

CITY OF NAPERVILLE ADVOCATE AGREEMENT

BETWEEN

THE CITY OF NAPERVILLE

&

S.B. FRIEDMAN & COMPANY

FOR

THE 5TH AVENUE REDEVELOPMENT

OCTOBER 17, 2018

THIS CITY ADVOCATE AGREEMENT (“Agreement”) is dated as of the 17th day of October 2018 (“**Effective Date**”), and is between the **CITY OF NAPERVILLE**, an Illinois municipal corporation and home rule unit of local government, with its principal office located at 400 South Eagle Street, Naperville, Illinois 60540 (“**City**”), and **S.B. FRIEDMAN & COMPANY**, an Illinois corporation with its principal office located at 221 North LaSalle Street, Suite 820, Chicago, Illinois 60601 (“**Advocate**”). The City and the Advocate may be hereinafter referenced when individually as “**Party**” or cumulatively as “**Parties**”.

IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth in this agreement, the Parties agree as follows:

Section 1. Recitals.

A. The City currently owns and leases eight (8) parcels on just over 13 acres near the Naperville Metra commuter train station, commonly referred to as the 5th Avenue Station. These properties (hereinafter the “**Redevelopment Area**”) have been the subject of planning and feasibility studies as they are an important gateway to downtown Naperville and surround one of the City’s commuter hubs.

B. In February 2017, the City advertised RFQ 17-036, 5th Avenue Redevelopment, to evaluate and potentially pursue opportunities for redevelopment of one or more of the properties to improve site utilization through mixed use redevelopment based on market conditions, financial principles, parking and transportation demands. Hereinafter this project shall be referred to as the “**Redevelopment.**”

C. In October 2017, the City’s City Council directed staff to move forward with the Ryan Companies to facilitate a community engagement process, complete market and technical studies, and develop a land use concept and financial plan. Ryan Companies is a national real estate development and management firm with offices in Naperville. Ryan Companies recently began the concept creation phase for the Redevelopment.

D. On August 6, 2018, the City issued a Request for Proposals 18-182, City Advocate for 5th Avenue Redevelopment, seeking experienced and qualified teams to act as a City advocate regarding the Redevelopment (“**RFP**”).

E. The Advocate provides analytical, strategic and financial consulting services in support of complex, high-impact development projects. The Advocate frequently assists in structuring and negotiating the public-private partnerships that are essential to successfully

implementing development and redevelopment projects and serves a full range of clients in the public, private and nonprofit/institutional sectors.

F. The Advocate responded to the RFP and will assist the City by providing the Services described herein.

G. The City has the authority, pursuant to the laws of the State of Illinois and its home rule authority, to promote the health, safety, and welfare of the City and its residents, to prevent the spread of conditions detrimental to healthy economic development, to encourage private development in order to enhance the local tax base, to increase employment, and to enter into contractual agreements with developers, redevelopers, consultants, and other third-parties for the purpose of achieving such objectives.

H. The City is authorized under the provisions of Article VII, Section 10 of the State of Illinois Constitution to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law.

I. The City is authorized under the provisions of Article VIII of the State of Illinois Constitution to use public funds for public purposes.

J. The Corporate Authorities of the City, after due and careful consideration, have concluded that the Advocate, pursuant to and in accordance with this Agreement, would further enable the City to progress the Redevelopment and would serve the best interests of the City.

K. The foregoing Recitals are incorporated herein and made a part of this Agreement.

Section 2. Definitions

A. **Definitions.** Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

“Additional Services”: Services not included in the Scope of Services for each Approved Service Order.

“Advocate”: S.B. Friedman & Company.

“Agreement”: This Agreement and all exhibits and attachments hereto. The Advocate’s response to the RFP, submitted by Ice Miller, LLP for the Services described

herein is made part of this Agreement by reference as though fully incorporated herein. In the event of a conflict in terms between the Advocate's response to the RFP and the remaining terms of this Agreement, this Agreement shall control.

"Approved Service Orders": Agreed upon segments of the Services to be performed hereunder which include, but are not limited to, a description of the specific Services to be performed in that segment of work, the timeframe for performance, the identity of the individuals who will be performing said Services, and the cost thereof.

"City": The City of Naperville.

"Director": The City's Director of Transportation Engineering and Development Business Group or the Director's designee.

"Effective Date": October 17, 2018.

"Project Manager": Geoffrey Dickinson of S.B. Friedman & Company.

"Project Representative": That individual designated by the Director as the individual to act as the City liaison to the Project Manager for day-to-day issues pertaining to this Agreement.

"Rates": The agreed upon hourly billable rate applicable to all Services and work provided by the Advocate and its subcontractors as part of this Agreement. Said rates are memorialized in **Exhibit B**. Those Rates shall be effective through December 31, 2019. The maximum Rate escalation shall be no more than three percent (3%) per year for future years.

"Redevelopment": The eight (8) parcels on just over 13 acres near the Naperville Metra commuter train station, commonly referred to as the 5th Avenue Station that the City is evaluating opportunities for redevelopment of one or more of the properties to improve site utilization through mixed use redevelopment based on market conditions, financial principles, parking and transportation demands.

"RFP": Request for Proposals 18-182, City Advocate for 5th Avenue Redevelopment, issued by the City on August 6, 2018 seeking experienced and qualified teams to act as a City advocate regarding the Redevelopment.

“Services”: The Advocate’s performance obligations under this Agreement. Those services to be provided by the Advocate, or the Advocate’s consultants or subcontractors, include, but are not limited to:

1. Providing the City analytical, strategic and financial consulting services in support of the Redevelopment;
2. Analyzing of the current land uses, traffic patterns, and legal status of the properties within the Redevelopment Area;
3. Completing and analyzing market and technical studies;
4. Analyzing and evaluating the uses of the Redevelopment Area proposed by Ryan Companies in the context of current and projected market demands, traffic flow, stormwater management, current parking needs, and future parking needs created by the proposed Redevelopment;
5. Identifying and analyzing needs to be solved or fulfilled by the proposed Redevelopment;
6. Assessing the impact of the proposed Redevelopment on the neighboring areas, on the City’s economy, and on services provided by the City;
7. Assessing the “fit” of the proposed Redevelopment with the adjacent neighborhoods, the City’s Downtown, and the aesthetics and culture and character of the City;
8. Identifying and analyzing other positive or negative impacts the Redevelopment could foreseeably have on the City and its residents;
9. Evaluating of the proposed costs of the Redevelopment;
10. Creating a land use concept and financial plan;
11. Structuring and negotiating the public-private partnerships and the creation of the development agreement and business terms with Ryan Companies for the comprehensive development and the associated public improvements for the Redevelopment.

12. Assessing construction estimates and oversight; and

13. Other services determined to be necessary and appropriate to accomplish any of the above, including but not limited to independent studies as needed.

“Work”: The services and deliverables set forth in each Approved Service Order.

Section 3. Advocate Services.

A. The City hereby retains the Advocate to provide professional consulting services to the City on an as needed basis pursuant to individual Service Orders issued in accordance with the terms and conditions of this Agreement. The Advocate shall serve as the City's consultant and advocate concerning the Redevelopment and shall provide consultation and advice to the City during the performance of the Services.

