

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

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APPELLANTS' APPENDIX  
Volume XII

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

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21	Motion for Relief From Judgment Filed by Zurich filed 09/20/17	5051-5056
8	Motion for Summary Judgment Filed by Ironshore filed 09/19/16	1860-1889
8	Notice of Acceptance of Offer filed in NV1, Exhibit 64 in Support of Zurich's Motion for Summary Judgment	1778-1783
21	Notice of Appeal filed 10/08/18	5083-5083
21	Notice of New Case Authority Filed by Ironshore filed 11/02/16	5012-5042
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/ <i>Wikey</i> 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



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
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Endorsement # 20

Policy Number: 017BW0905001

Effective Date Of Endorsements: April 15, 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 In-Jury  
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:

- a) 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
- 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.

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

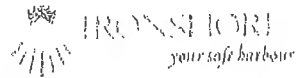
"Personal and advertising injury" arising directly  
or indirectly out of any action or omission that  
violates or is alleged to violate:

- a) 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
- 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

April 16, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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Endorsement # 21

Policy Number: 0178W0905001

Effective Date Of Endorsements: April 15, 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 – Cover-ages):


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, 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
- 3) Remains in effect.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

April 16, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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Endorsement # 22

Policy Number: 017BW0905001

Effective Date Of Endorsements: April 15, 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:

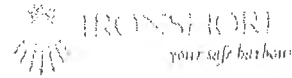
- (1) Such independent contractors have in force, at the time of the subject "occurrence," commercial general liability Insurance listing you as an additional insured; and
- (2) The limits of liability of such insurance are equal to or greater than those shown in the schedule below; and
- (3) The Insurance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

April 16, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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Endorsement # 23

Policy Number: 017BW0905001

Effective Date Of Endorsements: April 15, 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.

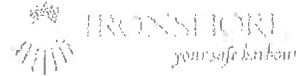
The above named individual is authorized and directed to accept service of process on behalf of the Company in any such suit and/or upon the request of the Named Insured to give written undertaking of the Named Insured that it or they will enter a general appearance upon the Company's behalf in the event 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 served any lawful process in any action, suit 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 16, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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Endorsement # 24

Policy Number: 017BW0905001

Effective Date Of Endorsements: April 15, 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 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 16, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
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Endorsement # 25

Policy Number: 017BW0905001

Effective Date Of Endorsements: April 15, 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.
- B. With respect to the insurance afforded to these additional Insureds, the following additional exclusions apply:
- This Insurance does not apply to:
1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
    - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - b. Supervisory, inspection, architectural or engineering activities.
  2. "Bodily injury" or "property damage" occurring after:
    - a. 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

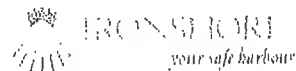
- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project; or
- c. "Property Damage" which manifests after expiration of the Policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

April 16, 2009  
Date





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Endorsement # 26

Policy Number: 017BW0905001

Effective Date Of Endorsements: April 15, 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:
1. 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 "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.
- 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

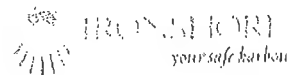
attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

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.
- 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

April 16, 2009  
Date

**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
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Endorsement # 27

Policy Number: 017BW0905001

Effective Date Of Endorsements: April 15, 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	\$ 1,000,000	Each employee	\$ 5,000	\$ Included
	\$ 1,000,000	Aggregate		
Retroactive Date:	4/15/09			
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.				

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:

- (1) 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

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 Supplementary Payments.

- b. This insurance applies to damages only if:

- (1) 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 Extended Reporting Period we provide under Paragraph F. of this endorsement.

- c. A "claim" seeking damages will be deemed to have been made at the earlier of the following times:
- (1) 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.
  - b. **Bodily Injury, Property Damage, Or Personal And Advertising Injury**  
"Bodily injury", "property damage" or "personal and advertising injury".
  - c. **Failure 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 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.
  - i. **Taxes, Fines Or Penalties**  
Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.
  - j. **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:
1. All references to Supplementary Payments – Coverages A and B are replaced by Supplementary Payments – Coverages A, B and Employee Benefits Liability.
  2. 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:
    - a. Each of your "employees" who is or was authorized to administer your "employee benefit program".
    - b. 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.
    - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Endorsement.
  3. 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 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.
  - b. 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

- a. 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 omissions 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
- (2) 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.

- 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.

- 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:

2. 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:

- (1) Immediately record the specifics of the "claim" or "suit" and the date received; and
- (2) Notify us as soon as practicable. You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.

- c. You and any other involved insured must:
    - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
    - (2) Authorize us to obtain records and other information;
    - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
    - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission 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 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**
- 1. 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.
  - 2. 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



Extended Reporting Period may not be canceled.

3. 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;
- c. 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
- c. 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.

2. "Cafeteria plans" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
3. "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.
4. "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;
  - c. 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:

5. "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".
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

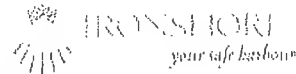
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

April 16, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 28

Policy Number: 017BW0905001

Effective Date Of Endorsements: April 15, 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**

Name of Additional Insured Person(s) Or Organization(s):	Location and Description of Completed Operations:
<p>We shall name person(s) or organization(s) as additional insureds to this insurance as required under a written contract with the Named Insured entered into before the claim or loss.</p> <p>No coverage, indemnity and/or defense shall be provided under this endorsement for any person(s) or organization(s) claiming to be additional insured(s) for claims or losses which do not arise from the Named Insured's work under a written contract. The Named Insured's mere presence at a worksite shall not be deemed sufficient to require coverage, indemnity and/or defense to any person(s) or organization(s) claiming to be an additional insured under this endorsement.</p> <p>There shall be no coverage, indemnity, defense, and/or duty to defend any person(s) or organization(s) claiming to be an additional insured under this endorsement if the claim or loss does not arise, in whole or in part, from the negligence and/or fault of the Named Insured.</p>	

Information required to complete this Schedule, if not shown 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 including in the "products-completed operations hazard."

