## IN THE SUPREME COURT OF THE STATE OF NEVADA

ZURICH AMERICAN INS. CO., et al.

Plaintiffs - Appellants

V.

IRONSHORE SPECIALTY INS. CO.

Defendant - Respondent

Case No.: 81428 Electronically Filed

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# APPELLANTS' APPENDIX Volume IX

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# Assurance Co. of America v. Ironshore Spec. Ins. Co. Case No. 81428

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1	Notice of Removal filed 03/12/15	0001-0045
20-21	Opposition of Ironshore To Zurich's Motion for Partial Summary Judgment filed 10/11/16	4936-4965
21	Opposition of Ironshore to Zurich's Motion for Relief filed 10/04/17	5057-5066

20	Opposition of Zurich To Ironshore's Motion for Summary Judgment filed 10/11/16	4904-4935
21	Order Accepting Certified Questions filed 09/11/20	5103-5104
21	Order Certifying Question filed 07/02/20	5084-5102
21	Order Denying Motion filed 09/18/18	5076-5082
21	Order on Motions for Summary Judgment filed 08/24/17	5043-5049
10	Plaintiffs' Complaint filed on April 12, 2011, in <i>Seven Hills</i> action, Exhibit 12 in Support of Ironshore's Motion for Summary Judgment	2253-2269
8	Plaintiffs' Supplemental Disclosures, dated October 14, 2015, Exhibit 2 in Support of Ironshore's Motion for Summary Judgment	1972-1975
18-19	Portions of subcontracts stating PR Construction Corporation's scope of work, Exhibit 129 in Support of Ironshore's Motion for Summary Judgment	4499-4516
20	Preliminary Cost of Repair for Claim Summary Report for Debard Plumbing/ <i>Drost</i> , Exhibit 146 in Support of Ironshore's Motion for Summary Judgment	4779-4799
8	Printout - Nevada Secretary of State website, Exhibit 75 in Support of Zurich's Motion for Summary Judgment	1857-1859
8	Printout - Nevada State Contractors Board website, Exhibit 74 in Support of Zurich's Motion for Summary Judgment	1855-1856
8	Proof of Service of Subpoena - Centex Homes, Exhibit 71 in Support of Zurich's Motion for Summary Judgment	1845-1846
8	Proof of Service of Subpoena - Champion Masonry, Exhibit 70 in Support of Zurich's Motion for Summary Judgment	1843-1844
20	Reconstruction Cost Guides and Estimates for Debard Plumbing/ <i>Lino</i> June 2013, Exhibit 148 in Support of Ironshore's Motion for Summary Judgment	4805-4836
20-21	Reply of Ironshore To Zurich's Motion for Summary Judgment filed 10/28/16	4992-5011

21	Reply of Zurich To Ironshore's Motion for Summary Judgment filed 10/28/16	4966-4991
21	Reply of Zurich to Opposition To Motion for Relief filed 10/11/17	5067-5075
6	Report issued as to Garcia, Exhibit 41 in Support of Zurich's Motion for Summary Judgment	1337-1340
17	Reserved, Exhibit 104 in Support of Ironshore's Motion for Summary Judgment	4069-4069
17	Reserved, Exhibit 105 in Support of Ironshore's Motion for Summary Judgment	4070-4070
8	Response to Subpoena - Centex Homes, Exhibit 73 in Support of Zurich's Motion for Summary Judgment	1849-1854
8	Response to Subpoena - Champion Masonry, Exhibit 72 in Support of Zurich's Motion for Summary Judgment	1847-1848
1	Second Amended Complaint filed 09/28/15	0088-0131
8	Second Amended Complaint, filed September 28, 2015. (See Docket No. 25.), Exhibit 1 in Support of Ironshore's Motion for Summary Judgment	1971-1971
16	Subcontract Agreement (excerpts) between D.W. Arnold, Inc. and Universal Framing, Exhibit 92 in Support of Ironshore's Motion for Summary Judgment	3872-3876
15	Subcontract Agreement between Coleman Development and J.P Construction Co., Inc. dated April 7, 2000, Exhibit 78 in Support of Ironshore's Motion for Summary Judgment	3583-3599
15	Subcontract Agreement between Coleman Development and J.P. Construction Co., Inc. dated September 27, 2000, Exhibit 79 in Support of Ironshore's Motion for Summary Judgment	3600-3611
15	Subcontract Agreement between Coleman Development and J.P. Construction Co., Inc. dated February 12, 2002, Exhibit 80 in Support of Ironshore's Motion for Summary Judgment	3612-3620
17	Subcontract between The Developers of Nevada, LLC and Champion Masonry dated April 20, 2001, Exhibit 109 in Support of Ironshore's Motion for Summary Judgment	4108-4120

20	Subcontractor Allocation (cost of repair) for Debard Plumbing/Wikey dated December 17, 2012, Exhibit 150 in Support of Ironshore's Motion for Summary Judgment	4843-4844
8	Subpoena - Centex Homes, Exhibit 69 in Support of Zurich's Motion for Summary Judgment	1840-1842
8	Subpoena - Champion Masonry, Exhibit 68 in Support of Zurich's Motion for Summary Judgment	1837-1839
14	Sun City Anthem – Lot Listing – Duplexes, Exhibit 69 in Support of Ironshore's Motion for Summary Judgment	3334-3339
6	Tender Letter in Garcia, Exhibit 39 in Support of Zurich's Motion for Summary Judgment	1328-1331
6	Tender Letter in Garcia, Exhibit 40 in Support of Zurich's Motion for Summary Judgment	1332-1336
5	Tender Letter served in Mohan, Exhibit 34 in Support of Zurich's Motion for Summary Judgment	1239-1241
15	Third Amended Class Action Construction Defect Complaint filed on August 29, 2011, in the <i>Casallas</i> action, Exhibit 75 in Support of Ironshore's Motion for Summary Judgment	3535-3559
7	Third Amended Complaint filed in Boyer, Exhibit 54 in Support of Zurich's Motion for Summary Judgment	1557-1579
18	Third Amended Complaint filed May 14, 2012, in the <i>Boyer</i> action, Exhibit 124 in Support of Ironshore's Motion for Summary Judgment	4450-4473
18	Third Party Complaint filed by PN II, Inc., on May 22, 2012, in the <i>Boyer</i> action, Exhibit 125 in Support of Ironshore's Motion for Summary Judgment	4474-4490
5	Third Party Complaint filed in Anthem, Exhibit 32 in Support of Zurich's Motion for Summary Judgment	1217-1235
7	Third Party Complaint filed in Anthem, Exhibit 57 in Support of Zurich's Motion for Summary Judgment	1622-1640
7	Third Party Complaint filed in Bennett, Exhibit 53 in Support of Zurich's Motion for Summary Judgment	1535-1556
7	Third Party Complaint filed in Boyer, Exhibit 55 in Support of Zurich's Motion for Summary Judgment	1580-1596

6	Third Party Complaint filed in Casallas, Exhibit 51 in Support of Zurich's Motion for Summary Judgment	1480-1498
8	Third Party Complaint filed in Clark, Exhibit 63 in Support of Zurich's Motion for Summary Judgment	1754-1777
6	Third Party Complaint filed in Garcia, Exhibit 38 in Support of Zurich's Motion for Summary Judgment	1305-1327
6	Third Party Complaint filed in Lino, Exhibit 47 in Support of Zurich's Motion for Summary Judgment	1409-1426
6	Third Party Complaint filed in Marcel, Exhibit 43 in Support of Zurich's Motion for Summary Judgment	1356-1368
7	Third Party Complaint filed in Stallion Mountain, Exhibit 59 in Support of Zurich's Motion for Summary Judgment	1652-1671
7	Third Party Complaint filed in Sun City, Exhibit 61 in Support of Zurich's Motion for Summary Judgment	1684-1716
6	Third Party Complaint filed in Wikey, Exhibit 49 in Support of Zurich's Motion for Summary Judgment	1440-1455
6	Third Party Complaint, Exhibit 45 in Support of Zurich's Motion for Summary Judgment	1383-1395
12	Third-Party Complaint filed by American West Homes, Inc. on November 14, 2008 in the <i>Bennett</i> action, Exhibit 41 in Support of Ironshore's Motion for Summary Judgment	2900-2921
10	Third-Party Complaint filed by Cedco, Inc. on March 27, 2012, in the <i>Seven Hills</i> action, Exhibit 13 in Support of Ironshore's Motion for Summary Judgment	2270-2284
14	Third-Party Complaint filed by Del Webb Communities, Inc., on March 18, 2010, in the <i>Sun City</i> action, Exhibit 67 in Support of Ironshore's Motion for Summary Judgment	3297-3329
11	Third-Party Complaint filed by Lakemont Copper Hills, LLC on August 1, 2012 in the Lino action, Exhibit 28 in Support of Ironshore's Motion for Summary Judgment	2600-2616
11	Third-Party Complaint filed by Silverwing Development on December 21, 2012, in the <i>Drost</i> action, Exhibit 23 in Support of Ironshore's Motion for Summary Judgment	2555-2567

9	Third-Party Complaint filed by Terravita Home Construction Company, Inc. on June 23, 2011, in the <i>Anthem</i> action, Exhibit 6 in Support of Ironshore's Motion for Summary Judgment	2129-2147
13	Third-Party Complaint filed by Terravita Home Construction Company, Inc. on June 23, 2011, in the <i>Anthem</i> action, Exhibit 53 in Support of Ironshore's Motion for Summary Judgment	3138-3156
17	Third-Party Complaint filed by The Developers of Nevada, LLC on May 28, 2013, in the <i>Marcel</i> action, Exhibit 111 in Support of Ironshore's Motion for Summary Judgment	4136-4148
15	Third-Party Complaint filed on February 9, 2012 by Baker-Coleman Construction, Inc., in the <i>Casallas</i> action, Exhibit 76 in Support of Ironshore's Motion for Summary Judgment	3560-3578
14	United Specialty policy no. IRH00CQE0805001 for policy period of February 18, 2008, to February 18, 2009, Exhibit 71 in Support of Ironshore's Motion for Summary Judgment	3357-3407
15	United Specialty policy no. IRH00T960805001 for policy period of October 13, 2008, to October 13, 2009, Exhibit 88 in Support of Ironshore's Motion for Summary Judgment	3695-3746



One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) JRON411

Endorsement #5

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY,

#### BASIS OF PREMIUM ENDORSEMENT

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed that SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended to include the following definitions of basis of premium used for computing premiums for this coverage:

Gross Sales or Receipts is defined as the gross amount charged by the named insured, concessionaires of the named Insured, or by others trading under the insured's name for:

- a. All goods or products, sold or distributed;
- b. Operations performed during the policy period;
- c. Rentals; and
- d. Dues or fees.

Only the following Items shall be deducted from Gross Sales or Receipts:

- 1. Sales or excise taxes which are collected and remitted directly to a governmental division;
- 2. Credits for repossessed merchandise and products returned.

Payroll or Remuneration is defined as the sum of salarles, wages, tips, piece of work, commission, bonuses, board and meals for work performed and excluding excess in accordance with the state payroll limitation rules.

Overtime is defined as hours worked at increased rates of pay in excess of hours normally worked in a given day or week. If there is a guaranteed wage plan which assures employees a given wage for working a specific number of hours per week, then the overtime means only the hours worked in excess of that specific amount. If there are records available showing the wages paid for overtime separately, which exceed the amount that would have been paid for the same work during normal hours, then all such excess wages are excluded. If these records show only the total of wages paid, including overtime on a time and one-half basis, then one-third of those wages should be excluded. If double time is paid for overtime and the total pay for such overtime is recorded separately, one-half of the total pay for double time shall be excluded.

Excluded from payroll is remuneration paid to clerical office employees, including those whose duties are strictly limited to keeping the insured's books or records, conducting correspondence, or engaged in clerical work in these areas. Anyone who does not work in the area separated physically by walled floors, or partitions from all other work areas of the insured is

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not considered. An exception to this is if the payroll or clerical office employees are specifically included in the classification wording or footnote of the ISO general liability classification.

Total Cost or Cost is defined as the total cost of all work, let or sublet in connections with each specific project including:

- a. The cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work; and
- b. All fees, bonuses or commissions made, paid or due.

Units is defined as the number of persons or items described.

Rental Receipts Is defined as the gross amount charged by the named insured, concessionaires of the named insured, or by others trading under the insured's name for rental of equipment.

Admissions is defined as the total number of persons, other than employees of the named insured, admitted to an event or events conducted on the premises, whether on pald admission, tickets, complimentary tickets, or passes.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

IB.EX.009 (10/09)

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Page 2 of 2



One State Street Plaza
7th Floor
New York, NY 10004
Toll Free: (877) IRON411

**Endorsement #6** 

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **CLAIMS NOTIFICATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Send all claim notifications and information to:

MIDLANDS CLAIM PO Box 23198 Oklahoma City, OK 73123 Phone: 1-800-498-9758 Fax: 405-840-0584

Website: www.mldlandsclaim.com

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED,

Authorized Representative

April 28, 2010 Date

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Page 1 of 1



One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement #7

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Designated Construction Projects: As required by written contract. We will not pay more than \$5,000,000 for A.I., for all Projects involved, regardless the number of the Projects.

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

- A. For all sums which the Insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
  - A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  - The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under COVERAGE C regardless of the number of:
    - a. Insureds:
    - b. Claims made or "suits" brought; or

- c. Persons or organizations making claims or bringing "suits".
- 3. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
- 4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

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- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
  - 1. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  - 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- When coverage for liability arising out of the "products-completed operations hazard" is pro-

- vided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of Limits of Insurance (SECTION III) not otherwise modified by this endorsement shall continue to apply as stipulated.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**Authorized Representative** 

April 28, 2010

Date



One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement #8

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY,

### **DEDUCTIBLE LIABILITY INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### **SCHEDULE**

Coverage	Amount and	Basis of Deductible
Bodily Injury Liability	\$N/A	per claim
	\$N/A	per occurrence
Property Damage Liability	\$N/A	per claim
	\$N/A	per occurrence
Bodily Injury Liability and/or	\$ N/A	per claim
Property Damage Liability Combined	\$ 10,000	per occurrence
Personal Injury Liability	\$ 10,000	per injury
Advertising Injury Liability	\$ 10,000	per injury

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury", "personal injury", "advertising injury", or "property damage", however caused):

- Our obligation under the Bodily Injury Liability, Personal Injury Liability, Advertising Injury Liability, and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages, and the limits of insurance applicable to such coverages will be reduced by the amount of such deductible. "Aggregate" limits for such
- coverage shall not be reduced by the application of such deductible amount.
- 2. The deductible amounts stated in the Schedule apply as follows:
  - PER CLAIM BASIS if the deductible is on a "per claim" basis, the deductible amount applies:
    - (1) Under Bodily Injury Liability or Property Damage Liability Coverage respectively:

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- a. to all damages because of "bodily injury" sustained by one person, or
- to all damages because of "property damage" sustained by one person or organization,
- as a result of any one "occurrence."
- (2) Under Bodily Injury Liability and Property
  Damage Liability Coverage Combined to all
  damages because of "bodily Injury" and
  "property damage" sustained by one person
  or organization as the result of any one
  "occurrence."
- PER OCCURRENCE BASIS if the deductible is on a "per occurrence" basis the deductible amount applies:
  - (1) Under Bodily Injury Liability or Property Damage Liability Coverage, respectively:
    - to all damages because of "bodiy Injury" as the result of any one "occurrence," or
    - to all damages because of "property damage" as the result of any one "occurrence,"

regardless of the number of persons or organizations who sustain damages because of that "occurrence".

(2) Under Bodily Injury Liability and Property
Damage Liability Coverage Combined to all
damages because of "bodily injury" and
"property damage" as the result of any one
"occurrence regardless of the number of

- persons or organizations who sustain damages because of that "occurrence."
- c. PER INJURY BASIS if the deductible is on a "per Injury" basis the deductible amount applies:
  - Under the Personal Injury Liability Coverage to all damages because of "personal injury" sustained by one person or organization as a result of any one injury.
  - (2) Under the Advertising Injury Liability Coverage to all damages because of "advertising injury" sustained by one person or organization as a result of any one injury.
- The deductible amount stated shall also apply towards the investigation, adjustment and legal expenses incurred in the handling and investigation of each claim, whether or not payment is made to any claimant, comprise settlement is reached, or the claim is denied.
- The terms of this insurance, including those with respect to:
  - (a) Our right and duty to defend any "suits" seeking those damages; and
  - (b) Your duties in the event of an "occurrence," claim, or sult

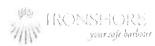
apply irrespective of the application of the deductible amount.

5. We may pay any part or all of the deductible amount towards investigation, adjustment and legal expense, or to effect settlement of any claim or suit and, upon notification of such payment, you shall promptly reimburse us for such part of the deductible amount as has been pald by us.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**Authorized Representative** 

April 28, 2010 Date



One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement #9

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **ASBESTOS EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART RAILROAD PROTECTIVE LIABILITY COVERAGE PART BUSINESSOWNERS LIABILITY COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below: (The following needs to be completed only when this endorsement is issued subsequent to inception of the policy.)

Named Insured Cedco, Inc.		
Endorsement Effective April 01, 2010	Policy Number 000194200	

This insurance does not apply to:

- A) "Bodily injury", "property damage" or "personal and advertising injury", in whole or in part, either directly or indirectly arising out of, based upon or attributable to any of the following:
  - 1. Asbestos or any asbestos related injury or damage; or
  - 2. any alleged act, error, omission or duty involving asbestos, its use, exposure, presence, ingestion, inhalation, absorption, existence, detention, removal, elimination or avoidance; or
  - 3. the use, exposure, presence, ingestion, inhalation, absorption, existence, detention, removal, elimination or avoidance of asbestos in any environment, building or structure; and

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B)	The investigation, settlement or defense of any claim, "sult" or proceeding against the insured alleging any actual or
	threatened injury or damage which arises out of or would not have occurred but for asbestos "bodily injury", "property
	damage" or "personal and advertising injury", as described above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 10

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY,

# CONTINUOUS OR PROGRESSIVE INJURY OR DAMAGE EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to any "bodily Injury" or "property damage":

- which first existed, or is alleged to have first existed, prior to the inception of this policy. "Property damage" from "your work", or the work of any additional insured, performed prior to policy inception will be deemed to have first existed prior to the policy inception, unless such "property damage" is sudden and accidental and takes place within the policy period); or
- 2. which was, or is alleged to have been, in the process of taking place prior to the inception date of this policy, even if the such "bodily injury" or "property damage" continued during this policy period; or
- 3. which is, or is alleged to be, of the same general nature or type as a condition, circumstance or construction defect which resulted in "bodily injury" or "property damage" prior to the inception date of this policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**Authorized Representative** 

April 28, 2010

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# EXHIBIT 3 (Part 2)

Ironshore policy no. 000194200 for policy period of April 1, 2010, to April 1, 2011 Part 2 (ISIC 97-124)



One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 11

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

- This insurance does not apply to "bodily Injury",
   "property damage" or "personal and advertising
   injury" arising out of the rendering of or failure
   to render any professional services by you or on
   your behalf, but only with respect to either or
   both of the following operations:
  - a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
  - Providing, or hiring Independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

- Subject to Paragraph 3. below, professional services include:
  - Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, re-ports, surveys, field orders, change orders, or drawings and specifications; and
  - Supervisory or Inspection activities performed as part of any related architectural or engineering activities.
- Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED,

Authorized Representative

April 28, 2010

Date

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 12

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability: This insurance does not apply to:
  - "Bodfly Injury" to:
  - (1) A person arising out of any:
    - (a) Refusal to employ that person;
    - (b) Termination of that person's employment;
    - (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" to that person at whom any of the employmentrelated 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
- To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:

This insurance does not apply to: "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;
  - (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 "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

April 28, 2010

Date

- (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.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 13

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS**

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of, caused by, or attributable to, whether in whole or in part, the following:
  - The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement, of any "exterior insulation and finish system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or
  - "Your product" or "your work" with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system", or any substantially similar system, is

used on the part of that structure containing that component, fixture or feature.

- B. The following definition is added to the Definitions Section:
- C. "Exterior insulation and finish system" means a nonload bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:
  - A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
  - The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
  - 3. A reinforced or unreinforced base coat;
  - 4. A finish coat providing surface texture to which color may be added; and
  - 5. Any flashing, caulking or sealant used with the system for any purpose.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 14

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### INFLUENZA OR EPIDEMIC EXCLUSION

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below: (The following needs to be completed only when this endorsement is issued subsequent to inception of the policy.)

Named Insured Cedco, Inc.		
Endorsement Effective	Policy Number	
April 01, 2010	000194200	

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury", loss or damage, or cost or expense arising out of, caused by or resulting from, directly or indirectly:

#### A The:

- 1. Infection or feared or suspected infection with;
- 2. diagnosis of or treatment for, or failure to diagnose or treat;
- 3. quarantine for or attempted containment of, or failure to quarantine or contain;
- 4. presence or detection of, or failure to detect;
- 5. prevention of or vaccination against, or failure to prevent or vaccinate;
- 5. restrictions on travel due to, or fallure to restrict travel due to; or
- 7. declaration of an epidemic or pandemic due to, or fallure to declare an epidemic or pandemic due to;

any type of influenza virus, including but not limited to types A, B or C virus, any subtype or strain of the influenza A, B or C virus (including but not limited to the H5 and H7 subtypes), any similar or related influenza or virus, or any derivation from, reassortment, or mutation (occurring either naturally or through human intervention) of the influenza A, B or C virus, including but not limited to a human influenza virus.

Any epidemic, pandemic, pandemic alert or outbreak (or other term of similar meaning) that is declared, announced or otherwise notified by the U.S. Center for Disease Control and Prevention (as such is reported in the Morbidity and Mortality Weekly Report), World Health Organization, or any national, state or local public health organization (or organization acting in a similar capacity).

Exclusion of the epidemic or pandemic infectious disease shall begin as of the date of such announcement or notification and shall continue until the termination date of such epidemic or pandemic; provided, however, that this exclusion shall

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continue to apply to any individual case of epidemic or pandemic infectious disease contracted during the exclusionary period that continues beyond the termination date.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 15

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

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

#### LEAD CONTAMINATION EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART RAILROAD PROTECTIVE LIABILITY COVERAGE PART BUSINESSOWNERS LIABILITY COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below; (The following needs to be completed only when this endorsement is issued subsequent to inception of the policy.)

Named Insured Cedco, Inc.		
Endorsement Effective April 01, 2010	Policy Number 000194200	

This insurance does not apply to:

- A "Bodily injury", "property damage" or "personal and advertising injury" in whole or in part, either directly or indirectly, arising out of, based upon or attributable to any of the following:
  - The use, installation, storage, withdrawal, removal, encapsulation, destruction, containment, testing, distribution, ownership, presence, ingestion, inhalation, absorption, sale or disposal of lead, lead dust, lead fibers or material containing lead;
  - 2. Exposure to lead, lead dust, lead fibers or material containing lead; or
  - Any error or omission in supervision, instructions, recommendations, notices, warnings or advice given, or which should have been given, in connection with lead, lead dust, lead fibers or material containing lead.

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В	The investigation, settlement or defense of any claim, "suit" or proceeding against the insured alleging any actual or
	threatened injury or damage which arises out of or would not have occurred but for lead "bodily injury", "property
	damage" or "personal and advertising injury", as described above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 16

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **EXCLUSION - COVERAGE C - MEDICAL PAYMENTS**

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE	
Description And Location Of Premises Or Classification:	
Any and All Locations.	

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

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

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

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 17

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

#### MOLD, FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Notwithstanding anything to the contrary contained in the policy or any endorsement attached thereto, this insurance does not apply to and shall not respond to any claim, demand or "sult" alleging:

- "Bodily Injury," "Property Damage" or "Personal and Advertising Injury" arising out of, in whole or in part, the actual, alleged or threatened discharge, inhalation, ingestion, dispersal, seepage, migration, release, escape or existence of any mold, mildew, bacteria or fungus, or any materials containing them, at any time.
- 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 any mold, mildew, bacteria or fungus, or any materials containing them; or
  - b. Claim, demand or "suit" by or on behalf of a governmental authority or any other person or organization 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 any mold, mildew, bacteria or fungus, or any materials containing them.
- An obligation to contribute to, share damages with, repay or indemnify someone else who must pay damages, loss, cost or expense because of "Bodily Injury," "Property Damage" or "Personal and Advertising Injury" as set forth in 1., 2.a., or 2.b. above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED,

Authorized Representative

April 28, 2010

Date

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

**Endorsement #18** 

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (Broad Form)

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- 1 The insurance does not apply:
  - Under any Liability Coverage, to "bodily injury" or "property damage";
    - (a) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or
    - (b) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily in-Jury" resulting from the "hazardous properties"

- of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.
- C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:
  - (a) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
  - (b) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
  - (c) The "bodily Injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.
- 2 As used in this endorsement: "Hazardous properties" includes radioactive, toxic or explosive properties.

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"Nuclear material" means "source material", "Special nuclear material" or "by-product material", "Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or

exposed to radiation In a "nuclear reactor".

"Waste" means any waste material (a) containing
"by-product material" other than the tallings or
wastes produced by the extraction or concentration
of uranium or thorium from any ore processed
primarily for its "source material" content, and (b)
resulting from the operation by any person or
organization of any "nuclear facility" included under
the first two paragraphs of the definition of "nuclear
facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. "Property damage" includes all forms of radioactive contamination of property.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 19

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### SILICA OR SILICA-RELATED DUST EXCLUSION

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:
  - 2. Exclusions

This insurance does not apply to: Silica Or Silica-Related Dust

- a. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silicarelated dust".
- b. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- c. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.
- B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

- Exclusions
   This insurance does not apply to:
   Silica Or Silica-Related Dust
- a. "Personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- b. Any loss, cost or expense arising, in whole or In part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.
- C. The following definitions are added to the Definitions Section:
  - "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
  - 2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**Authorized Representative** 

April 28, 2010

Date

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 20

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### TERRORISM EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

We will not pay for loss or damage caused directly or indirectly by "Terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

Where used in this endorsement, "Terrorism" means activities directed against any person, organization or property which activities involve any of the following, or any preparation for, or acts in furtherance of, any of the following (referred to in this endorsement as "Activities"):

- A. The use or threat of force or violence; or
- B. The commission or threat of any dangerous act; or
- The commission or threat of any act that interferes with or disrupts any electronic, communication, information, or mechanical system;

and one or both of the following is applicable to A., B., or C. above:

- 1. The effect or intended effect of the activities described In A., B., or C. above is to intimidate or coerce any government or governmental agency, or the civilian population or any segment thereof, or to disrupt any segment of the economy.
- 2. The effect or Intended effect of the activities described in A., B., or C. above is to further any political, ideological, religious, social or economic objectives or to express (or express opposition to) any philosophy or ideology.

"TerrorIsm" specifically includes, but is not limited to any Activities that:

- A. Involve the use, release or escape of any nuclear materials, or that directly or indirectly result in nuclear reaction or radiation or radioactive contamination of any kind; or
- B. Are carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- C. Involve the intentional or deliberate release of any pathogenic or polsonous, biological, or chemical materials.

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"Terrorism" also specifically includes any "Certified Act of Terrorism." The term "Certified Act of Terrorism" means any act that is certified by the United States Secretary of the Treasury, in concurrence with the United

States Secretary of State, and the Attorney General of the United States, in accordance with the United States Terrorism Risk Insurance Act of 2002 (the "Act"):

- A. to be an act of terrorism;
- B. to be a violent act or an act that is dangerous to:
  - 1. human life; property; or
  - 2. infrastructure;
- C. to have resulted in damage within the United States, or outside of the United States in the case of:
  - 1. an air carrier or vessel described in paragraph (5)(B) of the Act;
  - 2. or the premises of a United States mission; and
- D. to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 21

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY:

#### TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:
This insurance does not apply to:

- f, Pollution
  - "Bodlly injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
  - 2) Any loss, cost or expense arising out of any:
- 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 sult 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".

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**Authorized Representative** 

Aprll 28, 2010

Date

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 22

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY,

# EXCLUSION – VIOLATION OF STATUTES THAT GOVERN E-MAILS, FAX, PHONE CALLS OR OTHER METHODS OF SENDING MATERIAL OR INFORMATION

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:
  - 2. Exclusions

This insurance does not apply to:
DISTRIBUTION OF MATERIAL IN VIOLATION OF
STATILITES

"Bodily Injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

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

- The following exclusion is added to Paragraph 2.,
   Exclusions of Section I Coverage B Personal And Advertising injury Liability:
  - 2. Exclusions

This insurance does not apply to: DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

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

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

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Endorsement # 23

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION – DESIGNATED OPERATIONS COVERED BY A WRAP-UP INSURANCE PROGRAM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### **SCHEDULE**

Description and Location of Operation(s):

#### All Operations.

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

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages):

This insurance does not apply to "bodily Injury" or property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, whenever a Wrap-Up Insurance Program is being provided or has been offered to you and/or any other contractors or sub-contractors by the prime contractor, general contractor, project manager or owner of any construction project at the location described in the Schedule of this endorsement.

This exclusion applies whether or not the Wrap-Up insurance Program:

- Provides coverage identical to that provided by this Coverage Part;
- 2) Has limits adequate to cover all claims;
- 3) Is Cancelled;
- 4) Remains in effect; or
- Expires at the natural expiration of the policy period or project.

This exclusion applies whether or not the Named Insured has enrolled in, purchased or been offered coverage under, or is otherwise entitled to any coverage under any Wrap-Up Insurance Program.

A "Wrap-Up Insurance Program" shall mean an Owner Controlled Insurance Program, Contractor Controlled Insurance Program, Consolidated Insurance Program or any other insurance program whereby insurance is offered by the prime contractor, general contractor,

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project manager or owners to any contractors and	subcontractors.
ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCH	IANGED.
x 1	
	April 28, 2010
Authorized Representative	Date



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Endorsement # 24

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### INDEPENDENT CONTRACTORS LIMITATION OF COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to any claim, demand or "sult" arising out of operations performed for you by Independent contractors unless:

- (1) Such independent contractors have in force, at the time of the subject "occurrence," commercial general liability insurance listing you as an additional insured; and
- (2) The limits of liability of such insurance are equal to or greater than those shown in the schedule below; and
- (3) The insurance described in (1) and (2) above is primary and non-contributory with respect to such "occurrence."

GENERAL AGGREGATE LIMIT (Other than Products-Completed Operations) \$2,000,000
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT \$2,000,000
PERSONAL INJURY LIMIT AND ADVERTISING INJURY LIMIT \$1,000,000
EACH OCCURRENCE LIMIT \$1,000,000

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

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Endorsement # 25

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **SERVICE OF SUIT**

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

SERVICE OF SUIT

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of any Court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such Court Jurisdiction, and all matters arising hereunder shall be determined in accordance with the law and practice of such court. It is further agreed that service of process in such suit may be made upon:

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or his nominee, and that in any suit instituted against them upon this contract, the Company will abide by the final decision of such Court of any Appellate Court in the event of an appeal.

The above named individual is authorized and directed to accept service of process on behalf of the Company in any such sult and/or upon the request of the Named Insured to give written undertaking of the Named Insured that it or they will enter a general appearance upon the Company's behalf in the event of a suit shall be instituted.

Further, pursuant to any statute of any State, Territory, or District of the United States of America, which makes provision therefore, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as their true and lawful attorney upon whom may be service any lawful process in any action, sult or proceeding instituted by or on behalf of the Named insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**Authorized Representative** 

April 28, 2010

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One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 26

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE** 

Name of Person or Organization: "As required by written contract"

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

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

IB.EX.041 (10/09)

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Page 1 of 1



One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 27

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **EMPLOYEE BENEFITS LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Coverage	Limit Of insurance	Each Employee Deductible	Premlum
Employee Benefits	\$ 1,000,000 Each employee	\$ 5,000	\$ Included
Programs	\$ 1,000,000 Aggregate		5 included
Retroactive Date:	04/01/2010		

- A. The following is added to Section I Coverages: COVERAGE EMPLOYEE BENEFITS LIABILITY
  - 1. Insuring Agreement
    - a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission, of the in-sured, or of any other person for whose acts the insured is legally liable, 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 to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:
      - The amount we will pay for damages is ilmited as described in Paragraph D. (Sec-tion III – Limits Of Insurance); and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

- b. This insurance applies to damages only if:
  - The act, error or omission, is negligently committed in the "administration" of your "employee benefit program";
  - (2) The act, error or omission, did not take place before the Retroactive Date, If any, shown in the Schedule nor after the end of the policy period; and
  - (3) A "claim" for damages, because of an act, error or omission, is first made against any insured, in accordance with Paragraph c. below, during the policy

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- A "claim" seeking damages will be deemed to have been made at the earlier of the following times;
  - When notice of such "claim" is received and recorded by any insured or by us, whichever comes first; or

(2) When we make settlement in accordance with Paragraph a. above.

A "claim" received and recorded by the insured within 60 days after the end of the policy period will be considered to have been received within the policy period, if no subsequent policy is available to cover the claim.

d. All "claims" for damages made by an "employee" because of any act, error or omission, or a series of related acts, errors or omissions, including damages claimed by such "employee's" dependents and beneficiaries, will be deemed to have been made at the time the first of those "claims" is made against any in-sured.

#### 2. Exclusions

This insurance does not apply to:

a. Dishonest, Fraudulent, Criminal Or

Mailcious Act
Damages arising out of any intentional,
dishonest, fraudulent, criminal or mallclous
act, error or omission, committed by any
insured, including the willful or reckless
violation of any statute.

- Bodily Injury, Property Damage, Or Personal And Advertising Injury "Bodily injury", "property damage" or "personal and advertising injury".
- c. Fallure To Perform A Contract
  Damages arising out of failure of
  performance of contract by any insurer.
- d. Insufficiency Of Funds Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".
- e. Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation

Any "claim" based upon:

- (1) Failure of any investment to perform;
- (2) Errors In providing information on past performance of investment vehicles; or
- (3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan

included in the "employee benefit program".

f. Workers' Compensation And Similar Laws Any "claim" arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

#### g, ERISA

Damages for which any insured is llable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

h. Available Benefits

Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

- Taxes, Fines Or Penalties
   Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.
- Employment-Related Practices
   Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.
- B. For the purposes of the coverage provided by this endorsement:
  - All references to Supplementary Payments Coverages A and B are replaced by Supplementary Payments – Coverages A, B and Employee Benefits Llability.
  - Paragraphs 1.b. and 2. of the Supplementary Payments provision do not apply.
- C. For the purposes of the coverage provided by this endorsement, Paragraphs 2. and 3. of Section II – Who Is An Insured are replaced by the following:
  - 2. Each of the following is also an Insured:
    - Each of your "employees" who is or was authorized to administer your "employee benefit program".
    - Any persons, organizations or "employees" having proper temporary authorization to ad-minister your "employee benefit program" if you die, but only until your legal representative is appointed.
    - 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 Endorsement.

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- Any organization you newly acquire or form, other than a partnership, joint venture or limited llability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar Insurance applies to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
  - Coverage under this provision does not apply to any act, error or omission that was committed before you acquired or formed the organization.
- For the purposes of the coverage provided by this endorsement, Section III – Limits Of Insurance is replaced by the following:
  - 1. Limits Of Insurance
    - The Limits of Insurance shown in the Schedule and the rules below fix the most we will pay regardless of the number of:
      - (1) Insureds;
      - (2) "Claims" made or "suits" brought;
      - (3) Persons or organizations making "claims" or bringing "suits";
      - (4) Acts, errors or omissions; or
      - (5) Benefits included in your "employee benefit program".
    - b. The Aggregate Limit Is the most we will pay for all damages because of acts, errors or omis-sions negligently committed in the "administration" of your "employee benefit program".
    - c. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiarles, as a result of:
      - (1) An act, error or omission; or
      - A series of related acts, errors or omissions

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

The Limits of Insurance of this endorsement 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 of the

policy to which this endorsement is attached, 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.