B. **Service Order.** Each Service Order will describe the services and deliverables (collectively **“Work”**) the Advocate must provide, the time limit within which the Advocate must complete the Work, and the compensation for the Work.

C. **Approved Service Order.** The Advocate cannot start performing any Work until the Director has executed the service order for such Work (**“Approved Service Order”**). Such Approved Service Orders will be attached to and made part of this Agreement.

D. **Obligation to Issue.** The City has no obligation to issue any Approved Service Orders under this Agreement. The City may issue any number of Approved Service Orders provided that the sum of the maximum compensation of all Approved Service Orders cannot exceed the

E. Each Approved Service Order will be in substantially the form specified in **Exhibit A**. Subject to the terms and conditions of this Agreement, the Advocate and the City will negotiate the specific requirements of each Approved Service Order.

1. **Director's Request to Prepare Proposal.** The Director will request the Advocate to prepare a written Service Order proposal. The Director will either request the Advocate to include a draft scope of Work in its proposal, or provide the Advocate with a draft scope of Work upon which the Advocate must base its proposal.

2. **Meeting/Site Inspection.** As part of the Director's request for the Advocate to prepare a Service Order, the Director may require the Advocate to meet to discuss the scope of the Work, the schedule of performance, and any other relevant details. The Director may also require the Advocate to conduct a site inspection for the purpose of identifying any issues that may need to be included in the scope of Work.

3. **Advocate Proposal.** The Advocate will prepare a written Service Order proposal in accordance with the Director's request. The Advocate will provide the proposal in both paper and electronic form. The proposal must include, but is not limited to, the following:

- a. The proposed scope of Work;
- b. The name and assignment of each of Advocate's professional employees who will be principally responsible for performing the Work;
- c. The names any consultants and subcontractors the Advocate would use and the portion of Work they would perform;
- d. A time schedule and cost for providing the Work; and
- e. Any other information requested by the Director.

F. **Incorporation of Terms and Conditions.** Each Approved Service Order incorporates the terms and conditions of this Agreement, and becomes a part of this Agreement.

1. **No Conflicts.** An Approved Service Order must be consistent with – and cannot alter - the terms and conditions of this Agreement.

2. **Agreement Controls.** The terms and conditions of this Agreement control over the terms and conditions contained in an Approved Service Order – even if the Approved Service Order expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Service Order are invalid and unenforceable.

G. The Advocate and its consultants and subcontractors, and their employees and agents, shall not have any interest, and shall not acquire directly or indirectly any such interest,

which may conflict in any manner with the performance of the Services under this Agreement, or as it is amended.

H. The Advocate shall designate Geoffrey Dickinson to act as its Project Manager for the Work to be performed under this Agreement. The Project Manager shall have complete authority to transmit instructions, receive information, and interpret and define the Advocate's policies and decisions with respect to the Services and Work covered by this Agreement. Any change in the identity of the Project Manager must be agreed to and approved in writing by the City, in its sole discretion.

I. The Advocate is an independent contractor and is not an employee of the City. All employees, consultants, and subcontractors of the Advocate shall likewise not be employees of the City.

1. Notwithstanding the foregoing, the City has, or will, enter into a legal engagement letter with an attorney or law firm ("**Legal Advisor**") for the purpose of said Legal Advisor providing confidential legal advice to the City regarding certain aspects of the proposed Redevelopment. For the purpose of the Redevelopment and the Services to be provided hereunder, the Advocate is considered a member of the City's control group. Therefore, any communications between the City's control group and the Legal Advisor shall be considered privileged communications protected by attorney-client privilege. In addition, any communications between the Legal Advisor, in-house City attorneys, and nonlegal third-party service providers who perform Work relative to the Redevelopment shall also be deemed privileged so long as the purpose of such communication was to allow the Legal Advisor and/or in-house City attorneys, to provide legal advice to the City. In the event of third-party litigation related to the Redevelopment, the attorney-client work product doctrine shall also apply between the Legal Advisor, the City, the Advocate, and nonlegal third-party service providers who perform Work relative to the Redevelopment and the Services hereunder.

J. The Advocate shall employ only well qualified persons to perform the Services required under this Agreement. The Advocate shall provide the City with a list of key personnel for each Approved Service Order, subject to approval of the City in its sole discretion ("**Key Personnel**"). City approval of a change of Key Personnel shall be accomplished via written approval by the Director.

K. The Advocate shall adhere to its plan as provided for each Approved Service Order and shall complete the Work required under this Agreement for each Approved Service Order pursuant to the agreed upon project schedule. The Advocate shall submit to the City a statement in writing that it is in compliance with its Approved Service Order plan and schedule upon the request of the City. The Advocate may modify its Approved Service Order plan and schedule,

subject to written approval by the Director if such modification results in less than a ten percent (10%) increase over the total cost of the Approved Service order. Any modifications which would result in an increase of greater than a ten percent (10%) of the Approved Service Order shall require City Council approval. If a modification is an Additional Service as defined in Section 4, hereof, the provisions of Section 4 shall also apply.

L. The Advocate shall furnish the City a reasonable number of original prints of all necessary reports, studies, documents, plans, and specifications as determined by the City to be applicable to each Approved Service Order task. The Advocate shall obtain appropriate endorsements and seals on all final studies, reports, contracts, plans, maps, plats, surveys, cost estimates, and other similar documents as applicable. Such endorsements must be made by a person duly registered in the appropriate category by the Department of Professional Regulation of the State of Illinois, being in full employ of the Advocate and responsible for the portion of the professional services for which registration is required.

M. The City approves and authorizes the Advocate to contract or subcontract with the third-parties that the Advocate proposed working with during the RFP process. Specifically, the Advocate is authorized to work with Ice Miller, LLP as Legal Adviser, CCS, International, Inc., and Teska and Associates. The Advocate shall obtain written approval from the Director prior to subcontracting with any other entity or person to perform any of the Services required under this Agreement. The Advocate shall submit to the City a draft subcontractor agreement for City review and approval prior to the execution of such an agreement. If the Advocate subcontracts any of the Services to be performed under this Agreement, said subcontractor agreement shall provide that the services to be performed thereunder shall not be assigned, subcontracted, or otherwise performed by another entity or person without the City's prior written consent, and shall include the provision set forth in Section 9 below. The Advocate shall be responsible for the accuracy and quality of any subcontractor's work.

N. The Advocate shall cooperate fully with City officials, City Staff, other City consultants, and other individuals or entities as directed by the City Manager, the Director, or the Project Representative.

O. The Advocate shall submit a progress report regarding the Approved Service Order then in effect at the end of each month this Agreement is in force, which shall include the following items:

1. A summary of the Work activities performed by the Advocate and the identity of each individual who performed each task, and the costs therefor during the invoice period.

2. A summary of the Work activities performed by any consultant or subcontractor of the Advocate, and the identity of each individual who performed each task, and the cost therefor.

3. A list of outstanding items anticipated to be completed by the Advocate or its consultants or subcontractors during the next invoice period and the cost therefor.

4. A list of any items or information to be supplied by the City, and the date(s) by which such items and information will be needed.