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

April 16, 2009  
Date

# EXHIBIT 39

## (Part 1)

Ironshore policy no. 000242101 for policy period of April 15, 2010, to April 15, 2011 (ISIC 2366-2430)

Part 1 (ISIC 2366-2397)



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

This insurance contract is issued pursuant to the Nevada insurance laws by an insurer neither licensed 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 claim under this contract is not covered by the Nevada Insurance Guaranty Association Act.

**COMMERCIAL GENERAL LIABILITY DECLARATIONS**

Policy Number: 000242101

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 & Mailing Address:**

Southwest Foundations, Inc., Laird Whipple Concrete Construction,  
Laird Whipple Construction, Inc., Raymond Land, LLC.  
513 Eastgate Road  
Henderson, NV 89011

**2. Policy Period:**

Inception	April 15, 2010	to
Expiration	April 15, 2011	at 12:01 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 BI & PD & PI/AI, Per Occurrence, Including LAE

**6. Coverage Part Premium Calculation:**

Coverage Part Premium:

Inspection Fee:

Terrorism Premium:

Coverage Part Total:

REDACTED

PREMIUM IS MINIMUM AND DEPOSIT

**7. Audit Period: Annual**

**8. Endorsements Attached To This Policy: See Schedule of Forms and Endorsements.**

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

Page 1 of 3

ISIC 2366

AA002769

Policy Number: 000242101

1. IB.EX.003 (1009) Common Policy Conditions
2. IB.EX.006 (1009) Amendment of Insured Contract Definition
3. IB.EX.007A (1009) Amendment of Premium
4. IB.EX.009 (1009) Basis of Premium
5. IB.EX.010 (1009) Claims Notification
6. IB.EX.011 (1009) Designated Construction Projects General Aggregate Limit
7. IB.EX.012 (1009) Deductible Liability Insurance
8. IB.EX.013 (1009) Asbestos Exclusion
9. IB.EX.014B (1009) Continuous or Progressive Injury or Damage Exclusion (Broad Form)
10. IB.EX.015 (1009) Exclusion - Contractors Professional Liability - Professional Liability
11. IB.EX.018 (1009) Employment-Related Practices Exclusion
12. IB.EX.019 (1009) Exterior Insulation and Finish Systems Exclusion
13. IB.EX.022 (1009) Influenza or Epidemic Exclusion
14. IB.EX.023 (0909) Lead Contamination Exclusion
15. IB.EX.025 (1009) Exclusion - Coverage C - Medical Payments
16. IB.EX.026 (1009) Mold, Fungi or Bacteria Exclusion
17. IB.EX.027 (1009) Nuclear Energy Liability Exclusion Endorsement
18. IB.EX.028 (1009) Silica or Silica Related Dust Exclusion
19. IB.EX.030 (1009) Terrorism Exclusion
20. IB.EX.031 (1009) Total Pollution Exclusion Endorsement
21. IB.EX.032 (1009) Exclusion - Violation of Statutes That Govern E-Mails, Faxes...or Other Methods of Sending Material or Information
22. IB.EX.033 (1207) Operations Covered By A Consolidated (Wrap-Up) Insurance Program
23. IB.EX.034 (1009) Independent Contractors Limitation of Coverage
24. IB.EX.037A (0510) Service of Suit
25. IB.EX.041 (1009) Waiver of Transfer of Rights of Recovery Against Others To Us
26. IB.EX.059 (0909) Employee Benefits Liability Coverage
27. IB.EX.060A (0909) AI - Owners, Lessees or Contractors - Completed Operations (Residential)
28. IB.EX.070 (1009) AI - Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement (Premises - Primary & Noncontributory)

**9. Producer & Mailing Address**

Crump Insurance Services, Inc.  
5613 DTC Parkway, Suite 425  
Greenwood Village, CO 80111

License Number: 18429

**10. Surplus Lines Broker & Mailing Address:**

Crump Insurance Services, Inc.  
7557 Rambler Road, Suite 300  
Dallas, TX 75231

License Number: 18429

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.



Authorized Representative

June 14, 2010

Date

IB.EX.002 (12/07Ed)

Page 2 of 3

ISIC 2367

AA002770

Policy Number: 000242101

COMMERCIAL GENERAL LIABILITY CLASSIFICATION AND PREMIUM  
SCHEDULE

LOCATION NUMBER	CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
	Concrete Construction	91560	<b>REDACTED</b>				

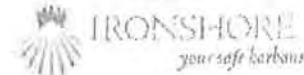
ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



Authorized Representative

June 14, 2010

Date



# IRONSHORE SPECIALTY INSURANCE COMPANY

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

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Policy Number: 000242101

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

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

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

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

- 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 "bodily injury" or "property damage" to us or any other Insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- 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 liability for damages:

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

### c. Liquor Liability

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

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

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

### d. Workers' Compensation And Similar Laws

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

### e. Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

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

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

### f. Pollution

- (1) "Bodily 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;



- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible; 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, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto Or Watercraft**

"Bodily Injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

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

This exclusion does not apply to:

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

**i. 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;

(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 "products-completed operations hazard".

**k. Damage To Your Product**

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

**l. 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:

- (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
- (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.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

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

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "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:
  - (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 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 Falsity**  
"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 falsity.
- 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 – Failure 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:

- (1) 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.

## l. 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 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".

**o. War**

"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:
  - (1) 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;
  - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

- a. **Any Insured**  
To any insured, except "volunteer workers".
- b. **Hired Person**  
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**  
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. **Workers Compensation And Similar Laws**  
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

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

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. 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 bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
  - 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 "suit", 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.
2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. 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";



- 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 indemnitee:

(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 "suit";
  - (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 "suit"; 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 I – 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:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. 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.