- 2. Deductible
  - a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Schedule as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
  - The deductible amount stated in the Schedule applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiarles, because of all acts, errors or omissions to which this insurance applies.
  - c. The terms of this insurance, including those with respect to:
    - (1) Our right and duty to defend any "suits" seeking those damages; and
    - (2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or "claim" apply irrespective of the application of the deductible amount.
  - d. We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.
- E. For the purposes of the coverage provided by this endorsement, Conditions 2. and 4. of Section IV – Commercial General Liability Conditions are replaced by the following:
  - Duties In The Event Of An Act, Error Or Omission, Or "Claim" Or "Suit"
    - a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a "claim". To the extent possible, notice should include:
      - (1) What the act, error or omission was and when it occurred; and
      - (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
    - b. If a "claim" is made or "suit" is brought against any insured, you must:
      - Immediately record the specifics of the "claim" or "suit" and the date received; and

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- (2) Notify us as soon as practicable. You must see to it that we receive written notice of the "claim" or "sult" as soon as practicable.
- c. You and any other involved insured must:
  - Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.
- No Insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.

#### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this endorsement, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

#### b. Excess Insurance

- (1) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the policy period shown in the Schedule of this insurance and that applies to an act, error or omission on other than a claims-made basis, if:
  - (a) No Retroactive Date is shown in the Schedule of this insurance; or
  - (b) The other Insurance has a policy period which continues after the Retroactive Date shown in the Schedule of this Insurance.
- (2) When this insurance is excess, we will have no duty 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.
- (3) 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 the total amount that all such other insurance would pay for the loss in absence of this insurance; and the total of all deductible and self-insured amounts under all that other insurance.
- (4) 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 Schedule of this endorsement.
- c. Method Of Sharing

  If all of 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 limits of insurance to the total applicable limits of insurance of all insurers.

- F. For the purposes of the coverage provided by this endorsement, the following Extended Reporting Period provisions are added, or, if this endorsement is attached to a claims-made Coverage Part, replaces any similar Section in that Coverage Part: EXTENDED REPORTING PERIOD
  - You will have the right to purchase an Extended Reporting Period, as described below, if:
    - a. This endorsement is canceled or not renewed; or
    - b. We renew or replace this endorsement with insurance that:
      - (1) Has a Retroactive Date later than the date shown in the Schedule of this endorsement; or
      - (2) Does not apply to an act, error or omission on a claims-made basis.
  - The Extended Reporting Period does not extend the policy period or change the scope of coverage provided. It applies only to "claims" for acts, errors or omissions that were first

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- An Extended Reporting Period of five years is available, but only by an endorsement and for an extra charge.
  - You must give us a written request for the endorsement within 60 days after the end of the policy period. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due. We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:
  - a. The "employee benefit programs" insured;
  - b. Previous types and amounts of insurance;
  - Limits of insurance available under this endorsement for future payment of damages; and
  - d. Other related factors.

The additional premium will not exceed 100% of the annual premium for this endorsement. The Extended Reporting Period endorsement applicable to this coverage shall set forth the terms, not inconsistent with this Section, applicable to the Extended Reporting Period, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Reporting Period starts.

- 4. If the Extended Reporting Period is in effect, we will provide an extended reporting period aggregate limit of insurance described below, but only for claims first received and recorded during the Extended Reporting Period. The extended reporting period aggregate limit of insurance will be equal to the dollar amount shown in the Schedule of this endorsement under Limits of Insurance. Paragraph D.1.b. of this endorsement will be amended accordingly. The Each Employee Limit shown in the Schedule will then continue to apply as set forth in Paragraph D.1.c.
- G. For the purposes of the coverage provided by this endorsement, the following definitions are added to the Definitions Section:
  - 1. "Administration" means:
    - a. Providing Information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";

- b. Handling records in connection with the "employee benefit program"; or
- Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include handling payroll deductions.

- "Cafeteria plans" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
- "Claim" means any demand, or "suit", made by an "employee" or an "employee's" dependents and beneficiaries, for damages as the result of an act, error or omission.
- "Employee benefit program" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
  - a. Group life insurance, group accident or health insurance, dental, vision and hearing plans, and flexible spending accounts, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
  - Profit sharing plans, employee savings
    plans, employee stock ownership plans,
    pension plans and stock subscription plans,
    provided that no one other than an
    "employee" may subscribe to such benefits
    and such benefits are made generally
    available to all "employees" who are eligible
    under the plan for such benefits;
  - Unemployment insurance, social security benefits, workers' compensation and disability benefits;
  - d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies; and
  - e. Any other similar benefits designated in the Schedule or added thereto by endorsement.
- H. For the purposes of the coverage provided by this endorsement, Definitions 5. and 18. In the Definitions Section are replaced by the following:
  - "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

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- 18. "Suit" means a civil proceeding in which damages because of an act, error or omission 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
- Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date



One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Endorsement # 28

Policy Number: 000194200

Effective Date Of Endorsement: April 01, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY,

# ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies Insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Location And Description Of Completed Operations

Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

April 28, 2010

Date

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# EXHIBIT 4 (Part 1)

Ironshore policy no. 000194200 for policy period of June 1, 2009, to April 1, 2010 Part 1 (ISIC 1 - 34)



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

This insurance contract is issued pursuant to the Nevada insurance laws by an insurer neither ilcensed by nor under the supervision of the Division of insurance of the Department of Business and Industry of the State of Nevada. If the insurer is found insolvent, a plajm under this contract is not covered by the Nevada insurance Guaranty Association Act.

#### COMMERCIAL GENERAL LIABILITY DECLARATIONS

Policy Number: 018680905001

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

1. Named insured & Malling Address:

Cedeo Inc 7210 Placid Street Las Vegas, NV 89119

2. Policy Period:

Inception June 01, 2009 to

Expiration June 01, 2010 at 12:81 a.m. standard time at your address shown above.

3. Form of Business: Contractor

4. Limits of insurance:

\$ 1,000,000 Each Occurrence \$ 2,000,000 General Aggregate

\$ 2,000,000 Products - Completed Operations Aggregate

\$ 1,000,000 Personal and Advertising Injury

\$ 50,000 Fire Damage

5. Deductible: \$10,000

B) & PD & PI/Al; Per Occurrence, Including LAE

PREMIUM IS 100% MINIMUM AND DEPOSIT

6. Goverage Part Premium Calculation:

Coverage Part Premium:

Inspection Fee: Terrorism Premium: Coverage Part Total:

REDACTED

7. Audit Period: Annual

IB.EX.002 (12/07Ed.)

#### Policy Number: 018ER090\$001 8. Endorsements Attached To This Policy: See Schedule of Forms and Endorsements. 1. IB.EX.003 Common Policy Conditions 2. IB.EX.006 Amended Insured Contract Definition 3. IB.EX.007 Amendment of Premium 4. IB.EX.009 Basis of Premium 5. IB.EX.010 Claims Notification 6. IB.EX.012 Deductible Liability Insurance 7. IB.EX.013 Asbestos Exclusion 8. IB.EX.014B Continuous or Progressive Injury Exclusion (Broad Form) 9. IB.EX.015 Contractors Professional Liability 10. IB.EX.018 Employment-Related Practices 11. IB.EX.019 Exterior insulation and Finish Systems 12. IB.EX.022 Influenza or Epidemic Exclusion 13. IB.EX.023 Lead Contamination 14. IB.EX.025 Medical Payments Exclusion 15. IB.EX.026 Mold, Fungi or Bacteria 16. IB.EX.027 Nuclear Energy Liability Exclusion Endorsement 17. IB.EX.028 Silica or Silica Related Dust Exclusion 18. IB.EX.030 Terrorism Exclusion 19. IB.EX.031 Total Pollution Exclusion Endorsement 20. IB.EX.032 Emails Fax Phone Calis Or Other Methods Of Sending Material Or Information 21. IB.EX.033 Operations Covered By A Consolidated (Wrap-Up) Insurance Program 22. IB.EX.034 Independent Contractors Limitation of Coverage 23. IB:EX.037 Service of Suit 24. JB.EX.008 Automatic Status - Owners, Lessees or Contractors - Automatic Status 25. IB.EX.011 Designated Construction Projects 26. IB.EX.041 Walver of Transfer of Rights of Recovery Against Others To Us 27. IB.EX.059 Employee Benefits Liability Coverage 28. IB.EX.06D Additional Insured - Completed Operations (Commercial) 9. Producer & Malling Address American &&S insurance 101 California Street, Suite 900 San Francisco, CA 94111 License Number: 4964 10. Surplus Lines Broker & Mailing Address: Allied North America Insurance Brokerage of NV LLC c/o Allied Group Holdings LLC 390 North Broadway Jericho, NY 11753 License Number: 18402 THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(\$) AND ANY ENDORSOMENT(S), COMPLETE THE ABOVE NUMBERED POLICY. July 13, 2009 **Authorized Representative**

IB.EX.002 (12/07Ed)

LOCATION	CLASSIFICATION	CODE	PREMIUM		RATE	ADVANC	E PREMIUM
NÜMBEB		NO.	BASE	Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Protl/Comp Ops
	Mašontķ	97447(3A)		Ups	Ups	Оμз	Орз
	Concrete Construction	91560(38)		RE	DACTED		
	Ländssäpä Gardening	97047(1-)					
	*Total combined audited revenue is in excess of \$30,000,000*			980			
1	ERMS, CONDITION	AND EXCLUSIO	NS REMAIN UNC	HANGED,			
1	iepresentalive		<del></del>		July 13, 2009 Date		
1					July 13, 2009 Date		
1					July 13, 2009 Date		



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

#### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Policy Number: 018ER0905001

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under Section II — Who is An Insured. Other words and phrases that appear in quotation marks have special meaning, Refer to Section V —Definitions. SECTION I — COVERAGES.

- DAMAGE LIABILITY: 1. Insuring Agreement
  - a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodlly injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
    - The amount we will pay for damages is limited as described in Section III — Elmits Of Insurance; and
    - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II Who is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodlly 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 "bodlly injury" or "property damage" occurred, then any continuation, change or resumption of such "bodlly injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II Who is An insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

IB.EX.001 (12/07 Ed.)

- d. "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 II – 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 "bodlly injury" or "property damage" to us or any other insurer:
  - (2) Receives a written or verbal demand or daim 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.
- e. 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".
- 2. Exclusions
  - This insurance does not apply to:
  - a. Expected Or Intended Injury "Bodily Injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily Injury" resulting from the use of reasonable force to protect persons or property.
  - b. Contractual Liability "Bodily Injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to ilability for damages:
    - That the insured would have in the absence of the contract or agreement; or
    - (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
      - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract";
      - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

- c. Liquor Liability
  - "Bodlly injury" or "property damage" for which any insured may be held liable by reason of:
  - 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 Paragraph (1) above.
- This exclusion applies:
- 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) "Bodlly injury" or "property damage" 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;

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- (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
- (lii) "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; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations 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, furnes 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".
- (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

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- (b) Claim or "sult" 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.
- 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:

- A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or

- (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".
- h. Mobile Equipment

"Bodily Injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.
- l. War

"Bodily injury" or "property damage", 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. 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;

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

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

- k. Damage To Your Product "Property damage" to "your product" arising out of it or any part of it.
- I. 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

work or the work out of which the damage arises was performed on your behalf by a

- m. 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.

n. 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
- (a) "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.
- Personal And Advertising injury "Bodity injury" arising out of "personal and advertising injury".
- b. 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. As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Exclusions c. through p. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III — Limits Of insurance.

#### COVERAGE B PERSONAL AND ADVERTISING INJURY

- 1. Insuring Agreement
  - a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "sult" seeking those damages. However, we will have no duty to defend the insured against any "sult" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:
    - The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
    - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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- No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments Coverages A and B.
- b. This insurance applies 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.
- 2. Exclusions

This insurance does not apply to:

- a. Knowing Violation Of Rights Of Another "Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".
- b. Material Published With Knowledge Of Faisity "Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its faisity.
- c. Material Published Prior To Policy Period "Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.
- d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

- f. Breach Of Contract
  - "Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".
- g. Quality Or Performance Of Goods Fallure To Conform To Statements
  "Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".
- h. Wrong Description Of Prices "Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

- i. Infringement Of Copyright, Patent, Trademark
  Or Trade Secret
  - "Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.
- J. Insureds in Media And Internet Type Businesses "Personal and advertising injury" committed by an insured whose business is:
- Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others: or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section. For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

- k. Electronic Chatrooms Or Bulletin Boards "Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.
- Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- n. Pollution-Related
  - Any loss, cost or expense arising out of any:
  - (1) 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
  - (2) Claim or sult 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".

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- o. Wai
- "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.

#### COVERAGE C MEDICAL PAYMENTS

- 1. 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:
    - The accident takes place in the "coverage territory" and during the policy period;
    - (2) The expenses are incurred and reported to us within one year 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:
    - Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
    - Necessary ambulance, hospital, professional nursing and funeral services.
- 2. Exclusions

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.
- Products-Completed Operations Hazard Included within the "products-completed operations hazard".
- g. Coverage A Exclusions
  Excluded under Coverage A.

#### SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

- We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
  - a. All expenses we incur.
  - b. Up to \$250 for cost of ball bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
  - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - d, All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "sult", including actual loss of earnings up to \$250 a day because of time off from work.
  - e. All costs taxed against the insured in the "suit".
  - f. 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.
  - g. 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.

These payments will not reduce the limits of insurance.

- If we defend an insured against a "sult" and an indemnitee of the insured is also named as a party to the "sult", we will defend that indemnitee if all of the following conditions are met:
  - The "sult" 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";
  - This insurance applies to such liability assumed by the insured;
  - c. 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".

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- d. 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 interests of the indemnitee;
- e. 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
- f. The indomnitee:
  - (1) Agrees in writing to:
    - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "sult":
    - (c) Notify any other insurer whose coverage is available to the indemnitee; and
    - (d) Cooperate with us with respect to coordinating other applicable insurance available to the Indemnitee; and
- (2) Provides us with written authorization to:
  - (a) Obtain records and other information related to the "sult"; and
  - (b) 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 2.b.(2) of Section 1—Coverage A—Bodily injury And Property Damage Liability, 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:

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

#### SECTION II - WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or Joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

- c. 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.
- A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- 2. Each of the following is also an insured:
  - a. Your "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:
    - "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), 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 "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.
  - (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

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- 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).
- Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- Any person or organization having proper temporary custody of your property if you die, but only;
  - With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.
- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- Any organization you newly acquire or form, other than a partnership, Joint venture or limited liability company, and over which you maintain ownership or majority interest, 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 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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.

#### **5ECTION III - LIMITS OF INSURANCE**

- 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
  - Persons or organizations making claims or bringing "suits".
- The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.

- The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to Z, above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
- 6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
- Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily Injury" sustained by any one person.

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

### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

- 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. Dutles in The Event Of Occurrence, Offense, Claim
  Or Suit
  - a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
    - 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.

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- b. If a claim is made or "sult" is brought against any insured, you must:
  - Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable. You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the dalm or "suit";
  - (2) Authorize us to obtain records and other information:
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.
- 3. Legal Action Against Us

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- To sue us on this Coverage Part 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 Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

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

a. Primary insurance

This insurance is primary except when b, below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over:

(1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

- (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (c) 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; or
- (d) 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 I Coverage A Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B 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

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:

- 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 of 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.

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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.

#### 5. Premium Audit

- We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named insured.
- c. The first Named insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 6. Representations

By accepting this policy, you agree:

- The statements in the Declarations are accurate and complete;
- Those statements are based upon representations you made to us; and
- We have issued this policy in reliance upon your representations.

#### 7. Separation Of Insureds

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

- a. As If each Named Insured were the only Named
- Separately to each insured against whom claim is made or "suit" is brought.
- 8. Transfer Of Rights Of Recovery Against Others To Us if the insured has rights to recover all or part of any payment 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 "sult" or transfer those rights to us and help us enforce them.

#### 9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### SECTION V - DEFINITIONS

- "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.
   For the purposes of this definition:
  - Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

#### 2. "Auto" means:

- A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- 4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - 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 a "sult" on the merits, in the territory described in a. above or in a settlement we agree to.

- "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

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- "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- "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
  - h. You have failed to fulfill the terms of a contract or agreement;
  - if such property can be restored to use by:
  - The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - Your fulfilling the terms of the contract or agreement.
- 9. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

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

- (b) Giving directions or instructions, or falling to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
- 10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- 11. "Loading or unloading" means the handling of property:
  - After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - While it is being moved from an aircraft, watercraft or "auto" to the place where it is linally delivered;

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

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

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- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
  - (1) Equipment designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- [3] Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

- 13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 14: "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Mallclous prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your "advertisement"; or
  - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
- 15. "Pollutants" mean 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 recialmed.
- 16. "Products-completed operations hazard";

- a. Includes all "bodlly 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 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.

- 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;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that productscompleted operations are subject to the General Aggregate Limit.
- 17. "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 foss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

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

- 18. "Sult" 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. "Sult" 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.
- "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or shortterm workload conditions.
- 20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 21. "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
- 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 fallure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.
- 22. "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",
    - (2) The providing of or failure to provide warnings or instructions.

Ironshore Specialty Insurance Company by:

Secretary

President

IB.EX.001 (12/07 Ed.)



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10005 Toll Free: (877) IRON411

#### Endorsement #1

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY,

#### COMMON POLICY CONDITIONS

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

- A) Cancellation
  - The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
  - We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least;
    - a) 10 days before the effective date of cancellation. If we cancel for nonpayment of premium; or
    - b) 30 days before the effective date of cancellation if we cancel for any other
  - We will mail or deliver our notice to the first Named insured's jast mailing address known to us.
  - Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
  - 5) If this policy is cancelled, we will send the first Named insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
  - f notice is mailed, proof of mailing will be sufficient proof of notice.
- B) Changes
- C) This policy contains all the agreements between you and us concerning the insurance afforded. The first Named insured shown in the Declarations is authorized to make changes in the terms of this

- policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.
- D) Examination Of Your Books And Records
- We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.
- F) Inspections And Surveys
  - 1) We have the right to:
    - a) Make inspections and surveys at any time;
    - Give you reports on the conditions we find;
       and
    - c) Recommend changes.
  - 2) We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
    - a) Are safe or healthful; or
    - b) Comply with laws, regulations, codes or standards.
  - 3) Paragraphs 1. and 2, of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
  - Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to

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certifization, unider state or municipal atatutes, ordinances or regulations; of boilars, pressure vessels or elevators.

- G) Premiums
- The:first Named Insured shown in the Declarations:
   Is responsible for the payment of all premiums; and
  - Will be the payde for any, return premiums we pay.
- Transfer of Your Rights And Duties: Under This Policy
- Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual harned insured.
- K) If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN LINCHANGED.

Authorized Representation

July 13, 2009

Date

IB.EX.003 (12/07Ed.)



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) iRON411

#### Endorsement # 2

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

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

- 1 That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- 2 That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - a) Preparing, approving, or failing to prepare or approve, maps, shop drawlings, opinions, reports, surveys, field orders, change orders or drawlings and specifications; or
  - b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- 3 Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

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ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009 Date

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Page 2 of 2



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) JRON411

Endorsement #3

Policy Number: 018ER6905001

Effective Data: Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### AMENDMENT OF PREMIUM ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph 5. of SECTION IV - CONDITIONS is replaced by the following:

This insurance does not apply to any "bodlly injury" or "property damage":

- 5 Premium Audit
  - a) We will compute all premiums for this Policy in accordance with our rules and rates.
  - b) Premium shown in this Policy is the advance premium for the policy term. If the final audit develops a premium lass than the advance premium, a minimum premium of will be retained by us. If the final audit develops a premium greater than the advance premium, additional premium shall be due and payable to us on notice to the first Named insured.
  - c) The first Named insured must keep records of the information we need for premium computation, and send us copies at such times as we may request,
  - In the event you cancel this Policy, a minimum premium of earned premium, whichever is greater, will be retained by us.
- or the applicable pro-rata/short rate
- 6 Your fallure to pay premium when due shall be considered a request by the first Named insured or their appointed authority for us to cancel. In the event of such cancellation for non-payment of premium the minimum premium shall be due and payable.
- 7 We have the right, but are not obligated, to rescind our cancellation notice if the premium is received prior to the effective date of cancellation.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

Date

IB.EX.007 (12/07Ed.)



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

#### Endorsement # 4

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### BASIS OF PREMIUM ENDORSEMENT

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed that SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS is amended to include the following definitions of basis of premium used for computing premiums for this coverage:

Gross Sales or Receipts is defined as the gross amount charged by the named insured, concessionaires of the named insured, or by others trading under the insured's name for:

- a. All goods or products, sold or distributed;
- b. Operations performed during the policy period;
- c. Rentals; and
- d. Dues or fees.

Only the following items shall be deducted from Gross Sales or Receipts:

- 1. Sales or excise taxes which are collected and remitted directly to a governmental division;
- 2. Credits for repossessed merchandise and products returned:

Payroll or Remuneration is defined as the sum of salaries, wages, tips, piece of work, commission, bonuses, board and meals for work performed and excluding excess in accordance with the state payroll limitation rules.

Overtime is defined as hours worked at increased rates of pay in excess of hours normally worked in a given day or week. If there is a guaranteed wage plan which assures employees a given wage for working a specific number of hours per week, then the overtime means only the hours worked in excess of that specific amount. If there are records available showing the wages paid for overtime separately, which exceed the amount that would have been paid for the same work during normal hours, then all such excess wages are excluded. If these records show only the total of wages paid, including overtime on a time and one-half basis, then one-third of those wages should be excluded. If double time is paid for overtime and the total pay for such overtime is recorded separately, one-half of the total pay for double time shall be excluded.

Excluded from payroll is remuneration paid to clerical office employees, including those whose duties are strictly limited to keeping the insured's books or records, conducting correspondence, or engaged in clerical work in these areas. Anyone who does not work in the area separated physically by walled floors, or partitions from all other work areas of the insured is

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not considered. An exception to this is if the payroll or clerical office employees are specifically included in the classification wording or footnote of the ISO general liability classification.

Total Cost or Cost is defined as the total cost of all work, let or subjet in connections with each specific project including:

- a. The cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work; and
- b. All fees, bonuses or commissions made, paid or due.

Units is defined as the number of persons or items described.

Rental Receipts is defined as the gross amount charged by the named insured, concessionaires of the named insured, or by others trading under the insured's name for rental of equipment.

Admissions is defined as the total number of persons, other than employees of the named insured; admitted to an event or events conducted on the premises, whether on paid admission, tickets, complimentary, tickets, or passes.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

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1 Exchange Plaza (55 Broadway, NP) 12th Ploor New York, NY 10005 Toll Free; (837) (RON411

#### Endocroment#5

Pollcy Number: 018ER0905001

Effective Date:Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY,

#### CLAIMS NOTIFICATION

This endatsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Send all claim notifications and informations to:

MIDLANDS CLAIM PO Box 23198 Oklahoma City, OK 73123 Phone: 1-800-498-9798 Fax: 405-840-0584

Website: www.midlandsclaim.com

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009 Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) (RON411

#### Endorsement # 6

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **DEDUCTIBLE LIABILITY INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

	SCHEDULE	
Coverage	Amount and	Basis of Deductible
Bodily Injury Liability	SN/A	per claim
	\$N/A	per occurrence
Property Damage Liability	\$N/A	per claim
	\$N/A	per occurrence
Bodily Injury Liability and/or	S N/A	per claim
Property Damage Liability Combined	510,000	per occurrence
Personal Injury Liability	\$10,000	per injury
Advertising Injury Liability	\$10,000	perinjury

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement, if no limitation is entered, the deductibles apply to damages for all "bodily injury", "personal injury", "advertising injury", or "property damage", however caused);

- 3. Our obligation under the Bodily Injury Liability, Personal injury Liability, Advertising Injury Liability, and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages, and the limits of insurance applicable to such coverages will be reduced by the amount of such deductible. "Aggregate" limits for such coverage shall not be reduced by the application of such deductible amount.
- 2. The deductible amounts stated in the Schedule apply
  - a. PER CLAIM BASIS If the deductible is on a "per claim" basis, the deductible amount applies:
    - (1) Under Bodily Injury Liability or Property Damage Liability Coverage respectively:
      - a. to all damages because of "bodlly injury" sustained by one person, or
      - to all damages because of "property damage" sustained by one person or organization,

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- as a result of any one "occurrence."
- (2) Under Bodily Injury Liability and Property Damage Liability Coverage Combined to all damages because of "bodily Injury" and "property damage" sustained by one person or organization as the result of any one "occurrence."
- PER OCCURRENCE BASIS If the deductible is on a "per occurrence" basis the deductible amount applies:
  - (1) Under Bodily Injury Liability or Property Damage Liability Coverage, respectively:
    - to all damages because of "bodily injury" as the result of any one "occurrence," or
    - to all damages because of "property damage" as the result of any one "occurrence."

regardless of the number of persons or organizations who sustain damages because of that "occurrence".

- (2) Under Bodily Injury Liability and Property Damage Liability Coverage Combined to all damages because of "bodily injury" and "property damage" as the result of any one "occurrence regardless of the number of persons or organizations who sustain damages because of that "occurrence."
- PER INJURY BASIS If the deductible is on a "per injury" basis the deductible amount applies;

- Under the Personal Injury Liability Coverage to all damages because of "personal injury" sustained by one person or organization as a result of any one injury.
- (2) Under the Advertising Injury Liability Coverage to all damages because of "advertising Injury" sustained by one person or organization as a result of any one injury.
- The deductible amount stated shall also apply towards the investigation, adjustment and legal expenses incurred in the handling and investigation of each claim, whether or not payment is made to any claimant, comprise settlement is reached, or the claim is denied.
- The terms of this insurance, including those with respect to:
  - (a) Our right and duty to defend any "suits" seeking those damages; and
  - (b) Your duties in the event of an "occurrence," claim, or suit

apply irrespective of the application of the deductible amount.

5. We may pay any part or all of the deductible amount towards investigation, adjustment and legal expense, or to effect settlement of any claim or suit and, upon notification of such payment, you shall promptly reimburse us for such part of the deductible amount as has been paid by us;

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

#### Endorsement #7

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **ASBESTOS EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

RAILROAD PROTECTIVE LIABILITY COVERAGE PART

BUSINESSOWNERS LIABILITY COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below: (The following needs to be completed only when this endorsement is issued subsequent to inception of the policy.)

Named Insured Cedco Inc		
Endorsement Effective June 01, 2009	Policy Number 018ER0905001	

This insurance does not apply to:

- A) "Bodily injury", "property damage" or "personal and advertising injury", in whole or in part, either directly or indirectly
  arising out of, based upon or attributable to any of the following:
  - 1. Asbestos or any asbestos related injury or damage; or
  - any alleged act, error, omission or duty involving asbastos, its use, exposure, presence, ingestion, inhalation, absorption, existence, detention, removal, elimination or avoidance; or
  - the use, exposure, presence, ingestion, inhalation, absorption, existence, detention, removal, elimination or avoidance of asbestos in any environment, building or structure; and
- B) The investigation, settlement or defense of any claim, "sult" or proceeding against the insured alleging any actual or threatened injury or damage which arises out of or would not have occurred but for asbestos "bodily injury", "property damage" or "personal and advertising injury", as described above.

IB.EX.013 (12/07Ed.)

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009 Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 8

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### CONTINUOUS OR PROGRESSIVE INJURY OR DAMAGE EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to any "bodily injury" or "property damage":

- which first existed, or is alleged to have first existed, prior to the inception of this policy. "Property damage" from "your work", or the work of any additional insured, 'performed prior to policy inception will be deemed to have first existed prior to the policy inception, unless such "property damage" is sudden and accidental and takes place within the policy period); or
- 2. which was, or is alleged to have been, in the process of taking place prior to the inception date of this policy, even if the such "bodily-injury" or "property damage" continued during this policy period; or
- which is, or is alleged to be, of the same general nature or type as a condition, circumstance or construction defect
  which resulted in "bodily injury" or "property damage" prior to: the inception date of this policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 9

Policy Number: 018£R0905001

Effective Date Of Endorsement; June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **EXCLUSION - CONTRACTORS - PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

- This insurance does not apply to "bodily injury",
   "property damage" or "personal and advertising
   injury" arising out of the rendering of or fallure
   to render any professional services by you or on
   your behalf, but only with respect to either or
   both of the following operations:
  - Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
  - Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

- Subject to Paragraph 3, below, professional services include:
  - Preparing, approving, or falling to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
  - Supervisory or inspection activities performed as part of any related architectural or engineering activities.
- Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

Date

IB.EX.015 (12/07Ed.)



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 10

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **EMPLOYMENT-RELATED PRACTICES EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section 1 — Coverage A — Bodily Injury And Property Damage Liability: This insurance does not apply to:
  - "Bodily injury" to:
  - (1) A person arising out of any:
    (a) Refusal to employ that person;
    - (b) Termination of that person's employment;
    - (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" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- 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.

The following exclusion is added to Paragraph 2.,
 Exclusions of Section I — Coverage B — Personal And
 Advertising injury Liability:
 This insurance does not apply to:

This insurance does not apply to:
"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 "personal and advertising injury" to that 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.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009 Date

IB.EX.018 (12/07Ed.)



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

#### Endorsement # 11

Policy Number; 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS**

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of, caused by, or attributable to, whether in whole or in part, the following:
  - The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement, of any "exterior insulation and finish system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or
  - "Your product" or "your work" with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system", or any substantially similar system, is

used on the part of that structure containing that component, fixture or feature.

- The following definition is added to the Definitions Section:
- C. "Exterior insulation and finish system" means a nonload bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:
  - A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
  - The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
  - 3. A reinforced or unreinforced base coat;
  - A finish coat providing surface texture to which color may be added; and
  - Any flashing, caulking or sealant used with the system for any purpose.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009.

Date

IB.EX.019 (12/07Ed.)



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 12

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### INFLUENZA OR EPIDEMIC EXCLUSION

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below:

Named Insured Cedco-Inc	en this endorsement is issued subsequent to inception of the policy
Endorsement Effective	Policy Number
June 01, 2009	018ER0905001

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury", loss or damage, or cost or expense arising out of, caused by or resulting from, directly or indirectly:

#### A The:

- 1. Infection or feared or suspected infection with;
- 2. diagnosis of or treatment for, or failure to diagnose or treat;
- 3. quarantine for or attempted containment of, or fallure to quarantine or contain;
- presence or detection of, or failure to detect;
- 5. prevention of or vaccination against, or failure to prevent or vaccinate;
- 6. restrictions on travel due to, or fallure to restrict travel due to; or
- 7. declaration of an epidemic or pandemic due to, or failure to declare an epidemic or pandemic due to;

any type of influenza virus, including but not ilmíted to types A, B or C virus, any subtype or strain of the influenza A, B or C virus (including but not limited to the H5 and H7 subtypes), any similar or related influenza or virus, or any derivation from, reassortment, or mutation (occurring either naturally or through human intervention) of the influenza A, B or C virus, including but not limited to a human influenza virus.

Any epidemic, pandemic, pandemic alert or outbreak (or other term of similar meaning) that is declared, announced or otherwise notified by the U.S. Center for Disease Control and Prevention (as such is reported in the Morbidity and Mortality Weekly Report), World Health Organization, or any national, state or local public health organization (or organization acting in a similar capacity).

Exclusion of the epidemic or pandemic infectious disease shall begin as of the date of such announcement or notification and shall continue until the termination date of such epidemic or pandemic; provided, however, that this exclusion shall continue to apply to any individual case of epidemic or pandemic infectious disease contracted during the exclusionary period that continues beyond the termination date.

IB-EX-022 (12/07Ed.)

# EXHIBIT 4 (Part 2)

Ironshore policy no. 000194200 for policy period of June 1, 2009, to April 1, 2010 Part 2 (ISIC 35 - 62)

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009 Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 13

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### LEAD CONTAMINATION EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
BUSINESSOWNERS LIABILITY COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below: (The following needs to be completed only when this endorsement is issued subsequent to inception of the policy.)

Named Insured Cedco Inc		
Endorsement Effective June 01, 2009	Policy Number 018ER0905001	

This insurance does not apply to:

- A "Bodily injury", "property damage" or "personal and advertising injury" in whole or in part, either directly or indirectly, arising out of, based upon or attributable to any of the following:
  - The use, installation, storage, withdrawal, removal, encapsulation, destruction, containment, testing, distribution, ownership, presence, ingestion, inhalation, absorption, sale or disposal of lead, lead dust, lead fibers or material containing lead;
  - 2. Exposure to lead, lead dust, lead fibers or material containing lead; or
  - 3. Any error or omission in supervision, instructions, recommendations, notices, warnings or advice given, or which should have been given, in connection with lead, lead dust, lead fibers or material containing lead.
- B The Investigation, settlement or defense of any claim, "suit" or proceeding against the insured alleging any actual or threatened injury or damage which arises out of or would not have occurred but for lead "bodily injury", "property damage" or "personal and advertising injury", as described above.

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ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 14

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### **EXCLUSION - COVERAGE C - MEDICAL PAYMENTS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCH	EDULE
Description And Location Of Premises Or Classification:	
Any and All Locations.	
(If no entry appears above, information required to complete applicable to this endorsement.)	this endorsement will be shown in the Declarations as
With respect to any premises or classification shown in the Schedule:	<ol> <li>The following is added to Section I – Supplementary Payments:</li> </ol>
<ol> <li>Section I – Coverage C – Medical Payments does not apply and none of the references to it in the</li> </ol>	h. Expenses incurred by the insured for first aid administered to others at the time of an

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**Authorized Representative** 

July 13, 2009 Date

insurance applies.

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 15

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### MOLD, FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Notwithstanding anything to the contrary contained in the policy or any endorsement attached thereto, this insurance does not apply to and shall not respond to any claim, demand or "suit" alleging:

- "Bodily injury," "Property Damage" or "Personal and Advertising Injury" arising out of, in whole or in part, the actual, alleged or threatened discharge, inhalation, ingestion, dispersal, seepage, migration, release, escape or existence of any mold, mildew, bacteria or fungus, or any materials containing them, at any time.
- 2 Any loss, cost or expense arising out of any:
  - Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean
    up, remove, contain, treat, detaxify or neutralize, or in any way respond to, or assess the effects of any mold,
    mildew, bacteria or fungus, or any materials containing them; or
  - b. Claim, demand or "suit" by or on behalf of a governmental authority or any other person or organization 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 any mold, mildew, bacteria or fungus, or any materials containing them.
- 3 An obligation to contribute to, share damages with, repay or indemnify someone else who must pay damages, loss, cost or expense because of "Bodily Injury," "Property Damage" or "Personal and Advertising Injury" as set forth in 1., 2.a., or 2,b. above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

#### **Endorsement # 16**

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (Broad Form)

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- 1 The insurance does not apply:
  - A. Under any Liability Coverage, to "bodily injury" or "property damage":
    - (a) With respect to which an "Insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
    - (b) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any iaw amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the

- operation of a "nuclear facility" by any person or organization.
- C. Under any Liability Coverage, to "bodlly Injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:
  - (a) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
  - (b) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
  - (c) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damagé" to such "nuclear facility" and any property thereat.
- 2 As used in this endorsement:
  - "Hazardous properties" includes radioactive, toxic or explosive properties.
  - "Nuclear material" means "source material", "Special nuclear material" or "by-product material".