5. The total amount of money spent to date on the current Approved Service Order and the amount remaining in the budget.

6. A status of the Work schedule.

Section 4. Additional Services.

A. If a representative of the City verbally requests the Advocate to perform additional services not included in the Work set forth for each Approved Service Order, or if the Advocate recommends that additional services be performed, ("**Additional Services**") the Advocate shall confirm in writing the specific services that have been requested and specify that such services are Additional Services not included in the Approved Service Order. The Advocate shall not perform any Additional Services until City has confirmed approval of said Additional Services in writing. If authorized in writing by the City, the Advocate shall furnish, or obtain from others, Additional Services of the following types, which shall be paid for by the City as set forth in Section 6 of this Agreement. Additional Services may include, but are not limited to, the following (*only if such services are not part of the original Work for an Approved Service Order*).

1. Additional Services due to significant changes in scope of the Approved Service Order;

2. Revisions of previously approved studies, reports, design documents, drawings or specifications;

3. Preparation of detailed renderings, exhibits or scale models for the Approved Service Order;

4. Investigations involving detailed consideration of operations, maintenance and overhead expenses for the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material and labor, and material audits or inventories required for certification of force account construction performed by the City;

5. Preparation of substantial change orders requested by the City;

6. Additional Services relating to the Approved Service Order not included in the Approved Service Order;

7. Preparing to serve or serving as an expert witness for the City in any litigation or other proceeding involving the Work;

8. Additional Services and costs necessitated by out-of-town travel required of the Advocate other than visits to the Redevelopment sites as required herein; and

9. Additional Services agreed upon by the City and the Advocate which are required because of changes in applicable laws, codes, ordinances or regulations which changes were not known or foreseeable at the time of execution of this Agreement.

B. The City, through the Director, may, upon written notice, and without invalidating this Agreement, require changes resulting in the revision or abandonment of work already performed by the Advocate, or require other elements of the Work not originally contemplated and for which full compensation is not provided in any portion of this Agreement. Any Additional Services, abandonment of services which were authorized by the City, or changes in services directed by the City which result in the revision of the Work for an Approved Service Order that cause the payment due to the Advocate to exceed the amount set forth an Approved Service Order, shall be addressed in an amendment in the Approved Service Order except as specifically provided herein.

Section 5. The City's Responsibilities.

A. The City shall assist the Advocate by placing at its disposal all available information in the City's possession which is pertinent to an Approved Service Order. Additionally, the City

shall provide information in its possession as requested by the Advocate for each Approved Service Order.

1. The City makes no representation or warranty of any nature whatsoever as to the accuracy of information or documentation provided by the City to the Advocate which were generated or provided by third-parties. The accuracy of information or documentation provided to the Advocate by the City may be relied upon only to the extent specified in the Work for each Approved Service Order.

B. The City shall make all reasonable efforts to provide access to, and provision for the Advocate to enter upon public and private lands as required for the Advocate to perform the Services under this Agreement.

C. The City shall designate in writing a person to act as the City's Project Representative with respect to the Work to be performed under this Agreement for an Approved Service Order.

D. The City shall give prompt written notice to the Advocate whenever the City observes or otherwise becomes aware of any defect in the Work performed by the Advocate or its consultants or subcontractors pursuant to an Approved Service Order.

E. The City may furnish or direct the Advocate to provide, at the City's expense, Additional Services pursuant to Section 4 of this Agreement.

F. At the discretion of the City, the City shall give the Advocate credit for its services performed under this Agreement in its official communications, published articles, and project identification signage.

G. The City may evaluate the performance of the Advocate and the Advocate's consultants and subcontractors when there is a concern about such performance and/or as an annual review. Unfavorable performance may result in amendments to Approved Service Orders at the discretion of the Director.

Section 6. Payment for Services and Reimbursements.

A. The Advocate shall invoice the City monthly pursuant to the Rates and Services provided in the Approved Service Order. The Advocate shall compile all its fees and costs as well as those of its subcontractors and submit a single invoice to the City. The invoice shall be

comprehensive and shall contain detailed of all hourly billing based on Rates established herein and specified on the Rate sheet attached hereto as **Exhibit B**. The invoice shall also detail any other costs incurred by the Advocate. The City shall pay all invoices within thirty (30) days of approval. This provision supersedes and replaces all provisions of the Local Government Prompt Payment Act.

B. The maximum total amount payable to the Advocate, shall not exceed the approved cost of the Approved Service Order unless specifically provided for herein or unless provided for in an amendment to this Agreement.

C. The Advocate shall be reimbursed for its actual costs related to the Rates of specific employees for the time directly attributable and properly chargeable to the Services under the terms of this Agreement. A tabulation showing the Rates, as set forth in **Exhibit B**, for each classification of employee will be provided for each Approved Service Order. The classifications of the employees used in the work should be consistent with the employee classifications and estimated man-hours for each Approved Service Order. If personnel of the Advocate's firm, including the Advocate's principal, perform routine services that should normally be performed by lesser-salaried personnel, the Rate(s) billed for such services shall be commensurate with the work performed.

D. The Advocate shall be reimbursed for its actual in-house and outside direct costs for expenses subcontractor fees attributable pursuant to the agreed upon Rates and properly chargeable to the Approved Service Order under the terms of this Agreement.

E. In the event of termination by the City of this Agreement pursuant to Section 8, fees due the Advocate (and Advocate's consultants and subcontractors) for Services rendered through the date of termination which are not in dispute shall constitute final payment for such services, and no further fees or other payment shall be due to the Advocate or Advocate's consultants and subcontractors.

F. The City shall have the right to withhold payment to the Advocate, and/or Advocate's consultants and subcontractors, in proportion to that portion of the Work performed hereunder not being performed in accordance with the requirements of this Agreement to the City's reasonable satisfaction, or due to the failure or refusal to perform any of its obligations hereunder by the Advocate or Advocate's consultants or subcontractors. Failure to pay any portion of a bill or invoice within the timeframes specified herein shall be deemed a rejection and disapproval of the unpaid portion. Further, the City

shall provide written notice of the Work performed (or omitted to be performed) which was the basis for any payment withheld.

G. Invoices must be received by the City within a reasonable period agreeable to the Parties of the provision of goods or services hereunder, except that any invoice for goods or services performed in December of any year must be received by the City on or before the first week of January of the following year to ensure that such bill is attributed to the City's prior fiscal year.

All invoices shall be sent to:

City of Naperville
Attention: Director of T.E.D. Business Group
400 South Eagle Street
Naperville, Illinois 60540

Section 7. Term and Period of Service.

A. **Term.** This Agreement shall remain in full force and effect beginning on October 17, 2018, and shall continue for two (2) years until October 17, 2020 unless earlier terminated as provided herein. Further, this Agreement may be extended for up to three (3) additional years in increments of one (1) year at the City's discretion provided that any changes in the terms and conditions set forth herein are mutually agreed to by both Parties.

B. **Period of Service.** The Advocate shall commence work on an Approved Service Order within seven (7) calendar days after receipt of a written notice from the City to proceed and complete the Services pursuant to the Approved Service Order Schedule. The City shall determine when the Advocate has completed the work required pursuant to this Agreement.

Section 8. Termination.