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 for:

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

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), 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

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

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any 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;
  - b. 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.

#### SECTION III – LIMITS OF INSURANCE

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

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to 2. above, the Personal 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.

5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C because of all "bodily injury" 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.

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

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

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

### 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
- b. 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 insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (2) The total of all deductible and self-insured amounts under all that other insurance.
- We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

#### c. Method Of Sharing

If all 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 limit of insurance to the total applicable limits of insurance of all Insurers.

**5. Premium Audit**

- a. 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:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. 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 Insured; and
- b. 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 "suit" 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**

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

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

2. "Auto" means:

- a. 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".

3. "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;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
  - (1) Goods or products made or sold by you in the territory described in a. above;
  - (2) The activities of a person whose home is in the territory described in a. above, but is away for a 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 "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

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

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - 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 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";
  - 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;
  - An elevator maintenance agreement;
  - 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:
- 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;
  - That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
  - 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";
  - 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 finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
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;
  - Vehicles maintained for use solely on or next to premises you own or rent;
  - Vehicles that travel on crawler treads;
  - 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;
  - 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
    - Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

(1) Equipment designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing; or
- (c) Street cleaning;

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

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

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. Malicious 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 reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed 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:

- 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.

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

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

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

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

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

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

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

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

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", and
- (2) The providing of or failure to provide warnings or instructions.

Ironshore Specialty Insurance Company by:



Secretary



President



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 1**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 2010

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**

- 1) The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- 2) 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 reason.
- 3) We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- 4) 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.
- 6) If 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**

- E) 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;
  - b) 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.



- 4) Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.
- G) Premiums
- H) The first Named Insured shown in the Declarations:
  - 1) Is responsible for the payment of all premiums; and
  - 2) Will be the payee for any return premiums we pay,
- I) Transfer Of Your Rights And Duties Under This Policy
- J) Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named 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 UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 2**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 2010

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;
- c) Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d) An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e) An elevator maintenance agreement;
- f) That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or 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, 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 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.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

June 14, 2010  
Date





**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 3

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 2010

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:

- 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 less 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.
  - d) In the event you cancel this Policy, a minimum premium of \_\_\_\_\_ or the applicable pro-rata/short rate earned premium, whichever is greater, will be retained by us.
- 6 Your failure 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.

REDACTED

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 4**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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 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 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 paid admission, tickets, complimentary tickets, or passes.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 5**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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

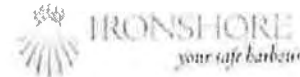
Send all claim notifications and information to:

MIDLANDS CLAIM  
PO Box 23198  
Oklahoma City, OK 73123  
Phone: 1-800-498-9758  
Fax: 405-840-0584  
Website: [www.midlandsclaim.com](http://www.midlandsclaim.com)

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 6**

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 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.)

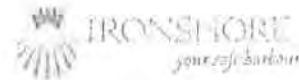
- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. 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 "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.

- 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.
- 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

June 14, 2010  
Date

**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 7**

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 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 Property Damage Liability Combined	\$ N/A	per claim
	\$ 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.
- 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:
    - Under Bodily Injury Liability or Property Damage Liability Coverage respectively:

- a. to all damages because of "bodily injury" sustained by one person, or
  - b. 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."
  - b. 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:
      - a. to all damages because of "bodily injury" as the result of any one "occurrence," or
      - b. 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:
    - (1) 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.
  - 3. 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, compromise settlement is reached, or the claim is denied.
  - 4. 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

June 14, 2010  
 Date





**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 8**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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 Southwest Foundations, Inc., Laird Whipple Concrete Construction, Laird Whipple Construction, Inc., Raymond Land, LLC.	
Endorsement Effective April 15, 2010	Policy Number 000242101

This Insurance does not apply to:

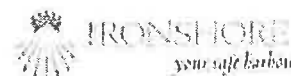
- A) "Bodily Injury", "property damage" or "personal and advertising injury", in whole or in part, either directly or indirectly arising out of, based upon or attributable to any of the following:
1. Asbestos or any asbestos related injury or damage; or
  2. any alleged act, error, omission or duty involving 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

- 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 asbestos "bodily injury", "property damage" or "personal and advertising injury", as described above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 9**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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":

1. 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

June 14, 2010  
Date

# EXHIBIT 39

## (Part 2)

Ironshore policy no. 000242101 for policy period of April 15, 2010, to April 15, 2011 (ISIC 2366-2430)

Part 2 (ISIC 2398-2430)



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 10**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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

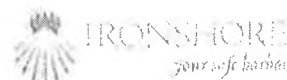
The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

1. 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
  - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.
2. Subject to Paragraph 3. below, professional services include:
  - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, re-ports, surveys, field orders, change orders, or drawings and specifications; and
  - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. 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

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 11**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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:

"Bodily injury" to:

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

**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; 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

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 12**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – EXTERIOR INSULATION AND FINISH SYSTEMS**

This endorsement modifies insurance provided under the following:

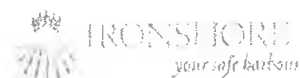
**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

- 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:
1. 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
  2. "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 non-load bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:
1. A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
  2. 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

June 14, 2010  
Date

**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 13

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 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.)

<b>Named Insured</b> Southwest Foundations, Inc., Laird Whipple Concrete Construction, Laird Whipple Construction, Inc., Raymond Land, LLC.	
<b>Endorsement Effective</b> April 15, 2010	<b>Policy Number</b> 000242101

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;
6. restrictions on travel due to, or failure 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 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.

- B** 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.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
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Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 14**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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.)