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

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor", "Waste" means any waste material (a) containing "by-product material" other than the tallings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" If at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains mora than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excayation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. "Property damage" includes all forms of radioactive contamination of property.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toli Free: (877) IRON411

Endorsement # 17

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY,

#### SILICA OR SILICA-RELATED DUST EXCLUSION

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:
  - 2. Exclusions

This insurance does not apply to:

Silica Or Silica-Related Dust

- a. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silicarelated dust",
- b. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- c. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or
- B. The following exclusion is added to Paragraph 2, Exclusions of Section I - Coverage B - Personal And Advertising injury Liability:

- 2. Exclusions This insurance does not apply to: Silica Or Silica-Related Dust
- a. "Personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.
- C. The following definitions are added to the Dafinitions Section:
  - 1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
  - "Silica-related dust" means a mixture or combination of silica and other dust or particles.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**Authorized Representative** 

July 13, 2009 Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 18

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

#### TERRORISM EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

We will not pay for loss or damage caused directly or indirectly by "Terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

Where used in this endorsement, "Terrorism" means activities directed against any person, organization or property which activities involve any of the following, or any preparation for, or acts in furtherance of, any of the following (referred to in this endorsement as "Activities"):

- A. The use or threat of force or violence; or
- B. The commission or threat of any dangerous act; or
- The commission or threat of any act that interferes with or disrupts any electronic, communication, information, or mechanical system;

and one or both of the following is applicable to A., B., or C. above:

- 1. The effect or intended effect of the activities described in A., B., or C. above is to intimidate or coerce any government or governmental agency, or the civilian population or any segment thereof, or to disrupt any segment of the economy.
- 2. The effect or intended effect of the activities described in A., B., or C. above is to further any political, ideological, religious, social or economic objectives or to express (or express opposition to) any philosophy or ideology.

"Terrorism" specifically includes, but is not limited to any Activities that:

- A. Involve the use, release or escape of any nuclear materials, or that directly or indirectly result in nuclear reaction or radiation or radioactive contamination of any kind; or
- B. Are carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- C. Involve the Intentional or deliberate release of any pathogenic or poisonous, biological, or chemical materials.

"Terrorism" also specifically includes any "Certified Act of Terrorism." The term "Certified Act of Terrorism" means any act that is certified by the United States Secretary of the Treasury, in concurrence with the United

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States Secretary of State, and the Attorney General of the United States, in accordance with the United States Terrorism Risk insurance Act of 2002 (the "Act"):

- to be an act of terrorism;
- to be a violent act or an act that is dangerous to:
  - human life; property; er
     infrastructure;
- to have resulted in damage within the United States, or outside of the United States in the case of:
  - an-air carrier or vessel described in paragraph (5)(B) of the Act;
     or the premises of a United States mission; and
- D. to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as: part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

all other terms, conditions and exclusions remain unchanged.

Authorized Representative

July 13, 2009

Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 19

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

#### TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is roplaced by the following:

This insurance does not apply to:

- f. Pollution
  - "Bodily Injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
  - 2) Any loss, cost or expense arising out of any:
- 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".

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

**Authorized Representative** 

July 13, 2009

Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) JRON411

Endorsement # 20

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# EXCLUSION – VIOLATION OF STATUTES THAT GOVERN E-MAILS, FAX, PHONE CALLS OR OTHER METHODS OF SENDING MATERIAL OR INFORMATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:
  - 2. Exclusions

This insurance does not apply to:
DISTRIBUTION OF MATERIAL IN VIOLATION OF
STATUTES

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

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

- B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:
  - 2. Exclusions

This insurance does not apply to: DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES

"Personal and advertising Injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

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

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009 Date

IB.EX.032 (12/07Ed.)

Page 1 of 1



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 21

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description and Location of Operation(s):

All Operations.

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

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A — BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I — Coverages);

This insurance does not apply to "bodily injuty" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the

prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- Provides coverage identical to that provided by this Coverage Part;
- 2) Has limits adequate to cover all claims; or
- 3) Remains in effect.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

Date

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Page 1 of 1



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toli Free: (877) IRON411

Endorsement # 22

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# INDEPENDENT CONTRACTORS LIMITATION OF COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to any claim, demand or "suit" arising out of operations performed for you by independent contractors unless:

- (1) Such independent contractors have in force, at the time of the subject "occurrence," commercial general liability insurance listing you as an additional insured; and
- (2) The limits of liability of such insurance are equal to or greater than those shown in the schedule below; and
- (3) The insurance described in (1) and (2) above is primary and non-contributory with respect to such "occurrence."

GENERAL AGGREGATE LIMIT (Other than Products-Completed Operations) \$2,000,000
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT \$2,000,000
PERSONAL INJURY LIMIT AND ADVERTISING INJURY LIMIT \$1,000,000
EACH OCCURRENCE LIMIT \$1,000,000

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 23

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY,

### SERVICE OF SUIT

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

SERVICE OF SUIT

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of any Court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such Court jurisdiction, and all matters arising hereunder shall be determined in accordance with the law and practice of such court. It is further agreed that service of process in such suit may be made upon:

CT Corporation System 1-800-624-0909

or his nominee, and that in any suit instituted against them upon this contract, the Company will abide by the final decision of such Court of any Appellate Court in the event of an appeal.

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

Further, pursuant to any statute of any. State, Territory, or District of the United States of America, which makes provision therefore, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or fils successor or successors in office, as their true and lawful attorney upon whom may be service any lawful process in any action, sult or proceeding instituted by or on behalf of the Named insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

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Page 1 of 1



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

#### Endorsement # 24

Policy Number; 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY,

# ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II Who is An insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - 1. Your acts or omissions; or
  - 2. The acts or omissions of those acting on your behalf;
  - in the performance of your ongoing operations for the additional insured.
  - A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.
  - It is further agreed that such insurance as is afforded by this Policy for the benefits of an additional insured shall be primary.
- With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
   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:
    - The preparing, approving, or failing to prepare or approve, maps, shop drawlings, opinions, reports, surveys, field orders, change orders or drawlings and specifications; or
    - b. Supervisory, inspection, architectural or engineering activities.
  - 2. "Bodily Injury" or "property damage" occurring after:
    - All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
    - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project; or
    - c. "Property Damage" which manifests after expiration of the Policy.

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ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

<u>July 13, 2009</u> Date

1

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**ISIC 51** 



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 25

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Designated Construction Projects: As required by written contract. We will not pay more than \$5,000,000 for A.I., for all Projects Involved, regardless the number of the Projects.

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

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
  - A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  - 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under COVERAGE C regardless of the number of:
    - a. Insureds;
    - b. Claims made or "sults" brought; or
    - c. Persons or organizations making claims or bringing "suits".

- 3. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
- 4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which cannot be

IB.EX.011 (12/07Ed.)

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attributed only to ongoing operations at a single designated construction project shown in the Schedule above;

- Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
- Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the
- "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of Limits of Insurance (SECTION III) not otherwise modified by this endorsement shall continue to apply as stipulated:

ALL OTHER TERMS CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009 Date

IB.EX.011 (12/07Ed.)



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 26

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization: "As required by written contract"

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

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We walve any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

Date

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ISIC 54



1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 27

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

### EMPLOYEE BENEFITS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Coverage	Limit Of Insurance			Each Employee Deductible	Premium
Employee Benefits Programs	5	1,000,000	Each employee	\$ 5,000	\$ Included
	\$	1,000,000	Aggregate		
Retroactive Date:				Service 100 100 100 100 100 100 100 100 100 10	

- A. The following is added to Section I Coverages: COVERAGE – EMPLOYEE BENEFITS LIABILITY
  - 1. Insuring Agreement
    - a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission, of the insured, or of any other person for whose acts the insured is legally liable, 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 to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:
      - The amount we will pay for damages is limited as described in Paragraph D. (Section III – Limits Of insurance); and
      - (2) Our right and duty to defend ends when we have used up the applicable

ilmit of insurance in the payment of judgments or settlements.

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

- b. This insurance applies to damages only if:
  - The act, error or omission, is negligently committed in the "administration" of your "employee benefit program";
  - (2) The act, error or omission, did not take place before the Retroactive Date, if any, shown in the Schedule nor after the end of the policy period; and
  - (3) A "claim" for damages, because of an act, error or omission, is first made against any insured, in accordance with Paragraph c. below, during the policy period or an Ex-tended Reporting Period we provide under Paragraph F: of this endorsement.

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- a "claim" seeking damages will be deemed to have been made at the earlier of the following times;
  - When notice of such "claim" is received and recorded by any insured or by us, whichever comes first; or
- (2) When we make settlement in accordance with Paragraph a, above,

A "claim" received and recorded by the insured within 60 days after the end of the policy period will be considered to have been received within the policy period, if no subsequent policy is available to cover the claim.

- d. All "claims" for damages made by an "employee" because of any act, error or omission, or a series of related acts, errors or omissions, including damages claimed by such "employee's" dependents and beneficiaries, will be deemed to have been made at the time the first of those "claims" is made against any insured.
- 2. Exclusions

This insurance does not apply to:

- a. Dishonest, Fraudulent, Criminal Or Malicious Act Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.
- Bodily-injury, Property Damage, Or Personal And Advertising injury "Bodily injury", "property damage" or "personal and advertising injury".
- Fallure To Perform A Contract
   Damages arising out of fallure of performance of contract by any insurer.
- d. Insufficiency Of Funds
  Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program",
- e. Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation

Any "claim" based upon:

- (1) Fallure of any investment to perform;
- (2) Errors in providing information on past performance of investment vehicles; or
- (3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".
- f. Workers' Compensation And Similar Laws

Any "claim" arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

#### P. FRISA

Damages for which any Insured Is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

#### h. Available Benefits

Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

- Taxes, Fines Or Penalties
   Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.
- Employment-Related Practices
   Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.
- B. For the purposes of the coverage provided by this endorsement:
  - All references to Supplementary Payments Coverages A and B are replaced by Supplementary Payments — Coverages A, B and Employee Benefits Liability.
  - Paragraphs 1.b. and 2. of the Supplementary Payments provision do not apply.
- C. For the purposes of the coverage provided by this endorsement, Paragraphs 2, and 3, of Section II – Who is An insured are replaced by the following:
  - 2. Each of the following is also an insured:
    - Each of your "employees" who is or was authorized to administer your "employee benefit program".
    - Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
    - 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 Endorsement.
  - Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will

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qualify as a Named Insured If no other similar insurance applies to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
- Coverage under this provision does not apply to any act, error or omission that was committed before you acquired or formed the organization.
- D. For the purposes of the coverage provided by this endorsement, Section III – Limits Of Insurance is replaced by the following:
  - 1. Limits Of Insurance
    - The limits of insurance shown in the Schedule and the rules below fix the most we will pay regardless of the number of;
      - (1) Insureds;
      - (2) "Claims" made or "suits" brought;
      - (3) Persons or organizations making "claims" or bringing "suits";
      - (4) Acts, errors or omissions; or
      - (5) Benefits included in your "employee benefit program".
    - b. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omis-sions negligently committed in the "administration" of your "employee benefit program".
    - c. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
      - (1) An act, error or omission; or
      - A series of related acts, errors or omissions

negligently committed in the "administration" of your "employee benefit program".

However, the amount pald under this endorsement shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

The Elmits of Insurance of this endorsement 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 of the policy to which this endorsement is attached, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will

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be deemed part of the last preceding period for purposes of determining the Limits Of Insurance.

- 2. Deductible
  - a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Schedule as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
  - b. The deductible amount stated in the Schedule applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
  - The terms of this insurance, including those with respect to:
    - (1) Our right and duty to defend any "suits" seeking those damages; and
    - (2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or "claim" apply irrespective of the application of the

apply irrespective of the application of the deductible amount.

- d. We may pay any part or all of the deductible amount to effect settlement of any "cfaim!" or "suita" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.
- E. For the purposes of the coverage provided by this endorsement, Conditions 2, and 4, of Section IV – Commercial General Liability Conditions are replaced by the following:
  - 2. Duties in The Event Of An Act, Error Or Omission, Or "Claim" Or "Sult"
    - a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a "claim". To the extent possible, notice should include:
      - (1) What the act, error or omission was and when it occurred; and
      - (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
    - b. If a "claim" is made or "suit" is brought against any insured, you must:
      - (1) Immediately record the specifics of the "claim" or "suit" and the date received;
      - (2) Notify us as soon as practicable.
        You must see to it that we receive written
        notice of the "claim" or "suit" as soon as
        practicable.

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- c. You and any other involved insured must:
  - Immediately send us copies of any demands, notices, summons or legal papers received in connection with the "claim" or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "sult"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.
- No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.
- Other Insurance
   If other valid and collectible insurance is
   available to the insured for a loss we cover
   under this endorsement, our obligations are
   Ilmited as follows;
  - a. Primary insurance This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.
  - b. Excess insurance
    - (1) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the policy period shown in the Schedule of this insurance and that applies to an act, error or omission on other than a claims made basis, if:
      - (a) No Retroactive Date is shown in the Schedule of this insurance; or
      - (b) The other insurance has a policy period which continues after the Retroactive Date shown in the Schedule of this insurance.
    - (2) When this insurance is excess, we will have no duty 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.

- (3) 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 the total amount that all such other insurance would pay for the loss in absence of this insurance; and the total of all deductible and self-insured amounts under all that other insurance.
- (4) 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 Schedule of this endorsement.
- c. Method Of Sharing If all of 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 limits of insurance to the total applicable limits of insurance of all insurers.
- F. For the purposes of the coverage provided by this endorsement, the following Extended Reporting Period provisions are added, or, if this endorsement is attached to a claims-made Coverage Part, replaces any similar Section in that Coverage Part: EXTENDED REPORTING PERIOD
  - You will have the right to purchase an Extended Reporting Period, as described below, if:
    - This endorsement is canceled or not renewed; or
    - We renew or replace this endorsement with insurance that;
      - (1) Has a Retroactive Date later than the date shown in the Schedule of this endorsement; or
      - (2) Does not apply to an act, error or omission on a claims-made basis.
  - The Extended Reporting Period does not extend
    the policy period or change the scope of
    coverage provided, it applies only to "claims" for
    acts, errors or omissions that were first
    committed before the end of the policy period
    but not before the Retroactive Date, if any,
    shown in the Schedule. Once in effect, the

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- Extended Reporting Period may not be canceled.
- An Extended Reporting Period of five years is available, but only by an endorsement and for an extra charge.

You must give us a written request for the endorsement within 60 days after the end of the policy period. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due. We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The "employee benefit programs" insured;
- b. Previous types and amounts of insurance;
- Limits of insurance available under this endorsement for future payment of damages; and
- d. Other related factors.

The additional premium will not exceed 100% of the annual premium for this endorsement. The Extended Reporting Period endorsement applicable to this coverage shall set forth the terms, not inconsistent with this Section, applicable to the Extended Reporting Period, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Reporting Period starts.

- 4. If the Extended Reporting Period Is in effect, we will provide an extended reporting period aggregate limit of insurance described below, but only for claims first received and recorded during the Extended Reporting Period. The extended reporting period aggregate limit of insurance will be equal to the dollar amount shown in the Schedule of this endorsement under Limits of Insurance. Paragraph D.1.b. of this endorsement will be amended accordingly. The Each Employee Limit shown in the Schedule will then continue to apply as set forth in Paragraph D.1.c.
- G. For the purposes of the coverage provided by this endorsement, the following definitions are added to the Definitions Section:
  - 1. "Administration" means:
    - a. Providing Information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
    - Handling records in connection with the "employee benefit program"; or
    - Effecting, continuing or terminating any "employee's" participation in any benefit

included in the "employee benefit program".

However, "administration" does not include handling payroll deductions.

- "Cafeteria plans" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
- "Claim" means any demand, or "suit", made by an "employee" or an "employee's" dependents and beneficiaries, for damages as the result of an act, error or omission.
- "Employee benefit program" means a program
  providing some or all of the following benefits to
  "employees", whether provided through a
  "cafeteria plan" or otherwise:
  - a. Group life insurance, group accident or health insurance, dental, vision and hearing plans, and flexible spending accounts, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
  - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
  - Unemployment insurance, social security benefits, workers' compensation and disability benefits;
  - d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tultion assistance plans; transportation and health club subsidies; and
  - Any other similar benefits designated in the Schedule or added thereto by endorsement.
- H. For the purposes of the coverage provided by this endorsement, Definitions 5, and 18. In the Definitions Section are replaced by the following:
  - "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
  - "Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged, "Suit" includes:

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Page 5 of 6

 An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our censent; or  Any other alternative dispute resolution proceeding in which such damages are utelimed and to which the insured applications with our consent.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009 Date

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1 Exchange Plaza (55 Broadway, NY) 12th Floor New York, NY 10006 Toll Free: (877) IRON411

Endorsement # 28

Policy Number: 018ER0905001

Effective Date Of Endorsement: June 01, 2009

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
As required by written contract.  No coverage is provided under this endorsement for single and multi family dwelling units.	
Information required to complete this Schedule, if not show	above, will be shown in the Declarations.

Section II - Who is An insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

July 13, 2009

Dave

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Page 1 of 1



One State Street Plaza 7th Floor New York, NY 10004 Toll Free: (877) IRON411

Policy Number: 018ER0905001

Effective Date Of Endorsement: April 01, 2010

# **CANCELLATION ENDORSEMENT**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

In consideration of a return premium of in its entirety effective April 01, 2010.

It is understood and agreed that the policy is hereby cancelled

REDACTED

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

March 26, 2010

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# EXHIBIT 5

Plaintiffs' Complaint for Damages filed on February 3, 2011, in Clark County District Court, Nevada, in the action captioned *Anthem Country Club Community Association, Inc. v. Terravita Home Construction Company*, Case No. A-11-634626-D ("*Anthem* action") (ISIC 183-206)

(Page 2 of 25) Electronically Filed 02/03/2011 03:25:15 PM COMP Paul P. Terry Jr., SBN 7192 CLERK OF THE COURT John Stander, SBN 9198 Mclissa Bybee, SBN 8390 3 Asmara Tarar, SBN 10999 ANGIUS & TERRY LLP 4 1120 N. Town Center Drive, Suite 260 Las Vegas, NV 89144 5 Telephone: (702) 990-2017 6 Facsimile: (702) 990-2018 istander@angius-terry.com 7 mbybco@angius-terry.com Attorneys for Plaintiff 8 9 DISTRICT COURT 10 CLARK COUNTY, NEVADA 11 Case No. A-11-634626-D ANTHEM COUNTRY CLUB COMMUNITY) 12 ASSOCIATION, INC., a Nevada non-profit Dept. No. XXII 13 mutual benefit corporation, 14 COMPLAINT FOR DAMAGES Plaintiff. 15 [Chapter 40.600 to 40.695] ARBITRATION EXEMPTIONS CLAIMED: 16 TERRAVITA HOME CONSTRUCTION 17 1. Declaratory Relief COMPANY, an Arizona corporation; and Significant Issues of Public Policy 2 18 DOES I through 300, Damages Exceed \$50,000 per plaintiff 3. 19 exclusive of interests and costs Defendants. 20 JURY TRIAL DEMANDED 21 22 23 24 25 26 27 28 ANGIGS & TERRY LLP 1120 V. Limb Center Dr. Suite 260 Lux Vegas, NV 89144 (201) 990-2017

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ANGILS & TERRY LAP 1120 N. Tuwn Center Dr. Suite 760 Los Vegas, NV 89144 (702) 990-2017

COMES NOW Plaintiff, by and through its attorneys, ANGIUS & TERRY LLP, and for causes of action against Defendants, and each of them, alleges as follows:

# GENERAL ALLEGATIONS

- 1. Plaintiff ANTHEM COUNTRY CLUB COMMUNITY ASSOCIATION, INC. ("Association" or "Plaintiff") is, and at all relevant times was, a Nevada non-profit mutual benefit corporation duly organized and existing by virtue of the laws of the State of Nevada, located in the City of Henderson, Clark County, Nevada.
- Association is informed and believes and thereon alleges that defendant TERRAVITA HOME CONSTRUCTION COMPANY ("TERRAVITA") is, and at all relevant times was, an Arizona corporation doing business in Clark County, Nevada.
- The true names and capacities of Does 1 through 300 are unknown to 3. Association, who therefore sues said defendants by such fictitious names. The Association will move to amend this Complaint to show their true names and capacities when the same have been ascertained.
- Association is also unaware of the basis of liability as to some or all of the fictitious defendants sucd herein as Does 1 through 300 but believes that their liability arises out of the same general facts set forth herein. Association will move to amend this Complaint to assert the theories of liability against the fictitiously named defendants when they have been ascertained.
- Association is informed and believes and thereon alleges that each of the Doc Defendants are legally responsible in some manner for the events and damages referred to herein, and legally and proximately caused damage to Association. Each and every defendant had a duty to Association's members as reasonably foresecable purchasers and Project residents to use reasonable care in performing the tasks as related to the planning, development, creation, improvement, design, construction, inspection, promotion and sale of the Anthem Country Club Project.
- Association is informed and believes and thereon alleges that at all relevant times, each defendant was the agent and employee of each of its co-defendants, and in doing the things herein alleged, was acting within the course and scope of his/her authority as such

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ANAUS & TEIRTY LLP 1120 N. Diven Center Dr. Suite 260 Lies Vegas, NV 89144 (702) 990-2017 agent and employee, and each defendant has ratified and approved the acts of his/her agents and employees.

7. Association is informed and believes and thereon alleges that TERRAVITA owned certain real property located in the City of Henderson, Clark County, Nevada, consisting of approximately 1647 single family homes, a club house, pool and Common Areas, commonly known as the Anthem Country Club (hereinafter, "the Project"), but more particularly described as:

Anthem Country Club, Parcel I of Parcel Map in Book 084, Page 0057, recorded June 1, 1998, as Document No. 02189, Parcel 2 of Parcel Map in Book 084, Page 0058, recorded June 1, 1998, as Document No. 02192, Parcel 30 of Parcel Map in Book 084 Page 0059, recorded June 1, 1998, as Document No. 02196, Parcel 31 of Parcel Map in Book 084, Page 0060, recorded June 1, 1998, as Document No. 02199, Parcel 32 of Parcel Map in Book 084, Page 0061, recorded June 1, 1998, as Document No. 02202, all of the Official Records of the Clark County, Nevada recorder.

- 8. Association is informed and believes and thereon alleges that TERRAVITA and Does I through 10 (collectively referred to herein as "Developer Defendants") developed, planned, improved, designed, constructed, promoted, marketed, advertised and sold the homes and Common Areas within the Project to individual members of Association, or their predecessors in title.
- Association is informed and believes and thereon alleges that Developer
  Defendants created Association, and caused it to accept management, operation and control of
  the Common Areas and various aspects of the Project for the benefit of its members.
- 10. Association is informed and believes and thereon alleges that Developer Defendants caused and assented to the recordation of certain Covenants, Conditions and Restrictions ("CC&R's"), recorded in the office of the Clark County Recorder.
- 11. Association is informed and believes and thereon alleges that Developer Defendants caused and assented to the filing of certain Articles of Incorporation ("Articles") in the Office of Secretary of State of the State of Nevada and further caused and assented to

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ANGIUS & TERRIT LLP 1120 M. Inwo Center Di Suite 260 Leo Vogas, NV 89144 (702) 990 2017 the preparation and execution of certain By-Laws ("Bylaws") pertaining to the Association. (The Bylaws, Articles and CC&R's are referred to collectively as the "Governing Documents.")

- 12. As set forth in the Governing Documents and Nevada law, the purpose and powers of Association are, and at all relevant times were, to provide administration, maintenance, preservation and architectural control of the Common Areas within the Project; to preserve the values and amenities in the Project; to promote the general welfare of the community comprising the Association; and to possess and exercise all powers of a non-profit mutual benefit corporation operating for the benefit and on behalf of the members, subject only to the limitations set forth in the Governing Documents.
- 13. As further set forth in the Governing Documents and Nevada law, Association is obligated to maintain, repair and replace various elements of the real property and improvements thereto, and located within the Project referred to as "Common Areas" for the common use and enjoyment of all members of Association.
- 14. Association is informed and believes and thereon alleges that Developer Defendants and Does 11 through 25 (collectively referred to herein as "Fiduciary Defendants") were employees and/or agents of Developer Defendants, who served as directors and officers of Association until such time as Developer Defendants, by virtue of the Governing Documents and Nevada law, could no longer elect the Fiduciary Defendants to serve as Association's directors and officers.
- 15. Association is informed and believes and thereon alleges that Defendants TERRAVITA and Does 26 through 100 were individuals and/or entities and all their employees and agents (collectively referred to herein as "Contractor Defendants") who performed services as general contractors or subcontractors, and/or provided equipment, materials and/or supplies for the construction of the Project.
- 16. Association is informed and believes and thereon alleges that Does 101 through 125 were individuals and/or entities (collectively referred to herein as "Design Professional Defendants") who provided design services to Developer Defendants in

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ANGILS & THIRD LLP 1) 20 V. Inwe Corner Dr. State 260 Law Veges, NV 89144 1703) 990-2017 connection with the planning, design, specification, inspection, development and construction of the Project.

- 17. Association is informed and believes and thereon alleges that Does 126 through 150 were individuals and/or entities (collectively referred to herein as "Supplier Defendants") who supplied, manufactured and/or distributed materials, products and goods used in or for the construction of the Project.
- 18. Association is informed and believes and thereon alleges that Does 151 through 175 (collectively referred to herein as "Surety Defendants") are individuals and/or entities who were, and now are, authorized to engage in, and actually engaged in, the surety insurance business in the State of Nevada.
- 19. Association is informed and believes and thereon alleges that Does 176 through 200 (collectively referred to herein as "Successor Defendants") were individuals and/or entities who succeeded to the obligations and liabilities of the Developer Defendants and Contractor Defendants herein pursuant to operation of law, contracts, investment or by other legal means.
- at all relevant times there existed, a unity of interest and ownership between and among Developer Defendants, Fiduciary Defendants and Does 201 through 225 (collectively referred to herein as "Alter Ego Defendants"), such that any individuality and separateness between and among the Alter Ego Defendants ceased to exist, and that if the acts that harm Association are treated as those of said Developer Defendants alone, an inequitable result will follow such that equity requires that the Alter Ego Defendants be held responsible for the acts of the Developer Defendants. The circumstances by which such liability should be imposed include, but are not limited to, failure to adequately capitalize the corporation; the total absence of corporate assets, or undercapitalization; diversion of assets from the corporation by or to a stockholder or other person or entity, to the detriment of creditors or other third parties, or manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another; contracting with another with intent to avoid performance by use

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ANGILS & THIRTY LLP 1120 N. THAN Center Or. Suite 260 Line Veges, NV 89 (ad (702) 990-20)? of the corporate entity as a shield against personal liability; and formation and use of the corporation to transfer to it the existing liability of another person or entity.

- Association is informed and believes and thereon alleges that from time to time during the approximate period 1998 to 2003 (the "Construction Period"), and from 2003 to the date of this Complaint, but particularly during the actual construction of the Project, defendants performed inspections and reported on conditions of various elements of the Project, including the Common Areas, and made recommendations as to said conditions to co-defendants.
- Association is informed and believes and thereon alleges that defendants or those who such defendants hired to make inspections did not reveal, disclose or inform Association or its members of the defective conditions of the Project observed during inspections conducted by said parties, and Association's members reasonably relied on the implied and express representation that the Project and Common Areas were free from defects and that the Association's obligations of maintenance, repair and replacement of the Common Areas as required by the Governing Documents could be funded by the budget estimates submitted by defendants to Association.
- 23. Association is presently unaware of when all of the defective conditions alleged herein first occurred or manifested themselves or caused physical injury to or destruction of tangible property, or the loss of use of such property, but asserts that the construction deficiencies at the Project have developed and occurred over a number of years since substantial completion of the Project, said deficiencies and resulting physical injuries being continuous and progressive.
- 24. Since the original construction of the Project and for a period of several years, thereafter, defendants promised, agreed to and actually did make certain repairs to the Project's Common Areas, and in doing so, Association reasonably relied on defendants' promises, agreements and repairs, and thereby deferred the filing of the within action. During the period in which defendants made such promises, agreements and repairs, all statutes of limitations were tolled and defendants are estopped from claiming that the alleged expiration of any statutes of limitations bar the within action.

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- 25. Association is informed and believes and thereon alleges that Association and its members have sustained and suffered consequential damages resulting from defendants' acts and/or omissions including, without limitation, physical injury and/or destruction of tangible property and the loss of use of Common Areas; consequential damages to Common Areas; damage to separate interests related to Common Area defects; damage to personal property related to Common Area defects; and has or will incur relocation expenses.
- 26. Pursuant to the Governing Documents and Nevada Revised Statute Section 116.3102, Association brings this action individually on its own behalf and in its representative capacity for damage to the Common Areas, damages to the separate property interests which arise out of or are integrally related to damage in the Common Areas, and damages to the separate interests that Association is obligated to maintain or repair. Pursuant to said Section, Association has standing to institute this legal action for the damages alleged berein in its own name as the real party in interest and without joining with it the individual owners of the common interest development, with the exception of those damages or injuries that are intangible and inherently personal to the individual members of Association. Association commenced this action, in part, to protect the health, safety and welfare of the members of the Association.
- 27. Association also brings this action to enforce the personal and property rights of the Association members pertaining to the undivided interests in the Common Areas of the project, and to enforce the property rights pertaining to the Common Areas. The persons in the class are so numerous that the joinder of all such persons is impractical and the disposition of their claims in a class action is a benefit to the parties and to the Court. There is a well-defined community of interest in the common questions of law and fact affecting the parties to be represented in that this action involves construction defects and design deficiencies in the Common Areas of the subject property. This action also involves alleged breaches of warranties. The common questions of law and fact predominate over questions of law and fact which pertain only to individual class members. Proof of a common or single state of facts will establish the right of each member of the class to recover. The Association will fairly and adequately represent the interests of the class. Association sues in its representative

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ANGIUS & THICKY LLP 1120 N. Town Center Dr. State 260 Law Yogas, NV 89340 (702) 990-2017 capacity on all causes of action which are not appropriately the subject of Association claims under Nevada Revised Statute Section 116.3102. Association has and/or will receive assignments of causes of action against the defendants from each of the members of the Association.

- 28. Association is informed and believes and thereon alleges that Defendants TERRAVITA and DOES I through 100 were, and at all times herein mentioned are, engaged in the production of residential structures and appurtenances for sale and use by members of the general public, and that said Defendants, and each of them, participated in the development, design, construction and/or sale of the Project.
- 29. Association is informed and believes and thereon alleges that Defendants TERRAVITA and DOES I through 100, as developers, sellers and/or builders developed the Project, and it was the intent and understanding of such defendants that the Common Areas of the project would be used by members of the public for residential purposes and sold to individual members of Association.
- 30. Association is informed and believes and thereon alleges that Defendants TERRAVITA and DOES 1 through 100, as developers, designers, sellers and/or builders of the Project, knew that the Project and structures thereon, including the Common Areas, would be sold to and be used by members of the general public for the purpose of residences, and said Defendants knew or reasonably should have known that the persons who would purchase said units and Common Areas would do so without inspection for the defects set forth herein.
- 31. Defendants TERRAVITA and DOES 1 through 100, at all times herein mentioned, were and are merchants with respect to the Project and structures thereon, and represented that the Project and structures thereon, including the Common Areas, were of merchantable quality and were erected in a reasonable and workmanlike manner.
- 32. Defendants TERRAVITA and DOES 1 through 100, as developers, mass-developers, mass-constructors and mass-producers of the Project, are liable and responsible to Plaintiff for all damages suffered as a result of the Common Area deficiencies set forth herein.
- 33. Within the past two years, Association has discovered that the project has been and is experiencing defective conditions of the real property and structures thereon, including

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without limitation; cracked and deteriorated concrete curb and gutter; chips in the concrete curb and gutter; water ponding in concrete gutters; vertical offset concrete curb; cracked concrete drainage swales or cross gutters; cracked, chipped and deteriorated concrete sidewalks; vertical offset concrete sidewalk; ponding on concrete sidewalk; cracked and eroded asphalt payement; deteriorated asphalt seal; asphalt payement below edge of swale; brick pavers set below edge of swale; irregular asphalt pavement surface (gouges); sinkhole in asphalt pavement; asphalt not sealed for certain communities; ponding on asphalt pavement; ponding on pavers; deteriorated concrete utility pad; debris on finish surface; blue reflective fire hydrant blue payement markers omitted; sinkhole has formed in the street; broken utility collar; cracked concrete manhole cover; chipped concrete utility pad or manhole cover; cracked concrete vault cover or pad; settled concrete utility vault; sinking storm drain inlets; efflorescence forming on retaining walls; decorative caps on retaining walls are deteriorating; color coat on retaining walls is deteriorating and color is changing; cracked masonry fence; short vertical reinforcing in masonry fence; missing vertical and horizontal reinforcing in masonry fence; metal fence or post installed in direct contact with soil; metal fencing is not properly installed, metal fencing is rusting, cracked concrete landscape curb at base of fence; expansion joint filled with stucco or grout; exposed wall footing; deteriorated wall caps; incorrect drain inlets at cul-de-sacs; ramp is omitted; mail boxes are too low; pool lights are improperly installed; a second "residents only" entry and exit was not provided; and cracks in the bottom of the community pool. Said components are not of merchaniable quality, nor were they designed, erected, constructed or installed in a workmanlike manner, but instead are defective and, as now known, the subject components demonstrate improper, nonexistent, and/or inadequate design, construction, manufacture, installation, and/or build. Association is informed and believes and thereon alleges that the structures may be additionally defective in ways and to an extent not precisely known, but which will be established at the time of trial, according to proof.

34. Association has complied with all prefiling requirements of Nevada Revised Statutes 40.600 through 40.695, except to the extent such requirements have been excused.

ANGRUS & TERRY LLP 1120 V. Lown Center 17, Suite 260 Law Vegas, NV 89144 (702) 990-2017 (Page 11 of 25)

ANGILS & TERRY LLP 1720 N. Town Center Dr. Svine 260 Las Veyes, NV 891344 (702) 990-2012 waived or rendered irrelevant by the actions, failure to act or status of Defendants, and each of them,

- Association is informed and believes and thereon alleges that the items generally referred to and particularly described herein were "latent deficiencies" within the meaning of Nevada Revised Statutes \$11.202 through \$11.205, in that the above-described defects arose out of, were attributable to and are directly and proximately caused by the above-described latent deficiencies in the design, specifications, planning, supervision, observation of construction, construction, development and/or improvement of the subject premises and subject structures, and that prior to the time when it was discovered by Association as set forth herein, could not have been discovered by the exercise of reasonable diligence. Association, at all times herein mentioned, relied on the skill of Defendants TERRAVITA and DOES 1 through 100, in producing the Project and structures thereon, including the Common Areas, that were reasonably fit for their intended purpose.
- 36. Association is still not fully aware of all of the causes, the full extent and possible legal significance of the results or causes of the property conditions herein above-described due to the loss being continual and latent in nature. Association is lay individuals who have required expert consultations to provide a review of the property conditions. Association is still not informed of all causes or entire results of the full extent of these latent deficiencies, nor is Association fully informed of the potential causes of the resultant distress due to the loss being continual and latent in nature.
- Association is informed and believes and thereon alleges that Defendants, TERRAVITA and DOES I through 100, did inspect and market the Common Areas with full knowledge of the causes and effects of defects in the construction of the Common Areas, the deficiencies in design, installation and supervision thereof and, in willful and reckless disregard of the defective conditions, causes and results. In particular, Association is informed and believes and thereon alleges that said Defendants in the inspection, design, installation and supervision of the Project, engaged in a course of conduct to reduce the costs of development by the use of substandard, deficient and inadequate design and construction techniques and materials.

