and November 10, 2008.

On or about June 23, 2011, Mainstay Business Solutions filed a First Amended Complaint for damages for breach of written contract, money on an open book account, breach of covenant of good faith and fair dealing, gross negligence and ordinary negligence against the Insured and DOES 1-10.

On or about July 14, 2011, United Contractors received a tender for defense and indemnity from the Law Offices of Eric F. Hartman, the Insured's personal counsel, on behalf of the Insured.

THE POLICY

United Contractors insurance policy GL-CA010804 provides as follows:

SECTION 1 – COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

I. INSURING AGREEMENT

- a. We will pay those sums that an insured becomes legally obligated to pay as damages because of **bodily injury** or **property damage** to which this insurance applies. Our duty to indemnify the insured is expressly limited by the terms of this policy.

Notwithstanding the preceding paragraph, we have the right and duty to defend only those insureds as defined paragraphs 1. or 2. of SECTION II – WHO IS AN INSURED against any suit seeking damages to which this insurance applies. We have the right, but not the duty, to defend any other insureds. We have no duty to defend any insured against any suit when any other insurer is obligated to defend the insured.

We, may at our sole discretion, investigate any occurrence and settle any claim or suit that may result. But:

- (1) The amount we will pay for damages is limited as described in SECTION III – LIMITS OF INSURANCE; and
- (2) Our right and duty to defend ends when we have used up the applicable limit

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of insurance in the payment of judgments or settlements under Coverage A or B or Medical Expenses under Coverage C.

- b. This insurance applies to **bodily Injury** and **property damage** only if:
- (1) The **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**; and
 - (2) The **bodily Injury** or **property damage** is caused by an **occurrence** that takes place during the policy period whether or not such **occurrence** is known to any **insured**; and
 - (3) The **bodily Injury** or **property damage** resulting from such **occurrence** first takes place during the policy period; and

All **bodily injury** or **property damage** arising out of an **occurrence**, or series of related **occurrences**, shall be deemed to take place at the time of the first such **bodily Injury** or **property damage**, regardless of when the **bodily Injury** or **property damage** becomes manifest or apparent to anyone. If any **bodily injury** or **property damage** takes place prior to the inception of this policy, then all **bodily injury** or **property damage** will be deemed to first take place prior to the inception of this policy even though the **occurrence** giving rise to such damage may be continuous or repeated exposure to the same generally harmful conditions, and even though the nature, type or extent of such **bodily injury** or **property damage** may be continuous, progressive, cumulative, changing or evolving, and even though the **bodily injury** or **property damage** continues into this policy period.

- c. Our duty to defend is further limited as follows:
- (1) We shall have no duty to defend any **claim** or **suit** in which it is alleged or claimed, in whole or in part, that any **bodily injury** or **property damage** is continuous or progressive in nature or results from continuous or repeated exposure to the same generally harmful conditions, unless the **claim** or **suit** specifically alleges that all of the **bodily injury** or **property damage** for which damages are sought first took place during the policy period.
 - (2) We shall have no duty to defend any **claim** or **suit** filed before the policy period, regardless of whether the **insured** seeking coverage was a party to such **claim** or **suit** at the time it was filed. This provision includes **suits** that are amended, consolidated or refiled, among some or all of the same parties, and the filing date of the first **suit** will determine whether the **suit** was filed before the inception date of this policy.
 - (3) When we have no duty to defend, we retain the right, but not the duty, at our sole election and discretion, to defend an **insured** or to intervene in any **claim** or **suit** for which a defense or indemnity has been requested by any **insured** under this policy.
 - (4) If we defend an **insured** against a **claim** or **suit** and your indemnitee is also

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named as a party to the **claim** or **suit**, we retain the right, but not the duty, to defend **your** indemnitee. The decision concerning whether to defend any such indemnitee shall be at **our** sole election and discretion.

- (5) We shall have no duty to defend any **insured** that does not qualify as an **insured** as defined in paragraphs 1. or 2. of SECTION II – WHO IS AN INSURED. We have no duty to defend an **insured** as defined in paragraph 3. of SECTION II – WHO IS AN INSURED.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A AND B.

2. EXCLUSIONS:

The following exclusions apply regardless of whether any other cause or causes contributed, in whole or in part, directly or indirectly, jointly or concurrently or in any sequence, with the excluded matters to cause **bodily injury** or **property damage**, and regardless of whether any other contributing or concurrent cause or causes of the **bodily injury** or **property damage** are covered by this policy.

D. WORKERS COMPENSATION AND SIMILAR LAWS EXCLUSION

Any obligation of any **insured** under a workers' compensation, disability benefits, unemployment compensation law or any similar law.