<b>Named Insured</b> Southwest Foundations, Inc., Laird Whipple Concrete Construction, Laird Whipple Construction, Inc., Raymond Land, LLC.	
<b>Endorsement Effective</b> April 15, 2010	<b>Policy Number</b> 000242101

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. 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, "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 lead "bodily injury", "property damage" or "personal and advertising injury", as described above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 15**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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:

1. Section I – Coverage C – Medical Payments does not apply and none of the references to it in the Coverage Part apply; and

2. The following is added to Section I – Supplementary Payments:

- h. Expenses incurred by the insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 16**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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**

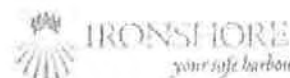
Notwithstanding anything to the contrary contained in the policy or any endorsement attached thereto, this Insurance does not apply to and shall not respond to any claim, demand or "sue" alleging:

- 1 "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 "sue" 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

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 17

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 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:
  - 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 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 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 "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.

"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 tailings 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

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 18

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 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 "silica-related 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:


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  
Definitions Section:
1. "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

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 19**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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
- C. 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

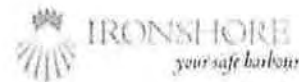
States Secretary of State, and the Attorney General of the United States, in accordance with the United States Terrorism Risk Insurance Act of 2002 (the "Act");

- 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

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 20

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 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:

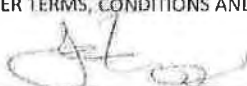
f. Pollution

- 1) "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.

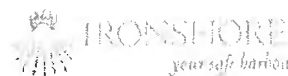
- 2) Any loss, cost or expense arising out of any:

- a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 21

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 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  
STATUTES

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

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

- 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:

- a) 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
- 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

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 22**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 2010

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 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.

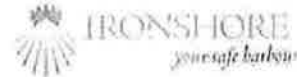
This exclusion applies whether or not the consolidated  
(wrap-up) insurance program:

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

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 23**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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 "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

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 24

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 2010


THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**SERVICE OF SUIT**

In the event of the Company's failure to pay any amount claimed to be due hereunder, the Company, at the request of the Insured will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the law; of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Legal Department, Ironshore Holdings, U.S. Inc., 1 State Street Plaza, NY, NY 10004, or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal.

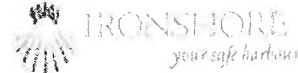
Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the Company hereby designates the Superintendent, Commissioner, or Director of Insurance, other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of an Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above named Counsel 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

June 14, 2010  
\_\_\_\_\_  
Date





**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

**Endorsement # 25**

**Policy Number:** 000242101

**Effective Date Of Endorsement:** April 15, 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

June 14, 2010  
Date

**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 26

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 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	Premium
Employee Benefits Programs	\$ 1,000,000	Each employee	\$ 5,000	\$ Included
	\$ 1,000,000	Aggregate		
Retroactive Date:	04/15/2009			
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.				

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:

- (1) 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 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 Supplementary Payments.

- b. This insurance applies to damages only if:

- (1) 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

- included in the "employee benefit program".
- c. A "claim" seeking damages will be deemed to have been made at the earlier of the following times:
    - (1) 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.
  - b. **Bodily Injury, Property Damage, Or Personal And Advertising Injury**  
"Bodily injury", "property damage" or "personal and advertising injury".
  - c. **Failure 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
- 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 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.
  - i. **Taxes, Fines Or Penalties**  
Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.
  - j. **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:**
- 1. All references to Supplementary Payments – Coverages A and B are replaced by Supplementary Payments – Coverages A, B and Employee Benefits Liability.
  - 2. 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:
    - a. Each of your "employees" who is or was authorized to administer your "employee benefit program".
    - b. 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.
    - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Endorsement.

3. 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 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.
  - b. 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
    - a. 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 omissions 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
      - (2) 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.
    - 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.
    - 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:
    2. 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:
        - (1) Immediately record the specifics of the "claim" or "suit" and the date received; and


- (2) Notify us as soon as practicable. You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
- c. You and any other involved Insured must:
- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the Insured because of an act, error or omission 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 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**
1. 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.
  2. 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

3. 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;
  - c. 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
    - c. 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.
  2. "Cafeteria plans" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.
  3. "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.
  4. "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;
    - c. 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:
    5. "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".

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
- b. 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

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 27

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 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**


Name of Additional Insured Person(s) Or Organization(s):	Location and Description of Completed Operations:
<p>We shall name person(s) or organization(s) as additional insureds to this Insurance as required under a written contract with the Named Insured entered into before the claim or loss.</p> <p>No coverage, indemnity and/or defense shall be provided under this endorsement for any person(s) or organization(s) claiming to be additional insured(s) for claims or losses which do not arise from the Named Insured's work under a written contract. The Named Insured's mere presence at a worksite shall not be deemed sufficient to require coverage, indemnity and/or defense to any person(s) or organization(s) claiming to be an additional insured under this endorsement.</p> <p>There shall be no coverage, indemnity, defense, and/or duty to defend any person(s) or organization(s) claiming to be an additional insured under this endorsement if the claim or loss does not arise, in whole or in part, from the negligence and/or fault of the Named Insured.</p>	

Information required to complete this Schedule, if not shown 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 including in the "products-completed operations hazard."

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED,

  
\_\_\_\_\_  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 28

Policy Number: 000242101

Effective Date Of Endorsement: April 15, 2010

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – PREMISES  
– AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT  
WITH YOU (PRIMARY & NONCONTRIBUTORY)**

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.

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

This insurance does not apply to:

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

a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

b. Supervisory, inspection, architectural or engineering activities.

2. "Bodily injury" or "property damage" occurring after:

a. 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.