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ANGRES & TEMEY LLP 1130 N. Envo Genter Dr. Suite 260 Lin Vegas, NV 89144 (702) 990-2017

- Association is informed and believes and thereon alleges that Defendants TERRAVITA and DOES I through 100, ignored curing the causes of the defects and pursued a course of development and construction of the Project so as to increase their profit from the project at the expense of the ultimate purchaser, knowing that the defects were latent and not apparent from a casual inspection, but would only become apparent as time passed.
- 39. Association is informed and believes and thereon alleges that any and all repair attempts by Defendants TERRAVITA and DOES 1 through 100, failed to adequately correct said property damage and deficiencies, resulting in further property damage.
- 40. Association is informed and believes and thereon alleges that instead of causing the necessary and required reconstruction and repair of the Project, Defendants TERRAVITA and DOES 1 through 100, have caused cosmetic, temporary or ineffective repairs to be made to various portions of the Project for the purpose of leading Association to believe that said Defendants were resolving and correcting all deficiencies. By virtue of such conduct, said Defendants are estopped to assert that the Association has not commenced this action in a timely fashion and are further estopped to assert that the Plaintiff may not seek the damages herein sought.
- 41. Association is informed and believes and thereon alleges that the above-described defects arose out of, were attributable to, and are directly and proximately caused by the above-described deficiencies in the design, specification, planning, supervision, observation of construction, development and/or improvement and any repairs to the Project, and that prior to the time when the defects were discovered by Association as set forth herein, they could not have been discovered by the exercise of reasonable diligence.

## CAUSES OF ACTION

# FIRST CAUSE OF ACTION (Breach of Implied Warrantics) (Against TERRAVITA, DOES 1 through 100 and DOES 176 through 225)

- 42. Association realleges and incorporates by reference paragraphs I through 41.
- 43. At the time each of the homes were purchased by individual members of Association, Defendants TERRAVITA and Does 1 through 100 impliedly warranted that the

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ANGUS & THRRY LLP 1120 N. Luva Conter Hr. Suite 389 Los Vegna, NV 89144 (702) 990-2017 Common Areas were constructed in accordance with applicable law, according to sound standards of engineering and construction, in a commercially reasonable, habitable and workmanlike manner and free from defective materials.

- 44. Defendants TERRAVITA and Does I through 100 impliedly warranted that the Common Areas were of merchantable quality and were fit for ordinary residential and community purposes without significant defective construction or conditions un-remedied or unrepaired by said Defendants.
- Association is informed and believes and thereon alleges that the Common Areas were not constructed in accordance with applicable law or according to sound standards of engineering and construction, were not constructed in a workmanlike manner, were not free from defective materials, and were not of proper durability, reliability, habitability, merchantability, and/or general quality and not fit for their intended use.
- 46. Association is informed and believes and thereon alleges that as a direct and proximate result of the defects set forth herein, Association has suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and will hereafter be required to perform works of repair, restoration, and construction to portions of the Common Areas to prevent further damages and to restore the structures to their proper condition. Association will establish the precise amount of such damages at trial, according to proof, for the following damages:
  - a. The cost of any repairs already made;
  - The cost of any repairs yet to be made that are necessary to cure any construction defect;
  - c. The expenses of temporary housing reasonably necessary during the repairs;
  - The loss of the use of all or any part of the residences;
  - e. The value of any other property damaged by the construction defects;
  - f. The reduction in market value of the residences;
  - Any additional costs incurred by the Plaintiff, including, but not limited to, any costs and fees incurred for the retention of experts;
  - h. Any reasonable attorney's fees;

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and habitable manner.

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ANGIUS & TERRY LLP 1120 N. Fown Center Dr. Suito 760 Los Vegos, NV 89144 (702) 990-2017 Any interest provided by statute;

WHEREFORE, Association prays for judgment as hereinafter set forth.

# SECOND CAUSE OF ACTION (Breach of Express Warranties)

(Against TERRAVITA, DOES 1 through 100 and DOES 176 through 225)

- 47. Association realleges and incorporates by reference paragraphs 1 through 41.
- 48. Association is informed and believes and thereon alleges that Defendants

  TERRAVITA and DOES I through 100, expressly warranted through sales brochures of the subject premises, related advertising circulars and materials, and through the contracts of sale and related sales warranty information regarding the subject premises, that the Project, including the Common Areas, was designed and constructed in a commercially reasonable
- 49. When Defendants TERRAVITA and DOES 1 through 100 offered the Project, including the Common Areas, for sale to the general public for use as residences, Association relied on the express representations of Defendants TERRAVITA and DOES 1 through 100 that the Common Areas were marketed for sale to the general public, and thus were of merchantable quality, suitable for their intended purpose, without major, significant defective construction or conditions, un-remedied or unrepaired by said Defendants.
- Defendants TERRAVITA and DOES I through 100 breached these express warranties by selling the Project, including the Common Areas, with the above-described deficiencies in the design, specification, planning supervision, construction, observation of construction, development and/or improvement and repair of the Common Areas.
- 51. As a direct and proximate result of the breach of the express warranties by Defendants TERRAVITA and DOES 1 through 100, as alleged above, Association and its members have suffered damages stemming from the failure of the Common Areas, as set forth above.
- 52. Association is informed and believes and thereon alleges that as a direct and proximate result of the breaches set forth herein, Association has suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and will hereafter be required to perform investigations and works of repair,

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ANGLUS & THERY LLD (178) Y. Tuwn Center Dr. Suite 260 Lass Vegas, NV 89144 (702) 990-2017 restoration, and construction to portions of the Common Areas and individual homes to prevent further damage and to restore the structures to their proper condition, and/or will suffer damages in an amount the full nature and extent of which shall be ascertained according to proof at trial.

WHEREFORE, Association prays for judgment as hereinafter set forth.

# THIRD CAUSE OF ACTION (Negligence) (Against TERRAYITA and DOES 1 through 300)

- Association realleges and incorporates by reference Paragraphs 1 through 41.
- 54. Association is informed and believes and thereon alleges that Defendants

TERRAVITA and DOES 1 through 300, were and are builders, contractors, general contractors, subcontractors, suppliers, material men, architects and/or engineers, or other persons, entities or professionals who participated in the process of design, engineering, manufacture, and/or construction of the Project, including the Common Areas, and who performed works of labor, supplied materials, equipment and/or services necessary for the building and construction, including supervision of construction of the Project with the knowledge that the Common Areas would be sold to and used by members of the public. In so doing, said Defendants in the capacity as builder, contractor, subcontractors, supplier, materialmen, architect, engineer, seller and/or general contractor or otherwise, caused the Project to be designed, engineered and/or constructed through their own works of labor, their supplying of materials, equipment and services, and through causing other contractors and subcontractors, including other Defendants to perform works of labor, to supply materials, equipment and services in order to properly complete the Project so that it could be sold to and used by members of the public.

Association is informed and believes and thereon alleges that Defendants TERRAVITA and DOES 1 through 300, whether builder, contractor, subcontractor, supplier, material men, architect, engineer or otherwise, negligently, carelessly, tortuously, and wrongfully failed to use reasonable care in the analysis, preparation, design, manufacture, construction, and/or installation of the Project.

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ANGILS & TERRY LEP 1120 N. Times Conter In-State 260 Lay Vegus, NV 89144 (702) 990-2017 Association is informed and believes and thereon alleges that Defendants
TERRAVITA and DOES 1 through 300, whether builder, contractor, subcontractor, supplier, material men, architect, engineer or otherwise, performed work, labor and/or services for the construction of the Project, and each knew or should have known that if the Project was not properly or adequately designed, engineered, supervised and/or constructed, that the owners and users would be substantially damaged thereby, and that the Project would be defective and not of merchantable quality.

- 57. The Defendants TERRAVITA and DOES I through 300 were under a duty to exercise ordinary care as builder, contractor, subcontractor, supplier, material men, architect, engineer or otherwise to avoid reasonably foreseeable injury to users and purchasers of the Project, including the Common Areas, and knew or should have foreseen that purchasers and/or users would suffer the damages set forth herein if said Defendants, and each of them, failed to perform their duty to cause the Project to be designed, engineered and constructed in a proper workmanlike manner and fushion.
- In performing the works of a builder and/or contractor, subcontractor, supplier, material man, architect, engineer or otherwise, Defendants TERRAVITA and DOES I through 300 breached their duty owed to Association and neglected to perform the work, labor and services properly or adequately in that each said Defendant so negligently, carelessly and in an unworkmanlike manner performed the aforesaid work, labor and/or services such that the Project, including the Common Areas, was designed, engineered and/or constructed improperly, negligently, carelessly and/or in an unworkmanlike manner.
- 59. Association is informed and believes and thereon alleges that as a direct and proximate result of the conduct described herein, Association has suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this Court, in that it has been and will in the future be required to perform investigations and works of repair, restoration, and construction to portions of the Common Areas and homes to prevent further damage and to restore the Common Areas to their proper condition, and/or will suffer damages in an amount the full nature and extent of which shall be ascertained according to proof at trial.

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WHEREFORE, Association prays for judgment as hereinafter set forth.

# FOURTH CAUSE OF ACTION

(Breach of Implied Warranties of Quality-NRS 116.4114) (Against TERRAVITA, DOES 1 through 10 and DOES 176 through 225)

- Association realleges and incorporates by reference Paragraphs 1 through 41.
- NRS 116.4114 provides that the defendants did warrant the suitability 61. (habitability) and quality of the community, including the Common Elements, regardless of when they were developed and/or built. As set forth above, Defendants TERRAVITA and DOES 1 through 10 are the declarant or affiliates of the declarant for the Anthem Country Club development. NRS 116.4114 states that a declarant and any dealer impliedly warrants that the Common Elements in the common-interest community are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him, or made by any person before the creation of the common-interest community, will be:
  - Free from defective materials; and (a)
- Constructed in accordance with applicable law, according to sound standards (b) of engineering and construction, and in a workmanlike manner,
- Any conveyance of a unit transfers to the purchaser all of the Declarant's implied warranties of quality.
- Defendants TERRAVITA and DOES 1 through 10 did violate NRS 116.4114 by transferring ownership of Common Areas that were, in many respects, not suitable for use or habitation, not free of defective materials and in violation of time-pertinent building codes and standards.
- The Association and by incorporation, its unit members, have been harmed by these violations of warranty in many ways. Community property has been damaged by ongoing failures of component systems. The cost to repair or replace conditions that have been damaged, or are in violation of warranties, is expected to exceed \$50,000.00.
- As a result of Defendants' violations of NRS Chapter 116, as expressed above, Plaintiff has suffered actual damages and is entitled to be compensated for such damages, including reasonable attorney's fees, investigative costs and punitive damages, if the conduct of the Defendants is a result of their willful and material failure to comply with NRS

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Ascents & Terry 12P 1120 V. Imm Certer Dr. Suite 260 Las Vegas, NV 89144 (702) 990-2017 Chapter 116. NRS 116.4117.

WHEREFORE, Association prays for judgment as hereinafter set forth.

# FIFTH CAUSE OF ACTION (Violations of NRS 116.4102 and NRS 116.4103) (Against TERRAVITA, DOES 1 through 10 and DOES 176 through 225)

- 66. The Association incorporates by reference paragraphs 1 41.
- 67. NRS 116.4102 and NRS 116.4103 provides that TERRAVITA and DOES 1 through 10 make full and accurate disclosures of the true condition of the Common Elements of the community as part of the Public Offering Statements given to each original owner.
- Statement was provided to the Anthem Country Club homeowners by TERRAVITA and DOES I through 10 and each of them, on or about the time that each homeowner purchased their homes at the Anthem Country Club development. However, Plaintiff is informed and believes and thereon alleges that the Public Offering Statement failed to disclose the true condition of the Project and the Common Areas. TERRAVITA and DOES I through 10 and each of them therefore wholly and completely failed to comply with the mandates of NRS 116.4102 and 116.4103.
- through 10 to disclose the true condition of the Common Areas. Community property has been damaged by ongoing failures of component systems with problems that were not disclosed, and that would have been discovered and disclosed by reasonable inspection. The cost to repair or replace conditions that have been damaged, or are in violation of warranties, that were not properly disclosed is expected to exceed \$50,000.00. Similarly, the Association was not adequately funded to address these items, as set forth in Count Six. TERRAVITA

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ANGILS & THICK LLP 1120 N. Town Conter 19: Sufte 201 Las Vegas, NV 89144 (102) 990 2017 and DOES I through 10 are liable for false and/or misleading statements or the omission of material facts, and are subject to a statutory action pursuant to NRS 116.4117, below.

70. As a result of TERRAVITA and DOES 1 through 10's violations of NRS Chapter 116, as expressed above, Plaintiff has suffered actual damages and is entitled to be compensated for such damages, including reasonable attorney's Fees, investigation costs and punitive damages, if the conduct of TERRAVITA and DOES 1 through 10 is a result of their willful and material failure to comply with NRS Chapter 116. NRS 116.4117.

WHEREFORE, Association prays for judgment as hereinafter set forth.

# SIXTH CAUSE OF ACTION (Violation of NRS 116.4102/NRS 116.4103/NRS 116.31038) (Inadequate Reserves/Under- Funding) (Against TERRAVITA, DOES 1 through 10 and DOES 176 through 225)

- 71. The Association incorporates by reference paragraphs 1 41.
- 72. NRS 116.4103 requires TERRAVITA and DOES 1 through 10 to provide the Association with an adequately funded operating budget and reserves for long-term repairs and/or maintenance. TERRAVITA and DOES 1 through 10 and each of them, prior to sale of the homes at the Anthem Country Club Development, commissioned a Reserve Study of the development. Plaintiff is informed and believes and thereon alleges that this Reserve Study was provided by TERRAVITA and DOES 1 through 10 and each of them to Plaintiff when it was commissioned, and to each homeowner upon the purchase of their homes.
- 4n the Reserve Study, TERRAVITA and DOES I through 10 did not provide an adequate operating budget or reserves. TERRAVITA and DOES I through 10 commissioned a reserve study that assumed that the Common Areas were suitable for use or habitation (untrue), free of defective materials (untrue), and without code violations (also untrue). In fact, TERRAVITA and DOES I through 10 knew or should have known of the contrary. They did not incorporate the true condition of the Common Areas in their budget determinations, by intent, resulting in both inadequate budgets and long-term reserve financing, as well as artificially low assessments, meant to attract and deceive prospective customers in a proverbial 'bait-and-switch' scheme.

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- 74. Further, Plaintiff is informed and believes and thereon alleges that TERRA VITA and DOES 1 through 10 and each of them failed to fund the reserves as required by NRS 116,31038. Pursuant to NRS 116,31038, within 30 days of turning over control of the Association to the Plaintiff, TERRAVITA and DOES 1 through 10 were required to fund the reserve account of the Association with TERRAVITA and DOES 1 through 10's share of the reserve funds due.
- TERRAVITA and DOES 1 through 10 wholly and completely failed to fund the reserve accounts as required under NRS 116.31038.
- The Association has been harmed by the failure of TERRAVITA and DOES I through 10 to set adequate budgets and reserves, and their failure to adequately fund the reserve account of the Association. As a result of these actions and omissions by TERRA VITA and DOES I through 10, Association is not in a sound financial position to permanently repair Common Areas and community property that has been damaged by ongoing failures of component systems. The Association is not in a sound financial position to repair or replace conditions that are otherwise in need of repair or will be in need of repair before their existing budgeted estimates.
- 77. The Association also seeks relief pursuant to NRS 116.4102 because the Public Offering Statement, including (but not limited to) reserve studies and budgets, contain false and/or misleading statements, or omit material facts (i.e., the true condition of the Common Areas) that provide for an accurate financial statement for this community. TERRAVITA and DOES 1 through 10 are liable for false and/or misleading statements or the omission of material facts and are subject to a statutory action pursuant to NRS 116.4117, below.
- 78. As a result of TERRAVITA and DOES 1 through 10's violations of NRS Chapter 116, as expressed above, Plaintiff has suffered actual damages and is entitled to be compensated for such damages, including reasonable attorney's fees and punitive damages, if the conduct of TERRAVITA and DOES 1 through 10 is a result of their willful and material failure to comply with NRS Chapter 116. NRS 116.4117.

WHEREFORE, Association prays for judgment as hereinafter set forth.

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## SEVENTH CAUSE OF ACTION

(Violation of NRS 116.1113)
(Duty of Good Faith and Fair Dealing)
(Against TERRAVITA, DOES I through 100 and DOES 176 through 225)

- Plaintiff incorporates by reference paragraphs 1 41.
- 80. The pattern and practice of conduct of TERRAVITA and DOES 1 through 100, including but not limited to the overall scheme creating and governing the Project and the Common Areas, incorporating ploys such as inadequate expert investigations, inadequate corrective measures, false and/or deceptive public offerings and under-funding, separate and/or together are violations of the duty of good faith and fair dealing owed to the Association and its members, NRS 116.1113.
- 81. The Association has been harmed in the various ways and manners described in other counts of this complaint and incorporated by reference.

WHEREFORE, Association prays for judgment as hereinafter set forth.

## EIGHTH CAUSE OF ACTION (Negligent Misrepresentation)

(Against TERRAVITA, DOES 1 through 10 and DOES 176 through 225)

- The Association incorporates by reference paragraphs 1 41.
- 83. TERRAVITA and DOES I through 10 did negligently fail to provide full, complete or accurate statements or reports about the condition of the Common Areas in the following sales and financial documents: the Reserve Study; the Purchase and Sales Agreements and the related sales warranty information; the Public Offering Statement, including the financial statement and Budget; the marketing materials, including the sales brochures of the subject premises; and related advertising circulars and materials.
- 84. The representations about the condition and useful life of the community and/or its components, including the Common Areas, that were made were in part-false and/or misleading.
- The representations made about the financial condition of the community, including budgets, reserves, studies and/or other projections, were in large part false and misleading.
  - 86. These representations were made orally and in writing to Association to induce

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Association to accept conveyance and control of the Project and Common Areas, and Association did accept conveyance and control of the Project and Common Areas.

- These representations were made orally and in writing to individual members of Association as part of TERRAVITA and DOES I through 10's sales program, to induce members of Association to accept a conveyance of the homes within the Project, and nembers did accept such conveyances.
- Defendants made the representations as set forth herein in a careless and reckless manner and with no reasonable hasis for believing them to be true.
- Defendants made the representations to Association and members of 89. Association, and/or reasonably expected that such representations would be made by others including, without limitation, accountants, real estate agents, brokers and predecessors-ininterest to the members, and said representations were made based upon the misrepresentations by TERRAVITA and DOES 1 through 10.
- Actually and justifiably relying upon such negligent misrepresentations as herein alleged, Association accepted conveyance and control of the Project and Common Areas, and Association members entered into contracts for the purchase of and did purchase homes within the Project. The facts which have been misrepresented to Association and to Association members were material to the Association's decision to accept conveyance and control of the Project and Common Areas, and to Association's members' decisions to purchase the homes. Had they been aware of the true facts, Association would not have accepted conveyance and control of the Project and Common Areas and Association members would not have purchased the homes.
- The negligent misrepresentations of TERRAVITA and DOES 1 through 10 91. were material, and the Association and its members did rely upon them to their prejudice, injury and/or hann.
- TERRAVITA and DOES 1 through 10's false and/or misleading 92. representations were the proximate and legal cause of harm, including ongoing and continued damage to Association property, including but not limited to damage and/or harm in the future, prospective repair and maintenance costs, and various economic losses.

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WHEREFORE, Association prays for judgment as hereinafter set forth.

## NINTH CAUSE OF ACTION (Intentional Misrepresentation) (Against TERRAVITA, DOES 1 through 10 and DOES 176 through 225)

- 93. The Association incorporates by reference paragraphs 1 41.
- 94. TERRAVITA and DOES I through 10 did intentionally fail to provide full, complete or accurate statements or reports about the condition of the Common Areas in the following sales and financial documents: the Reserve Study; the Purchase and Sales Agreements and the related sales warranty information; the Public Offering Statement, including the financial statement and Budget; the marketing materials such as the sales brochures of the subject premises; and related advertising circulars and materials.
- 95. The representations about the condition and useful life of the community and/or its components, including the Common Areas, that were made were, in part, false and/or misleading.
- 96. The representations made about the financial condition of the community, including budgets, reserves, studies and/or other projections, were in large part false and misleading.
- 97. These representations were made orally and in writing to Association to induce Association to accept conveyance and control of the Project and Common Areas, and Association did accept conveyance and control of the Project and Common Areas.
- 98. These representations were made orally and in writing to individual members of Association as part of TERRAVITA and DOES I through 10's sales program, to induce members of Association to accept a conveyance of the homes within the Project, and members did accept such conveyances.
- 99. These representations were false and were made with the intent to deceive and induce members of Association to accept a conveyance of the homes within the Project, and members did accept such conveyances.
  - 100. Defendants made the representations to Association and members of

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ANGIUS & TERRY LLIV 1120 V. 10ven Center Dr. Nuite 260 Las Vojas, NV 89144 (702) 990-2017 Association with the intent that said representations would be made by others including, without limitation, accountants, real estate agents, brokers and predecessors-in-interest to the members, and the representations were made based upon the misrepresentations by Defendants.

- herein alleged, Association accepted conveyance and control of the Project and Common Areas and Association members entered into contracts for the purchase of and did purchase homes within the Project. The facts which have been misrepresented to Association and to Association's members were material to the Association decision to accept conveyance and control of the Project and Common Areas, and to Association members' decisions to purchase the homes. Had they been aware of the true facts, Association would not have accepted conveyance and control of the Project and Common Areas and Association members would not have purchased the homes.
- 102. The intentional misrepresentations of TERRAVITA and DOES 1 through 10 were material, and the Association and its members did rely upon them to their prejudice, injury and/or harm.
- 103. TERRAVITA and DOES 1 through 10's false and/or misleading representations were the proximate and legal cause of harm, including ongoing and continued damage to Association property, including but not limited to damage and/or harm in the future, prospective repair and maintenance costs, and various economic losses.

WHEREFORE, Association prays for judgment as hereinafter set forth.

## TENTH CAUSE OF ACTION (Professional Negligence) (Against DOES 101 through 125)

- 104. Plaintiff incorporates by reference Paragraphs 1 through 41,
- 105. DOE Design Professionals 101 through 125 fell below the professional standard of care for an architect or engineer by accepting work that was, in part, incompetent, inequalified and/or unlicensed to provide, by failing to conduct a reasonable or

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ANGIUS & TERRY LLF 1120 N., Invit Confer Dr. Suite 260) Las Vegas, NV 89144 (202) 990-2017 adequate inspection of the Common Areas, and by representing that the Common Areas and its major components were in a good and sound condition, when many are clearly not, and have a useful life (suitability for use) that is far longer than actual or reasonable.

106. These Defendants' professional negligence was a legal and proximate cause of injury, harm and damage to the Association and the community, including ongoing and continued damage to the Common Areas, including but not limited to damage and/or harm in the future, prospective repair and maintenance costs, and various economic losses.

WHEREFORE, Association prays for judgment as hereinafter set forth,

### PRAYER

WHEREFORE, Association prays for judgment against Defendants TERRAVITA and DOES 1 through 300, and each of them, as follows:

- For general and special damages in excess of \$50,000.00;
- For prejudgment interest;
- 3. For cost of suit and attorneys' fees incurred by Plaintiff herein; and
- For such other and further relief as the Court may deem just and proper.

DATED: February 3, 20100

ANGIUS & TERRY LLP

/s/ Melissa Bybee

Paul P. Terry, Jr., SBN 7192
John J. Stander, SBN 9198
Melissa Bybee, SBN 8390
Asmara Tarar, SBN 10999
ANGIUS & TERRY LLP
1120 Town Center Drive, Suite 260
Las Vegas, Nevada 89144
Attorneys for Plaintiff

## EXHIBIT 6

Third-Party Complaint filed by Terravita Home Construction Company, Inc. on June 23, 2011, in the *Anthem* action (ISIC 207-224)

(Page 1 of 18)

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2	JASON W. WILLIAMS, ESQ. Nevada Bar No. 8310	CLERK OF THE COURT
	MARK F. ROACH, ESQ.	
3	Nevada Bar No. 8237	
4	KOBLLER, NEBEKER, CARLSON & HALUCK, LLP	
5	300 South Fourth Street, Suite 500	
	Las Vegas, NV 89101	
6	Phone: (702) 853-5500 Fax: (702) 853-5599	
7	Attorneys for Defendant/Third-Party Plainting	ff
8	TERRAVITA HOME CONSTRUCTION C	.O.
9	DISTRICT COURT	
0	CLARK COUNTY, NEVADA	
1	CLARK C	OUNT 1, NEVADA
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	ANTHEM COUNTRY CLUB COMMUNITY ASSOCIATION, INC. a	?
3	Nevada non-profit mutual benefit	CASE NO.: A634626
4	corporation	) DEPT. NO.: XXII
5	Distriction	)
	Plaintiff,	TERRAVITA HOME CONSTRUCTION
6	vs.	) CO.'S THIRD-PARTY COMPLAINT
7	The state of the s	)
8	TERRAVITA HOME CONSTRUCTION COMPANY, INC., an Arizona	}
	corporation; and DOES 1 through 300	j .
9		)
0	Defendants.	3
1	INC. CONTRACTOR OF THE CONTRAC	Ś
	TERRAVITA HOME CONSTRUCTION	)
2	COMPANY, INC., an Arizona	3
23	corporation	)
24	Third-Party Plaintiff,	)
25	vs.	)
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	AMERICAN ASPHALT & GRADING	3
7	COMPANY, a Nevada corporation,	,
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BOBS CONSTRUCTION, INC., a Nevada corporation, CEDCO, INC.a Nevada corporation, CHIEF CONCRETE, INC., a Nevada corporation, FRADELLA IRON WORKS, INC., a Nevada corporation, GOTHIC LANDSCAPING, INC., a Foreign Corporation, MASONRY BUILDERS OF NEVADA, a Nevada corporation, MS CONCRETE CO., INC., a Nevada Corporation, PETE KING NEVADA CORPORATION, a Nevada corporation, SOUTHERN NEVADA PAVING, INC., a Nevada corporation, STEWART & SUNDELL, LLC., a Nevada limited liability corporation, TRAFFIC MASTERS, an unknown entity, WESTERN PIPELINE CONSTRUCTION CORPORATION a Nevada corporation, and ROES 1-250 Third-Party Defendants COMES NOW Third-Party Plaintiff TERRAVITA HOME CONSTRUCTION CO. (hereinafter "Third-Party Plaintiff") by and through its attorneys Koeller, Nebeker, Carlson & Haluck, LLP, and hereby state this Third-Party Complaint against American Asphalt & Grading Company, a Nevada corporation, Bobs Construction, Inc., a Nevada corporation, Cedeo, Inc., a Nevada corporation, Chief Concrete, Inc., a Nevada corporation, Fradella Iron Works, Inc., a Nevada corporation, Gothic Landscaping, Inc., a Foreign Corporation, Masonry Builders of

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Nevada, a Nevada corporation, MS Concrete Co., Inc., a Nevada Corporation, Pete King Nevada

Corporation, a Nevada corporation, Southern Nevada Paving, Inc., a Nevada corporation,

Stewart & Sundell, LL.C., A Nevada limited liability corporation, Traffic Masters, an unknown

entity, Western Pipeline Construction Corporation, a Nevada corporation, and ROES 1-250 (hereinafter collectively "Third-Party Defendants"), as follows:

#### GENERAL ALLEGATIONS

- Third-Party Plaintiff Terravita Home Construction Co. is an Arizona corporation
  and is, and at all times relevant herein, was authorized to do business in the State of Nevada.
- 2. At all times relevant herein, each of the Third-Party Defendants were entities doing business in the State of Nevada and performed architectural, engineering, or construction related work and/or supplied materials for the construction of the common area elements of the residential development known as Anthem Country Club located in the City of Henderson, Country of Clark, State of Nevada.
- 3. Each of the Third-Party Defendants were architects, engineers, suppliers, manufacturers or subcontractors who performed engineering, architectural or construction activities for the common area elements located within and throughout the Anthem Country Club development or who supplied or provided to one of the other architects, engineers or subcontractors materials and/or other items which were installed into and/or became a part of the Anthem Country Club development.
- 4. Third-Party Defendant, AMERICAN ASPHALT & GRADING COMPANY a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.
- 5. Third-Party Defendant, BOB'S CONSTRUCTION, INC. a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.

- 6. Third-Party Defendant, CEDCO, INC., a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.
- 7. Third-Party Defendant, CHIEF CONCRETE, INC, a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.
- 8. Third-Party Defendant, FRADELLA IRON WORKS, INC., a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.
- 9. Third-Party Defendant, GOTHIC LANDSCAPING, INC., a foreign corporation, was at all times material bereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.
- 10. Third-Party Defendant, MASONRY BUILDERS OF NEVADA, a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.
- 11. Third-Party Defendant, MS CONCRETE, INC, a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.

12. Third-Party Defendant, PETE KING NEVADA CORPORATION a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country

Club development.

- 13. Third-Party Defendant, SOUTHERN NEVADA PAVING, INC., a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.
- 14. Third-Party Defendant, STEWARD & SUNDELL, LLC a Nevada limited liability corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.
- 15. Third-Party Defendant, TRAFFIC MASTERS, an unknown entity, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.
- 16. Third-Party Defendant, WESTERN PIPELINE CONSTRUCTION CORPORATION, a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.
- 17. The true names and capacities, whether individual, corporate, associate or otherwise, of the Third-Party Defendants designated herein as ROES 1-250, are unknown to Third-Party Plaintiff, who therefore sues said Third-Party Defendants by such fictitious names,

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and who will seek leave of Court to amend this Third-Party Complaint to set forth their true names and capacities, together with the appropriate charging allegations, when same have been ascertained. Third-Party Defendants ROES 1-250, and/or, each of them, are responsible to Third-Party Plaintiff as subcontractors, design professionals, maintenance contractors, suppliers, manufacturers, insurers or in other capacities based on the facts and theories alleged herein.

## FIRST CLAIM FOR RELIEF

## Breach of Contract

- 18. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 17 of this Third-Party Complaint as though fully set forth herein.
- 19. Third-Party Plaintiff is informed and believes, and thereon alleges, that pursuant to the terms of said written agreements, and wherever else referenced, Third-Party Defendants and ROES 1-250, and each of them, undertook obligations, including but not limited to, maintaining commercial general liability policies, naming Third-Party Plaintiff as Additional Insureds under their respective policies of liability insurance, indemnifying Third-Party Plaintiff, defending Third-Party Plaintiff, and performing their work in a good and workmanlike manner in accordance with the contract, plans, and specifications for the construction of the residences, at the Anthem Country Club development as follows:

INSURANCE: Contractor shall maintain at all times during performance of said Work:

- statutory worker's compensation insurance and employer's liability insurance in the amount of the State of Nevada's statutory limits to cover all employees engaged in the Work;
- ii) commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate;
- iii) \$2,000,000 products/completed operations aggregate; and
- iv) automobile liability insurance for all owned, non-owned, and hired vehicles with a minimum limit of \$500,000 combined single limit per accident.

The commercial general liability insurance shall specifically include coverage for Contractor's obligations under any indemnification/hold harmless provisions in

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(Page 7 of 18)

this Contract. Contractor may satisfy a portion of the employer's liability/occupational disease, commercial general liability, or automobile liability limits with following form excess or umbrella excess liability insurance. The commercial general liability policy shall be endorsed to include Del Webb Corporation, Del Webb's subsidiaries, and affiliates, and their respective directors, officers, employees, and agents, (hereinafter sometimes collectively referred to as "Webb" in this Section only) as additional insureds, with respect to any claims, losses, expenses, or other costs arising out of this Contract, and shall also be endorsed as primary coverage with respect to any other insurance which may be entried by Webb. It is expressly agreed that any other insurance covering Webb is over and non-contributing with Contractor's commercial general liability insurance.

Certificates of insurance evidencing the worker's compensation, commercial general liability, and automobile liability coverages required herein shall be filed with Webb within five (5) days following the execution of this Contract prior to the commencement of any Work thereunder and shall be maintained in a current status throughout the term of this Contract. Such certificates of insurance shall require the insurer (s) to provide not less than thirty (30) days advance written notice to Webb in the event of any cancellation, non-renewal of material change in the policy limits, terms or conditions. All of the coverages required herein shall be maintained with insurers rated "B+" or better in the most current edition of Best's Insurance Reports.

The worker's compensation/employer's liability/occupational disease insurance required herein may be maintained with the state worker's compensation fund operating in the state in which the job-site is located. Contractor shall immediately notify Webb in writing, of any incident, occurrence, injury, or situation arising in connection with this Contract which may give rise to any claim, or loss under any of the aforementioned insurance coverages.

Contractor hereby waives Contractor's right of recovery against Webb for any claims, losses, expenses, or the costs Contractor may sustain arising out of this Contract and shall cause the worker's compensation policy to be specifically endorsed to waive all rights of subrogation against Webb. Contractor shall maintain Contractor's commercial general liability insurance described above for not less than five (5) years following the completion of this Contract. Contractor also shall maintain adequate property insurance on and security for all equipment and building materials whether on-site, or off-site until such time they are incorporated in the Work and finally acceptance by Webb, as described below. Contractor hereby waives Contractor's right of recovery against Webb for any loss of, or damage to such equipment and building materials, including any loss of use claim, and shall cause each such property insurance policy to include a waiver of subrogation in favor of Webb.

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- Third-Party Plaintiff has fully performed all conditions, covenants and promises 20. required of them in accordance with the terms and conditions of said written agreements.
- Third-Party Plaintiff is informed and believes, and thereon alleges, that Thirdparty Defendants and ROES 1-250, and each of them, have breached said written agreements by refusing and failing to comply with their contractual obligations to maintain liability insurance, to name Third-Party Plaintiff as additional insureds under said policies of liability insurance, to indemnify Third-Party Plaintiff, to defend Third-Party Plaintiff, and to perform their work in a good and workmanlike manner, without defects, and in accordance with said written agreements.
- Third-Party Plaintiff has necessarily engaged Koeller, Nebeker, Carlson & 22. Haluck, LLP to represent them in the defense of Plaintiff's Complaint for Damages, and in this Third-Party Complaint, and have incurred legal fees, court costs, and investigations costs, and will in the future incur further fees and costs by reason of Plaintiff's Complaint for Damages referenced herein.

### SECOND CLAIM FOR RELIEF

## **Express Indemnity**

- Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 22 23, of this Third-Party Complaint as though fully set forth herein.
- Third-Party Plaintiff is informed and believes, and based thereon alleges, that it 24. entered into written agreements with Third-Party Defendants, and ROES 1-250 wherein said Third-Party Defendants agreed to satisfy, among other things, the following specific terms:

INDEMNIFICATION: Contractor shall indemnify, protect, defend, and hold harmless Del Webb from and against any and all "Claims" (defined below) directly or indirectly caused by Contractor's negligent or intentional act or omission, regardless of whether such act or omission is active or passive, in Contractor's performance of (or failure to perform) the Work covered by this Contract, including without limitation, the failure to discover dangerous conditions or events regardless of any active or passive negligence of or by Del Webb, but excluding any gross negligence or willful misconduct by Del Webb. For purposes of this indemnification "Del Webb" shall include parent and subsidiary corporations, and the officers, directors, agents, and employees of Del

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Webb and such parents and subsidiaries. "Claims" shall mean all claims, demands, causes of action, injuries, losses, damages, liabilities, costs, charges, judgments, or expenses, including without limitation, attorneys' fees, for:

- i) personal injury to any person (including employees of Del Webb and Contractor);
- ii) property damage; and
- iii) any and all penalties, fines or assessments imposed on account of any violation of any law or statute required to be complied with by Contractor.

Contractor shall at Contractor's own cost and expense and risk, defend all suits, actions, or other proceedings that may be instituted by a third party against Del Webb covered by this indemnification. Contractor shall reimburse Del Webb for any expenses Del Webb incurs in enforcing this indemnification.