A. This Agreement may be terminated at any time upon thirty (30) days written notice by either Party in the event of substantial failure to perform in accordance with the terms hereof by the other Party through no fault of the terminating Party. In addition, the City shall have the right to terminate this Agreement upon thirty (30) days written notice for any reason.

B. Within thirty (30) days of completion, expiration or termination of this Agreement, the Advocate shall turn over to the City any documents, drafts, and materials, including but not

limited to, outstanding work product, data, studies, test results, source documents, and such other items specifically identified by the City and all Documents and items identified in Section 11 of this Agreement. Upon receipt of said items, the Advocate shall be paid for time and expenses incurred to the date of termination as provided in Section 6. If this Agreement is terminated due to either Party's substantial failure to perform, the Advocate shall be paid for as provided in Section 6 subject to set off for any damages, losses or claims against the City resulting from or relating to Advocate's performance or failure to perform under this Agreement. This Agreement is subject to termination by either Party if either Party is restrained by a state or federal court of competent jurisdiction from performing the provisions of this Agreement. Upon such termination, the liabilities of the Parties to this Agreement shall cease, but they shall not be relieved of the duty to perform their obligations through the date of termination.

C. If because of death or any other occurrence, including, but not limited to, Advocate becoming insolvent, it becomes impossible for any principal or principals of the Advocate to render the services set forth in this Agreement, neither the Advocate, nor its surviving principals shall be relieved of their obligations to complete the professional Services hereunder. However, in such an occurrence, the City at its own option may terminate this Agreement if it is not furnished evidence to its satisfaction that competent professional Services can still be furnished as scheduled.

Section 9. Insurance.

A. The Advocate shall, at its own expense, procure and maintain in effect throughout the duration of this contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Advocate, his agents, representatives, employees or subcontractors.

B. The Advocate must furnish Certificates of Insurance to the City before staff recommends award of the contract to City Council. If requested, the Advocate will give the City a copy of the insurance policies. The policies must be delivered to the City within two (2) weeks of the request. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of not less than A: VII according to the A.M. Best Company. Should any of the insurance policies be canceled before the expiration date, the issuing company will mail thirty (30) days written notice to the City. The Advocate must provide proof of replacement insurance that is acceptable to the City prior to the expiration date. The Advocate shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

C. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, the Advocate shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Advocate shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses. In any case, the Advocate shall be solely liable for any deductibles or self-insured retentions.

D. The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law. If the Advocate, or any consultants or subcontractors, maintains higher limits than the minimums shown below, the City shall be entitled to coverage for higher limits.

1. **Commercial General Liability:**

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability Occurrence Form CG 00 01 and include Premise/Operations, Products/Completed Operations, Independent Contractors, Contractual and Personal Injury/Advertising Injury.

Limits:

General Aggregate	\$2,000,000.00
Products/Completed Operations	\$2,000,000.00
Each Occurrence	\$1,000,000.00
Personal Injury	\$1,000,000.00

2. **Automobile Liability:**

Coverage shall be at least as broad as Insurance Services Office Form CA 00 01 to include all Owned, Hired, Non-owned vehicles.

Limits:

Combined Single Limit per Accident	\$1,000,000.00
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3. **Workers' Compensation:**

Coverage shall be in accordance with the provisions of the laws of the State of Illinois.

4. Employers' Liability

Limits:

Each Accident	\$1,000,000.00
Each Employee Bodily Injury by Disease	\$1,000,000.00
Policy Limit Bodily Injury by Disease	\$1,000,000.00

5. Errors & Omissions Liability/Professional Liability:

Errors & Omissions Liability insurance appropriate to the Advocate and any consultants and subcontractors. If applicable to the work performed pursuant to this Agreement, architects and engineer's coverage is to be endorsed to include contractual liability.

Limits:

Per Occurrence	\$1,000,000.00
Annual Aggregate	\$3,000,000.00

If Errors & Omissions coverage is written on a claims-made form:

- a. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of contract work.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Advocate must purchase extended reporting period coverage for a minimum of three (3) years after completion of contract work.

6. Other Insurance Provisions.

The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

- a. The City, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Advocate, and any consultants and subcontractors, and with respect to liability arising out of work or operations performed by or on behalf of the Advocate, and any consultants and subcontractors, including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement to the Advocate's and any consultants' and subcontractors' insurance policies, or as a separate owner's policy.
- b. For any claims related to the performance of the Advocate's work, or the work of any consultant or subcontractor, the Advocate's insurance coverage, and/or the insurance coverage of the consultant or subcontractor shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Advocate's insurance, and the insurance of any consultant or subcontractor, and shall not contribute with it.
- c. Workers' Compensation shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Advocate and/or by any consultant or subcontractor, and their employees, agents, subcontractors, and consultants.
- d. The Advocate understands that the acceptance of Certificates of Insurance, additional insured endorsements, insurance policies, and any other documents by the City, in no way releases or diminishes the obligations and requirements set forth in this Agreement.

Section 10. Indemnification.

A. The Advocate shall defend, indemnify and hold harmless the City and its officers, agents, and employees from any and all liability, losses or damages as a result of claims, demands,

suits, actions, or proceedings of any kind or nature, including but not limited to costs, and fees, including reasonable attorney fees, to the extent resulting from any negligent or willful act or omission on the part of the Advocate or Advocate's consultants or subcontractors during the performance of this Agreement. Such defense, indemnification, and hold harmless obligation shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall not apply to liability resulting solely from the City's own actions.

B. The City shall defend, indemnify and hold harmless the Advocate and its officers and employees from any and all liability, losses or damages as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including but not limited to costs, and fees, including reasonable attorney fees, to the extent resulting from any grossly negligent or willful act or omission on the part of the City during the performance of this Agreement. Such defense, indemnification, and hold harmless obligation shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall not apply to liability resulting solely from Advocate's own actions.

C. Nothing contained herein shall be construed as prohibiting the City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them.

D. Nothing herein shall be construed as a limitation or waiver of defenses available to the City and employees and agents, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

E. Acceptance of Work performed by the Advocate, or Advocate's consultants and subcontractors, by the City will not relieve the Advocate or its consultants or subcontractors for the responsibility for correcting any such errors or omissions.

F. The Advocate shall not be responsible for any delay in the performance or progress of an Approved Service Order, or liable for any costs or damages sustained by the City resulting from such delay, caused by any errors, omissions and/or negligent acts of the City or their agents, or by changes ordered in the work. In the event of such delay, the Advocate will proceed with due diligence to alleviate the delay and continue the performance of its obligations under this Agreement.

G. The Advocate shall not be responsible for any damages which may occur as a result of any modifications made to the plans of the Advocate by others without the Advocate's knowledge, or for damages that may occur because of the improper or negligent acts of others.

H. The provisions of this Section 10 shall survive completion, expiration or termination of this Agreement.

Section 11. Documents, Drawings, and Intellectual Property.