If required by written contract or agreement, such insurance as is afforded by this policy shall be primary insurance, and any insurance or self-insurance maintained by the above additional insured(s) shall be excess of the insurance afforded to the Named insured and shall not contribute to it.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
Authorized Representative

June 14, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Policy Number: 000242101

Effective Date of Endorsement: April 15, 2010

Insured Name: Southwest Foundations, Inc.,

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**POLICY CHANGES**

Coverage Parts Affected:  
Schedule of Endorsements

**Changes:**

In consideration of the premium charged, It understood and agreed that Endorsement #3 IB.EX.007A is hereby deleted from the policy and is replaced with Endorsement #29 IB.EX.007A.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

October 5, 2010  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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

Endorsement # 29

Policy Number: 000242101

Effective Date of Endorsement: April 15, 2010

Insured Name: Southwest Foundations, Inc;

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:

- 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 less 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.
  - d) In the event you cancel this Policy, a minimum premium of \_\_\_\_\_ or the applicable pro-rata/short rate earned premium, whichever is greater, will be retained by us.
- 6 Your failure 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.

REDACTED

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
Authorized Representative

October 5, 2010  
Date

# EXHIBIT 40

## (Part 1)

Plaintiffs' Construction Defect Complaint filed on March 3, 2008, in Clark County District Court, Nevada, in the action captioned *Bennett v. American West Homes, Inc.*, Case No. A558243 ("*Bennett* action") (with Exhibits to Complaint) (ISIC 4968-5815)  
Part 1 (ISIC 4968-4987, ¶¶ 1-79)

**ORIGINAL**

1 COMP  
 2 CRAIG D. FULLER  
 3 (Nevada State Bar No. 8075)  
 4 Fuller Jenkins  
 5 4250 Executive Square, Suite 555  
 6 La Jolla, CA 92037  
 7 Telephone: (858) 450-4050  
 8 Facsimile: (858) 450-4051

**FILED**

MAR 3 11 32 AM '08

*Craig Fuller*  
 CLERK OF THE COURT

6 MARK A. LOBELLO  
 7 (Nevada State Bar No. 3994)  
 8 The LoBello Law Firm  
 9 2061 E. Sahara, 2<sup>nd</sup> Floor  
 10 Las Vegas, NV 89104  
 11 (702) 733-7761

12 Attorneys for Plaintiffs

13 **DISTRICT COURT FOR THE STATE OF NEVADA**

14 **IN AND FOR THE COUNTY OF CLARK**

15 LINDA BENNETT; JOSEPH GRAYSON  
 16 AND PATRICE COLEMAN-GRAYSON;  
 17 STEVEN AND BARBARA CORWIN;  
 18 DONALD AND JENNIFER DERMER;  
 19 PHILLIP DICKINSON, TRUSTEE OF THE  
 20 P.W. DICKINSON QUALIFIED  
 21 PERSONAL RESIDENTIAL TRUST;  
 22 EVELYN FELICIANO; ROBERT GREEN;  
 23 GEORGE AND ELISA HASSE;  
 24 CHARLOTTE HUFFMAN; WILLIAM AND  
 25 LYNN JACKSON; CHRISTOPHER AND  
 ZOE LAW; JOHN AND CATHERINE  
 LETUS, TRUSTEES OF THE LETUS  
 TRUST; MARK AND BECKY LILLEY,  
 TRUSTEES OF THE LILLEY FAMILY  
 TRUST; THEODORE AND ILEENE  
 MANAHAN; GARY MEDINA; CONNIE  
 MARTIN; RUTH PRANGE; JEANENE  
 RUSSELL; BRETT SCOVIL; GLORIA AND  
 ALMA SMITH; ALEXANDER AND  
 JOYCE STELLA; EDDIE AND SHARON  
 STUBBS; ROGER AND JANAN  
 THOMPSON,

Plaintiffs,

CASE NO.

**A558243**

DEPT. NO.

**XVI**~~ELECTRONIC FILING CASE~~

**ORIGINAL COMPLAINT**  
**[NRS Chapter 40]**

**CLASS ACTION****JURY TRIAL DEMANDED**

CLERK OF THE COURT

MAR 03 2008

**RECEIVED**

FULLER JENKINS

ORIGINAL COMPLAINT



1 vs.

2 AMERICAN WEST HOMES, INC., a  
3 Nevada corporation; AMERICAN WEST  
4 HOMES INC., a Nevada corporation;  
5 AMERICAN WEST DEVELOPMENT, a  
6 Nevada corporation; and DOES 1 through  
100;

Defendants.

7 COME NOW LINDA BENNETT; JOSEPH GRAYSON AND PATRICE COLEMAN-  
8 GRAYSON; STEVEN AND BARBARA CORWIN; DONALD AND JENNIFER DERMER;  
9 PHILLIP DICKINSON, TRUSTEE OF THE P.W. DICKINSON QUALIFIED PERSONAL  
10 RESIDENTIAL TRUST; EVELYN FELICIANO; ROBERT GREEN; GEORGE AND ELISA  
11 HASSE; CHARLOTTE HUFFMAN; WILLIAM AND LYNN JACKSON; CHRISTOPHER AND  
12 ZOE LAW; JOHN AND CATHERINE LETUS, TRUSTEES OF THE LETUS TRUST; MARK  
13 AND BECKY LILLEY, TRUSTEES OF THE LILLEY FAMILY TRUST; THEODORE AND  
14 ILEENE MANAHAN; GARY MEDINA; CONNIE MERTIN; RUTH PRANGE; JEANENE  
15 RUSSELL; BRETT SCOVIL; GLORIA AND ALMA SMITH; ALEXANDER AND JOYCE  
16 STELLA; EDDIE AND SHARON STUBBS; ROGER AND JANAN THOMPSON, Plaintiffs  
17 (hereinafter collectively, "Plaintiffs"), and all others similarly situated, who are also included as  
18 Plaintiffs, by and through their attorneys, THE LoBELLO LAW FIRM, and MARK A. LoBELLO  
19 and FULLER JENKINS and CRAIG D. FULLER, and for their causes of action against Defendants,  
20 AMERICAN WEST HOMES, INCORPORATED, AMERICAN WEST HOMES  
21 INCORPORATED and AMERICAN WEST DEVELOPMENT (collectively, "AMERICAN WEST  
22 HOMES, INC.") and DOES 1 through 100, inclusive, and each of them (collectively, "Defendants")  
23 allege as follows:

24 1. Plaintiff LINDA BENNETT is a resident of Clark County, Nevada and is the  
25 beneficial owner of the real property within the American West Classics Development (hereinafter  
26 "Classics"), located at, 3717 Heather Lily Court, Las Vegas, Nevada;

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1           2.     Plaintiffs JOSEPH GRAYSON and PATRICE COLEMAN-GRAYSON are residents  
2 of Clark County, Nevada and are the beneficial owners of the real property within the Classics  
3 Development located at 9056 Lawton Pine Avenue, Las Vegas, Nevada;

4           3.     Plaintiffs STEVEN and BARBARA CORWIN are residents of Clark County,  
5 Nevada, and are the beneficial owners of the real property within the Classics Development located  
6 at 3708 Plum Blossom Court, Las Vegas, Nevada;

7           4.     Plaintiffs DONALD and JENNIFER DERMER are residents of Clark County, Nevada  
8 and are the beneficial owners of the real property within the Classics Development located at 3716  
9 Heather Lily Court, Las Vegas, Nevada;

10          5.     Plaintiff PHILLIP DICKINSON is the Trustee of the P.W. DICKINSON Qualified  
11 Personal Residential Trust. Plaintiff DICKINSON is a resident of Clark County, Nevada and the  
12 beneficial owner of the real property within the Classics Development located at 3725 Dorrington  
13 Drive, Las Vegas, Nevada;

14          6.     Plaintiff EVELYN FELICIANO is a resident of Clark County, Nevada, and the  
15 beneficial owner of the real property within the Classics Development located at 9080 Lawton Pine  
16 Avenue, Las Vegas, Nevada;

17          7.     Plaintiff ROBERT GREEN is a resident of Clark County, Nevada and the beneficial  
18 owner of the real property within the Classics Development located at 9172 Lawton Pine Avenue,  
19 Las Vegas, Nevada;

20          8.     Plaintiffs GEORGE and ELISA HASSE are residents of Clark County, Nevada, and  
21 the beneficial owners of the real property within the Classics Development located at 3728 Deer  
22 Flats Street, Las Vegas, Nevada;

23          9.     Plaintiff CHARLOTTE HUFFMAN is a resident of Clark County, Nevada, and the  
24 beneficial owner of the real property within the Classics Development located at 3721 Deer Flats  
25 Street, Las Vegas, Nevada;

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1           10.     Plaintiffs WILLIAM and LYNN JACKSON are residents of Clark County, Nevada,  
2     and the beneficial owners of the real property within the Classics Development located at 3732  
3     Dorrington Drive, Las Vegas, Nevada;

4           11.     Plaintiffs CHRISTOPHER and ZOE LAW are residents of Clark County, Nevada,  
5     and the beneficial owners of the real property within the Classics Development located at 3729  
6     Dorrington Drive, Las Vegas, Nevada.

7           12.     Plaintiffs JOHN and CATHERINE LETUS are the Trustees of the LETUS Trust.  
8     The LETUS are residents of Clark County, Nevada, and the beneficial owners of the real property  
9     within the Classics Development located at 3712 Fisherking Drive, Las Vegas, Nevada;

10          13.     Plaintiffs MARK and BECKY LILLEY are the Trustees of the LILLEY Family  
11     Trust. The LILLEYS are residents of Clark County, Nevada, and the beneficial owners of the real  
12     property within the Classics Development located at 3632 Deer Flats Street, Las Vegas, Nevada;

13          14.     Plaintiffs THEODORE and ILEENE MANAHAN are residents of Clark County,  
14     Nevada, and the beneficial owners of the real property within the Classics Development located at  
15     9064 Lawton Pine Avenue, Las Vegas, Nevada;

16          15.     Plaintiff GARY MEDINA is a resident of Clark County, Nevada, and the beneficial  
17     owner of the real property within the Classics Development located at 9101 Songwood Court, Las  
18     Vegas, Nevada;

19          16.     Plaintiff CONNIE MERTIN is a resident of Clark County, Nevada, and the beneficial  
20     owner of the real property within the Classics Development located at 3725 Deer Flats Street, Las  
21     Vegas, Nevada;

22          17.     Plaintiff RUTH PRANGE is a resident of Clark County, Nevada, and the beneficial  
23     owner of the real property within the Classics Development located at 3705 Heather Lily Court, Las  
24     Vegas, Nevada;

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1  
2 18. Plaintiff JEANENE RUSSELL is a resident of Clark County, Nevada, and the  
3 beneficial owner of the real property within the Classics Development located at 3709 Heather Lily  
4 Court, Las Vegas, Nevada;

5 19. Plaintiff BRETT SCOVIL is a resident of Clark County, Nevada, and the beneficial  
6 owner of the real property within the Classics Development located at 9148 Lawton Pine Avenue,  
7 Las Vegas, Nevada;

8 20. Plaintiffs GLORIA and ALMA SMITH are residents of Clark County, Nevada, and  
9 the beneficial owners of the real property within the Classics Development located at 3720 Deer  
10 Flats Street, Las Vegas, Nevada;

11 21. Plaintiffs ALEXANDER and JOYCE STELLA are residents of Clark County,  
12 Nevada and the beneficial owners of the real property within the Classics Development located at  
13 3736 Dorrington Drive, Las Vegas, Nevada;