E. EMPLOYEE, OWNER AND WORKER'S LIABILITY EXCLUSION

Bodily injury to:

- (1) An **employee** of any **insured** arising out of:
(a) Employment by any **insured**; or
(b) Performing duties related to the conduct of any **insured's** business.
- (2) A subcontractor or independent contractor of any **insured** including the subcontractor's or independent contractor's employees, leased employees, volunteer worker's, borrowed servants or temporary employees.
- (3) The **named insured**.
- (4) A spouse, child, parent, brother or sister of an **employee** of any **insured**, or the employee of any subcontractor or independent contractor retained by any **insured**, as a consequence of paragraphs (1), (2) or (3) above.

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This exclusion applies:

- (1) Whether any **insured** may be liable as an employer or in any other capacity;
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury; and
- (3) To liability assumed in an **insured contract**, or any **claim** or **suit** for contribution by any **insured** against any other **insured** or by any third party against any **insured** when such **claim** or **suit** arises out of or as a consequence of paragraphs (1), (2), (3) or (4) of the immediately preceding section.

JJ. PREVIOUSLY COMPLETED WORK OR PRODUCTS EXCLUSION

Property damage falling within the **products-completed operations hazard** and arising out of, caused by, or in any way related to **your work** that was performed prior to the inception date of this policy or **your product** that was supplied or incorporated into any work of real property improvement prior to the inception date of this policy, including all associated common areas. This exclusion applies even though the nature, type or extent of such **property damage** may be continuous, progressive, cumulative, changing or evolving.

If this is a renewal policy and coverage has been continuous with us without interruption, and for the purpose of this exclusion only, the policy inception date shall be deemed to be the inception date of the first continuous policy issued by us.

LI. BREACH OF CONTRACT EXCLUSION

Bodily injury or **property damage** arising out of a breach of any contract, agreement or warranty of any kind or nature.

SECTION V – DEFINITIONS

5. **BODILY INJURY**

Bodily Injury means **bodily injury**, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily injury** does not include any mental or emotional trauma or distress unless caused by a direct injury, physical sickness or physical disease that is itself covered by this policy.

9. **EMPLOYEE**

Employee means all possible categories and types of **employees**, including but not limited to any **leased worker**, **temporary worker**, **volunteer worker** or anyone who may be

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determined to be an **employee** of any **insured** or an **employee of an employee** of any **insured**, under any legal or equitable theory or doctrine. **Employee** includes anyone that any **insured** may be found liable for or to as an employer.

But for the purpose of paragraph 2. in SECTION II -- WHO IS AN INSURED **employees** include only your direct or general **employees** and does not include all other possible categories of **employees**.

19. OCCURRENCE

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

United Contractors insurance policies GL-CA013327 and GL-CA015766 provide as follows:

SECTION 1 - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

I. INSURING AGREEMENT

- a. We will pay those sums that an **insured** becomes legally obligated to pay as damages because of **bodily injury** or **property damage** to which this insurance applies. **Our** duty to indemnify the **insured** is expressly limited by the terms of this policy.

Notwithstanding the preceding paragraph, we have the right and duty to defend only those **insureds** as defined paragraphs 1. or 2. of SECTION II -- WHO IS AN INSURED against any **suit** seeking damages to which this insurance applies. We have the right, but not the duty, to defend any other **insureds**. We have no duty to defend any **insured** against any **suit** when any other insurer is obligated to defend the **insured**.

We may at **our** sole discretion, investigate any **occurrence** and settle any **claim** or **suit** that may result. But:

- (1) The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE: and
- (2) **Our** right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or Medical Expenses under Coverage C.

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- b. This insurance applies to **bodily Injury and property damage** only if:
- (1) The **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**; and
 - (2) The **bodily Injury** or **property damage** is caused by an **occurrence** that takes place during the policy period whether or not such **occurrence** is known to any **insured**; and
 - (3) The **bodily Injury** or **property damage** resulting from such **occurrence** first takes place during the policy period; and

All **bodily injury** or **property damage** arising out of an **occurrence**, or series of related **occurrences**, shall be deemed to take place at the time of the first such **bodily Injury** or **property damage**, regardless of when the **bodily Injury** or **property damage** becomes manifest or apparent to anyone. If any **bodily injury** or **property damage** takes place prior to the inception of this policy, then all **bodily injury** or **property damage** will be deemed to first take place prior to the inception of this policy even though the **occurrence** giving rise to such damage may be continuous or repeated exposure to the same generally harmful conditions, and even though the nature, type or extent of such **bodily injury** or **property damage** may be continuous, progressive, cumulative, changing or evolving, and even though the **bodily injury** or **property damage** continues into this policy period.