- 25. Third-Party Plaintiff is informed and believes, and thereon alleges, the defects and damages alleged by Plaintiff in its Complaint for Damages involve alleged defects and alleged damages to portions of the Anthem Country Club development. Third-Party Plaintiff is informed and believes, and thereon alleges, that any damages alleged by Plaintiff were caused by Third-Party Defendants and ROES 1-250, and each of them, arising out of and connected with the performance of their obligations pursuant to those written agreements herein referred to and entered into by the above-specified Third-Party Defendants.
- 26. Third-Party Plaintiff has made a demand or by this Third-Party Complaint demand that Third-Party Defendants and ROES 1-250, defend, indemnify, release, and hold harmless Third-Party Plaintiff for any liability, and the resulting sums to be paid, which are assigned to Third-Party Plaintiff due to judgment on, or settlement of, the allegations in Plaintiff's Complaint for Damages.
- 27. Third-Party Plaintiff is informed and believes, and thereon alleges that Third-Party Defendants, have failed and refused to, and continue to fail and refuse to defend, indemnify, release and hold harmless Third-Party Plaintiff.
- 28. Third-Party Plaintiff has necessarily retained Koeller, Nebeker, Carlson & Haluck, LLP to defend against the Complaint for Damages filed by Plaintiffs, thereby incurring costs and attorneys' fees in the defense of this action and in the prosecution of this Third-Party

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Complaint. Third-Party Plaintiff will seek leave of Court to amend this Third-Party Complaint to show the amount of said cost of attorneys' fees when the same becomes known to Third-Party Plaintiff.

Third-Party Plaintiff is entitled to express indemnity from the above-specified 29. Third-Party Defendants, and each of them, pursuant to the terms of the written agreements entered into between Third-Party Plaintiff and each of the specified Third-Party Defendants, including costs and attorneys' fees according to proof at trial.

## THIRD CLAIM FOR RELIEF

## Equitable Indemnity

- Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 29 30. of this Third-Party Complaint as though fully set forth herein.
- Third-Party Plaintiff, by way of its Answer to Plaintiff's Complaint for Damages, has denied and continues to deny Plaintiffs' allegations and has asserted by way of Answer the appropriate affirmative defenses.
- In the event that the trier of fact concludes that the allegations of Plaintiff are 32. true, and if Third-Party Plaintiff is held liable to Plaintiffs in said action, then Third-Party Plaintiff alleges that any responsibility found on the part of Third-Party Plaintiff will be due to the negligence and/or fault of Third-Party Defendants, ROES 1-250, and each of them.
- By reason of the foregoing, if Plaintiff should recover judgment against Third-Party Plaintiff and/or if Third-Party Plaintiff should enter into a settlement or compromise with Plaintiff, then Third-Party Plaintiff will be entitled to judgment in the like amount, or in proportion to fault, for comparative indemnity over and against Third-Party Defendants, ROES 1-250, and each of them, and in addition, Third-Party Plaintiff will be entitled to recover from Third-Party Defendants, ROES 1-250, and each of them, all costs, expenses, and attorneys' fees that Third-Party Plaintiff incurs in the preparation of its defense of the principal action, and in the preparation, presentation and prosecution of this Third-Party Complaint, respectively,

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FOURTH CLAIM FOR RELIEF

Breach of Express Warranty

Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 33 34. of this Third-Party Complaint as though fully set forth herein.

The written agreements between Third-Party Plaintiff and Third-Party Defendants provide the description of the work to be performed by Third-Party Defendants, and their guarantee and warranty of said work as follows:

WARRANTY: If at any time during one (~l year after the date of completion and acceptance of the Work by Anthem Country Club (or such longer period as may be specified in Exhibit "B" attached hereto), any part of the materials or workmanship furnished by Contractor shall prove to be defective or not in conformity with plans and specifications, Contractor shall be responsible for the replacement or repair of the non-conforming or defective Work to Anthem Country Club's satisfaction, including all costs incidental thereto, without cost to Anthem Country Club. In the event Contractor's Work on this project terminates prior to the expiration date of all warranty periods, Contractor will remain obligated to fulfill Contractor's responsibilities for all such Work covered by this Contract. Anthem Country Club reserves the right to withhold from current and future payables due under this Contract, for a period of ninety (90) days following the termination of this Contract, an amount equal to ten percent (10%) of the total amount to be paid for Work completed under the terms hereof to off-set any expenses incurred by Anthem Country Club to complete unfinished Work or any Work not meeting the requirements of this Contract, including warranty Work. At the end of such ninety (90) day period, all amounts withheld that have not been applied or are not required to be applied to the cost of such non-conforming Work, warranty Work, or completion items, shall be paid to Contractor. This warranty shall not limit or void any extended or longer warranty provided under applicable law for a latent construction defect, or under any case law extending the warranty provided by the developer to the buyer of any residential unit.

- As set forth in the written agreements between Third-Party Plaintiff and Third-36. Party Defendants, and as further alleged above and elsewhere in this Third-Party Complaint, Third-Party Defendants, ROES 1 - 250, and each of them, agreed and guaranteed to perform their work in a good and workmanlike manner,
- Third-Party Plaintiff relied upon such warranties and believed in good faith that the construction of the Anthem Country Club development would comply with approved plans

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 and specifications for the Anthem Country Club development and would be free from defective construction or workmanship.

- 38. Third-Party Plaintiff has fully performed all conditions and promises required on its part to be performed in accordance with the terms and conditions of the underlying written agreements.
- 39. Third-Party Plaintiff has provided notice, or by this Third-Party Complaint provides notice, to the Third-Party Defendants, ROES 1 250, and each of them, of claims asserted by Plaintiff, which if true, would trigger the warranty provisions identified above and elsewhere in the Third-Party Complaint.
- Third-Party Plaintiff has undertaken defense of the matter in question and if Plaintiff recovers judgment against Third-Party Plaintiff for failure to comply with the approved plans and specifications, or alleged defective construction or workmanship, or if Third-Party Plaintiff incurs any expense in the defense of said lawsuit, then Third-Party Plaintiff alleges that it are entitled to judgment over and against Third-Party Defendants, ROES 1 250, and each of them, for all sums that Third-Party Plaintiff incurs by reason of said judgment, settlement, and expense of litigation, including reasonable attorneys' fees and costs, as provided by the contract agreement.

## FIFTH CLAIM FOR RELIEF

#### Breach of Implied Warranty

- 41. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 40 of this Third-Party Complaint as though fully set forth herein.
- 42. Third-Party Plaintiff is informed and believes, and thereon alleges that Third-Party Defendants and ROES 1-250, impliedly warranted that the work performed by Third-Party Defendants at the Anthem Country Club development was performed in a reasonably workmanlike manner.
- 43. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-Party Defendants and ROES 1-250, impliedly warranted that their work that the common area

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elements of the Anthem Country Club development were of merchantable quality and safe and fit for their foreseeable or intended use.

- 44. Plaintiff has alleged in its Complaint for Damages that the Third-Party Plaintiff is somehow liable for the damage, if any, it has alleged. Third-Party Plaintiff, by way of their Answer to Plaintiff's Complaint for Damages, has denied and continues to deny Plaintiff's allegations and have asserted, by way of Answer, the appropriate affirmative defenses. If at the trial of this action, it should be determined that Third-Party Plaintiff is in some manner responsible to Plaintiff, then Third-Party Plaintiff is informed and believes, and thereon alleges, that the proximate cause of Plaintiff's damage, if any, was a result of Third-Party Defendants' failure to construct the common area elements of the Anthem Country Club development in a reasonably workmanlike manner as warranted by Third-Party Defendants, ROES 1-250, and each of them, and therefore Third-Party Defendants and ROES 1-250 have breached their implied warranty.
- 45. Third-Party Plaintiff intends this Third-Party Complaint to constitute notice to said Third-Party Defendants and ROES 1-250 of the breach of said implied warranty.
- 46. Third-Party Plaintiff alleges that, by virtue of their breach of implied warranty, Third-Party Defendant and ROBS 1-250 are liable to Third-Party Plaintiff for resulting damages, including, but not limited to the expenses in defending Plaintiff's Complaint for Damages, any judgment or settlement ultimately favoring Plaintiff, and the expense of maintaining this Third-Party Complaint.

#### SIXTH CLAIM FOR RELIEF

## Declaratory Relief Regarding Duty to Defend Against All Third-Party Defendants, ROES 1-250

- 47. Third-Party Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through 46 of this Third-Party Complaint as though fully set forth herein.
- 48. An actual controversy exists between Third-Party Plaintiff and Third-Party Defendants, and all ROES 1-250, as to their rights and liabilities with respect to any ultimate

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responsibility to Plaintiff and with respect to the rights of the Third-Party Plaintiff to receive, or duty of the Third-Party Defendants to provide, a defense to Third-Party Plaintiff.

- 49. Third-Party Plaintiff contends that, if Plaintiff's claims arise out of or in any manner are connected to the work, materials or services provided by Third-Party Defendants, or the contracts between Third-Party Plaintiff and the Third-Party Defendants expressly provide for the defense of Third-Party Plaintiff against the claims of Plaintiff, then Third-Party Defendants have an obligation to defend Third-Party Plaintiff without, and before, a determination of the fault of the Third-Party Defendants for the damages alleged by Plaintiff.
- 50. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-Party Defendants and ROES 1-250 contend to the contrary. Therefore, an actual controversy exists relative to the legal rights and duties of the respective parties pursuant to their written agreements, which controversy Third-Party Plaintiff requests the court to resolve in the form of Declaratory Judgment.

## SEVENTH CLAIM FOR RELIEF Declaratory Relief Regarding Duty to Indemnify Against All Third-Party Defendants, ROES 1-250

- 51. Third-Party Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through 50 of this Third-Party Complaint as though fully set forth herein.
- 52. An actual controversy exists between Third-Party Plaintiff and Third-Party Defendants, and ROES 1-250 as to their rights and liabilities with respect to any ultimate responsibility to Plaintiff and with respect to the rights to receive, or duty to give, indemnification in proportion to their comparative fault, if any.
- Third-Party Plaintiff contends that if it suffers judgment in the action brought by Plaintiff or if it pays monies by way of reasonable compromise of said claim, then Third-Party Plaintiff is entitled to be indemnified by all Third-Party Defendants and ROES 1-250, and entitled to judgment over and against Third-Party Defendants and ROES 1-250, to the extent that Third-Party Plaintiff's financial responsibility to Plaintiff exceeds the percentage of Third-Party Plaintiff's negligence, fault, or liability, if any.

 54. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-Party Defendants and ROES 1-250, contend to the contrary. Therefore, an actual controversy exists relative to the legal rights and duties of the respective parties pursuant to their written agreements, which controversy Third-Party Plaintiff requests the court to resolve in the form of Declaratory Judgment.

## EIGHTH CLAIM FOR RELIEF Declaratory Relief Regarding Duty to Name Third-Party Plaintiff as Additional Insured Against ROES 1-250

- 55. Third-Party Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through 54 of this Third-Party Complaint as though fully set forth herein.
- 56. An actual controversy has arisen and now exists between Third-Party Plaintiff and Third-Party Defendant Insurers, concerning their respective rights and duties in that Third-Party Plaintiff contends it is an additional insured under the policies of insurance provided by Third-Party Defendant Insurers to various Third-Party Defendants under the terms of the Third-Party Defendants' liability policies of insurance provided by Third-Party Defendant Insurers.
- 57. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-Party Defendant Insurers contend to the contrary. Therefore, an actual controversy exists relative to the legal rights and duties of the respective parties pursuant to their written agreements, which controversy Third-Party Plaintiff requests the court to resolve in the form of Declaratory Judgment.

## NINTH CLAIM FOR RELIEF Contribution Against All Third-Party Defendants, ROES 1-250

- 58. Third-Party Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through 57 of this Third-Party Complaint as though fully set forth herein.
- 59. Third-Party Plaintiff contends that it is not responsible legally or otherwise for the damage created from the Constructional Defects alleged by Plaintiff in this litigation.

  Despite this, Third-Party Plaintiff has incurred expenses investigating and repairing, among

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1 other expenses, common area elements of the Anthem Country Club that have been damaged by Third-Party Defendants.

- In the event that the trier of fact concludes that the allegations of Plaintiff are 60. true, and if Third-Party Plaintiff is held liable to Plaintiff in said action, then Third-Party Plaintiff alleges that any responsibility found on the part of Third-Party Plaintiff will be due to the negligence and/or fault of Third-Party Defendants and ROES 1-250 and each of them
- By reason of the foregoing, if Plaintiff should recover judgment against Third-Party Plaintiff and/or if Third-Party Plaintiff should enter into a settlement or compromise with Plaintiff, then Third-Party Plaintiff will be entitled to contribution over and against Third-Party Defendants, ROES 1-250, and each of them, for all costs, expenses, and attorneys' fees that Third-Party Plaintiff incur in the preparation and presentation of its defense of the principal action, and in the preparation, presentation and prosecution of this Third-Party Complaint, respectively.
- Third-Party Plaintiff has necessarily engaged the law firm Koeller, Nebeker, 62, Carlson & Haluck, LLP to represent them in the defense of the Plaintiff's Complaint for Damages, and in this Third-Party Complaint, and have incurred legal fees, courts costs, and investigation costs, and will in the future incur further fees and costs by reason of Plaintiff's Complaint for Damages referenced herein.

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WHEREFORE, Third-Party Plaintiff respectfully request that this Court enter 1 judgment against Third-Party Defendants and ROES 1-250, and each of them as follows: 2 A determination that each Third-Party Defendant and ROES 1-250, and each of 3 them, contributed in some percentage to the loss, damage and detriment alleged 4 by Plaintiff and for a declaration of percentages by which the conduct of Third-5 Party Defendants and ROES 1-250 and each of them, contributed to the loss, 6 damage and detriment, if any, of the Plaintiff; A determination that Third-Party Plaintiff is an additional insured under the 2. 8 policies of Insurance provided by Third-Party Defendant Insurers to various 9 Third-Party Defendants under the terms of the Third-Party Defendants' liability 10 policies of insurance provided by Third-Party Defendant Insurers 11 That if Plaintiff should recover sum or judgment against Third-Party Plaintiff, 3. 12 that Third-Party Plaintiff should have judgment against Third-Party Defendants 13 and ROES 1-250; 14 That Third-Party Plaintiff is entitled to a defense from Third-Party Defendants 4. 15 and ROES 1-250; 16 For general and special damages in an amount to be proven at trial; 5. 17 For indemnity of all damages and/or economic losses that Plaintiff recovers 6. 18 against Third-Party Plaintiff by way of judgment, order, settlement, compromise, 19 or trial; 20 For reasonable attorneys' fees, expert fees and costs; 7. 21 For prejudgment and post-judgment interest; 8. 22 For contribution pursuant to NRS 17.225; and 9. 23 111 24 25 26 27 28 17 98230\_1

(Page 18 of 18) For such other and further relief as the Court may deem just, equitable, and 10. 1 proper. 2 Dated this 23 day of June, 2011, 3 KOELLER, NEBEKER, CARLSON 4 & HALUCK, LLP 5 BY: ( 6 JASON W. WILLIAMS, ESQ. 7 Nevada Bar No. 8310 8 MARK F. ROACH, ESQ. Nevada Bar No. 8237 9 300 South Fourth Street, Suite 500 Las Vegas, NV 89101 10 Phone: (702) 853-5500 11 Fax: (702) 853-5599 Attorneys for Defendant/Third Party Plaintiff 12 Terravita Home Construction Co. 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 18 98230\_1

# EXHIBIT 7

August 18, 2011 letter from Zurich to Ironshore without attachments (attachments are Exhs. 5, 6 and 8) (ISIC 181-182)

Inomotione



## FIRST CLASS MAIL

August 18, 2011

Attn: Claims Professional Ironshore Specialty Midlands Claim Administrators 3503 NW 63rd Street, Suite 305 Oklahoma City, OK 73116

RECEIVED

AUG 22 2011

MCA

RE Anthem Country Club Community Association v. Terravita

Insured(s):

Cedco, Inc. Cedco Landscape, Inc.

Cedco Iron, Inc.

Davis Manufacturing, Inc. dba Architectural

Cast Elements (02-03)

Claim Number:

9260066599

Policies:

CON 50022947 [4/12/01-4/12/03] 018ER0905001 [6/1/09-6/1/10]

Ironshore:

ZURICH

Construction Defect &

P.O. Box 66965

Chicago, Illinois 60666-0965

Professional Liability Claim

Phone: (702) 408-3844 Fax (866) 257-1205

Rachael.Rutherford@zurichna.com

Dear Claims Professional:

The purpose of this letter is to tender the defense and indemnity on behalf of mutual insured Cedco, Inc., under any and all insurance policies issued by Ironshore Specialty.

This matter involves alleged construction defects at 18 to 20 miles of common areas located within the Anthem Master Plan Community in Las Vegas, Nevada. At this time Assurance believes that Cedco installed some of the CMU walls, wrought iron gates and concrete. Attached please find the following documents for your review:

- Third Party Complaint;
- Complaint; and
- Civil Report

Please acknowledge receipt of this letter, in writing, informing me as to the adjuster assigned, your claim number, and your position regarding the defense and indemnification of our mutual insured.

Please be advised that we are undertaking a complete review of this claim. We tender this matter to you so that you may complete your own investigation. All actions taken in regard to this matter are undertaken subject to a complete reservation of rights under the terms, conditions and provisions of the policies

Ironshore Specialty August 18, 2011

and in law and equity. No action taken shall constitute an admission of liability or coverage under the policies, and should not be construed as a waiver of any right or as an estoppel from asserting any right to disclaim or limit coverage under the policies.

If you have any questions, please do not hesitate to contact the undersigned at 702 408-3844.

Sincerely,
Assurance Company of America

Rachael Rutherford

Rachael Rutherford Claims Specialist II

Enclosures as stated.

# EXHIBIT 8

August 1, 2008 Burkett & Wong preliminary defects list (ISIC 225-227)





August 1, 2008

STRUCTURAL ENGINEERING

CIVIL ENGINEERING

SUAVEYING

LAND PLANNING

Mr. Paul Terry Ms. Melissa Bybee ANGIUS & TERRY 1120 North Town Center Drive, Suite 260 Las Vegas, NV 89144 FAX: 702.990.2018

Project: Anthem Country Club, Henderson, Nevada

Dear Mr. Terry and Ms Bybee:

The following is a preliminary list of the Civil Engineering related defects observed during our recent site inspections. Please note this list is based on a visual inspection only.

Defect: Cracked concrete curb and gutter. Location: Private streets within the development. Improper Installation and construction. Cause:

Aesthetically unacceptable: deterioration and failure of the asphalt Damage:

pavement.

Defect Cracked concrete drainage swales or cross gutters.

Location: Private streets within the development. Improper installation and construction. Свине:

Aesthetically unacceptable: deterioration and fallure of the asphall Damage:

pavement.

Cracked concrete sidewalks. Defect

Private concrete walkways within the development. Location: Cause: Improper installation.

Creates a "trip and fall" hazard for pedestrians: aesthetically Damage: unacceptable; provides a source of water to deteriorate concrete

Sinkhole has formed in the street. Defect Private street within the development. Location: Additional investigation required. Cause:

Creates a 'Life Safety' Issue. Damage:

Defect: Cracked asphalt pavement.

Location: Private streets within the development. Cause: Either Improper Installation of the asphalt pavement section or

pavement section is inadequate.
The service life of the pavement is diminished. Damage:

1434 Fourth Avenue - San Diego, CA 92103 -P 619 299 5550 · P 619 299 9934 · www.burkett-wong.com Ban Diego - Las Yegas

Mr. Paul Terry and Ms. Melissa Bybee ANGIUS & TERRY

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Chips in the concrete curb and gutter. Defect: Location: Private streets within the development.

Cause: Damage during construction. Aesthetically unacceptable: deterioration and failure of the asphalt Damage:

pavement.

Sinking storm drain inlets. Defect:

Re: Anthem Country Club, Henderson, NV.

Private streets within the development. Location:

Cause: Improper Installation.

Aesthetically unacceptable: deterioration and fallure of the asphalt Damage:

pavement and utilities.

Defect: Crack in the bottom of the community pool. Location: Common area within the development.

Cause: Under Investigation.

Damage: Creates a health hazard: aeathetically unacceptable; provides a source

of water for soil subsidence.

9. Defect: Water ponding in concrete gutters. Location: Private streets within the development.

Cause: Improper Installation.

Damage: Aesthetically unacceptable: deterioration and failure of the asphalt

pavement and surface of the gutter.

Defect: Deteriorated concrete sidewalks and curb and guller. Location: Private concrete walkways within the development.

Cause: Under Investigation.

Creates a "trip and fall" hezard for pedestrians: aesthetically Damage:

unacceptable.

Defect: Efflorescence forming on retaining walls. Location: Common areas within the development. Cause: Under investigation.

Damage: Aesthetically unacceptable: deterioration and fallure of the wall.

12. Defect: Decorative caps on retaining walls are deteriorating. Location: Common areas within the development. Cause: Under Investigation.

Damaga: Aesthetically unacceptable.

Dofect Color coat on retaining wells is deteriorating and color is changing,

Location: Common areas within the development. Cause: Under Investigation.

Damage: Aesthetically unacceptable.

Defect Cracks are forming in the masonry fences. Location: Common areas within the development. Cause: Under investigation. Aesthetically unacceptable. Damage:



(Page 10 of 36)

Mr. Paul Terry and Ms. Melissa Bybee ANGIUS & TERRY Ra: Anthem Country Club, Handerson, NV. Page 3 of 3

Defect

Metal fencing is not properly installed.

Location: Cause:

Common areas within the davelopment.

Damago:

Improper Installation. Fence will become unstable

18. Defect:

Metal fencing is rusting.

Location: Cause:

Common areas within the development.

Damage:

Under Investigation. Useful life of fence is shortened.

17. Defect:

Blue reflective fire hydrant location markers omitted.

Location: Cause:

Private streets within the development. Improper installation or omission during construction.

Damage:

Prevent fire department from readily locating hydrant in an emergency.

18. Defect: Location: A second "residents only" entry and exit was not provided. Entry to the private the development.

Cause:

Omission during planning, design and construction.

Damage:

Excessively long and dangerous traffic queue waiting to turn left from Anthem Perkway into the development. Secondary exit in case of a

major catastrophe is not present.

A more detailed investigation may reveal additional categories of defects.

Sincerely,

BURKETT & WONG ENGINEERS

Robert M. Shaffor, P.E.

Principal

RMS:W

# EXHIBIT 9 (Part 1)

Excerpts of various Subcontracts between Cedco and Terravita Home Construction
• Part 1 (ISIC 409-438, 446-481, 482-493)

TERRAVITA HOME CONSTRUCTION CO

SUBCONTRACT NUMBER:

0

SUPPLEMENT NUMBER: " SUBCONTRACT DATE:

November 17, 1999

FROM:

Cedco, Inc.

7210 Placid

Las Vegas, NV 89119

RE:

Parcel 20 Walls

VENDOR NUMBER:

3113

LICENSE NUMBER: 0027032-CL8

SALES TAX NUMBER: 207716-03-08

FEDERAL I.D. NO.: 88-0233027

Billed in Full # 36578

TO: Terravita Home Construction Co.

> Anthem Country Club (hereinafter "Anthem")

11500 S. Eastern Avenue Henderson, NV 89052

ATTN: Land Development

The undersigned Subcontractor hereby proposes to furnish, at its own cost and expense, all labor, materials, tools, equipment, facilities, and supervision necessary to fully perform the following described Work for Anthem, located in Henderson, NV. The Work shall include completion of all punch list items in a manner that is finally accepted by Anthem's Project Superintendent. The Work also includes an obligation to cooperate with other trades, and to clean-up and remove all debris from the job-site.

The description of the Work, phasing, scope, and other requirements of this Subcontract are included in the documents described below:

- Subcontract Provisions attached as Exhibit "A"
- Scope of Work attached as Exhibit "B" <
- Base and Unit Pricing Schedule attached as Exhibit "C"
- OSHA Safety Guidelines

Each of these documents are incorporated by reference into this Subcontract.

This Work is to be fully completed and delivered to Anthem according to the terms and conditions of this Subcontract for the following price, as more fully described in Exhibit "C", which includes all taxes, if any.

\* \* \*\$153,686.31\* \* \*

\* \*One Hundred Fifty-Three Thousand Six Hundred Eighty-Six and 31/100\* \* \*

This Subcontract, when executed by Anthem and Subcontractor, shall become binding upon Anthem and Subcontractor, their heirs, executors, administrators, successors, and assigns. The terms and conditions of this Subcontract supersede and cancel all previous understandings or agreements, whether written, verbal, or implied.

IN WITNESS WHEREOF, this Subcontract is executed as of the date first above written.

Subcontractors are required by law to be licensed and regulated by the Nevada Registrar of Contractors.

Accepted:	
Terravita Home Construction Co an Arizona Corporation	Cedco, Inc.
ву:	BY: Chill
V.P. Land Development	Name: o paff les Davis
DATE:	
Y X	Title: Differ had
BY:	DATE: 11-74-8-4
V.P. Finance	
name.	

scw/subcont/ldtitle (REV:06/10/94)

#### EXHIBIT "B"

## SCOPE OF WORK RETAINING WALLS - PARCEL 20

## Description of Project

This project consists of installation of all retaining Parcel 20 as shown on Del Webb Communities, Inc. Anthem Country Club Improvement Plans Parcel 20 dated June, 19, 1998 including 3 revisions drawn by G.C. Wallace, Inc.

## I. MATERIAL SPECIFICATIONS

## A. Block Masonry

This work includes without limitation all labor, material, equipment, and supervision to perform all operations in connection with the installation of all masonry work, including footings, in strict accordance with the plans for the Parcel 20 subdivision at Anthem Country Club as drawn by G.C. Wallace. Unless otherwise noted all materials shall conform to the Uniform Building Code, latest edition, and per standard specifications for the City of Henderson, Nevada. Work to include, but not limited to:

All retaining walls will be constructed with 8X6X16 slump block. Any changes will be at the sole discretion of Del Webb.

All walls will have sack finish and painted.

Reinforcing steel shall conform to ASTM A-615, Grade 60.

Masonry units shall conform to ASTM C-90, Grade N-1 Hollow Concrete units.

Masonry design stress is as follows: f'm=1500 psi. Full stresses are used where specification inspection is required. Half stresses are used elsewhere, see retaining wall schedule. Special inspection per the 1994 UBC Section 1701 shall be provided as required.

Mortar shall be ASTM C270, Type "M" or "S" with a minimum strength of 1800 psi at 28 days.

#### B. Footing Concrete

The footing concrete shall be proportioned and mixed to a certified and proven

Exhibit B Contract 346154 Cedco Parcel 20 11/17/99

mix design for a minimum strength of 4000 psi at 28 days using Type V cement per ASTM C-150. (Based on Pc=2500 psi, no special inspection is required.)

Grout shall have a minimum strength of 2000 psi at 28 days using Type V cement per ASTM C-150.

## C. Water Proofing

Brewercoat will be applied to all concrete and masonry surfaces below ground level to ensure protection against water, chemicals, petroleum and various other potential contaminants.

## II. INSTALLATION SPECIFICATIONS

## A. Masonry

The masonry contractor shall furnish and install all masonry units as described under the Material Specifications of this Exhibit and in accordance with type, sizes, and color selections as directed by Del Webb. Masonry unit installation shall include, but not be limited to:

All retaining walls shall be built with a 1/8" horizontal per 1' of vertical height so that walls will be plumb after backfill and loading.

Horizontal joint reinforcing, where required shall be 9-ga. Ladder type with lap slices of 12" minimum, including corners and intersections. Expansion caulking and plastic flashing at 12" block.

Solid grout all masonry units that are below the highest finish grade at the wall.

All corner and angled retaining walls shall be tied together with horizontal reinforcing steel and grouted solid.

Where vertical grout pours are not continuous for the entire height of the wall, terminate lift 1 ½" below top of top block to form a key for future lifts.

Locate keyed joint in retaining wall at a maximum spacing of 24'-0".

All work shall be performed in a neat workmanlike manner and in the best practice of the trade. Extreme care shall be taken to prevent mortar splotches on exposed masonry walls.

Exhibit B Contract 346154 Cedco Parcel 20 11/17/99

Fence wall control joints shall be in accordance with plan details and/or building code requirements.

Masonry surfaces are to be in accordance with plans and fence details for height, size, and type of masonry units. Masonry fence bond beams, if required, shall be in accordance with plan details.

Bond beams and joint reinforcing shall not be continuous through wall construction joints.

Contractor to provide reinforcing steel embedded in retaining walls for installation of fence walls. Lap and location of steel to be per structural plans. Safety caps are to be installed on all exposed rebar per OSHA Standards.

Walls shall be stepped only as shown on the plans.

If actual height of walls is not listed in table, use steel and dimensions for the next highest wall listed.

If actual grade difference on grading plan wall should be rounded up to next half tenth.

### B. Waterproofing

Apply two coats brewercoat with Delta MS.

### C. Backfill

Backfill behind walls shall be by others.

### D. <u>Underground Utilities</u>

All underground utilities may run concurrently with all retaining wall installation. Contractor will be responsible for placing trench plates as necessary.

### E. Wall Footings

All footings are to be constructed according to the specifications detailed in the plans as prepared by the engineer.

Footing are to be constructed to the design grades and stepped according to the plans.

Exhibit B Contract 346154 Cedco Parcel 20 11/17/99

> The bottom of the footing trench shall be cast on undisturbed earth or fill compacted to 90% of maximum standard proctor density.

#### Ш. GENERAL

All work shall be done in accordance with plans and specifications prepared by G.C. Wallace, Inc. And PBS & J retaining Wall plans and the Structural Calculations. All notes relating to retaining walls from the above plans are included as specifications in the contract.

The anticipated schedule is as follows:

Start Date:

To Be Determined

To Be Determined Completion Date:

Del Webb reserves the right to adjust the schedule. Successful bidder will be expected to begin work within 48 hours of receiving Notice to Proceed.

The masonry contractor shall be responsible for periodical clean-up and removal of debris resulting from his work to an off-site location as required by the Project Superintendent, as well as final clean-up and removal of all debris resulting from his work to an off-site location. If the contractor does not adhere to the clean-up policy, Del Webb will take any necessary actions for clean-up and the cost will be forwarded onto the contractor.

The masonry contractor shall provide protection of his work, work of others, and provide cooperation and coordination with other trades.

Unless otherwise specified, materials, and installation methods used shall be in strict accordance with manufacturer's recommendations and industry standards. Substitutions must be approved in writing by Del Webb Communities, Inc. prior to performance of work.

All workmanship and materials shall be in accordance with City of Henderson, Nevada requirements, specifications, and details.

Contractor shall verify locations and elevations of all existing utilities prior to any construction.

The contractor shall give forty-eight (48) hour notice when contractor shall require the services of the engineer or any other person properly authorized for such purposes for laying out any portion of the work. He shall also dig all stake holes necessary to give line and levels and shall provide assistance called for by the engineer or his assistant upon any Exhibit B Contract 346154 Cedco Parcel 20 11/17/99

part of the work whenever so requested.

The contractor shall preserve all stake set for the lines, level or measurements for the work in their proper places until authorized to remove them by the engineers. The contractor will be responsible for locating and protecting all utilities.

The contractor shall be responsible for the care, maintenance, repair or replacement, of existing improvements in the work which have been removed or damaged during the course of construction. All repair, replacement, or clean-up shall be done to the satisfaction of the owner.

This project is subject to all applicable occupational safety and health administration regulations. Contractor shall be solely responsible for maintaining a safe work area and shall follow OSHA Regulations. Contractor shall be responsible for any and all barricades, trench plates, signs or other safety installations required to maintain a safe work area for the construction of all masonry walls.

Omissions or conflicts between various elements of the drawings, noted, and details shall be brought to the attention of the Superintendent and resolved before proceeding with the work.

The contractor shall obtain all necessary permits and call for all necessary inspections.

### IV. Insurance Requirements

Contractor shall maintain at all times during performance of said work statutory worker's compensation insurance as required by the laws of the state in which the work site is located, with minimum employer's liability and occupational disease limits of \$100,000/500,000 and \$100,000 aggregate to cover all employees engaged in such work, commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate and automobile liability insurance for all owned, non-owned and hired vehicles with a minimum limit of \$500,000 combined single limit per accident. The commercial general liability insurance shall specifically include coverage for Contractor's obligations under any indemnification/hold harmless provisions in this contract. Contractor may satisfy a portion of the employer's liability/occupational disease, commercial general liability or automobile liability limits with following form excess or umbrella excess liability insurance. The commercial general liability policy shall be endorsed to include Del Webb Corporation, an Arizona corporation, its subsidiaries and affiliates and their respective directors, officers, employees and agents, (hereinafter sometimes collectively referred to as "Del Webb" in this Section only) as additional insured, with respect to any claims, losses, expenses or

### EXHIBIT "C"

### Contract Number 346154 Parcel 20 Walls

This is a unit price Contract for Cedco and there will be no adjustments except for plan changes. In the event of plan changes the unit prices listed below will be used as a basis for adjustments.

(lf)	Wall Height	Wall Unit Price	Brewercoat & Delta-MS	Add-3 Day Grout	Total	Contract Amount
434	2'0"	\$19.23	\$3.50	\$0.50	\$23.23	\$10,081.82
924	2 '6"	\$23.31	\$4.38	\$0,63	\$28.32	\$26,167.68
937	3' 0"	\$27.91	\$5.25	\$0.75	\$33.91	\$31,773.67
316	3'6"	\$31.99	\$6.13	\$0.88	\$39.00	\$12,324.00
237	4' 0"	\$36.09	\$7.00	\$1.00	\$44.09	\$10,449.33
207	4' 6"	\$40.35	\$7.88	\$1.13	\$49.36	\$10,217.52
243	5' 0"	\$44.63	\$8.75	\$1,25	\$54.63	\$13,275.09
96	5' 6"	\$48.88	\$9.63	\$1.38	\$59.89	\$5,749.44
199	6' 0"	\$53.20	\$10.50	\$1.50	\$65.20	\$12,974.80
64	6' 6"	\$58.19	\$11.38	\$1.63	\$71.20	\$4,556.80
26	7'0"	\$63.12	\$12.25	\$1.75	\$77.12	\$2,005.12
144	7' 6"	\$68.13	\$13.13	\$1.88	\$83.14	\$11,972.16
24	8' 0"	\$73.12	\$14.00	\$2.00	\$89.12	\$2,138.88
	8' 6"	\$79.79	\$14.88	\$2.13	\$96.80	\$0.00
	9' 0"	\$86.45	\$15.75	\$2.25	\$104.45	\$0.00
	9'6"	\$93.06	\$16.63	\$2.38	\$112.07	\$0.00
	10'0'	\$96.90	\$17.50	. \$2.50	\$116,90	\$0.00

TOTAL CONTRACT

\$153,686.31

Note:

Actual quantities will be used for billing purposes

The above is based on proposal dated 10/26/99 per approved plans with 3 revisions dated June 18, 1998 as drawn by GC Wallace

11/17/1999	Del Webb Corporation	Page: 1
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	Supplement Detail Exhibit	
3113 Cedco, Inc.		
Contract # 346154 Date: 11/17/1999		
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RECEIVED

JUN 2 5 2001

June 21, 2001

Cedco, Inc. 7210 Placid Las Vegas, NV 89119

Attn: Accounts Receivable

RE: Contract Number 346154 - Miscellaneous Masonry & Improvements

Dear Accounts Receivable:

It has come to our attention that the above referenced contract is complete, therefore we are closing the contract.