A. Any documents, including but not limited to intellectual property (hereinafter "Documents") defined herein without limitation as drawings, survey data, reports, studies, processes, specifications, estimates, maps, plans, computations, photographs, audio and video recordings, electronic data, and software and any original work of authorship fixed in a tangible medium of expression within the meaning of the Copyright Act of the United States Code, and all other materials, regardless of physical form or characteristics, prepared, created, or discovered by the Advocate or by its consultants and subcontractors, for or in relation to an Approved Service Order, shall automatically and immediately be deemed to be the property of the City. Proprietary materials or services used by the Advocate or its consultant or subcontractors to generate Documents related to Agreed Service Orders or Services under this Agreement shall not be considered City property or subject to disclosure to the City.

B. During the course of the Agreement, the Advocate shall provide documents as required in any Approved Service Order and as otherwise requested by the City. Files delivered in an electronic medium must be compatible and work with the City's then-current systems and software.

C. Within thirty (30) days of completion, expiration or termination of this Agreement, and upon the City's request, the Advocate shall provide a hard copy and an electronic set of any and all Documents generated by the Advocate and its consultants and subcontractors related to the Services provided under this Agreement.

D. The Advocate and its consultants and subcontractors shall maintain for a minimum of three (3) years after the completion or expiration of this Agreement, or for three (3) years after the termination of this Agreement, whichever comes later, adequate books, records and supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with this Agreement. The Advocate shall make its books, records, digital files, and any other supporting documents related to the Agreement promptly available for review and audit by the City. Further, the Advocate agrees to cooperate fully with any audit conducted by the City and to provide full access, to all materials related to any aspect of this Agreement.

E. The Advocate shall require its consultants and subcontractors, to comply with the requirements of this Section 11, and shall include provisions in agreements with its consultants and subcontractors making such provisions applicable to them and providing they shall that such provisions shall survive the completion, expiration or termination of such agreement.

F. The provisions of this Section 11 shall survive completion, expiration or termination of this Agreement.

Section 12. General Provisions.

A. **Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by electronic internet mail ("e-mail"). E-mail notices shall be deemed valid only to the extent that they are (a) opened by the recipient on a business day at the address set forth below, and (b) a confirmation e-mail is sent by the recipient to the sender confirming receipt of e-mail notice. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 12, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the City shall be addressed to, and delivered at, the following address:

City of Naperville
Attention: City Manager
400 South Eagle Street
Naperville, Illinois 60540
E-mail: KriegerD@naperville.il.us

With a copy to: City of Naperville
Attention: City Attorney
400 South Eagle Street
Naperville, Illinois 60540
E-mail: DiSantoM@naperville.il.us

Notices and communications to the Advocate shall be addressed to, and delivered at, the following address:

S.B. Friedman & Company
Attention: Geoffrey Dickinson
221 North LaSalle Street
Suite 820
Chicago, IL 60601
E-mail: gdickinson@sbfriedman.com

B. **Time of the Essence.** Time is of the essence in the performance of this Agreement.

C. **Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

D. **Non-Waiver.** The Parties shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of a Party to exercise at any time any right granted to the Party shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the Party's right to enforce that right or any other right, except as otherwise set forth herein.

E. **Written Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any Party, or of any duly authorized officer, employee, agent, or representative of any Party, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

F. **Governing Law.** This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois. Venue for disputes arising from or related to this Agreement, the Development, or the Subject Property shall be in the Illinois Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

G. **Severability.** It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any Person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so

as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

H. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.

I. **Interpretation.** This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

J. **Exhibits.** All exhibits attached to this Agreement are incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

K. **Amendments and Modifications.** Except as otherwise specifically provided in Section 3, an amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all Parties in accordance with all requirements of law.

L. **Changes in Laws.** Unless otherwise provided in this Agreement, any reference to the requirements of law shall be deemed to include any modifications of, or amendments to, the requirements of law that may occur in the future.

M. **Compliance with Laws.** The Advocate agrees to comply with all requirements of law when performing any Services under this Agreement.

N. **Authority to Execute.** The City hereby warrants and represents to the Advocate that the City Manager who has executed this Agreement on its behalf has been properly authorized to do so by the Corporate Authorities of the City. The Advocate hereby warrants and represents to the City that it has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement, that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken, and that neither the execution of this Agreement nor the performance of the obligations assumed by the Advocate will (a) result in a breach or default under any agreement to which the Advocate is a party or to which it is bound or (b) violate any statute, law, restriction, court order, or agreement to which the Advocate is subject.

O. Standard of Performance and Care.

1. The Advocate's performance pursuant to this Agreement shall exhibit the same level of care, competence, judgment, and diligence that is reasonably expected of a real estate development firm in the Chicago Metropolitan Statistical Area that has experience which developments that are equally and more complex than the Redevelopment. Advocate warrants that it is familiar with and shall comply with the Requirements of Law affecting the performance of this Agreement, and that no plea of misunderstanding or ignorance thereof will be considered. The Advocate understands, represents, and warrants to the City that the Advocate's employees, affiliates, officers, agents, representatives, contractors and subcontractors are in compliance with all Requirements of Law in any manner affecting the performance of this Agreement and that they will remain in compliance with all Requirements of Law for the Agreement's term. As of the Effective Date and throughout this Agreement's term, the Advocate will have sufficient financial and economic resources to implement and timely complete in accordance with this Agreement the Advocate's obligations contained in this Agreement.

2. The Advocate shall perform the Services provided for herein to the satisfaction of the City and with that degree of care, knowledge, skill, and diligence ordinarily exercised by reputable members of the same profession currently practicing under similar conditions within the State of Illinois. Further, the Advocate shall perform such Services pursuant to applicable published standards. In the event of any conflict between applicable published standards, the Advocate shall identify such conflict to the City, and the Advocate shall follow the instructions furnished by the City.

3. The Advocate shall be responsible for the accuracy of its Services under this Agreement and shall promptly make revisions or corrections resulting from its errors, omissions, or negligent acts without additional compensation. The City's acceptance of any of the Advocate's professional Services shall not relieve the Advocate of its responsibility to subsequently correct any such errors or omissions.

4. If the Advocate has provided the City with Work pursuant to an Approved Service Order which is determined to be incorrect or which requires revision, the Advocate shall promptly make such corrections or revisions to such Work at no cost to the City. Further, upon receipt of an invoice from the City, the Advocate shall promptly reimburse the City for the reasonable costs associated with the City undertaking such corrections or revisions. If such invoice is not fully paid within thirty (30) days of receipt

by Advocate (by e-mail, personal service, regular mail, or certified mail), the City shall have the right to deduct that amount from any outstanding payments due the Advocate.

5. The Advocate shall respond to the City's notice of any errors or omissions within twenty-four (24) hours. The Advocate shall be required to promptly visit the Redevelopment site if requested by the City.

6. The Advocate shall comply with all federal, state, and other laws applicable to its performance under this Agreement.

7. If, within one (1) year after the Advocate has received a final payment under this Agreement, any of the work is found to be not in accordance with the requirements of the Agreement, the Advocate shall correct it promptly after receipt of written notice from the City to do so at no cost to the City. This remedy is in addition to any other remedies the City may have under this Agreement or the law.

8. The provisions of this Subsection O shall survive the completion, expiration or termination of this Agreement.

P. **No Third-Party Beneficiaries.** Nothing herein, express or implied, is intended to or shall confer upon any other person, entity, company, or organization, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Q. **Counterparts.** This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.