- c. Our duty to defend is further limited as follows:
- (1) We shall have no duty to defend any **claim** or **suit** in which it is alleged or claimed, in whole or in part, that any **bodily injury** or **property damage** is continuous or progressive in nature or results from continuous or repeated exposure to the same generally harmful conditions, unless the **claim** or **suit** specifically alleges that all of the **bodily injury** or **property damage** for which damages are sought first took place during the policy period.
 - (2) We shall have no duty to defend any **claim** made or **suit** filed before the policy period, regardless of whether the **insured** seeking coverage was a party to such **claim** or **suit** at the time it was made or filed. This provision includes **claims** or **suits** that are amended, consolidated, re-instituted, renewed or refiled, among some or all of the same parties. The first date upon which any **claim** was made will determine whether the **claim** was made before the inception date of this policy. The filing date of the first **suit** will determine whether the **suit** was filed before the inception date of this policy.
 - (3) When we have no duty to defend, we retain the right, but not the duty, at our sole election and discretion, to defend an **insured** or to intervene in any **claim** or **suit** for which a defense or indemnity has been requested by any **insured** under this policy.

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Our File No. 82411143

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- (4) If we defend an **insured** against a **claim** or **suit** and **your** indemnitee is also named as a party to the **claim** or **suit**, we retain the right, but not the duty, to defend **your** indemnitee. The decision concerning whether to defend any such indemnitee shall be at our sole election and discretion.
- (5) We shall have no duty to defend anyone that does not qualify as an **insured** as defined in paragraphs 1. or 2. of SECTION II – WHO IS AN INSURED. We have no duty to defend an **additional insured** as defined in paragraph 3. of SECTION II - WHO IS AN INSURED.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A AND B.

2. EXCLUSIONS:

The following exclusions apply regardless of whether any other cause or causes contributed, in whole or in part, directly or indirectly, jointly or concurrently or in any sequence, with the excluded matters to cause **bodily injury** or **property damage**, and regardless of whether any other contributing or concurrent cause or causes of the **bodily injury** or **property damage** are covered by this policy.

THIS POLICY DOES NOT APPLY TO AND COVERAGE IS EXPRESSLY EXCLUDED FOR EACH OF THE FOLLOWING:

D. WORKERS COMPENSATION AND SIMILAR LAWS EXCLUSION

Any obligation of any **insured** under a workers' compensation, disability benefits, unemployment compensation law or any similar law.

E. EMPLOYEE, OWNER AND WORKER'S LIABILITY EXCLUSION

Bodily injury to:

- (1) An **employee** of any **insured** arising out of:
 - (a) Employment by any **insured**; or
 - (b) Performing duties related to the conduct of any **insured's** business.
- (2) A subcontractor or independent contractor of any **insured** including the subcontractor's or independent contractor's **employees**.
- (3) The **named insured**.
- (4) A spouse, child, parent, brother or sister of an **employee** of any **insured**, or the **employee** of any subcontractor or independent contractor retained by any **insured**, as a consequence of paragraphs (1), (2) or (3) above.

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This exclusion applies:

- (1) Whether any **insured** may be liable as an employer or in any other capacity;
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury; and
- (3) To liability assumed in an **insured contract**, or any **claim** or **suit** for contribution by any **insured** against any other **insured** or by any third party against any **insured** when such **claim** or **suit** arises out of or as a consequence of paragraphs (1), (2), (3) or (4) of the immediately preceding section.
- (4) To any accompanying claims of wrongful death, loss of love, companionship, consortium, financial and emotional support, instruction, and/or services or similar claims made against any **insured** arising out of or as a consequence of paragraphs (1), (2), (3) or (4) of the immediately preceding section.

JJ. PREVIOUSLY COMPLETED WORK OR PRODUCTS EXCLUSION

Property damage falling within the **products-completed operations hazard** and arising out of, caused by, or in any way related to **your work** that was performed prior to the inception date of this policy or **your product** that was supplied or incorporated into any work of real property improvement prior to the inception date of this policy, including all associated common areas. This exclusion applies even though the nature, type or extent of such **property damage** may be continuous, progressive, cumulative, changing or evolving.

If this is a renewal policy and coverage has been continuous with us without interruption, and for the purpose of this exclusion only, the policy inception date shall be deemed to be the inception date of the first continuous policy issued by us.

LL. BREACH OF CONTRACT EXCLUSION

Bodily injury or **property damage** arising out of a breach of any contract, agreement or warranty of any kind or nature.