If there are any outstanding invoices and/or issues regarding payment that need to be addressed, please contact me at (702) 914-4917. Once a contract is closed, no more monies can be paid from that contract. This applies to contracted amounts only. Any work orders invoiced will be paid.

If there are no outstanding issues with this contract, please sign the enclosed Unconditional Waiver and Release on Final Payment form have it notarized, and return it to me as soon as possible.

Send To:

Denise Hardy

Anthem Country Club Land Development 11500 S Eastern Avenue Henderson, NV 89052

Sincerely,

Denise Hardy

Contract Coordinator

Land Development

#### TERRAVITA HOME CONSTRUCTION CO

SUBCONTRACT NUMBER;

346220

SUPPLEMENT NUMBER:

0

SUBCONTRACT DATE:

November 30, 1999

FROM:

Cedco, Inc. 7210 Placid

NV 89119

RE: Masonry Walls for Parcels 19, 20, and 28.

VENDOR NUMBER:

LICENSE NUMBER:

SALES TAX NUMBER: 207716-03-08

FEDERAL I.D. NO.: 88-0233027

TO: Terravita Home Construction Co.
Anthem Country Club
(hereinafter "Anthem")
11500 S. Eastern Avenue
Henderson, NV 89012
ATTN: Land Development

The undersigned Subcontractor hereby proposes to furnish, at its own cost and expense, all labor, materials, tools, equipment, facilities, and supervision necessary to fully perform the following described Work for Anthem, located in Henderson, NV. The Work shall include completion of all punch list items in a manner that is finally accepted by Anthem's Project Superintendent. The Work also includes an obligation to cooperate with other trades, and to clean-up and remove all debris from the job-site.

The description of the Work, phasing, scope, and other requirements of this Subcontract are included in the documents described below:

- Subcontract Provisions attached as Exhibit "A"
  - Scope of Work attached as Exhibit "B"
- Base and Unit Pricing Schedule attached as Exhibit "C"

Each of these documents are incorporated by reference into this Subcontract.

This Work is to be fully completed and delivered to Anthem according to the terms and conditions of this Subcontract which is not to be exceeded by the following price which includes all taxes and is more fully described in Exhibit "C."

\* \* \* \* \* \* \$ 810,700 \* \* \* \* \* \* \$ Eight Hundred Ten Thousand, Seven Hundred and XX/100\* \* \* This Subcontract, when executed by Anthem and Subcontractor, shall become binding upon Anthem and Subcontractor, their heirs, executors, administrators, successors, and assigns. The terms and conditions of this Subcontract supersede and cancel all previous understandings or agreements, whether written, verbal, or implied.

IN WITNESS WHEREOF, this Subcontract is executed as of the date first above written.

Subcontractors are required by law to be licensed and regulated by the Nevada Registrar of Contractors.

Accepted:

Terravita Home Construction Co an Arizona Corporation

nv.

V.P. Construction

DATE: 11/15/99

· (1) 0.7

V.P. Finance

DATE: 12/15/99

Cedco, Inc.

B'1101

Title: 100

DATE: 12-8-99

Anthem Country Club

11/30/99

### SECTION 04200 - MASONRY FENCING

### PART 1 - GENERAL

### 1.1 RELATED DOCUMENTS

A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 1 Specifications Sections, apply to this section.

### 1.2 SECTION REQUIREMENTS

 Provide Masonry Block Fencing which has been produced and installed in compliance with manufacturer's published performance criteria.

#### 1.3 SUBMITTALS

- Submit Product Data and/or Engineering for special installation procedures not outlined within these specifications.
- B. Submit written warranties executed by the manufacturer of the Masonry Block specified agreeing to repair or replace units or components that fail in materials or workmanship within the specified warranty period.
- C. Submit Material Safety Data Sheets (MSDS) on all products.

### 1.4 QUALITY ASSURANCE

A. Installer Qualifications: An experienced installer who has completed systems similar in material, design and extent to those indicated for the project and with a record of successful in-service performance. Include lists of completed projects with project names and addresses, names and addresses of architects and owners and other information specified.

### 1.5 DELIVERY, STORAGE AND HANDLING

- A. Deliver material in original packages, containers, palettes or bundles bearing brand name and identification of manufacturer or supplier.
- B. Store material inside and under cover; keep them dry and protected from weather, direct sunlight, surface contamination, aging, corrosion, damaging temperatures, construction traffic and other causes.

### 1.6 WARRANTY

A. If at any time during two (2) years after the date of close of escrow any part of the materials or workmanship furnished by the contractor shall prove defective or not be in conformity with plans and specifications, Contractor shall be responsible for replacement

SECTION 04200 - MASONRY FENCING - 1

### Anthem Country Club

11/30/99

- or repair of the non-conforming or defective work to General Contractor's satisfaction, including all costs incidental thereto, without cost to General Contractor.
- B. This warranty shall not limit or void any extended or longer warranty provided under applicable law for a latent construction defect, or under any case law extending the warranty provided by the Builder to the buyer of any residential lot.

### PART 2 - PRODUCTS

### 2.1 MASONRY UNITS

- Concrete Masonry Units: ASTM C 90, 8" wide slump block, Type II, non-moisturecontrolled units.
  - Special shapes for lintels, corners, jambs, sash, control joints and other special conditions.
  - Square-edged units for outside corners, unless otherwise indicated.
- B. Materials are to be of First quality (not second grade or used).

### PART 3 - EXECUTION

### 3.1 INSTALLATION GENERAL

- Cut masonry units with motor-driven saws. Install cut units with cut surfaces and, where possible, cut edges concealed.
- When Matching Existing Masonry: Match coursing, bonding, color and texture of existing masonry.
- C. Stopping and Resuming Work: In each course, rack back units; do not tooth.
- D. Fill cores in hollow concrete masonry units with grout 24 inches under bearing plates, beams, lintels, posts and similar items, unless otherwise indicated.
- E. Furnish and install all masonry units and pre-cast concrete columns as described under the Material Specifications of this Exhibit "B" and in accordance with types, sizes and color selections as directed by Owner. Installation shall include, but not be limited to:
  - All work shall be laid plumb and true. All retaining walls shall be built with a 1/8" horizontal per 1' of vertical height so that walls will be plumb after backfill and loading.
  - Joints on exposed interior surfaces shall be struck to accommodate possible future
    paint application by others. All walls shall be slump stone, integral color, 8" x 6" x
    16" with matching mortar.

SECTION 04200 - MASONRY FENCING - 2

### Anthem Country Club

11/30/99

- All work shall be performed in a neat workmanlike manner and in the best practice of the trade. Extreme care shall be taken to prevent mortar splotches on exposed masonry walls, exposed concrete, window frames and glass.
- 4. Fence wall control joints shall be in accordance with plan details and/or building code requirements. Space for expansion joint at structure shall be allowed for. Locate ½" Felt joint in retaining wall at a maximum spacing of 24'-0".
- Stair step cracks in mortar joints exceeding 3/32" and voids exceeding 1/8" shall be removed and rebuilt to a like-new condition.
- All fence returns to the house shall have a maximum 1/4" space provided between the pilaster and the house, or install an approved exposed expansion joint as approved by Owner's Lead Field Superintendent.
- Both sides of fence wall shall receive a 2 sack-portland cement slurry application as per field model.
- All fence returns to the house shall have a maximum ¼" space provided between the pilaster and the house.
- F. Fence contractor to provide block-out for wrought iron fence post to be installed in cell to top of footing. Fence contractor to grout cell and fence post solid.
- G. Mortar shall be mixed in accordance to ASTM C 270 proportion specifications, Type "M" or "S" with a minimum strength of 1800 psi at 28 days.
- H. Masonry reinforcing installation shall include, but not be limited to:
  - Vertical reinforcing bars to be installed at 48" O.C. in masonry walls unless specified
    otherwise on plans and/or details. Reinforcing steel shall conform to ASTM A-615,
    Grade 60.
  - Masonry fences to be in accordance with plans and fence details for height, size and type of masonry units. Masonry fence bond beams, if required, shall be in accordance with plan details.
- I. Footing Concrete.
- The footing Concrete shall be proportioned and mixed to a certified and proven mix design for a minimum strength of 4000 psi at 28 days using Type V cement per ASTM C-150.
- Water Proofing: Brewercoat will be applied to all concrete and masonry surfaces below ground level to ensure protection against water, chemicals, petroleum and various other potential contaminants.

### 3.2 EXAMINATION

- Examine all areas to receive the products for compliance with requirements for installation tolerances and other condition affecting performance.
- B. Do NOT proceed with installation until unsatisfactory conditions have been corrected.

SECTION 04200 - MASONRY FENCING - 3

Anthem Country Club

11/30/99

### 3.3 CONSTRUCTION TOLERANCES

- A. Masonry walls shall not exceed 1/4" out of plumb or level in 8'.
- B. Owner may engage a qualified independent testing agency to perform the following tests for each 5000 sq. ft. of wall area or portion thereof. Testing results shall be in compliance with the following standards:
  - 1. Mortar Properties: ASTM C 270
  - 2. Mortar Composition and Properties: ASTM C 780 integral color to match units.
  - 3. Grout: ASTM C 1019

### 3.4 CLEANING

A. Final Cleaning: After mortar is thoroughly set and cured, remove large mortar particles and scrub unit masonry.

### 3.5 PROTECTION

A. Provide final protection in a manner acceptable to owner that insures that work is without damage or deterioration at the time of acceptance by owner.

**END OF SECTION 04200** 

SECTION 04200 - MASONRY FENCING - 4

### EXHIBIT C -Unit Pricing

This is a unit price Subcontract. Final payment will be at a unit price bid for each item of Work, with payment quantities determined by field measurements of the work in place. Anthem Country Club will issue a supplement amending the Subcontract amount to reflect the actual quantities installed.

### UNIT PRICE SCHEDULE:

13 Course 8x6x16 slumpstone wall with footing \$30.75/lf.

13 Course 8x6x16 slumpstone wall without footing \$27.75/lf.

Add for extra course on wall in production \$2.50/lf.

Add for 2" flat cap \$3.00/lf.

12 Course 2'x2'x6' pilaster in production \$300/lf.

Add for extra course on pilaster in production \$25.00/course

Slurry \$ .40/sf.

### NOT TO EXCEED SCHEDULE:

Parcel 19 - Not to Exceed Amount \$208,000.00

Parcel 20 - Not to Exceed Amount \$427,200.00

Parcel 28 - Not to Exceed Amount \$175,500.00

Total \$810,700.00

11/30/1999 Del Webb Corporation Pagei 17134:08 Exhibit "D" Supplement Detail 3113 Cedco, Inc. Contract # 346220 Date: 11/30/1999 Line Num. Src Ren Item Type Item Code - Description Quantity eres first pass seed brook and discussification accommunications -----Miscellaneous Items: 1 DB 208,000.00 Masonry Walls for Parcel 19 208,000.00 400000.1201.12617/19 2 DE Masonry Walls for Parcel 20 427,200.00 427,200.00 400000.1201.12617/20 3 DR Masonry walls for Parcel 28 175,500.00 400000.1201.12617/28

. Total For Miscellaneous

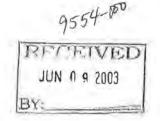
\* Total

Contractor:

DelWebb

810,700.00

810,700.00



### PULTE HOMES, DEL WEBB COMMUNITIES ANTHEM COUNTRY CLUB ATTN: CONSTRUCTION OPERATIONS

CONTRACT NUMBER: SUPPLEMENT NUMBER: SUPPLEMENT DATE: VENDOR NUMBER:

352160 13

May 15, 2003

FROM: Cedco, Inc. 7210 Placid

Las Vegas, NV 89119

TO: PULTE HOMES, DEL WEBE COMMUNITIES

ANTHEM COUNTRY CLUB (hereinafter "Anthem Country Club")

11500 S. Eastern Ave. Henderson, Nevada 89052 (702) 914-4900

It is agreed that the Contract referenced above is revised to incorporate changes in Contractor's work as stated in this Contract Amendment as described in the following exhibit(s):

- Exhibit D, supplement detail

The undersigned hereby proposes to amend its contract, numbered and dated as shown above, as follows:

- Invoice 10983, parcel 10 screen wall
- Invoice 10984, parcel 12 screen wall
- Invoice 10985, parcel 11 screen wall
- Invoice 10986, parcel 6 screen wall

This work is to be fully completed and delivered to Webb according to the terms and conditions of this Contract. This Contract Supplement, when accepted by Webb, shall become and be a part of said Contract referred to above.

Accepted: Cedco Inc.

(Title)

Pulte Homes, Del Webb Communities

Anthem Country Club

By

VP of Construction

THIS CHANGE:

159,036.00

5/15/2003	Del Wabb Corporation		Page: 1
11:19:49			
	Exhibit "D" Supplement Detail		
3113 Cedco, Inc.			
Continue # 150156 Page	- Are forces		
Contract # 352160 Date:	: 5/15/2003 Supplement # 013		
tine			
Num. Src Ren Itam Type	item Code Description	Quantity	Amount
***** ****	***********	mentioner i	CHAPPED CATEGORY
and the second state			
Miscellaneous Items:			
1 DB	INV 10983 PARCEL 10 SCREEN WALL		26,499.00
2.72	26,499.00 40071100.1208.01		44,152,145
2 DE	INV 10984 PARCEL 12 SCREEN WALL		101,510.00
	101,610.00 40071120.1208.01		
3 DE			21 122 22
3 DE	INV 10985 PARCEL 11 SCREEN WALL 21,129,00 40071110,1208,01		21,129.00
	21,123,00		
4 DB	INV 10986 PARCEL 6 SCREEN WALL		9,798.00
	9,798.00 40071060.1208.01		
	AT HE STORE WAS THE		************
	* Total For Miscellaneous	100	159,036-00
	** Total For This Supplement	-1	159,036.00
	TARRE LAS PRIES MARKETINE		

### PULTE HOMES, DEL WEBB COMMUNITIES ANTHEM COUNTRY CLUB ATTN: CONSTRUCTION OPERATIONS

CONTRACT NUMBER:

352160 12

SUPPLEMENT NUMBER: SUPPLEMENT DATE:

April 01, 2003

VENDOR NUMBER: 3113

FROM: Cedco, Inc.

7210 Placid

LAS VEGAS, NV 89119

TO: F

PULTE HOMES, DEL WEBB COMMUNITIES

ANTHEM COUNTRY CLUB (hereinafter "Anthem Country Club")

11500 S. Eastern Ave. Henderson, Nevada 89052

(702) 914-4900

It is agreed that the Contract referenced above is revised to incorporate changes in Contractor's work as stated in this Contract Amendment as described in the following exhibit(s):

- Supplement Detail attached as Exhibit "D"

The undersigned hereby proposes to amend its contract, numbered and dated as shown above, as follows:

Invoice payment for screen walls:

- Parcel 10, INV 10402, 10151, 10715. Parcel 11, INV 10403. Parcel 13, INV 10161, 10405, 10712. Parcel 12, INV 10404, 10717. Parcel 6, INV 10716

This work is to be fully completed and delivered to Webb according to the terms and conditions of this Contract. This Contract Supplement, when accepted by Webb, shall become and be a part of said Contract referred to above.

Accepted: Cedeo, Inc.

Imd + 7 A

Pulte Homes, Del Webb Communities

Anthem Country Club

By:

VP of Construction

THIS CHANGE:

256,028.83

REVISED TOTAL:

957,579.13

4/08/2003	Del Weab Corporation	Page:
8:55:14		
	Exhibit "D" Supplement Detail	
3113 Cedco, Inc.		
Contract # 352160 Date: 4/01/2003	Supplement # 012	
3,000 0 000 000 000		
Line		
Mum. Src Rsn Item Type Item Code	Description	Quantity Amount
most ner see seedester especialistical		INDERSONAL AND DESCRIPTION
Text 142 TO THE PROPERTY	V	
Miscallaneous Items;		
1 DE ADD	INV 10402 PARCEL 10 SCREEN WALLS, SLURRY	7,788,00
	7,788.00 40071100.1208.01	2.0
2 DE ADD	INV 10151 PARCEL 10 SCREEN WALLS, SLURRY	73,821.00
	73,821.00 40071100.1208.01	
3 DE ADD	INV 10403 PRCL 11 SCRN WALLS/SLRY PILSTR	46,951.50
	46,951.50 40071110.1208.01	237,444.22
4 DE ADD	INV 10404 PRCL 12 SCRN WALLS/SLRY FILST	20,729.50
	28,729.50 40071120,1208.01	
S DE ADD	INV 10161 PRCL 13 SCREEN WALLS/SLURRY	20 500 00
S DE ADD	20,592.00 40071130.120B.01	20, 592.00
	20/002100	
6 DE ADD	INV 10403 PRCL 13 SCREEN WALLS/SLURRY	30,294.00
	30,294.00 40071130.1208.01	
G are seen	some contract has been accounted to the	17.34-51
11 DE ADD	INV 10717 PARCEL 12 SCREEN WALLS/SLURRY 3,267.00 40071120.1208.01	3,267.00
	3,207.00 400/1120.1208.01	
12 DE ADD	INV 10716 PARCEL 6 CLOSURE, SLURRY	1,023.00
	1,023.00 40071060.1208.01	
19 DR ADD	INV 10715	18,084.00
	18,064.00 40071100.1208.01	
14 DE ADD	INV 10712 PARCEL 13 SCREEN WALLS/SLURRY	20,262.00
	20,262.00 40071130.1208.01	(3-(3-(3-))
	* Total For Miscellaneous	250,812.00
	as maked the mide through	200 000 000 000
	** Total For This Supplement	250,812,00

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### PULTE HOMES, DEL WEBB COMMUNITIES ANTHEM COUNTRY CLUB ATTN: CONSTRUCTION OPERATIONS

CONTRACT NUMBER:

352160

SUPPLEMENT NUMBER:

11

SUPPLEMENT DATE: VENDOR NUMBER: January 31, 2003

3113

FROM:

Cedco, Inc.

7210 Placid

\*&ABADD6, NV 89119

TO:

PULTE HOMES, DEL WEBB COMMUNITIES

ANTHEM COUNTRY CLUB (hereinafter "Anthem Country Club")

11500 S. Eastern Ave.

Henderson, Nevada 89052

(702) 914-4900

It is agreed that the Contract referenced above is revised to incorporate changes in Contractor's work as stated in this Contract Amendment as described in the following exhibit(s):

- Exhibit "D" - Contract detail supplement

The undersigned hereby proposes to amend its contract, numbered and dated as shown above, as follows:

Invoice payment for screen walls:

Inv 46138 - Parcel 6

Inv 46139 - Parcel 10

INV 46140 - Parcel 13

This work is to be fully completed and delivered to Webb according to the terms and conditions of this Contract. This Contract Supplement, when accepted by Webb, shall become and be a part of said Contract referred to above.

Accepted; Couco, Inc.

metal

Pulte Homes, Del Webb Communities
Anthem Country Club

BY:

VP of Construction

THIS CHANGE:

84,780.00

REVISED TOTAL:

701,550.30

	G. Company of the com	
1/31/2003	Del Webb Corporation	Page:
11:43:25		
	Exhibit "D" Supplement Detail	
3113 Ceddo, Inc.		
Contract # 352160 Date:	1/31/2003 Supplement # 011	
bine		
Num. Src Ran Item Type	Item Code Description	Quantity Amount
were no the immediation		addinate maleyester
Miscellaneous Itams:		
1 DE ADD	INV 46138 - PARCEL 6 SCREEN WALLS	693.00
	693.00 40071060.1208.01	
2 DE ADD	INV 46139 - PARCEL 10 SCREEN WALL	83,745,00
	83,745.00 40071100.1208.01	
3 DE ADD	INV 46140 - PARCEL 13 SCREEN WALL	342.00
	342.00 40071130,1208.01	
		**********
	* Total For Miscellaneous	84,780.00
	** Total For This Supplement	84,780.00

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\* TERRAVITA HOME CONSTRUCTION CO., dba. ANTHEM COUNTRY CLUB

SUBCONTRACT NUMBER: 352160 SUPPLEMENT NUMBER:

SUPPLEMENT DATE: VENDOR NUMBER:

March 15, 2002

3113

FROM Cedco, Inc. 7210 Placid Las Vegas

, NV 89119

TERRAVITA HOME CONSTRUCTION CO., DBA ANTHEM COUNTRY CLUB (Hereinafter "Anthem Country Club") 11500 S. Eastern Ave. Henderson, Nevada 89052 (702) 914-4900

It is agreed that Contract referenced above is revised to incorporate changes in Contractor's work as stated in:

### - Supplement Detail attached as Exhibit "D"

The undersigned hereby proposes to amend its Contract, numbered and dated as shown above, as follows:

> - Invoice 43815-in for Parcel 23 - Screen Walls and Slurry on Lots 1 - 12.

This work is to be fully completed and delivered to Anthem Country Club according to the terms and conditions of this Contract. This Contract Supplement, when accepted by Anthem Country Club, shall become and be a part of said Contract referred to above.

Accepted: TERRAVITA HOMES CONSTRUCTION CO.,

dba Anthem Country Club an Arizona Corporation

CEDCO, INC.

By:

VP of Construction

scg/subcont/supptitle

(REV: 02/01/95)

3/15/2002	Del Webb Corporation		Page: L
14:50:49	Exhibit "D" Supplement Detail		
3113 Cedco, Ind			
Contract # 352160 Date: 3/15/2002	Supplement # 002		
Dine			
Num. Sic Kan Item Type Item Code	V	Quantity	Amount
Miscellaneous Itoms:			
14 DE ADD	INF 43815-IN SLURRY FOR CC23 1-12 6,650.80 40071230.1208.01		6,650.80
			18522-011-00-00
	* Total For Miscallaneous		6,650,80
CC26 4 16403 A R			
4 DE ADD	INV 43815-IN 99LF SIDE WALL RIGHT 2,623.50 40071230.1208.01		2,623.50
	* Total For CC26 004		2,623.50
C2000   12 million (1-1)	- TOTAL FOR CC28 DD4		2,023.30
CC23 1 16512 C 8			
1 DS ADD	INV 43015-IN 110LF SIDE WALL 2,915.00 40071230.1208.01		2,915.00
			and the remaining
	* Total Por CC23 001		2,915,00
CC23 2 16513 A 8			
2 DR ADD	INV 43815-IN 111LF SIDS WALL RIGHT		2,941.50
	2,941.50 40071230.1208.01		
	* Total For CC23 002		2,941.50
CC23 3 16522 B 8			
3 DE ADD	INV 43815-IN 113LF SIDE WALL RIGHT		2,994.50
	2,994,50 40071230,1208,01		
	* Total For CC23 003		2,994:50
CC23 5 16531 C 8			
5 DE ADD	INV 43815-IN 97LF SIDE WALL RIGHT		2,570.50
5 DB 100	2,570.50 40071230.1206.01		41279130
	. Department of the second		
	* Total For GC23 005		2,570.50

3/15/2002	Del Webb Corporation		Page:
.14:50:49	Exhibit "D" Supplement Detail		
3113 Cedco, Inc.			
San Cadeo, Me.			
Contract # 352160 Date: 3/15/2002	Supplement # 002		
Num. Src ken trem Type Inam Code	Description	CUARTITY	Атомпъ
CC23 6 16532 H S			
A 40 1 400			2000
6 DE ADD	INV 43815-IN 77LF SIDE WALL RIGHT 2,040.50 40071230.1208.01		2,040.50
	* Total For CC23 006		2,040.50
CC23 7 16534 A R			
7 DE ADD	INV 53815-IN 81LF SIDE WALL RIGHT 2,146.50 40071230.1208.01		2,146,50
	2,210.30		
	* Total For CC23 007		2,146,50
The Company of			
CC23 8 16541 B 9			
8 DE ADD	INV 43815-IN 115LF SIDE WALL LEFT		3,047.50
	3,947.50 40071230.1208.01		
	* Total Por CC23 008		3,047,50
	- local For CC23 000		31447136
CC23 9 16542 B R			
9 DE ADD	INV 43815-IN 96LF SIDE WALL LEFT		2,544.00
	2,544.00 40071230.1208.01		
	10.1.a. 1.0. 63.0000		Population Science and
	* Total For CC23 009		3,544,00
CC23 10 16543 C R			
10 DE ADD	INV 43815-IN 103LF SIDE WALL LEFT		2,729.50
	2,729.50 40071230.1208.01		
			*(00*******
	* Total For CC23 010		2,729,50
CC23 11 16544 B R			
11 D8 ADD	INV 43815-IN 95LF SIDE WALL LEFT		2,517.50
	2,517.50 40071230.1208.01		
	* Total For CC23 011		2,517,50

3/15/2002 bel Webb Corporation Page: 3 -14:50:49 Exhibit "D" Supplement Detail 3113 Cedco, Inc. Contract # 352160 Date: 3/15/2002 Supplement # 002 Line Num. Src Ran Item Type Item Code Quantity Amount Description THE THE PERSON NAMED AND ADDRESS OF THE PERSON NAMED AND POST OF THE PERSON NAMED AND PARTY OF T CC23 12 16545 C S 12 DE ADD INV 43815-IN 114LF SIDE WALL LEFT 3,021.00 3,021.00 40071230.1208.01 13 DE ADD INV 43815-IN 68LP SIDE WALL RIGHT 1,802.00 1,802.00 40071230.1208.01 \* Total For CC23 012 4,823.00 \*\*\*\*\*\*\*\*\*\*\*\* 40,544.30 \*\* Total For This Supplement

ISIC 491



### TERRAVITA HOME CONSTRUCTION CO., dba. ANTHEM COUNTRY CLUB

SUBCONTRACT NUMBER: SUPPLEMENT NUMBER:

5 July 09, 2002

352160

\*\*\*\*\*\*\*\*\*\*\*\*

SUPPLEMENT DATE:

VENDOR NUMBER:

3113

FROM Cedco, Inc. 7210 Placid Las Vegas

, NV 89119

TO TERRAVITA HOME CONSTRUCTION CO., DBA ANTHEM COUNTRY CLUB (Hereinafter "Anthem Country Club") 11500 S. Bastern Ave. Henderson, Nevada 89052 (702) 914-4900

It is agreed that Contract referenced above is revised to incorporate changes in Contractor's work as stated in:

- Supplement Detail attached as Exhibit "D"

The undersigned hereby proposes to amend its Contract, numbered and dated as shown above, as follows:

> - Invoice 44432 for Side Walls w/Slurry on Parcel 6 Lots 28, 29, 30, 31, 32, 33, 34, 35

\*

This work is to be fully completed and delivered to Anthem Country Club according to the terms and conditions of this Contract. This Contract Supplement, when accepted by Anthem Country Club, shall become and be a part of said Contract referred to above.

Accepted: TERRAVITA HOMES CONSTRUCTION CO., dba Anthem Country Club an Arizona Corporation

CEDCO, INC.

"NO SIGNATURE REQUIRED" By:

"NO SIGNATURE REQUIRED"

(Title)

seg/subcont/supptitle

(REV: 02/01/95)

# EXHIBIT 9 (Part 2)

Excerpts of various Subcontracts between Cedco and Terravita Home Construction
• Part 2 (ISIC 494, 496-97, 515-521, 524-525, 536-537, 540-549, 552-553, 574-576)

### Case 2:15-cv-00460-JAD-PAL Document 42-12 Filed 09/19/16 Page 2 of 31

7/09/2002		Del Webb Corporation		Page: 1
17:25:31				
		Exhibit "D" Supplement Detail		
3113 Cedco, Inc.				
Contract # 352150 Date:	7/09/2002	Supplement # 005		
		/		
hine				
Num. Src Rsn Item Type	Item Code	Description	Quantity	Amount
With State Control Co.	<	** **************		
Miscellaneous Items:				
1 DE ADD		INV 44432 SIDS WALLS W/SLURRY ON LOT	es	24,377.30
		26, 29, 30, 31, 32, 33, 34, 35		
		21,377.30 40071060.1208.01		
				FF-44-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-1-
		* Total For Miscellapeous		24,377.30
		+* Total For This Supplement		24,377,30
		Contractor		
		- FR-144-14		
		DelWebb:		

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

DEL WEBB COMMUNITIES, INC. SUN CITY AT ANTHEM

ATTENTION: Landscape Design & Development

SUBCONTRACT NUMBER:

352529

SUPPLEMENT NUMBER:

0

SUBCONTRACT DATE:

March 07, 2002

VENDOR NUMBER: 4440

PROJECT: Original Contract - 2002-2003

FROM:

Cedco, Inc. 7210 Placid NV,89119 352529

LandScape

TOI

DEL WEBB COMMUNITIES, INC. (Hereinafter referred to as Webb)

11500 S Eastern Avenue Henderson NV 89052 (702) 914-4800

The undersigned Subcontractor hereby proposes to furnish at Subcontractor's own cost and expense, all labor, materials, tools, equipment and facilities and supervision necessary to fully perform the following described work for Webb at their project known as Sun City At Anthem, located in Henderson, Nevada. The work shall include completion of all punch list items in a manner that is finally accepted by Webb's Project Superintendent. The work also includes an obligation to cooperate with other trades and to clean-up and remove all debris from the job-site.

Plans involved: Individual plans as drawn by Webb's Landscape Architects and approved by buyer.

This subcontract covers all individual jobs started on or after MARCH 16, 2002 through all individual jobs started on or before MARCH 15, 2003...

The description of the work, phasing, scope and other requirements of this Subcontract are included in the documents described below:

- Subcontract provisions attached as Exhibit "A"

- Scope of Work attached as Exhibit "B"

- Progress Payment Schedule attached as Exhibit "P"

- OSHA Safety Guidelines

- Project Rules and Regulations

- Unit Pricing attached as Exhibit "C"

Each of these documents are incorporated by reference into this Subcontract.

This work is to be fully completed and delivered to Webb according to the terms and conditions of this Subcontract.

Cedco, Inc. March 07, 2002 Page 2

This Subcontract, when executed by Webb and Subcontractor, shall become binding upon Webb and Subcontractor, their heirs, executors, administrators, successors, and assigns. The terms and conditions of this Subcontract supersede and cancel all previous understanding or agreements, whether written, verbal or implied.

Subcontractors are required by law to be licensed and regulated by Nevada Registrar of Contractors.

Payment of items included on this subcontract may be delayed pending receipt of signed subcontract, Authorized signature form, proof of insurance, signed and notarized lien waivers, Consent to Assignment form, Safety Program and any other item requested by Webb.

IN WITNESS WHEREOF, this Subcontract is executed as of date above written.

Accepted:

Cedco, Inc.

By:

Del Webb Communities, Inc. an Arizona Corporation

By:

VP of Construction Operations

### EXHIBIT "B"

## Sun City Anthem Scope of Work Residential Landscape Program Masonry Wall Installation

### I. Description of Project

Masonry Wall Installation for Sun City Anthem Residential Landscape Program, hereafter referenced as "project," located in the master planned community of Anthem by Del Webb in Henderson, Nevada. The submitted bid shall include all operations necessary to complete the work in accordance with, but not limited to, the prepared plans, specifications, outlined scope of work.

Plans to be prepared by Del Webb Landscape Services Division and submitted to contractor for proposal.

### II. Scope of Work

### A. General

The scope of work to be performed by Contractor shall be in accordance with and shall include, without being limited to, the following (this list is not intended to be all-inclusive):

- Contractor shall provide all labor, material, supervision and
  equipment necessary to complete masonry wall installation at
  residential sites as referenced in prepared plans for Sun City
  Anthem in Henderson, Nevada, in strict accordance with all
  governmental and quasi-governmental agencies, all OSHA
  requirements, all plans, specifications, and instructions hereby
  given or referenced and to the complete satisfaction of Del Webb
  Anthem (DWA).
- Contractor shall complete all work per the codes and requirements of the City of Henderson and Clark County, Nevada.
- Contractor shall provide Material Safety Data Sheets (MSDS) report(s) in accordance with OSHA requirements to DWA.
- 4. Contractor shall complete all improvements in accordance with schedules provided by Del Webb. Any/all adjustments of schedules shall be met by Contractor. Weekly schedules shall be provided to Del Webb by Contractor that shall conform

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- with Del Webb overall schedule. Contractor shall accommodate any changes in the schedule due to changes in construction releases or other improvements.
- 5. Contractor shall have on-site at all times, English speaking, supervisory personnel to direct masonry wall Contractor's operation and shall have authority to immediately implement direction by Del Webb personnel. Said supervisor shall be maintained onsite for the duration of the project. Any change will be subject to DWA's approval.
- 6. Contractor shall visit the site and upon award of a contract, acknowledge that he has visited the site and is familiar with and has provided for the conditions that exist thereon and that he has checked with appropriate governing agencies and has made provisions for any and all requirements of those agencies.

### B. Notes:

- Construction water shall be provided by DWA. Contractor shall
  provide their own pumps and stand tanks, if necessary, so as to
  provide adequate water for grading operation and dust
  control. Transportation of water to the specific site shall be the
  responsibility of Contractor. Dust control is an integral part of this
  contract and shall be done by Contractor at Contractors cost.
- Fines levied against the dust control permittee (DWA) as a result
  of the lack of dust control remediations, shall be borne by the
  Contractor.
- DWA will supply all surveying, engineering, and testing.
  Contractor shall be responsible for arranging all required
  inspections and acquiring all necessary permits. Contractor will be
  responsible for the dust control necessary for Contractor's
  operations.
- Any restaking due to Contractor negligence will result in a back charge of \$150.00 per hour or the actual cost of charges paid for survey crews if greater.
- Contractor will be responsible for locating all underground facilities. Contractor shall be responsible for protection of these facilities from Contractors operations. All repair costs for damage to facilities due to Contractors operations will be the responsibility of the contractor.

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- Contractor shall be required to coordinate his activities with the other contractors on this project.
- All work must be approved and accepted by Webb prior to any progress payments.
- 8. Work to be done in sequence and by priority established by Webb.
- 9. The contractor is responsible for making himself familiar with all underground utilities, pipes, and structures. The contractor should contact the designated Webb field representatives and other trades to insure that all underground lines are located before commencing work that could affect these lines. The contractor shall take sole responsibility for cost incurred due to damage and replacement of said utilities. CALL BEFORE YOU DIG
- 10. Contractor is required to staff a crew and schedule all work to insure that pre-programmed construction dates are met. If production is lagging Webb reserves the right to require the contractor to work over-time at no additional cost to insure that the schedule dates are met.
- Contractor must thoroughly familiarize himself with all federal, state, and county laws, ordinances, rules, and regulations that may in any manner affect the nature and extent of work to be done under this contract.
- 12. Contractor acknowledges and agrees that the prices submitted for each job include all charges for incidental expenses, whether foreseeable or unforeseeable, at the time of this proposal: for supervision, for all federal, state, or local taxes, for insurance and for overhead, labor, and profit in accordance with the whole of the bid package.
- 13. Contractor to coordinate with Webb and supply his own radio(s).
- Contractor will protect his work as well as the work of other contractors. If this is not done, contractor will bear the expenses of repair.

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### III. Existing Conditions

- A. Contractor will familiarize himself with the actual conditions of the project site that may in any manner affect the nature and extent of the work to be done under this contract.
- B. Webb will make no allowance for inaccessibility of equipment due to the existing conditions.

### IV. Materials (Block Masonry)

- A. All walls will be constructed with 8"X8"X16" precision block manufactured by WMK or equal as determined by the sole discretion of Del Webb, unless otherwise noted.
- Masonry units shall conform to ASTM C-90, grade N-1 hollow concrete units.
- C. Mortar shall be ASTM C270, Type "M" or "S".