R. **Freedom of Information Act.** Advocate agrees to maintain, without charge, all records and documents concerning or relating to this Agreement, the Subject Property, the Development, and the City in accordance with the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1, et seq. Upon the City's request, the Advocate shall produce all records requested by the City within the timeframe requested by the City, and if additional time is needed to compile the requested records, the Advocate shall promptly notify the City. In the event that either Party is found to have not complied with FOIA due to the other Party's failure to produce documents or otherwise appropriately respond to a request under the Act, then the Party failing to produce and/or respond shall indemnify and hold harmless the other Party, and pay all amounts determined to be due, including, but not limited to, fines, costs, attorneys' fees and penalties.

Pursuant to 5 ILCS 140/7(2) of the FOIA, records in the possession of others whom the City has contracted with to perform a governmental function are covered by the FOIA and subject to disclosure within limited statutory timeframes (five (5) working days with a possible five (5) working day extension, or such time frame as might otherwise be agreed upon in writing by the requester). Upon notification from the City that it has received a FOIA request that calls for records within the Advocate's control, the Advocate shall promptly provide all requested records to the City so that the City may comply with the request within the required timeframe. The City and the Advocate shall cooperate to determine what records are subject to such a request and whether or not any exemptions to the disclosure of such records, or part thereof, are applicable. The City shall follow its established protocol and procedures to properly process inquiries and FOIA requests.

The Advocate may seek to have proprietary information submitted by it to the City withheld from disclosure to third-parties to the extent that such information falls within the definition and provisions of Section 7(1)(g) of FOIA so long as such information has been furnished to the City under a proprietary claim as provided in said Act.

S. **Savings Clause.** If any provision of this Agreement, or the application of such provision, is rendered or declared invalid by a court of competent jurisdiction, the remaining parts or portions of this Agreement shall remain in full force and effect.

T. **Ambiguities.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

U. **Calendar Days.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

V. **Successors and Assigns.** The City and the Advocate each bind themselves and their partners, successors, executors, administrators and assigns to the other Party of the Agreement and to the partners, successors, executors, administrators and assigns of such other Party in respect to all provisions of this Agreement. Neither the City nor the Advocate shall assign or in any way transfer its interest in this Agreement without the written consent of the other.

W. **Personal Liability.** Nothing herein shall be construed as creating any personal liability on the part of any officer, agent, or employee of the City or any individual officer, agent, or employee of the Advocate.

Exhibit List

Exhibit A Approved Service Order Form
Exhibit B Advocate's Hourly Billing Rates

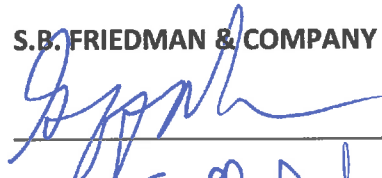
IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed on the date first above written.

CITY OF NAPERVILLE

By: **Douglas A. Krieger**

Its: **City Manager**

S.B. FRIEDMAN & COMPANY



By: **Geoff Friedman**

Its: **Senior Vice President**

EXHIBIT A
5th Avenue Redevelopment City Advocate
Approved Service Order Template

1. **Approved Service Order No.:** [Insert Number (e.g. 18-01)]
 2. **Advocate's Name:** S.B. FRIEDMAN & COMPANY
 3. **Project Name:** 5th Avenue Redevelopment
 4. The Advocate and the City will implement this Approved Service Order in accordance with the Agreement which is incorporated herein by reference.
-

5. **Cost**

- A. Total amount awarded by the City for this Agreement ("total"): \$ _____
 - B. Total amount approved for prior Approved Service Orders ("encumbered"): \$ _____
 - C. Maximum Advocate Compensation for this Approved Service Order ("new"): \$ _____
 - D. Remaining balance per Agreement (7.A. minus 5.B. and 5.C.) ("unencumbered"): \$ _____
-

6. **Scope of Work.** The Advocate shall provide the Work set forth in this Attachment A. The Advocate shall provide all Work required by this Attachment A to the satisfaction of the City's Project Manager.

7. **General Description** [Insert summary of overall scope of Work for this Approved Service Order]

8. **Task No. 1:** [Insert title of task.]

- A. **Services:** [Insert a description of the services.]
- B. **Deliverables:** [Insert a description of the deliverables.]
- C. **Completion Time:** The Advocate will complete the services and deliverables for this task on or before the following date: _____.

9. **Task No. 2:** [Insert title of task.]

- A. **Services:** [Insert a description of the services.]
 - B. **Deliverables:** [Insert a description of the deliverables.]
 - C. **Completion Time:** The Advocate will complete the services and deliverables for this task on or before the following date: _____.
-

EXHIBIT A
5th Avenue Redevelopment City Advocate
Approved Service Order Template

10. **Advocate's Project Manager and Other Staffing.** Identified below are the following: (a) the Advocate's project manager for this Approved Service Order, and (b) Employee(s) of the Advocate who will be principally responsible for providing the services and deliverables.

A. Advocate Project Manager

Name: Geoffrey Dickinson of S.B. Friedman & Company
Address: 221 North LaSalle Street, Suite 820, Chicago, IL 60601
Phone Number: 312.384.2404
E-mail: gdickinson@sbfriedman.com

B. Other Advocate Staffing

i. **Name:**
Assignment:

ii. **Name:**
Assignment:

iii. **Name:**
Assignment:

iv. **Name:**
Assignment:

C. Consultants / Subcontractor Staffing

i. **Name:**
Assignment:

ii. **Name:**
Assignment:

iii. **Name:**
Assignment:

iv. **Name:**
Assignment:

Proposal submitted by **Advocate Project Manager** on _____
Date

City Director Approval by: _____ on _____
Director Signature Date

Advocate Approval by: _____ on _____
Advocate Project Manager Signature Date

EXHIBIT B
RATES

SB Friedman	
Stephen B. Freeman, President	\$400
Practice Leader	\$365
Geoffrey Dickinson, Senior Vice President	\$265
Ranadip Bose, Senior Vice President	\$265
Fran Lefor Rood, Senior Vice President	\$265
Lance Dorn, Vice President	\$230
Associate Project Manager	\$200
Associate	\$160
Research Associate	\$145
CCS International	
Ian Parr, President, Project Management Services	\$200
Marc D. Rogers, Associate Project Manager	\$200
Graham Harwood, Project Executive	\$200
Teska	
Lee Brown, President	\$190
Mike Hoffman, Principal	\$155
Jodi Mariano, Principal	\$150

These rates shall be effective through December 31, 2019. The maximum rate escalation shall be no more than three percent (3%) per year for future years.

Attorney rates for legal services shall be determined separately.

AFFIDAVIT OF COMPLIANCE

APPLICANT: S.B. Friedman + Company
Name

221 N LaSalle St Ste 820 Chicago IL 60601
Address

Federal Tax I.D. # 36-3743752

As a condition of entering into a contract with the City of Naperville, and under oath and penalty of perjury and possible termination of contract rights and debarment, the undersigned,

(Please Print or Type)
Gert P. Dickson being first duly sworn on oath,
deposes and states that he/she is an officer

(the sole owner, a partner, a joint venturer, the President, the Secretary, etc.) of
S.B. Friedman + Company (Name of Company), the party making the foregoing bid, and that he/she has the authority to make any disclosures or certifications required by this Affidavit on behalf of the bidder and that all the information contained in this Affidavit is true and correct in both substance and fact.