SECTION V – DEFINITIONS

6. **BODILY INJURY**

Bodily Injury means **bodily injury**, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily injury** does not include any mental or emotional trauma or distress unless caused by a direct injury, physical sickness or physical disease that is itself covered by this policy.

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10. EMPLOYEE

Employee means all possible categories and types of **employees**, including but not limited to any **leased worker, temporary worker, volunteer worker** or anyone who may be determined to be an **employee** of any **insured** or an employee of an employee of any insured, under any legal or equitable theory or doctrine. **Employee** includes anyone that any **insured** may be found liable for or to as an employer.

Under Paragraph 2. in SECTION II - WHO IS AN INSURED **employees** include only **your** direct or general **employees** and does not include all other possible categories of **employees**.

21. OCCURRENCE

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

All **bodily injury or property damage** caused or alleged to have been caused by **your work** or **your product, which** is incorporated into a project of construction, including a development of multiple distinct units, shall be deemed to have been caused by a single **occurrence**.

DETERMINATION

Paragraph "1(b)" of Policy GL-CA010804 provides that coverage only applies to bodily injury or property damage which first occurs during the Policy. Mr. Flores' injury and Mr. Rubio's initial injury both occurred prior to the inception of the Policies on September 28, 2008. Accordingly, there is no coverage for the October 24, 2007 injury of Mr. Flores and the December 12, 2007 injury of Mr. Rubio.

The November 10, 2008 injury to Mr. Rubio occurred during Policy GL-CA010804. Policy GL-CA010804 contains a "workers compensation and similar law exclusion", Exclusion "D" which precludes coverage for any obligations of the Insured under workers' compensation law. The Policy also contains an "employee, owner and worker's liability exclusion", Exclusion "E", which precludes coverage for bodily injury to an employee arising out of employment by an Insured. Under the Policy the term "employee" includes any leased or temporary worker, and any employee that the Insured may be found liable for or to as an employer. As Mr. Rubio was a temporary and/or leased employees of the Insured at the time of the alleged injuries there is no coverage for the alleged bodily injuries under exclusions "D" and "E". Exclusion "E" also precludes coverage for injury to subcontractors and independent contractors of the Insured. If Mr. Rubio was not employees of the Insured, he was an independent contractor or subcontractor of the Insured. There is no coverage for

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the November 10, 2008 injury to Mr. Rubio. We note that the same exclusions would apply equally to bar the injury to Mr. Flores. Accordingly, there is no coverage for the alleged bodily injuries under the Policies.

The insuring agreement of Policies GL-CA013327 and GL-CA015766 at paragraph "1(b)" provides that coverage only applies to bodily injury or property damage which first occurs during the Policy. All alleged injuries occurred prior to the inception of these Policies and therefore there is no coverage for the alleged injuries of Mr. Flores and Mr. Rubio under these Policies. We note that both of these Policies also contain exclusions "D" and "E", which would also bar coverage. Accordingly, there is no coverage for the Claim under the Policies.

As discussed above, the Policies do not provide coverage for the Claim or the damages alleged in the Claim, and therefore United Contractors will not defend or indemnify the Insured with regard to the Claim. This initial determination is based on the information currently available to United Contractors. If the Claim changes or new information becomes available, please provide us with that information so that United Contractors may determine if the new information would provide a possibility that the Policies cover the Claim.

United Contractors' discussion or recital in this letter of any specific provisions of the Policies is not exhaustive, and United Contractors reserves all rights to rely on any provisions of the Policies, whether mentioned or not, to support its application of the Policies to the Claim. The failure of United Contractors to mention any provision of the Policies shall not constitute a waiver of any provisions of the Policies, and shall not waive United Contractors' right to rely on any term, condition, or exclusion of the Policies to deny or limit coverage for the Claim. United Contractors' discussion or recital in this letter of provisions of the Policies is not a modification of the Policies, and the Policies still control.

Please contact the undersigned if You disagree with any statements in this letter, You believe this letter misstates any facts, or if You know of any different or additional facts regarding the Claim or the Policy that You believe may be important to determining the application of the Policies to the Claim. United Contractors will review any information You provide to determine if the Policies may potentially provide coverage for the Claim.

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If You believe the Claim has been wrongfully denied or rejected, or if there is a dispute as to liability or damages, You have the right to have the matter reviewed by the Department of Insurance. The California Department of Insurance can be reached at:

California Department of Insurance
Consumer Affairs Division
300 South Spring Street, 6th Floor
Los Angeles, CA 90013
Tel: (800) 927-4357 or (213) 897-5961

Very truly yours,

FOWLER LAW GROUP



Stephanie Gois

SG/cm

cc: Michael A. Peart, Esq.