14 22. Plaintiffs EDDIE and SHARON STUBBS are residents of Clark County, Nevada,  
15 and the beneficial owners of the real property within the Classics Development located at 3701  
16 Heather Lily Court, Las Vegas, Nevada;

17 23. Plaintiffs ROBERT and JANAN THOMPSON are residents of Clark County,  
18 Nevada, and the beneficial owners of the real property within the Classics Development located at  
19 3701 Plum Blossom Court, Las Vegas, Nevada;

20 24. Plaintiffs, including, but not limited to Plaintiffs who are members of the putative  
21 class, are informed and believe, and thereon allege that, at all relevant times herein mentioned,  
22 Defendant AMERICAN WEST HOMES INCORPORATED, was a Nevada corporation, engaged  
23 and doing business in Clark County, Nevada, including but not limited to development, construction,  
24 improvement, marketing and/or sale of residential real property, including but not limited to the  
25 homes at the Classics Development which are the subject of this Complaint, as the successor in  
26 interest to Defendant AMERICAN WEST HOMES, INCORPORATED.

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1           25.     Plaintiffs, including, but not limited to Plaintiffs who are members of the putative  
2 class, are further informed and believe, and thereon allege that, at all relevant times herein  
3 mentioned, Defendant AMERICAN WEST HOMES, INCORPORATED a Nevada corporation, was  
4 engaged and doing business in Clark County, Nevada, including but not limited to development,  
5 construction, improvement, marketing and/or sale of residential real property, including but not  
6 limited to the homes at the Classics Development which are the subject of this Complaint, but that  
7 this Nevada Corporation has since dissolved.

8           26.     Plaintiffs, including, but not limited to Plaintiffs who are members of the putative  
9 class, are further informed and believe, and thereon allege that, at all relevant times herein  
10 mentioned, Defendant AMERICAN WEST DEVELOPMENT, INC., was a Nevada corporation,  
11 with its principal place of business in Clark County, Nevada, engaged and doing business in Clark  
12 County, Nevada, including but not limited to development, construction, improvement, marketing  
13 and/or sale of residential real property, including but not limited to the homes at the Classics  
14 Development which are the subject of this Complaint. Plaintiffs are further informed and believe  
15 and based thereon allege that AMERICAN WEST DEVELOPMENT, INC. is a subsidiary and/or  
16 related entity to the other named Defendants, AMERICAN WEST HOMES, INCORPORATED and  
17 AMERICAN WEST HOMES INCORPORATED.

18           27.     Plaintiffs, including but not limited to Plaintiffs who are members of the putative  
19 class, are owners and/or beneficial owners of real property(ies) within the Classics Development  
20 located in Las Vegas, Clark County, Nevada, which was developed, improved, marketed and  
21 constructed by Defendants AMERICAN WEST HOMES, INC.

22           28.     Defendants DOES 1 through 100, inclusive, whether individual, corporate,  
23 partnership, associate or otherwise are sued by these fictitious names as the true names and  
24 capacities of Defendants identified as DOES 1 through 100, inclusive, are, at the time of the filing of  
25 this Complaint, unknown to Plaintiffs. Plaintiffs, inclusive, are informed and believe and thereupon  
26 allege that at all times herein mentioned each of the Defendants sued herein as DOES 1 through 100  
27 were/are the employees, agents, servants, and/or independent contractors of one or more of his, her,  
28 its or their co-Defendants, and in doing the things hereinafter mentioned, the Defendants identified



1 herein as DOES 1 through 100, inclusive were acting within the scope of his, her, its or their  
2 authority as such employees, agents, servants, and/or independent contractors and with the  
3 permission, consent and/or ratification of each one or more of his, her, its or their co-Defendants;  
4 and that each of said fictitiously named Defendants, whether an individual, corporation, association,  
5 or otherwise, are in some way liable or responsible to Plaintiffs, including but not limited to those  
6 Plaintiffs who are members of the putative class, on the facts hereinafter alleged, and caused injuries  
7 and damages proximately thereby as hereinafter alleged. At such time as these Defendants' true  
8 names become known to Plaintiffs, Plaintiffs, inclusive, will seek leave of Court to amend this  
9 Complaint and to thereby insert the true names and capacities of each said DOE Defendant.

10 29. The named Plaintiffs herein bring this action on their own behalf and on behalf of all  
11 persons similarly situated. The class that Plaintiffs represent is composed of homeowners of  
12 approximately 100 homes within the Classics Development. The persons in the class are so  
13 numerous, consisting of approximately 100 sets of homeowners, that the joinder of all such persons  
14 is impractical. Plaintiffs are bringing this action on behalf of approximately 100 sets of homeowners  
15 of approximately 100 homes, who share a common or general interest, and it would be impractical  
16 for those current or former employees to bring the action individually. As such, the disposition of  
17 the Plaintiffs' claims in a class action rather than in individual actions will benefit the parties and the  
18 Court.

19 30. The class members share a community of interest and an injury in fact as Defendants  
20 have negligently built the homes in the Classics Development and/or the homes in the Classics  
21 Development were not properly or adequately prepared, designed, engineered, supervised and/or  
22 constructed, and in violation Nevada building codes, ordinances, and industry standards, thereby  
23 causing injury to Plaintiffs in substantially the same way in each of the homes in the class.

24 31. There is a well-defined community of interest in the questions of law and fact  
25 involved affecting the plaintiff class in that all named and unnamed Plaintiffs purchased defectively  
26 constructed real property within the Classics Development from Defendants AMERICAN WEST  
27 HOMES, INC. and DOES 1 through 100. These questions of law and fact predominate over  
28 questions that affect only individual class members. A common or single state of facts establishes

1 the right of each member of the class to recover.