DISCLOSURE OF BENEFICIARIES

Section 1. Ordinance 85-193, an ordinance amending Title 1 (Administrative) of the Naperville Municipal Code, as amended, by adding Chapter 12 thereto requires disclosure of certain interests by persons applying for permits, licenses, approvals or benefits from the City of Naperville.

- A. Nature of Benefit sought by the undersigned (state Bid or RFP No.). 18-182
- B. Nature of Applicant: (Please check one)
 - 1. Natural person
 - 2. Corporation
 - 3. Land Trust/Trustee
 - 4. Trust/Trustee
 - 5. Partnership
 - 6. Joint Venture

C. If applicant is an entity other than described in Section B, briefly state the nature and characteristics of the applicant below.

D. If in your answer to subsection B you have checked box 1, 2, 3, 4, 5, or 6 identify by name and address each person or entity who is a 5% shareholder in the case of a corporation, a beneficiary in the case of a trust or land trust, a joint venturer in the case of a joint venture, or who otherwise has a propriety interest, interest in profits and losses or right to control such entity:

NAME	ADDRESS	PERCENT OF INTEREST
1. Stephen B Friedman	221 N. LaSalle STB 820	100%
2.		
3.		
4.		

IMPORTANT NOTE: In the event your answer to Section 1 identified entities other than a natural person, additional disclosures are required for each such entity.

BID RIGGING AND BID ROTATING

Section 2: That in connection with this procurement,

- A. The bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;
- B. The bidder has not in any manner directly or indirectly sought by consultation, communication or agreement with anyone to fix the bid price of said bidder or any other bidder or to fix any overhead profit or cost element of such bid price or that of any other bidder or to secure any advantage against the public body awarding the contract or anyone interested in the proper contract;
- C. The bid is genuine and not collusive or sham;

- D. The prices or breakdowns thereof and any and all contents which had been quoted in this bid have not been knowingly disclosed by the bidder and will not be knowingly disclosed by the bidder directly or indirectly to any other bidder or any competitor prior to opening;
- E. All statements contained in such bid are true;
- F. No attempt has been made or will be made by the bidder to induce any other person or firm to submit a false or sham bid;
- G. No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition;

Section 3. The undersigned further states that: **(check A or B)**

- A. He/she is the person in the bidder's organization responsible within that organization for the decision as to the prices being bid herein and that he/she has not participated, and will not participate, in any action contrary to paragraphs A through G above; or
- B. He/she is not the person in the bidder's organization responsible within that organization for the decision as to the prices being bid herein but that he/she has been authorized to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to paragraphs A through G above and as their agent does hereby so certify; and
- C. That he/she has not participated, and will not participate, in any action contrary to paragraphs A through G above.

Section 4. The undersigned certifies that the bidder has never been convicted for a violation of State laws prohibiting bid rigging or bid rotating.

**THE REQUIREMENTS OF THE
ILLINOIS DRUG FREE WORKPLACE ACT**

Section 5. The undersigned will publish a statement:

- A. Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the aforementioned company's workplace;

- B. Specifying the actions that will be taken against employees for violations of this prohibition;
- C. Notifying the employees that, as a condition of their employment to do work under the contract with the City of Naperville, the employees will:
 - 1. Abide by the terms of the statement; and
 - 2. Notify the aforementioned company of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such a conviction.
- D. Establishing a drug free awareness program to inform the aforementioned company's employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The aforementioned company's policy of maintaining a drug free workplace;
 - 3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug violations.
- E. Making it a requirement to give a copy of the statement required by Section 5. to each employee engaged in the performance of the contract with the City of Naperville and to post the statement in a prominent place in the workplace;
- F. Notifying the City of Naperville within ten (10) days after receiving notice under Section 5.C.2. from an employee or otherwise receiving actual notice of such a conviction;
- G. Imposing a sanction on, or requiring the satisfactory participation in drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by Section 6., below;
- H. Training personnel to effectively assist employees in selecting a proper course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that an effectively trained counseling and referral team is in place;
- I. Making a good faith effort to continue to maintain a drug free workplace through implementing these requirements.

- J. Making a good faith effort to continue to maintain a drug free workplace through implementation of this policy.

Section 6. The undersigned further affirms that within thirty (30) days after receiving notice from an employee of a conviction of a violation of the criminal drug statute occurring in the aforementioned company's workplace he/she shall:

- A. Take appropriate personnel action against such employee up to and including termination; or
- B. Require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

TAX COMPLIANCE

Section 7. The undersigned on behalf of the entity making the foregoing proposal certifies that neither the undersigned nor the entity is barred from contracting with the City of Naperville because of any delinquency in the payment of any tax administered by the State of Illinois, Department of Revenue, unless the undersigned or the entity is contesting, in accordance with the procedures established by the appropriate revenue act, liability of the tax or the amount of tax.

Section 8. The undersigned or the entity making the proposal or bid understands that making a false statement regarding delinquency in taxes is a Class A Misdemeanor and in addition, voids the contract and allows the municipality to recover all amounts paid to the individual or entity under the contract in a civil action.

EQUAL EMPLOYMENT OPPORTUNITY

Section 9. This EQUAL EMPLOYMENT OPPORTUNITY CLAUSE is required by the Illinois Human Rights Act and the Rules and Regulations of the Illinois Department of Human Rights published at 44 Illinois Administrative Code Section 750, et seq.

Section 10. In the event of the contractor's noncompliance with any provision of this Equal Employment Opportunity Clause, the Illinois Human Right Act, or the Rules and Regulations for Public Contracts of the Department of Human Rights (hereinafter referred to as the Department) the contractor may be declared non-responsible and therefore ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or avoided in whole or in part, and such other sanctions or penalties may be imposed or remedies involved as provided by statute or regulation.

During the performance of this contract, the contractor agrees:

- A. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, citizenship status, national origin, veteran status, marital status, sexual orientation, gender identity or any other characteristic that is protected by law. Further, that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- B. That, if it hires additional employees in order to perform this contract, or any portion hereof, it will determine the availability (in accordance with the Department's Rules and Regulations for Public Contracts) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- C. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
- D. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations for Public Contract. If any such labor organization or representative fails or refuses to cooperate with the contractor in its efforts to comply with such Act and Rules and Regulations, the contractor will promptly so notify the Department and the contracting agency will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- E. That it will submit reports as required by the Department's Rules and Regulations for Public Contracts, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations for Public Contracts.
- F. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human

Rights Act and the Department's Rules and Regulations for Public Contracts.

- G. That it will include verbatim or by reference the provisions of this Equal Employment Opportunity Clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as the other provisions of this contract, the contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the contractor will not utilize any subcontractor declared by the Illinois Human Rights Department to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

Section 11. For the purposes of subsection G of Section 10, "Subcontract" means any agreement, arrangement or understanding, written or otherwise, between a public contractor and any person under which any portion of the public contractor's obligations under one or more public contracts is performed, undertaken or assumed; the term "subcontract," however, shall not include any agreement, arrangement or understanding in which the parties stand in the relationship of an employer and an employee, or between a bank or other financial institution and its customers.