### V. Materials (Footing Concrete)

- A. The footing concrete shall be proportioned and mixed to a certified and proven mix design for a minimum allowable compressive strength of 3,000 psi at 28 days using Type V cement per ASTM C-150.
- B. Grout shall have a minimum strength of 2,000 psi at 28 days using Type V cement per ASTM C-150. A separate line item as an incremental cost to be added to specific walls must be submitted for higher strength (4,000 pst), three-day grout in the event that the backfill schedule needs to be accelerated. 4,000 psi grout shall only be installed after the contractor receives written instructions from the Manager, Landscape Services prior to installation. Any cost for 4,000 psi grout installed without prior written approval of the Manager, Landscape Services shall be the responsibility of the contractor.

### VI. Materials (Water Proofing)

A. Delta-MS will be applied to all concrete and masonry surfaces below ground level to ensure protection against water, chemicals, petroleum and various other potential contaminants. Specifications of Delta-MS are found in the attached "Exhibit "E".

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### VII. Installation Specifications

### A. Masonry

The masonry contractor shall furnish and install all masonry units as described under the Material Specifications of this exhibit and in accordance with type, sizes and color selections as directed by Webb. Masonry unit installation shall include, but not be limited to:

Single or Double Side split-face block in Del Webb approved color, as supplied by WMK, will be used in the construction of all walls per supplied plans.

All retaining walls shall be built with at batter of 1/8" horizontal per 1' of vertical height so that walls will be plumb after backfill and loading. Structural retaining walls to be constructed in accordance with G.C. Wallace guidelines. (To be supplied)

Joints on exposed masonry shall be raked to a depth of 3/8" unless otherwise noted on plans.

All corner and angled walls shall be fied together with horizontal reinforcing steel and grouted solid. No vertical joints shall be allowed within 12' of a corner or angle point.

All radius walls shall be built on a neat uniform radius. Stakes for radius walls, where it is impractical to stake a center point, will be set at a maximum interval of 10°. Contractor shall be responsible for verifying the adequacy of the quantity of stakes set and shall not construct any radius walls that are not staked with either a radius point or staking at a maximum 10° interval. Contractor will be given one (1) set of stakes for walls. Any restaking will be at the expense of the masonry contractor.

All work shall be performed in a neat, workmanlike manner and in the best practice of the trade. Extreme care shall be taken to prevent mortar splotches on exposed masonry walls.

Fence wall control joints shall be in accordance with plan details and/or building code requirements.

Contractor will be responsible for placing stucco caps on all top surfaces of walls to match the color of the masonry.

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Masonry surfaces are to be in accordance with plans and fence details for height, size, and type of masonry units. Masonry fence bond beams, if required, shall be in accordance with plan details.

### B. Mortar

Mortar shall be mixed in 1: ½: 3 proportions of mortar cement to lime to sand. Water to be added to achieve desired consistency and maximum of 3" slump. Unless specified otherwise, mortar color shall be natural. If required, color admixtures shall be as approved by Webb.

### C. Grout

Grout shall be mixed in 1:1/10:2:3 proportions of cement to lime to pea gravel to sand. Water to be added to achieve desired pumping consistency and maximum of 8" slump. Grout admixtures are expressly prohibited without written acceptance/approval by Webb, otherwise mortar color shall be natural. If required, color admixtures shall be as approved by Webb.

Grout shall be double vibrated as dictated by project engineer or Webb superintendent.

### D. Waterproofing

Instructions for application and specifications of Delta-MS are found in the attached "Exhibit "E".

### E. Backfilling

The contractor will be responsible for backfilling of walls and footings with approved material.

### F. Wall Footings

All footings are to be constructed to the design grades and stepped according to the plans given to contractor.

The bottom of the footing trench shall be compacted to a minimum of 90% of maximum density with a moisture content of +/-4% optimum.

Spoils shall be removed from the site and taken to an approved dump area.

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### VIII. Service Requirements

- All contractors will have a representative (serviceman) responsible for warranty work.
- B. The contractor will be responsible to pick up Webb initiated work orders from Webb's Landscape Services office in a timely manner.
- C. Upon satisfactory completion of the work, the contractor is to have homeowner (or Webb Landscape Superintendent in the case of production housing) and the serviceman sign the work order and return it to the Landscape Services Department.
- D. If additional work is required by other trades following completion of work, the contractor shall be responsible to notify Landscape Services of any necessary follow-up.
- E. Work orders must be completed within five (5) working days of issuance unless specified otherwise by Landscape Services. Overdue work orders will not be tolerated.

### IX. Non-Competition

Contractor agrees that during the term of this contract, contractor will not engage in any masonry work directly for any individual who is currently a homeowner at Sun City Anthem at said homeowner's Sun City Anthem residence without the express consent of Del Webb. Non-compliance with this requirement will be cause for termination of this contract.

### X. General

- A. The masonry wall contractor shall provide protection for his work and the work of others and provide cooperation and coordination with other trades.
- B. Contractor will perform all work in accordance with Occupational Safety and Health Act Regulations.
- C. Contract is based upon unit prices in annual contract with actual quantities invoiced to be field measured.

### XI. Utilities

Temporary electric to be provided by contractor.

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3-4-02

### EXHIBIT "C"

### MASONRY BID SHEET LANDSCAPE SERVICES

### Unit Pricing

Company of the second of the s	2200
Up to 24" high Courtyard wall w/6"x3"x1:6" Grey Smooth Block	\$ 2000 Af
Up to 24" high Courtyard wall w/6"x8"x16" Single Sided Split Face Block	\$25°0/16
Up to 24" high Courtyard wall w/6"x8"x16" Double Sided Split Face Block	\$ 30°0/16
Up to 36" high Courtyard wall w/8"x8"x16" Grey Smooth Block	\$ 25°0/1f
Up to 36" high Courtyard wall w/8"x3"x16" Single Sided Split Face Block	5 30°C/1f
Up to 36" high Courtyard wall w/8"x8"x16" Double Sided Split Face Block	s 35 00/16
16"x16"x36" high Pilaster w/8"x8"x16" Grey Smooth Block  No x-10 x-10 might Pilaster w/8"x8"16" Single Sided Split Face Block  16"x16"x36" high Pilaster w/8"x8"16" Single Sided Split Face Block	\$ 15000 /ea 2000 /ea \$ 1750 /ea
24"x24"x36"high Pilaster w/8"x8"x16" Grey Smooth Block	s 17500 Tea
24"x24"x36" high Pilaster w/8"x8"x16" Single Sided Split Face Block	s 225 Tea
Up to 64" high Screen wall w/6"x8"x16" Grey Smooth Block	s 3000 /1f
Up to 64" high Screen wall w/8"x8"x16" Single Sided Split Face Block	s 4000 /1f
Up to 64" high Screen wall w/6"x8"x16" Grey Double Sided Split Face Block	s_4000/16
Up to 64" high Screen wall w/6"x8"x16" Colored Double Sided Split Face Block	\$ 45°0/16
Up to 64" high Screen wall w/8"x8"x16" Grey Double Sided Split Face Block	s_50°0/1f
Up to 64" high Screen wall w/8"x8"x16" Colored Double Sided Split Face Block	s 55 /1f
Up to 32" high Retaining wall w/8"x8"x16" Grey Smooth Block	5 30° /16
Up to 32" high Retaining wall w/8"x8"x16" Single Sided Split Face Block	\$ 35 /nf
4"x8"x8" Glass Block - Clear or Obscure	\$ 40 se /sf
18" diameter x 36" high concréte pilaster	\$ 300 /ea
Cultured Stone Veneer (Standard Size/Standard Color)	s 20° /sf
Flagstone Pavers (in sand bed)	\$ 2000 /sf
THE WAY A	

3: C4000098,000

INITIALS



Flagstone Pavers (on 4" thick Grey Broom finish slab)	\$ 25°0 /sf
20"x20"x2" Precast Concrete Pilaster Cap	\$ 175 <sup>60</sup> /ea
24"x24"x2" Precast Concrete Pilaster Cap	\$200° /ea
4" high x 12" wide Precast Concrete Wall Cap	\$ 20° /1f
12" wide x 20" long Flagstone Wall Cap	\$ 20° /1f
Firepit: 48" inside diameter x 20" high w/4" high cap block on 4" concrete slab (Excludes: gas lines and gas fixtures)	\$ 1500 rea
Wall Permit (Done on per job basis; NTE \$500.00)	

SUBMITTED BY: TED Davis

CONTRACTOR: CEDCO NC

DATE: 3-04-02

SIGNATURE:

su attached equipment schedule

G:\C&GSCOPE.DOC

INITIALS

TERRAVITA HOME CONSTRUCTION CO., dba. ANTHEM COUNTRY CLUB

SUBCONTRACT NUMBER: SUPPLEMENT NUMBER:

352160

SUPPLEMENT DATE:

May 29, 2002

VENDOR NUMBER: 3113

FROM Cedco, Inc. 7210 Placid Las Vegas

, NV 89119

TO TERRAVITA HOME CONSTRUCTION CO., DBA ANTHEM COUNTRY CLUB (Hereinafter "Anthem Country Club") 11500 S. Eastern Ave. Henderson, Nevada 89052 (702) 914-4900

It is agreed that Contract referenced above is revised to incorporate changes in Contractor's work as stated in:

- Supplement Detail attached as Exhibit "D"

The undersigned hereby proposes to amend its Contract, numbered and dated as shown above, as follows:

- INV 44170-IN Parcel 6 - Screen Walls and Slurry

This work is to be fully completed and delivered to Anthem Country Club according to the terms and conditions of this Contract. This Contract. Supplement, when accepted by Anthem Country Club, shall become and be a part of said Contract referred to above.

Accepted: TERRAVITA HOMES CONSTRUCTION CO.,

dba Anthem Country Club an Arizona Corporation

By:

NO SIGNATURE REQUIRED"

VP of Construction

(Title)

scg/subcont/supptitle

(REV:02/01/95)

TERRAVITA HOME CONSTRUCTION CO., dba.

ANTHEM COUNTRY CLUB

SUBCONTRACT NUMBER : SUPPLEMENT NUMBER:

352160

SUPPLEMENT DATE: VENDOR NUMBER:

April 11, 2002

3113

FROM Cedco, Inc. 7210 Placid Las Vegas

NV 89119

TO TERRAVITA HOME CONSTRUCTION CO., DBA ANTHEM COUNTRY CLUB (Hereinafter "Anthem Country Club") 11500 S. Eastern Ave. Henderson, Nevada 89052 (702) 914-4900

It is agreed that Contract referenced above is revised to incorporate changes in Contractor's work as stated in:

- Supplement Detail attached as Exhibit "D" The undersigned hereby proposes to amend its Contract, numbered and dated as shown above, as follows:

- Invoice 43976-IN for Screen Walls and Slurry for Parcel 6 on lots 3, 39, 41, 42, 43.
- Invoice 43976-IN includes Slurry coat which was not billed on previous invoice 43565-IN.

This work is to be fully completed and delivered to Anthem Country Club according to the terms and conditions of this Contract. This Contract Supplement, when accepted by Anthem Country Club, shall become and be a part of said Contract referred to above.

Accepted: TERRAVITA HOMES CONSTRUCTION CO.,

CEDCO, INC.

dba Anthem Country Club

an Arizona Corporation

By:

Signature Not Required for Invoice payment VP of Construction

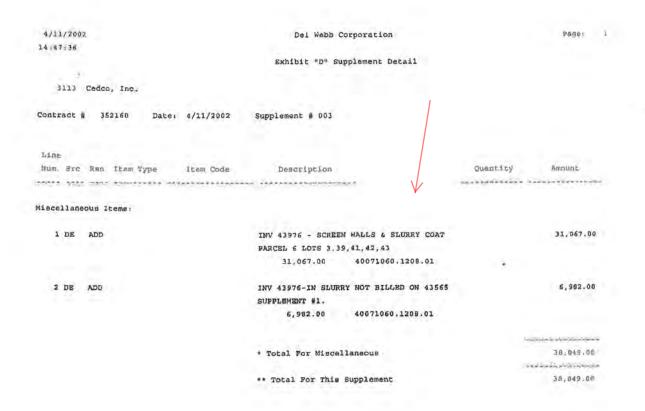
\*\*\*\*\*\*\*\*\*\*\*\*\*

(Title)

scg/subcont/supptitle

(REV: 02/01/95)

### Case 2:15-cv-00460-JAD-PAL Document 42-12 Filed 09/19/16 Page 16 of 31



Contractor

DelWebb:

\*

TERRAVITA HOME CONSTRUCTION CO., dba.
ANTHEM COUNTRY CLUB

SUBCONTRACT NUMBER:

352160

SUPPLEMENT NUMBER: SUPPLEMENT DATE:

February 21, 2002

VENDOR NUMBER:

3113

FROM Cedco, Inc. 7210 Placid

Las Vegas

NV 89119

TO TERRAVITA HOME CONSTRUCTION CO., DBA ANTHEM COUNTRY CLUB (Hereinafter "Anthem Country Club") 11500 S. Eastern Ave. Henderson, Nevada 89052 (702) 914-4900

It is agreed that Contract referenced above is revised to incorporate changes in Contractor's work as stated in:

- NTE Pricing from Cedco per Parcel attached as Exhibit "C"

The undersigned hereby proposes to amend its Contract, numbered and dated as shown above, as follows:

- Include Parcels 6, 10, 11, 12, 13 and 43 to Contract for Screen Walls.
- \* Parcel 6 Proposal #M5015 is Not to Exceed \$309,329.00
- \* Parcel 10 Proposal #M5086 is Not to Exceed \$404,177.00
- \* Parcel 11 Proposal #M5085 is Not to Exceed \$333,707.50
- \* Parcel 12 Proposal #M5087 is Not to Exceed \$343,231.00
- \* Parcel 13 Proposal #M5084 is Not to Exceed \$279,852.00
- Parcel 23 Proposal #4723B is Not to Exceed \$ 57,915.50
   Parcel 43 Proposal #M5083 is Not to Exceed \$876,458.50
- Pay Invoice 43630-IN Parcel 6 Common Area Screen Walls.
- Pay Invoice 43565-IN Parcel 6 Lots 24-38 Screen Walls.

This work is to be fully completed and delivered to Anthem Country Club according to the terms and conditions of this Contract. This Contract Supplement, when accepted by Anthem Country Club, shall become and be a part of said Contract referred to above.

scg/subcont/supptitle

(REV: 02/01/95)

Accepted: TERRAVITA HOMES CONSTRUCTION CO.,

dba Anthem Country Club an Arizona Corporation

By:

VP of Construction

CEDCO, INC.

(REV:02/01/95)

2/21/2002	Del Webb Corporation	Page:
17:29:07		
	Exhibit "D" Supplement Detail	
3113 Cedco, Inc.		
Contract # 352160 Date: 2	(leaferne and a series)	
Contract # 352160 Date: 2	/21/2002 Supplement # 001	
Line		
Num. Bro Ran Item Type I	tem Code Description	Quantity Amount
ther the the appearant said	************	tratherstand transcripture
and the same of the same		
Miscellaneous Items:		
I DE ADD	INV 43565-IN PARCEL 6 LOTS 24-38 WAI	LLS 33,469.50
	33,469.50 40071060.1208.03	
2 DE ADD	INV 43630-IN PARCEL 6 COMMON AREA	7,317.00
	7,317.00 40071060.1208.00	1
		*****
	+ Total For Miscellaneous	40,706.50
	26:20 516 m 30 15 m 30 15 m	
	** Total For This Supplement	40,786.50

FAX NO. : Jan. 15 2002 10:56AM P1 FROM : CEDCO

EXHIBAT

CEDCO, INC.

Proposal #M5015

January 15, 2002

Del Webb Corp. 11500 S. Eastern Henderson, NV-89052 Attn: Jeri Hernandez

> Re: Anthem Country Club Parcel 6 Screen Walls

We submit the following proposal to perform work on the above referenced project:

8,724 1,f. 6'8" high 6x8x16 \$231,186.00 precision wall w/footing.@ \$26.50/l.f.

50 ea. 10 course high 2'x2' pilasters @ \$315.00 ea. \$ 15,750.00

122,136 s.f. slurry on walls @ \$.50/s.f. \$ 61,068.00

2,650 s.f. slurry on pilasters @ \$.50/s.f. 1,325.00

TOTAL PROPOSAL \$309,329.00

Labor, materials, permits and clean up of Cedco materials only Bid Includes:

Bid Excludes: Backfill, soil compaction, caliche removal, removal of foundation spoils,

cutting of embankments, dampproofing, engineering and surveying.

Note: Compliance with OSHA requirements per accepted trade practices for residential

projects in Las Vegas.

Note: Final billing is based on actual field verified installed quantities.

Note: Due to the chemical content of Las Vegas water, all irrigation water must be set back

at least 3' from Cedco, Inc. finishes. All warranties will be null and void if this note is

not followed.

Sincerely,

Contractors License #26432 7210 Placid, Las Vegas, Nevada 89119

Phone (702) 361-6550 \* Fax (702) 361-8281,

FROM : CEDCØ

FAX NO. :

EXHIBIT

Feb. 12 2002 02:45PM

CEDCO, INC.

Proposal #M5086

February 11, 2002

Del Webb Corp. 11500 S. Eastern Henderson, NV 89052 Attn: Jeri Hernandez

Re:

Authem Country Club Parcel 10 Screen Walls

We submit the following proposal to perform work on the above referenced project:

11,460 f.f. 6'8" high 6x8x16

precision wall w/footing @ \$26.50/l.f.

\$303,690.00

59 èa. 10 course high 2'x2' pilasters @ \$315.00 ea.

\$ 18,585.00

160,440 s.f. slurry on walls @ \$.50/s.f.

\$ 80,220.00

3,363 s.f. slurry on pilasters @ \$.50/s.f.

1,682,00

TOTAL PROPOSAL

\$404,177.00

Labor, materials, permits and clean up of Cedco materials only Bid Includes:

Bid Excludes: Backfill, soil compaction, caliche removal, removal of foundation spoils, cutting of embankments, dampproofing, engineering and surveying.

Note:

Compliance with OSHA requirements per accepted trade practices for residential

projects in Las Vegas.

Note:

Final billing is based on actual field verified installed quantities.

Note:

Due to the chemical content of Las Vegas water, all irrigation water must be set back at least 3' from Cedco, Inc. finishes. All warranties will be null and void if this note is

not followed,

Sincerely,

CEDCO, INC

Contractors License #26432 7210 Placid, Las Vegas, Nevada 89119 Phone (702) 361-6550'\* Fax (702) 361-8281

FROM : CEDCO

FAX NO. :

Feb. 12 2002 02:45PM P2

Proposal #M5085

EXHIBIT "C"



February 11, 2002

Del Webb Corp. 11500 S. Eastern Henderson, NV 89052 Attn: Jeri Hernandez

Re:

Anthem Country Club Parcel 11 Screen Walls

We submit the following proposal to perform work on the above referenced project:

9,500 Lf. 6'8" high 6x8x16

precision wall w/footing @ \$26.50/l.f. \$251,750.00

45 ca. 10 course high 2'x2' pilasters @ \$315.00 ea. \$ 14,175.00

133,000 s.f. slurry on walls @ \$.50/s.f. \$66,500.00

2,565 s.f. slurry on pilasters @ \$.50/s.f. \$ 1,282.50

TOTAL PROPOSAL \$333,707.50

Bid Includes: Labor, materials, permits and clean up of Cedco materials only

Bid Excludes: Backfill, soil compaction, caliche removal, removal of foundation spoils,

cutting of embankments, dampproofing, engineering and surveying.

Note: Compliance with OSHA requirements per accepted trade practices for residential

projects in Las Vegas.

Note: Final billing is based on actual field verified installed quantities.

Note: Due to the chemical content of Las Vegas water, all irrigation water must be set back

at least 3' from Cedco, Inc. finishes. All warranties will be null and void if this note is

not followed.

Sincerely,

CEDCO, INC.

Mary S. Billington

Contractors License #26432 7210 Placid, Las Vegas, Nevada 89119 Phone (702) 361-6550 = Fax (702) 361-8281

**ISIC 545** 

FROM : CEDCØ FAX NO. : Feb. 12 2002 02:46PN

EXHIBIT "C"

Proposal #M5087

February 11, 2002

CEDCO, INC.

Del Webb Corp. 11500 S. Eastern Henderson, NV 89052 Attn: Jeri Hernandez

Re:

Authom Country Club Parcel 12 Screen Walls

We submit the following proposal to perform work on the above referenced project:

9,600 l.f. 6'8" high 6x8x16
precision wall w/footing @ \$26.50/l.f. \$254,400.00
49 ea. 10 course high 2'x2' pilasters @ \$315.00 ea. \$15,,435.00
134,400 s.f. slurry on walls @ \$.50/s.f. \$67,200.00
2,793 s.f. slurry on pilasters @ \$.50/s.f. \$1.396.50
TOTAL PROPOSAL \$343,231.00

Bid Includes: Labor, materials, permits and clean up of Cedco materials only

Bid Excludes: Backfill, soil compaction, caliche removal, removal of foundation spoils,

cutting of embaukments, dampproofing, engineering and surveying.

Note: Compliance with OSHA requirements per accepted trade practices for residential

projects in Las Vegas.

Note: Final billing is based on actual field verified installed quantities.

Note: Due to the chemical content of Las Vegas water, all irrigation water must be set back

at least 3' from Cedco, Inc. finishes. All warranties will be null and void if this note is

not followed.

Sincerely,

CEDCO, INC.

Contractors License #26432 7210 Placid, Las Vegas, Nevada 89.119 Phone (702) 361-6550 • Fax (702) 361-8281 FROM : CEDCØ

FAX NO. :

Feb. 12 2002 02:46PM P.

Proposal #M5084

EXHIBIT "C



February 11, 2002

Del Webb Corp. 11500 S. Eastern Henderson, NV 89052 Attn: Jeri Hernandez

Re:

Anthem Country Club Parcel 13 Screen Walls

We submit the following proposal to perform work on the above referenced project:

8,200 Lf. 6'8" high 6x8x16 precision wall w/footing @ \$26.50/l.f.	\$217,300.00
	***************************************
15 ea. 10 course high 2'x2' pilasters @ \$315.00 ea.	\$ ,4,725,00
114,800 s.f. slurry on walls @ \$.50/s.f.	\$ 57,400.00
855 s.f. slurry on pilasters @ \$.50/s.f.	\$ 427.00
TOTAL PROPOSAL	\$279,852.00

Bid Includes: Labor, materials, permits and clean up of Cedeo materials only

Bid Excludes: Backfill, soil compaction, caliche removal, removal of foundation spoils,

cutting of embankments, dampproofing, engineering and surveying.

Note: Compliance with OSHA requirements per accepted trade practices for residential

projects in Las Vegas.

Note: Final billing is based on actual field verified installed quantities.

Note: Due to the chemical content of Las Vegas water, all irrigation water must be set back

at least 3' from Cedco, Inc. finishes. All warranties will be null and void if this note is

not followed.

Sincerely,

CEDCO, INC

Mary S. Billington

Contractors License #26432 7210 Placid, Las Vegas, Nevada 89119 Phone (702) 361-6550 = Fax (702) 361-8281 FROM : CEDC0 FAX NO. : Feb. 12 2002 02:47PM

EXHIBIT

CEDCO, INC.

Proposal #M5083

February 11, 2002

Del Webb Corp: 11500 S. Eastern Henderson, NV 89052 Attn: Jeri Hernandez

> Re: Anthem Country Club Parcel 43 Screen Walls

We submit the following proposal to perform work on the above referenced project;

25,640 lf. 6'8" high 6x8x16
precision wall w/footing @ \$26.50/l.f. \$679,460.00

51 ea. 10 course high 2'x2' pilasters @ \$315.00 ea. \$ 16,065.00

358,960 s.f. slurry on walls @ \$.50/s.f. \$ 179,480.00

2,907 s.f. slurry on pilasters @ \$.50/s.f. \$ 1,453.50

TOTAL PROPOSAL \$876,458.50

Bid Includes: Labor, materials, permits and clean up of Cedco materials only

Bid Excludes: Backfill, soil compaction, catiche removal, removal of foundation spoils, cutting of embankments, dampproofing, engineering and surveying.

Compliance with OSHA requirements per accepted trade practices for residential

projects in Las Vegas.

Note: Final billing is based on actual field verified installed quantities.

Note: Due to the chemical content of Las Vegas water, all irrigation water must be set back

at least 3' from Cedco, Inc. finishes. All warranties will be null and void if this note is

not followed.

Sincerely,

Note:

CEDCO, INC.

Mary S. Billington

Contractors License #26432 7210 Placid, Las Vegas, Nevada 89119 Phone (702) 361-6550 • Fax (702) 361-8281 FROM : CEDCO

FAX NO.

Jan. 14 2002 11:28AM P2

Proposal 4723B



January 14, 2002

Anthem Country Club 11500 South Eastern Henderson, NV 89052

> nodels Re: Parcel 23 - Screen Walls

We submit the following proposal to perform work on the above referenced project. This proposal is in lieu of proposal 4723A dated September 5, 2001 and proposal 4800 dated September 25, 2001 and is based on the use of 8° block

1,627 lf. of 6'8" Screen Walls @ \$26.50/lf. 23,300 s.f. of Slurry @ \$.50/s.f. 10 pilasters @ \$315,00 ea. TOTAL PROPOSAL

\$43,115.50 \$11,650.00 3,150.00 \$57,915,50

Labor, materials, permits and clean up of Cedco materials only Bid Includes:

Bid Excludes: Backfill, soil compaction, caliche removal, removal of foundation spoils,

cutting of embankments, dampproofing, engineering and surveying.

Note: Compliance with OSHA requirements per accepted trade practices for residential projects in Las Vegas.

Note: Final billing is based on actual field verified installed quantities.

Due to the chemical content of Las Vegas water, all irrigation water must be Note:

set back at least 3' from Cedco, Inc. finishes. All warranties will be null and

void if this note is not followed.

Sincerely,

Mary S. Billington

Contractors License #26432 7210 Placid, Las Vegas, Nevada 89119 none (702) 361-6550 = Fax (702) 361-8281

### TERRAVITA HOME CONSTRUCTION CO., dba ANTHEM COUNTRY CLUB

SUBCONTRACT NUMBER: 352160 SUPPLEMENT NUMBER: 0

SUBCONTRACT DATE: January 11, 2002

VENDOR NUMBER: 3113

FROM: Cedco, Inc. 7210 Placid

Las Vegas, NV 89119

TO: TERRAVITA HOME CONSTRUCTION CO., dba

ANTHEM COUNTRY CLUB (hereinafter "Anthem Country Club")

11500 S. Eastern Ave. Henderson, Nevada 89052

(702) 914-4900

The undersigned Subcontractor hereby proposes to furnish at its own cost and expense, all labor, materials, tools, equipment, and facilities and supervision necessary to fully perform the following described work for Webb at their project known as Anthem Country Club, located in Henderson, Nevada. The work shall include completion of all punch list items in a manner that is finally accepted by Webb's Project Superintendent. The work also includes an obligation to cooperate with other trades and to clean-up and remove all debris from the job-site.

This Subcontract and the pricing herein is based on Proposal #M3689C dated December 4, 2001.

This subcontract is for the build out of Anthem Country Club to receive a new style of wall (Parcels 6, 10, 11, 12, 13 and 43). All blockwalls facing Anthem Country Drive or Reunion Drive will remain the old style of wall.

The description of the work, phasing, scope and other requirements of this Subcontract are included in the documents described below:

- Exhibit "A" - Contract Provisions

- Exhibit "B" - Scope of Work

- Exhibit "C" - Cost Schedule Exhibit

- Exhibit "P" - Progress Payment Schedule

Each of these documents are incorporated by reference into this Subcontract.

This work is to be fully completed and delivered to Anthem Country Club according to the terms and conditions of the Subcontract.

Cedco, Inc. January 11, 2002 Page 2

This Subcontract, when executed by Anthem Country Club and Subcontractor, shall become binding upon Anthem Country Club and Subcontractor, their heirs, executors, administrators, successors and assigns. The terms and conditions of this Subcontract supersede and cancel all previous understandings or agreements, whether written, verbal or implied.

Subcontractors are required by law to be licensed and regulated by Nevada Registrar of Contractors.

Payment of items included on this subcontract may be delayed pending receipt of signed subcontract, Authorized signature form, proof of insurance, signed and notarized lien waivers, Consent to Assignment form, Safety Program and any other item requested by Webb.

IN WITNESS WHEREOF, this Subcontract is executed as of date above written.

Accepted:

Cedco, Inc.

(Title

Terravita Home Construction Co., dba Anthem Country Club, an Arizona Corporation

By:

VP Construction

### DEL WEBB COMMUNITIES, INC. ANTHEM COUNTRY CLUB

EXHIBIT B

CONTRACT PERIOD: Effective with Parcels 6, 10, 11, 12, 13, 43

### MASONRY WALLS

This work includes without limitation all labor, material, equipment and supervision to perform all operations in connection with the installation of all masonry work in strict accordance with plans, specifications, and applicable building codes. See attached Exhibit B – General Requirements for additional requirements.

Unless otherwise specified, materials and installation methods used shall be in strict accordance with manufacturer's recommendations and industry standards. SUBSTITUTIONS MUST BE APPROVED IN WRITING BY DEL WEBB COMMUNITIES, INC. PRIOR TO WORK PERFORMANCE.

If any discrepancies exist between the plans and the specifications in this Exhibit, the specifications shall prevail.

Work to include, but not limited to:

### I. SCOPE OF WORK

- Cut masonry units with motor-driven saws. Install cut units with cut surfaces and, where possible, cut edges concealed.
- B. When Matching Existing Masonry: Match coursing, bonding, color and texture of existing masonry.
- C. Stopping and Resuming Work: In each course, rack back units; do not tooth.
- D. Fill cores in hollow concrete masonry units with grout 24 inches under bearing plates, beams, lintels, posts and similar items, unless otherwise indicated.
- E. Furnish and install all masonry units and pre-cast concrete columns as described under the Material Specifications of this Exhibit "B" and in accordance with types, sizes and color selections as directed by Owner. Installation shall include, but not be limited to:
  - All work shall be laid plumb and true. All retaining walls shall be built with a 1/8" horizontal per 1' of vertical height so that walls will be plumb after backfill and loading.
  - Joints on exposed interior surfaces shall be cut clean to accommodate possible future stucco and
    paint application. Paint application to be done by others. All walls shall be gray precision block,
    6" x 8" x 16" with matching mortar.
  - All work shall be performed in a near workmanlike manner and in the best practice of the trade.
     Extreme care shall be taken to prevent mortar splotches on exposed masonry walls, exposed concrete, window frames and glass.
  - 4. Fence wall control joints shall be in accordance with plan details and/or building code requirements. Space for expansion joint at structure shall be allowed for. Locate 1/2" Felt joint in retaining wall at a maximum spacing of 24'-0".
  - Stair step cracks in mortar joints exceeding 3/32" and voids exceeding 1/8" shall be removed and rebuilt to a like-new condition.
  - 6. All fence returns to the house shall have a maximum 1/4" space provided between the pilaster and the house, or install an approved exposed expansion joint as approved by Owner's Lead Field Superintendent.

Exhibit "B" - Masonry January 10, 2002 Initial A

Page | of 3

- 7 Both sides of fence wall shall receive a stucco sand coat application.
- All fence returns to the house shall have a maximum ¼" space provided between the pilaster and the house.
- F. Fence contractor to provide block-out for wrought iron fence post to be installed in cell to top of footing.
  Fence contractor to grout cell and fence post solid.
- G. Mortar shall be mixed in accordance to ASTM C 270 proportion specifications, Type "M" or "S" with a minimum strength of 1800 psi at 28 days.
- H. Masonry reinforcing installation shall include, but not be limited to:
  - Vertical reinforcing bars to be installed at 48" O.C. in masonry walls unless specified otherwise on plans and/or details. Reinforcing steel shall conform to ASTM A-615. Grade 60.
  - Masonry fences to be in accordance with plans and fence details for height, size and type of masonry units. Masonry fence bond beams, if required, shall be in accordance with plan details.
- Footing Concrete.
  - The footing Concrete shall be proportioned and mixed to a certified and proven mix design for a minimum strength of 4000 psi at 28 days using Type V cement per ASTM C-150.
  - Damp Proofing: Watchdog and Delta MS will be applied to all concrete and masonry surfaces below ground level to ensure protection against water, chemicals, petroleum and various other potential contaminants.

### II QUALITY ASSURANCE

A. Installer Qualifications: An experienced installer who has completed systems similar in material, design and extent to those indicated for the project and with a record of successful in-service performance. Include lists of completed projects with project names and addresses, names and addresses of architects and owners and other information specified.

### III. MATERIAL SPECIFICATIONS

- Concrete Masonry Units: ASTM C 90, 6" wide gray precision block, Type II, non-moisture-controlled units.
  - 1. Special shapes for lintels, comers, jambs, sash, control joints and other special conditions.
  - 2. Square-edged units for outside corners, unless otherwise indicated.
- Materials are to be of First quality (not second grade or used).
- C Masonry walls shall not exceed 1/4" out of plumb or level in 8'.
- D. Owner may engage a qualified independent testing agency to perform the following tests for each 5000 sq. ft. of wall area or portion thereof. Testing results shall be in compliance with the following standards:
  - Mortar Properties: ASTM C 270
  - 2. Mortar Composition and Properties: ASTM C 780 integral color to match units.
  - 3. Grout: ASTM C 1019.

Exhibit "B" - Masonry January 10, 2002 Initial 1

Page 2 of 3

 Final Cleaning: After mortar is thoroughly set and cured, remove large mortar particles and scrub unit masonry.

### IV. PRODUCT DATA SUBMITTALS

- A. At time of bid, submit manufacturer's technical data and installation instruction. Upon acceptance, this data will be maintained in Webb's trade contractor files MATERIAL SPECIFICATIONS.
- B. Submit written warranties executed by the manufacturer of the Masonry Block specified agreeing to repair or replace units or components that fail in materials or workmanship within the specified warranty period.
- B. Submit Material Safety Data Sheets (MSDS) on all products.

### V. EXCLUSIONS

Specific exclusions to this exhibit will be as follows:

- A. Wood support backing in frame walls will be furnished and installed by the rough carpentry contractor.
- B. Ornamental iron work and painting of iron.
- Stucco and painting of masonry courtyard walls.

### VI. UTILITIES

- A. Power on slab provided by Del Webb
- B. Temporary water to be provided by Webb,

Exhibit "B" - Masonry January 10, 2002 Initial /

Page 3 of 3

# EXHIBIT 9 (Part 3)

Excerpts of various Subcontracts between Cedco and Terravita Home Construction Part 3 (ISIC 584, 589-598, 603-605, 628-630, 661)

### ANTHEM COUNTRY CLUB EXHIBIT "C" COST SCHEDULE

Subcontract Number: 352160

Supplement Date: January 2, 2002

Vendor Number: 3113

### This contract shall include:

Change of block style from 8x6x16 slumpstone to 6x8x16 gray precision wall.

· Change of finish from Slurry Coat to Sand Stucco Coat.

 Costs shall be effective with the build out of Anthem Country Club to include Parcels 6, 10, 11, 12, 13 and 43.

 All walls facing Anthem Club Drive and Reunion Drive will remain the old style wall and shall be billed accordingly.

9 course 6x8x16 gray precision wall with footing	\$ 23.50/l.f.
9 course 6x8x16 gray precision wall without footing	\$ 21.50/l.f.
Add for extra course on wall in production	\$ 3.00/l.f.
9 course 2'x2'x6' pilaster	\$290.00/ea.
Add for extra course on pilaster in production	\$ 25.00/course
Sand Stucco Coat	\$ .50/s.f.

### NOTE:

- Price is based on City of Henderson Design.
- · Price commitment is for two years.
- Base Price includes \$ .40/l.f. for closure remobilization after landscape installed.