Section 12. It is expressly understood that the foregoing statements and representations and promises are made as a condition to the right of the bidder to receive payment under any award made under the terms and provisions of this bid.

Section 13. Have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the vendor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department and the Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act. A copy of the policies shall be provided to the Department upon request.

THE AMERICANS WITH DISABILITIES ACT

Section 14. The Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and the regulations thereunder (28 CFR 35.130) (ADA) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this contract, the undersigned vendor certifies that services, programs and activities provided under this contract are and will continue to be in compliance with the ADA.

ILLINOIS PREVAILING WAGE

Section 15. The undersigned shall comply with the applicable requirements of the *Illinois Prevailing Wage Act, 820 ILCS sec. 130/0.01 et seq.* as amended for public works projects.

EMPLOYEE SAFETY AND HEALTH


Section 16. The undersigned shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as all the work is completed and accepted by the City.

- A. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the work; all work, materials and equipment to be incorporated therein, whether in storage on or off site; and other property at the site or adjacent thereto in the course of construction.

Signed by: _____

Name _____

Title _____


GEOFF DICKINSON
Senior Vice President

**ADDITIONAL REMARKS SCHEDULE**

AGENCY The Daniel and Henry Co.		NAMED INSURED SB Friedman & Company 221 N. LaSalle St. #820 Chicago, IL 60601	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

Description of Operations/Locations/Vehicles:

CITY OF NAPERVILLE, ITS OFFICERS, OFFICIALS, EMPLOYEES, AND VOLUNTEERS

A waiver of subrogation applies to Workers Compensation for the additional insured listed above per written contract.

Umbrella is a following form.

BUSINESS LIABILITY COVERAGE FORM

**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

BUSINESS LIABILITY COVERAGE FORM	Beginning on Page
A. COVERAGES	1
Business Liability	1
Medical Expenses	2
Coverage Extension - Supplementary Payments	2
B. EXCLUSIONS	3
C. WHO IS AN INSURED	10
D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE	14
E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS	15
1. Bankruptcy	15
2. Duties In The Event Of Occurrence, Offense, Claim Or Suit	15
3. Financial Responsibility Laws	16
4. Legal Action Against Us	16
5. Separation Of Insureds	16
6. Representations	16
7. Other Insurance	16
8. Transfer Of Rights Of Recovery Against Others To Us	17
F. OPTIONAL ADDITIONAL INSURED COVERAGES	18
Additional Insureds	18
G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS	20



BUSINESS LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C.** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G.** - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" 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", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or 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 **D.** - Liability And Medical Expenses 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, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (b) The "bodily injury" or "property damage" occurs during the policy period; and
 - (c) Prior to the policy period, no insured listed under Paragraph 1. of Section **C.** - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.
- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section **C.** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; 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 administered 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.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
 - (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) 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 \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) 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.
 - (7) All interest on the full amount of any judgment that 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.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

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 because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" 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 purpose of liability assumed in an "insured contract", reasonable attorneys' 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:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' 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.

c. Liquor Liability

"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.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

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

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 (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".

f. Pollution

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

BUSINESS LIABILITY COVERAGE FORM

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 51 feet long; and
 - (b) Not being used to carry persons 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;
- (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"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"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 or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, 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, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

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

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

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

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

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

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

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

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

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

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

n. Damage To Impaired Property Or Property Not Physically Injured

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

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

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

BUSINESS LIABILITY COVERAGE FORM

o. Recall Of Products, Work Or Impaired Property

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

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

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

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;
 - (b) Designing or determining content of web sites for others; or
 - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:
 - (a) An "advertisement" for others on your web site;
 - (b) Placing a link to a web site of others on your web site;
 - (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
 - (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

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.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) 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.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions **c.** through **h.** and **k.** through **o.** do not apply to damage by fire, lightning or explosion to premises 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 **D.** - Liability And Medical Expenses Limits Of Insurance.

BUSINESS LIABILITY COVERAGE FORM

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

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

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

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.

e. Athletics Activities

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

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. 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.
- 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. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, 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 a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" 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.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such 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 is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

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.

d. Legal Representative If You Die

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 insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

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.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft 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 watercraft, 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 operating the watercraft; 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.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor 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 that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

BUSINESS LIABILITY COVERAGE FORM

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance**.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions**.

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

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

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".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

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.

**E. LIABILITY AND MEDICAL EXPENSES
GENERAL CONDITIONS**

1. Bankruptcy

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

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

a. Notice Of Occurrence Or Offense

You or any additional insured 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.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

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

c. Assistance And Cooperation Of The Insured

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, 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 that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

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.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

BUSINESS LIABILITY COVERAGE FORM

This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- 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 Coverage Form 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; 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.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

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

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

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 all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision – Permits

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1)** "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2)** "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a.** WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b.** The insurance afforded to the vendor is subject to the following additional exclusions:

- (1)** This insurance does not apply to:
 - (a)** "Bodily injury" or "property damage" for which the vendor 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 that the vendor would have in the absence of the contract or agreement;
 - (b)** Any express warranty unauthorized by you;
 - (c)** Any physical or chemical change in the product made intentionally by the vendor;
 - (d)** Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g)** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h)** "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i)** The exceptions contained in Subparagraphs **(d)** or **(f)**; or
- (ii)** Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2)** This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a.** Their financial control of you; or
- b.** Premises they own, maintain or control while you lease or occupy these premises.

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations for the additional insured(s); or

(2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

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

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "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;
- 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 short time on your business; or
 - (3) "Personal and 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 the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. 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.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:

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

12. "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, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D. – Liability and Medical Expenses Limits of Insurance.**
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- 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 by 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.** includes that part of any contract or agreement 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.

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

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18.** "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 19.** "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 or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) 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.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20.** "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21.** "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:
- 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.
- 22.** "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.
- 23.** "Volunteer worker" means a person who:
- a. Is not your "employee";

BUSINESS LIABILITY COVERAGE FORM

- b. Donates his or her work;
 - c. Acts at the direction of and within the scope of duties determined by you; and
 - d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 24. "Your product":**
- a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
 - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
- 25. "Your work":**
- a. Means:
 - (1) Work or operations performed by you or on your behalf; and
 - (2) Materials, parts or equipment furnished in connection with such work or operations.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
 - (2) The providing of or failure to provide warnings or instructions.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

We waive any right of recovery we may have against:

1. Any person or organization shown in the Declarations, or
2. Any person or organization with whom you have a contract that requires such waiver.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER
FROM OTHERS ENDORSEMENT**

Policy Number: 84 WEC BN7958

Endorsement Number:

Effective Date: 01/07/18

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: S B FRIEDMAN & CO & S B F HOLD
221 N. LASALLE ST STE 820
CHICAGO IL 60601

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

Any person or organization from whom you are required by contract or agreement to obtain this waiver from us. Endorsement is not applicable in KY, NH, NJ or for any MO construction risk

Countersigned by _____
Authorized Representative