INSTIAL AV

1/11/02

### TERRAVITA HOME CONSTRUCTION, CO.

CONTRACT NUMBER:

351584

SUPPLEMENT NUMBER: SUPPLEMENT DATE:

January 31, 2002

FROM;

Cedco, Inc. 7210 Placid

Las Vegas, NV 89119

TO: Terravita Home Construction, Co.

Anthem Country Club (hereinafter "WEBB")

11500 S. Eastern Avenue Henderson, NV 89052 ATTN: Land Development

The undersigned hereby proposes to amend its Contract, numbered and dated as shown above, as follows: Additional Cost for Walls in Parcel 11

It is agreed that Contract is revised to incorporate changes in Contractor's work as stated in this contract amendment as described in the exhibit titled "DESCRIPTION OF WORK and SCOPE", dated, attached hereto and incorporated herein by this reference.

This work is to be fully completed and delivered to Webb according to the terms and conditions of the Contract for the following prices, which include all taxes and delivery:

\*\*\*\*\*\* NTE \$73,418.31 \*\*\*\*\*\*

This Contract supplement, when accepted by Webb, shall become and be a part of said Contract referred to above.

Accepted:

Terravita Home Construction, Co. an Arizona Cofporatio

Cedco, Inc.

Thomas Hennessy.

VP Planning & Development

Title:

PREVIOUS TOTAL: \$742,459.85

THIS CHANGE:

\$ 73,418,31

REVISED TOTAL: \$815,878.16

Contract Number: 351584
Supplement Number: 01
Supplement Date: 01/31/02

### \*\*\*\*\*DESCRIPTION OF WORK\*\*\*\*

The purpose of this supplement is to add \$73,418.31 to the Contract listed above and to fix the adjusted contract amount which is shown hereon as "Revised Total".

#### \*\*\*\*\*SCOPE\*\*\*\*

This supplement is an add for the Parcel 11 Walls contract due to field changes per Cedco's proposal dated 12/31/01, hereby attached as Exhibit C and made an integral part of this contract.

There are no exceptions to this supplement. All other terms and conditions of the original contract remain in full force and effect.

MA LE

1/31/2002	Exhibit 'B"		Page:
15:12:12	Anthem Country Club		
	Account Distribution		
3113 Cedco, Inc.			
Contract # 351584 Date: 1/31/2002	Supplement # 001		
Line			
Num, Src Ran Itam Type Itam Code	Description	Quantity	Amount
Terris 1919 1034 2000 (1034 2000 (1034 1034 1034 1034 1034 1034 1034 1034			***********
Miscellaneous Itcms:	T		
1 08	Walls additional		73,418.31
	73,418.31 40011000.1271.17650		
	* Total For Miscellaneous		73,418.31
			***********
	** Total For This Supplement		73.418.31



Del Webb Corporation 11500 S. Eastern Avenue Henderson, Nevada 89052

Fax: 914-3104

DEC V 200

ATTN: Ged Woelke

Re: Anthem Country Club "Pop-out Parcels" Scope: Retaining walls summary 12/17

CEDCO, INC. is pleased to submit the follow proposals for the above mentioned project. Proposals are based revised mass grading plans provided by G.C. Wallace, Inc., plot dated 11/19/01. This is a summary of total retaining wall cost for the (6) parcels and (4) entries:

	Parcel	Old proposal	Revised proposal	Credit/Additional Cost
Contract	-	(Dated 9/21/01)	(Dated 12/11/01)	
35/583	10	\$391,515.59	\$362,345.15	-\$29,170.44 (credit) 400.10000.1241.12650
51584	11	\$742,459.85	\$815,878.16	+\$73,418.31 (additional cost) 40011000-1271-12650
51585	12	\$641,131.74 #624,617.86	\$504,731.17	-\$136,399.97 (credit) -\$119,886.69 40012000-1271.12650
51587	42	\$128,844.05	\$138,439.88	+\$9,595.83 (additional cost) 40042000 1271-12656
21288	43	\$1,018,524.27	\$907,560.49	-\$110,963.78 (credit) - \$90,774.58 40043000 1271.12650
	43C	\$462,238.90	\$432,078.06	-\$30,160.84 (credit) 40043000 .1271.12650
<u> </u>		\$3,384,713,80	\$3,161,032.75	-\$223,681.05 (credit) - \$ 176,978.41

Note: The attached formed footing wall locations and slump stone block retaining wall locations were provided by Ged Woelke.

Note: Slump stone block only along Anthem Club Drive. All other walls to be 8"x8"x16" Grey smooth block.

Note: Formed footings are calculated that top of footing on plans are new bottom of formed footings.

7210 Placid, Las Veras, Nevada 89119 Phone (702) 361-6550 • Fax (702) 361-8281 Del Webb Corporation December 13, 2001 Page 2 of 2

Note: Paint figured in Parcels 42 & 43C only.

Note: Drainstar to be in lieu of mirafi fabric.

Note: Additional charges will be added for veneering piers to retaining walls. Piers in

"Retaining Wall Scope", section 2.10, pages 16 & 17, are not indicated on grading plans

(plot dated 11/19/01).

Should you have any questions regarding this matter, please do not hesitate to contact us.

Sincerely, CEDCO, INC.

Thomas A. Ramirez

Estimator

# DEL WEBB COMMUNITIES, INC. INTEROFFICE MEMORANDUM

Date:

1/14/02

To:

File

From:

Deana Burris

Land Development x4977

Re:

Cedco Wall Deductions

Cedco submitted a memo 12/13/01 for various additions and deductions to the Pop-out Wall Contracts.

The reason for the changes as follows:

- 1. Some walls were reduced in height
- 2. Forming of the footings were changed
- 3. New price due to block change
- 4. Drain star will be used in lieu of mirafi

Base on these reasons, contract adjustments have been made accordingly.

ANTHEM COUNTRY CLUE	PARCE 11			CEDCO, INC.
BASE & UNIT PRICING				12/11/01
8"x8"x16" BLOCK				
Retaining Walls				
w/Pilasters	Quantity	Unit Price	Contract Total	
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~				
RW1 Type Retaining Walls				
1'4"	0	17.58	0.00	
2'0"	0	23.99	0.00	
2'8"	30	30.92	927.60	
3'4"	73	39.00	2,847.00	
4'0"	103	44.89	4,623.67	
4'8"	184	51.73	9,518.32	
5'4"	134	58.93	7,896,62	
6'0"	68	66.14	4,497.52	
6'8"	288	74.06	21,329.28	
7'4"	8	82,48	659.84	
8'0"	171	90.40	15,458.40	
8'8"	394	99.13	39,057.22	
9'4"	0	106.81	0.00	
10'0"	1			_
100	20	122.00	2,440.00	
			400 055 47	
T-1-1 DIAM - D 1 IAI 1				
Total - RW1 Type Retaining Wal	ls		109,255.47	11
Total - RW1 Type Retaining Wal	ls		109,255,47	
	ls .		109,233,47	
RW2 Type Retaining Walls				
RW2 Type RetainIng Walls 1'4"	0	17,58	0.00	
RW2 Type RetainIng Walls 1'4" 2'0"	0	24,49	0.00	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8"	0 0 554	24,49 31.57	0.00 0.00 17,489.78	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4"	0 0 554 610	24,49 31.57 39.8	0.00 0.00 17,489.78 24,278.00	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0"	0 0 554 610	24,49 31.57 39.8 45.84	0.00 0.00 17,489,78 24,278.00 278,248.80	
RW2 Type Retaining Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8"	0 0 554 610 6070 2554	24,49 31.57 39.8 45.84 53.54	0.00 0.00 17,489,78 24,278,00 278,248,80 136,741.16	
RW2 Type Retaining Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8"	0 0 554 610	24,49 31.57 39.8 45.84	0.00 0.00 17,489,78 24,278.00 278,248.80	
RW2 Type Retaining Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4"	0 0 554 610 6070 2554	24,49 31.57 39.8 45.84 53.54	0.00 0.00 17,489,78 24,278,00 278,248,80 136,741.16	
RW2 Type Retaining Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0"	0 0 554 610 6070 2554	24,49 31.57 39.8 45.84 53.54 61.6	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60	
RW2 Type Retaining Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8"	0 0 554 610 6070 2554 1326 666	24,49 31.57 39.8 45.84 53.54 61.6 69.67	0.00 0.00 17,489,78 24,278,00 278,248,80 136,741.16 81,681.60 46,400.22	
RW2 Type Retaining Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4"	0 0 554 610 6070 2554 1326 666 45	24,49 31.57 39.8 45.84 53.54 61.6 69.67 83.46	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70	
RW2 Type Retaining Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4"	0 0 554 610 6070 2554 1326 666 45	24,49 31.57 39.8 45.84 53.54 61.6 69.67 83.46	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4" 8'0"	0 0 554 610 6070 2554 1326 666 45 0	24,49 31.57 39.8 45.84 53.54 61.6 69.67 83.46 92.98 101.99 111.92 120.8	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00 0.00	
RW2 Type Retaining Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4"	0 0 554 610 6070 2554 1326 666 45 0	24,49 31.57 39.8 45.84 53.54 61.6 69.67 83.46 92.98 101.99	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00 0.00 0.00	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4" 8'0"	0 0 554 610 6070 2554 1326 666 45 0 0	24,49 31.57 39.8 45.84 53.54 61.6 69.67 83.46 92.98 101.99 111.92 120.8	0.00 0.00 17,489,78 24,278,00 278,248,80 136,741,16 81,681,60 46,400,22 3,755,70 0.00 0.00 0.00 61,849,60	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4" 8'0"	0 0 554 610 6070 2554 1326 666 45 0 0	24,49 31.57 39.8 45.84 53.54 61.6 69.67 83.46 92.98 101.99 111.92 120.8	0.00 0.00 17,489,78 24,278,00 278,248,80 136,741,16 81,681,60 46,400,22 3,755,70 0.00 0.00 0.00 61,849,60	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4" 8'0" 8'8"	0 0 554 610 6070 2554 1326 666 45 0 0	24,49 31.57 39.8 45.84 53.54 61.6 69.67 83.46 92.98 101.99 111.92 120.8	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00 0.00 0.00 61,849.60 0.00	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4" 8'0" 8'8" 9'4" 10'0"	0 0 554 610 6070 2554 1326 666 45 0 0	24,49 31.57 39.8 45.84 53.54 61.6 69.67 83.46 92.98 101.99 111.92 120.8	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00 0.00 0.00 61,849.60 0.00	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4" 8'0" 8'8"	0 0 554 610 6070 2554 1326 666 45 0 0	24,49 31,57 39,8 45,84 53,54 61,6 69,67 83,46 92,98 101,99 111,92 120,8 137,18	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00 0.00 0.00 61,849.60 0.00 650,444.86	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4" 8'0" 8'8" 9'4" 10'0" Total - RW2 Type Retaining Wal	0 0 554 610 6070 2554 1326 666 45 0 0	24,49 31,57 39,8 45,84 53,54 61,6 69,67 83,46 92,98 101,99 111,92 120,8 137,18	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00 0.00 0.00 61,849.60 0.00 650,444.86	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4" 8'0" 8'8" 9'4" 10'0"	0 0 554 610 6070 2554 1326 666 45 0 0	24,49 31,57 39,8 45,84 53,54 61,6 69,67 83,46 92,98 101,99 111,92 120,8 137,18	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00 0.00 0.00 61,849.60 0.00 650,444.86	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 6'8" 7'4" 8'0" 8'8" 9'4" 10'0" Total - RW2 Type Retaining Wal	0 0 554 610 6070 2554 1326 666 45 0 0	24,49 31,57 39,8 45,84 53,54 61,6 69,67 83,46 92,98 101,99 111,92 120,8 137,18	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00 0.00 0.00 61,849.60 0.00 650,444.86	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 8'8" 7'4" 8'0" 8'8" 9'4" 10'0" Total - RW2 Type Retaining Wal	0 0 554 610 6070 2554 1326 666 45 0 0	24,49 31,57 39,8 45,84 53,54 61,6 69,67 83,46 92,98 101,99 111,92 120,8 137,18	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00 0.00 0.00 61,849.60 0.00 650,444.86	
RW2 Type RetainIng Walls 1'4" 2'0" 2'8" 3'4" 4'0" 4'8" 5'4" 6'0" 8'8" 7'4" 8'0" 8'8" 9'4" 10'0" Total - RW2 Type Retaining Wal	0 0 554 610 6070 2554 1326 666 45 0 0	24,49 31,57 39,8 45,84 53,54 61,6 69,67 83,46 92,98 101,99 111,92 120,8 137,18	0.00 0.00 17,489.78 24,278.00 278,248.80 136,741.16 81,681.60 46,400.22 3,755.70 0.00 0.00 0.00 61,849.60 0.00 650,444.86	

ANTHEM COUNTRY CLUB	PARCI 11			CEDCO, INC.
BASE & UNIT PRICING				12/11/01
8"x6"x16" SLUMPBLOCK				
Retaining Walls				
w/Pilasters	Quantity	Unit Price	Contract Total	
RW1 Type Retaining Walls				
1'6"	0	18.31	0.00	
2'0"	0	25.03	0.00	
2'6"	0	30.51	0.00	
3'0"	0	36.48	0.00	
3'6"	0	41.96	0.00	
4'0"	0	47.44	0.00	
4'6"	0	53.10	0.00	
5'0"	0	58.75	0.00	
5'6"	0	64.39	0.00	
8'6"	125	104.11	13,013.75	
9'0"	0	112.25	0.00	
	-	112,25	0.00	
Total - RW1 Type Retaining Walls			13,013.75	
RW2 Type Retaining Walls				
1'6"	0	18.31	0.00	
2'0"	0	25.68	0.00	
2'6"	0	31,29	0.00	
3'0"	0	37.36	0.00	
3'6"	0	42.98	0.00	
4'0"	Oi	48.53	0.00	
4'6"	01	55.94	0.00	
5'0"	0	61.91	0.001	
5'6"	01	67.87	0.00	
6'0"	0	73.88	0.00	
Total - RW2 Type Retaining Walls			0.00	
			4	
TOTAL PROPOSAL			13,013.75	
				-
***				

ANTHEM COUNTRY CLUI	B-PARC 11			CEDCO, INC.
BASE & UNIT PRICING				12/11/01
8"x6"x16" SLUMPBLOCK	(Formed Footing	gs)		
Retaining Walls				
w/Pilasters	0	Unit Price	0-4-47-4-1	
Wirilasters	Quantity	Unit Price	Contract Total	
RW1 Type Retaining Walls				
1'6"	50	18.31	915.50	
2'0"	0	25.03	0.00	
2'6"	0	30.51	0.00	
3'0"	163	36.48	5,946.24	
3'6"	0	41.96	0.00	
4'0"	11	47.44	521.84	
4'6"	0	53.10	0.00	
5'0"	0	58.75	0.00	
6'0"	84	70.11	5,889.24	
6'6"	30	76,53	2,295.90	
7'0"	84	82.94	6,966.96	
7'6"				
10	0	89.46	0.00	
Total - RW1 Type Retaining Wa	lls		22,535.68	
RW2 Type Retaining Walls				
1'6"	0	18.31	0.00	
2'0"	0	25.68	0.00	
2'6"	0	31.29	0.00	
3'0"	0	3736	0.00	
3'6"	0	42.98	0.00	CARLES IN CO.
4'0"	0	48.53	0.00	
4'6"	0	55.94	0.00	
5'0"	0	61.91	0.00	
5'6"	0	67.87	0.00	
Total - RW2 Type Retaining Wa	lls	-	0.00	
TOTAL PROPOSAL			22,535.68	
	1			

ANTHEM COUNTRY CLUB	PARCE 11 (E	NTRY)	1	C	EDCO, INC.
BASE & UNIT PRICING		7-1-2"		12	2/11/01
8"x8"x16" BLOCK					
- material					
Retaining Walls					
w/Pilasters	Quantity	Unit Price	Contract Total		
of Scientists and all solventy and recommend of the			************		
RW1 Type Retaining Walls					
1'4"	0	17.58	0.00		
2'0"	0	23.99	0.00		
2'0"	0	30.92	0.00		
3'4"	0	39.00	0.00		
4'0"	0	44.89	0.00		
4'8"	0	51.73	0.00		
5'4"	0	58.93	0.00		
6'0"	0	66.14	0.00		
6'8"	0	74.06	0.00		
7'4"	0	82.48	0.00		
8'0"	0	90.40	0.00		
Total - RW1 Type Retaining Wall	\$		0.00		
RW2 Type Retaining Walls					
1'4"		47.50	0.00		
2'0"	0	17.58	0,00		
2'8"	0	24.49	0.00	-	
3'4"	0	31.57	0.00		
4'0"	0	39.8	0.00		
4'8"	130	45.84	5,959.20		
	0	53,54	0.00		
5'4"	0	61.6	0.00		
6'0"	0	69.67	0.00		-
6'8"	20	83.46	1,669.20	8 4	
Total - RW2 Type Retaining Walls	5		7,628.40		
TOTAL PROPOSAL			7,628.40		
			-		

## Anthem Country Club.

September 28, 2001

Cedco, Inc. 7210 Placid

Las Vegas, NV 89119

Re: Contract / Supplement - 351583-000, 351584-000, 351585, 351587-000,

351588-000

Dear Bill:

1334,033 1434,033 1434,033 1434,033

Enclosed you will find two original contracts for Parcels 10, 11, 12, 42, 43 & 43C walls and Parcels 42, 43 & 43C view fence. Please read, sign and affix signatures or initials where indicated. Page 6 of the contract has 2 places to initial. Return both originals to the attention of Denise Hardy and upon execution by our offices, one will be returned for your records.

Should you have any questions please do not hesitate to contact me at 914-4917.

Thank you for your prompt attention to this matter.

Sincerely,

Denise Hardy

Contract Coordinator Land Development

Enclosures

/dah

TO DRIVED BY BUT CONTRIDENT

R.C. Box 531450, Henderson, NV 89057-1450 14500 S. Edmarn Avenue, Henderson, NV 89052 TERRAVITA HOME CONSTRUCTION, CO.

CONTRACT NUMBER:

351584

SUPPLEMENT NUMBER: CONTRACT DATE:

September 24, 2001

FROM:

Cedco, Inc. 7210 Placid

TO: Terravita Home Construction, Co.

Anthem Country Club (hereinafter "WEBB")

11500 S. Eastern Avenue Henderson, NV 89052 ATTN: Land Development

The undersigned Contractor hereby proposes to furnish at its own cost and expense, all labor, materials, tools, equipment, and facilities necessary to do and complete the following described work for WEBB at their project known as Anthem located in Henderson, NV and described in the following pages. PARCEL 11 WALLS

Description of Work: For Description of Work, see exhibit titled "DESCRIPTION OF WORK AND SCOPE", dated, attached hereto and incorporated herein by this reference.

This work is to be fully completed and delivered to Webb according to the terms and conditions of the Contract for the following prices, which include all taxes and delivery:

\*\*\*\*\*\* \$742,459.85 \*\*\*\*\*\*\*

This Contract, when accepted by Webb, shall become binding upon WEBB and Contractor, their heirs, executors, administrators, successors, and assigns as of the date first written. It is agreed that the terms and conditions of this Contract supersede and cancel all previous understanding or agreements, whether written, verbal, or implied.

IN WITNESS WHEREOF, this Contract is executed as of the date above written.

Accepted:

Terravita Home Construction, Co. Cedco, Inc.

an Arizona Corporation

Y:

mes B. Rizzi,

Title:

ISIC 603

Contract No.: 351584

Contract Date: September 24, 2001

Contractor: Cedcon, INC.

### \*\*\*\*\*DESCRIPTION OF WORK\*\*\*\*

Contractor will do all masonry work in Parcel 11 complete, installed in strict accordance with the requirements of the City of Henderson, Clark County, and/or standard NDOT Specifications for such work and in accordance with plans and specifications and Bid Contract Documents.

\*\*\*\*\*SCOPE\*\*\*\*

Plans:

Anthem Country Club Improvement Plans Parcel 11 Sheets 1 thru 17, date stamped 8/10/01 Preliminary, Not for Construction Prepared by G.C. Wallace

Contractor shall supply and install all masonry walls per the above referenced plans, Instructions to Bidder, Bid Documents, dated 8/17/01 referenced but not attached in its entirety and made an integral part of this contract as Exhibit C and as further described in Contractors proposal, 1 page attached and made an integral part of this contract as Exhibit C-1.

Construction schedule is attached and made an integral part of this contract as Exhibit B-1.

Any additions or deletions to this contract will be at the Unit Costs agreed upon for Contractor's Annual Agreement, referenced but not attached. These prices will remain in effect until June, 2003.

All terms and conditions listed in "Instructions to Bidders" shall be considered an integral part of this Contract and adhered to by the Contractor.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

This is a NOT TO EXCEED contract. The contract price will be adjusted for additions and deletions only under the following conditions:

- A. The addition or deletion is a result of a plan change that was not disclosed in the original bid set of plans.
- B. The contractor has been directed in writing by Webb to proceed with the work described in the change.

INITIALS

Additions and/or deletions will be considered as a result of A & B above, and the contract price will be adjusted at the unit prices shown above.

The provisions set forth on the attached Exhibit "A" shall be included as a part of this Contract and are not exclusive. Del Webb shall have the right to pursue all other remedies to which it may be entitled, either under this contract or at law or equity, including but not limited to the right of termination, cancellation or recision of this contract and subsequent amendments. In the event of any discrepancy between the verbiage in the Exhibit "A" and the printed description of work, the printed description of work shall prevail.

### ANTHEM COUNTRY CLUB LAND DEVELOPMENT BILLING PROCEDURES

Invoices submitted for payment on the 1st of the month, shall bill for work that was COMPLETE as of the 25th of the previous month.

All verifications shall be done with your Del Webb Land Development Superintendent on this job <a href="PRIOR">PRIOR</a> to submitting an invoice for payment.

Invoices received that were not verified and therefore, not approved by the Land Development Superintendent, shall be returned unpaid.

Please use the following billing procedures to ensure prompt payment of your invoices:

Address all Invoices to
 Del Webb Communities, Inc.
 11500 S. Eastern Avenue
 Henderson, NV 89052
 Attn: Denise Hardy, Anthem Country Club, Land Development

Original Invoices with all required back up may either be mailed to the above address or dropped off at the front desk in an envelope with the above information on the front of the envelope. Faxed invoices will not be accepted.

It's the Contractor's responsibility to deliver Invoices and Lien Waivers to the correct person/entity at Del Webb. Del Webb will not be responsible for misdirected mail, resulting in upaid Invoices or unreleased Checks. This includes any unmarked mail left at the front desk that may directed incorrectly.

### 2. Invoices should be submitted with the following

- a) Contract Number/Supplement Number clearly indicated on the Invoice
- b) Work Order Number clearly indicated on the Invoice
- c) Original Conditional on Progress Lien Waiver attached

INITIALS DATI

9/24/2001	Exhibit "B"		Page: 1
12:25:32	Account Distribution		
3113 Cedco, Inc.			
Contract # 351584 Date: 9/2	4/2001		
			V
Line			
	m Code Description	Quantity	Amount
	militariana productions services	gonness;	MINORIELE.
4-718-80-7-590-4-53-30-4-5-3-40-0A	Water Salah Colonia Co	1.000mm,100mm	
Miscellaneous Items:			
1 DE	Parcel 11 RW1 Walls		98,738.08
	98,738.88 40011000.1271.1265	0	
4 64	The second second		464 504 00
2 08	Parcel 11 RW2 Walls		630,720.97
	630,720.97 40011000.1271,1269	.0	
3 DE	Parcel 11 Pump Footings NTE		3,000.00
	NTE - daily signed TaM tickets must		1000
	be submitted with invoice	17	
	3,000.00 40011000.1271.126	DIH.	
		0.0	
4 DE	Parcel 11 Hoe Ram NTB		10,000.00
	NTE - daily signed T&M tickets must		
	be submitted with invoice. 10,000.00 40011000.1271.1261		
	10,000.00 40011000.1271.1281	2	
			*************
	* Total For Miscellaneous		242,459.85
	Popular e Linding America America		
	** Total ?		742,459.85

Contractor

Dalwann.

ISIC 629

#351584

ANTHEM COUNTRY CLUB	PARUEL 11	Exhibit C			CEDCO, INC.
BASE & UNIT PRICING					9/12/01
		15			
Retaining Walls					
w/Pliasters	Quantity	Unit Price	Contract Total		
RW1 Type Retaining Walls					
1'6"	0	18.76	4 0		
2'0"	0	25.63	0.00		
2'6"	0	31.26	0.00		
3'0"	0	37.38	0.00		7
3'6"	215	43.01	9,247.15		
4'0"	0	48.84	0.00		
4'6"	102	54.45	5,553.90		-
5'0"	90	60.25	5,422.50		
5'6"	17	86.04	1,122.68		
6'0"	0	71.91	0.00		
6'6"				-	
7'0"	123	78.48	9,853.04		
8'6"	0	85.04	0.00		
9'0"	806	106.66	64,635.96		
	27	114.95	3,103.65	1001.0	1-
Total - RW1 Type Retaining Wall	8		98,736.88	127/.12	650
RW2 Type Retaining Walls			-		
1'6"	77	18.76	1444.52	-	
2'0"	145	26.28	3,810.80		
2'6"	155	32.04	4,986.20		0
3'0"	854	38.26	25,022.04		XI/
3'6"	626			-	10178
4'0"		44.03	27,562.78	1	/
4'6"	2816	49.73	140,039.68		
	2473	57.29	141,678.17	eco s	1 5001
5'0"	1617	63.41	102,533.97	SEP	1
5'6"	751	69.52	52,209.52		
6'0"	448	75.68	33,753.28		TOTAL COLUMN
6'6"	260	88.01	22,882.60		12 9 2
7'0"	167	95.39	15,930.13		N.
8'6"	492	119.69	58,887.48		
Total - RW2 Type Retaining Wall	9		630,720.97	1271.1	26 50
Pump Footings		NTE	3,000.00	1271.1	2612
				10-27	
Hoe Ram		NTE	10,000.00	1271-1	2612
				0	
	-			Nico	The same
TOTAL BRODGE M	-	_	740 450 05	SECT	36000
TOTAL PROPOSAL			742,459.85	OCH A	407
-				- (	2001
					4

INITIALS

# EXHIBIT 10

March 11, 2013 letter from Midlands to Ironshore (ISIC 260-262)

# **MIDLANDS**

March 11, 2013

Attn Sanford Oster AVP, Casualty Claims Ironshore Insurance One State Street Plaza New York, NY 10004 sanford.oster@ironshore.com

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction

Co., et al.

Insured

CEDCO, Inc.

Policy No.

018ER0905001 effective June 01, 2009-10

0001942200 effective April 01, 2010-11

Claimant

Anthem Country Club HOA, et al

Our File No. :

109311-CM 130505-CM

This will serve as our initial report on the above-captioned matters

# **Assignment**

We have been asked to assist Ironshore in the investigation of a construction defect allegation.

# Factual Background

This action involves allegations of construction defect and property damage made by the owners of residences located in the city of Henderson, NV. It appears CEDCO, Inc. completed their work on the project(s) involved in this case on 11/26/2003.

The documents supplied to us revealed the construction involved in this project was completed by CEDCO, Inc. before the policy inception date.

## The Policies

Ironshore issued Policy Number 018ER0905001 effective June 01, 2009 - June 01, 2010. The policy contains an Each Occurrence Limit of

3503 NW 63rd Street, Ste 305 Oklahoma Clly, OK 73116 • www.midlandsclaim.com Phone: 405.840.0074 • 800.800.4007 • Fax: 405.840.5432 To: Ironshore Insurance

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al. Date: March 11, 2013

\$1,000,000.00 and a General Aggregate Limit in the amount of \$2,000,000.00.

Ironshore issued Policy Number 000194200 effective April 01, 2010 – April 01, 2011. The policy contains an Each Occurrence Limit of \$1,000,000.00 and a General Aggregate Limit in the amount of \$2,000,000.00.

The policies are also subject to numerous exclusions and endorsements, including but not limited to, the wrap up exclusion and the Continuous or Progressive Injury or Damage Exclusion (IB.EX.014B 7/08Ed).

Based on our review of the materials and information submitted regarding the subject project, we recommend a declination of coverage for this claim. Our reasons for this conclusion include:

- The claims made do not fall within the scope of the insuring agreement as discussed above;
- The project was completed by CEDCO, Inc. prior to the Ironshore policy's issue date and given the nature of the allegations is excluded under the Continuous or Progressive Injury or Damage Exclusion.

#### **Liabliity Analysis**

We have not been provided with a copy of the defect list or cost of repair.

## Injuries/Damages

We have not received a defect list related to this claim.

# Reserve Analysis

#### REDACTED

# Litigation Plan

As this matter appears to fall outside the scope of coverage, we do not plan to direct, or participate in any possible litigation related to this claim.

To: Ironshore Insurance

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al.

Date: March 11, 2013

# **Action Plan**

- 1. Pending your approval, send Declination of coverage, outlining our understanding of the facts and coverage issues and our reasons for concluding that there is no coverage obligation in this case.
- 2, Monitor, or hold in abeyance for 30 days. If no response at that time, we will close our file.

# **Next Report Date**

None, if no response is received in 30 days.

Yours very truly,

Crystal Mathews

Midlands Claim Administrators, Inc.

Claims Examiner

cmathews@mldman.com

(405) 767-1721

CM/pp

# EXHIBIT 11

March 11, 2013 disclaimer letter from Midlands to Cedco (ISIC 234-245)

# **MIDLANDS**

March 11, 2013

#### **VIA CERTIFIED & REGULAR MAIL**

Attn Officer Manager CEDCO, Inc. 7210 Placid St. Las Vegas, NV 89119

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction

Co., et al.

Insured: CEDCO, Inc.

Policy No. : 018ER0905001 effective June 01, 2009-10

0001942200 effective April 01, 2010-11

Claimant: Anthem Country Club HOA, et al

Our File No.: 109311-CM

130505-CM

## Dear Policyholder:

On behalf of Ironshore Specialty Insurance Company (hereinafter, "Ironshore"), this letter will serve to acknowledge receipt of the above captioned matter by this office. We are the claim administrators for this program. Please make note of our claim number and direct all future correspondence to this office, to the attention of this writer using our claim number as a reference.

Based on these documents and other information submitted, we have determined that this claim does not fall within the scope of coverage, or is otherwise excluded from coverage under the Ironshore policy, or policies issued to CEDCO, Inc. As such, unless additional, new or different information is provided, Ironshore must deny your request for coverage in this matter. Our reasons for concluding that there is no coverage are explained below.

## Factual Background

This action involves allegations of construction defect and property damage made by the owners of residence located in the city of Henderson, NV. It

3503 NW 63rd Street, Ste 305 Oklahoma Clty, OK 73116 • www.mldlandsclaim.com Phone: 405,840,0074 • 800,800,4007 • Fax: 405,840,5432

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al. Date: March 11, 2013

appears CEDCO, Inc. completed their work on the project(s) involved in this case on 11/26/2003.

The documents supplied to us revealed the construction involved in this project was completed by CEDCO, Inc. before the policy inception date.

# The Policies

Ironshore issued Policy Number 018ER0905001 effective June 01, 2009 – June 01, 2010. The policy contains an Each Occurrence Limit of \$1,000,000.00 and a General Aggregate Limit in the amount of \$2,000,000.00.

Ironshore issued Policy Number 000194200 effective April 01, 2010 – April 01, 2011. The policy contains an Each Occurrence Limit of \$1,000,000.00 and a General Aggregate Limit in the amount of \$2,000,000.00.

Based on the facts of this matter as reported to Ironshore, when compared to the terms, conditions, exclusions and endorsements of the Ironshore policy or policies at issue, this claim does not fall within the coverage provided under the policy or policies under which coverage is being sought.

# **Declination of Coverage**

Ironshore respectfully disclaims coverage in this matter subject to the terms, conditions, exclusions and limits of the Ironshore policy, and the applicable law. CEDCO, Inc. completed their work on this project prior to inception of the policy. Therefore, coverage would not be triggered due in part to the Continuous or Progressive Injury or Damage Exclusion.

#### SECTION I - COVERAGES

# COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

# 1 Insuring Agreement

A. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al. Date: March 11, 2013

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

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

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

- B. This Insurance applies to "bodily injury" and "property damage" only if:
  - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II 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.

The Ironshore policies contain the following pertinent definitions:

#### **SECTION V - DEFINITIONS**

- 13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- "Products-completed operations hazard"

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al. Date: March 11, 2013

- 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 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.

- 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;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products completed operations are subject to the General Aggregate Limit.
- 17. "Property Damage" means:

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al. Date: March 11, 2013

- 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 the "occurrence" that caused it.

## 21. "Your Products":

- 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.

# 22 "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.

The Ironshore policies contain the following pertinent Exclusions:

- 2. Exclusions
- j. Damage to Property

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al. Date: March 11, 2013

- (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 much 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 III – 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), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

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

This insurance does not apply to:

k. Damage To Your Product

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

I. 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.

m. 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:

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al. Date: March 11, 2013

- (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

n. 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.

# Who Is An Insured

#### SECTION II WHO IS AN INSURED, states:

- 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.

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al. Date; March 11, 2013

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. 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 under this policy with respect to:

- (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), 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 "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

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al. Date: March 11, 2013

(d) Arising out of his or her providing or failing to provide professional health care services.

The Ironshore policy also includes the (IB.EX.014B 7/08Ed) endorsement below:

# CONTINUOUS OR PROGRESSIVE INJURY OR DAMAGE EXCLUSION

This endorsement modifies insurance provided under the following:

# COMMERCIAL GENERAL LIABILITY COVERAGE PART

This Insurance does not apply to any "bodily injury' or "property damage":

- 1. which first existed, or is alleged to have first existed, prior to the inception date of this policy. "Property damage" from "your work", or the work of any additional insured, performed prior to policy inception will be deemed to have first existed prior to the policy inception, unless such "property damage" is sudden and accidental and takes place within the policy period; or
- 2. which was, or is alleged to have been, in the process of taking place prior to the inception date of this policy, even if the such "bodily injury" or "property damage" continued during this policy period; or
- 3. which is, or is alleged to be, of the same general nature or type as a condition, circumstance or construction defect which resulted in "bodily injury" or "property damage" prior to the inception date of this policy.

This endorsement forms a part of the Policy to which attached, effective on the inception date of the Policy unless otherwise stated herein.

All other terms, conditions and exclusions remain unchanged.

Ironshore respectfully declines coverage based upon the Continuous or Progressive Injury or Damage Exclusion. Paragraph (1) of the Continuous Damage Exclusion provides that (a) property damage from the insured's work performed prior to the policy period will be deemed to have existed prior to the policy period and (b) there is no coverage for property damage which first existed or is alleged to have existed prior to inception of the policy. Here, the dates for CEDCO, Inc.'s work at the subject properties are all prior to the policy inception date. Therefore, even if property damage occurred at

Re: Anthem Country Club HOA, et al. v. Terravita Homes Construction Co., et al. Date: March 11, 2013

the properties within the policy period, the Continuous Damage Exclusion operates to exclude coverage where CEDCO, Inc.'s work was performed prior to the policy period.

Paragraph (1) of the Continuous Damage Exclusion contains an exception to the exclusion for property damage that is sudden and accidental and takes place within the policy period. It is CEDCO, Inc.'s or Terravita Homes Construction Co.'s burden to show the claim falls within the exception to the exclusion.

Another important aspect of the Ironshore policies is the endorsement below:

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

# EXCLUSION - DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

## Description and Location of Operation(s):

## All Operations:

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

The following exclusion is added to paragraph 2., Exclusions of Coverage A - Bodily Injury and Property Damage Liability (Section I -Coverages):

This insurance does not apply to "bodlly injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- 1) Provides coverage identical to that provided by this Coverage Part;
- 2) Has limits adequate to cover all claims; or