2 32. The claims of the named Plaintiffs are typical of those of the class Plaintiffs are  
3 representing. Defendants have negligently built the homes of each of the class Plaintiffs in the  
4 Classics Development and/or the homes of the class Plaintiffs in the Classics Development were not  
5 properly or adequately prepared, designed, engineered, supervised and/or constructed, and in  
6 violation Nevada building codes, ordinances, and industry standards. Defendants' tortious acts and  
7 omissions were substantially the same in each home, such that the named Plaintiffs' claims are  
8 typical of those of the entire class of Plaintiffs in the Classics Development.

9 33. The named Plaintiffs will fairly and adequately represent the interests of the class.  
10 Plaintiffs' experience and knowledge of the acts of Defendants, and each of them, entitle them to  
11 fairly and adequately represent the class of Plaintiffs in the Classics Development.

12 34. There is no plain, speedy, or adequate remedy other than by maintenance of this class  
13 action since Plaintiffs are informed and believe that the damage to each plaintiff is relatively small in  
14 relation to the costs necessary to pursue an action against all responsible parties, making it  
15 economically unfeasible for each individual plaintiff to pursue remedies other than a class action.  
16 Consequently, there would be a failure of justice but for the maintenance of the present class action.

17 35. The prosecution of individual remedies by members of the plaintiff class would tend  
18 to establish inconsistent standards of conduct for the Defendants and tend to result in the impairment  
19 of the class members' rights and the disposition of their interests through actions to which they were  
20 not parties.

21 36. The prosecution of individual remedies by members of the plaintiff class would also  
22 create a risk of adjudications with respect to individual members of the class which would as a  
23 practical matter be dispositive of the interests of the other members not parties to the adjudications  
24 or substantially impair or impede their ability to protect their interests in the event of exhaustion of  
25 insurance funds by Defendants.

26 ///

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28 ///



1           37.     Plaintiffs are informed and believe and thereupon allege that starting in or about  
2     1995, AMERICAN WEST HOMES, INC. and/or Defendants named herein as DOES 1 through 100,  
3     inclusive, were, and at all times herein mentioned are, engaged in the mass production of single  
4     family homes in Clark County, Nevada, the improvements and appurtenances thereof or thereto, for  
5     sale and use by members of the general public, including but not limited to Plaintiffs and those  
6     Plaintiffs who are members of the putative class, and each of them. Defendants, and each of them,  
7     including those Defendants named herein as DOES 1 through 100, participated in the development,  
8     construction, marketing and/or sale of the single family homes, appurtenances, and improvements in  
9     and for the Classics Development.

10           38.     Plaintiffs are informed and believe and thereupon allege that Defendants  
11     AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, as developers, contractors,  
12     sub-contractors, marketers, sellers and/or builders, developed the Classics Development and the  
13     subject residential structures therein, which structures were intended to be used as residential  
14     dwellings; and that at all times herein mentioned, Defendants, and each of them acted as developers  
15     contractors, sub-contractors, marketers, sellers and/or builders of the Development at Classics for the  
16     purposes set forth herein.

17           39.     Plaintiffs, including but not limited to those Plaintiffs who are members of the  
18     putative class, are informed and believe and based thereon allege that Defendants AMERICAN  
19     WEST HOMES, INC. and DOES 1 through 100, inclusive, as developers, contractors, sub-  
20     contractors, marketers, sellers and/or builders of the Classics Development, knew that the homes,  
21     appurtenances, and the structures therein were to be sold, and would be sold to and thus be used by  
22     members of the general public, including, but not limited to the Plaintiffs herein, inclusive, as and  
23     for residential purposes.

24           40.     Defendants, and each of them, knew or in the exercise of reasonable diligence should  
25     have known, that all persons who planned to purchase and/or who did in fact purchase said  
26     structures would do so without inspection for the defects as are set forth herein.

27     ///

28     ///

1       41.     The defects set forth herein include, without limitation, patent defects, latent defects  
2     and/or defects which Defendants, and each of them, knew or in the exercise of reasonable diligence  
3     should have known would occur.

4       42.     Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive,  
5     as developers, mass-developers, constructors, mass-constructors, marketers, mass-marketers,  
6     producers, and/or mass-producers of the Classics Development are liable for the defects as herein  
7     mentioned and are, therefore, responsible to Plaintiffs, inclusive, and each of them, for all  
8     damages suffered as a result of the deficiencies set forth herein, in a sum in excess of Ten  
9     Thousand Dollars (\$10,000.00).

10      43.     Plaintiffs have properly notified Defendants AMERICAN WEST HOMES, INC. of  
11     the defective conditions of the subject property, in accordance with Nevada Revised Statutes section  
12     40.645 and have complied with all pre-filing requirements of Nevada Revised Statutes sections  
13     40.600 through 40.695, including but not limited to Mediation pursuant to Nevada Revised Statutes  
14     section 40.680 *et seq.* and notwithstanding such notice and procedure, AMERICAN WEST  
15     HOMES, INC. and DOES 1 through 100, inclusive, have failed to and have not made the appropriate  
16     restorations and/or repairs to the structures the subject of this Complaint, at their cost and expense.

17      44.     Plaintiffs, at all times herein mentioned, relied on the skill of Defendants  
18     AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, in producing homes and  
19     appurtenances thereto that were and are reasonably fit to be used by Plaintiffs, and each of them,  
20     inclusive, for their intended purpose(s).

21      45.     Plaintiffs, and each of them, inclusive, are still not fully aware of all of the causes, the  
22     full extent and possible legal significance of the results or causes of the property conditions herein  
23     above-described, due to the loss being continual in nature and the fact that discovery is ongoing.  
24     Plaintiffs, and each of them, inclusive, are lay persons who have required expert consultations to  
25     provide a review of the property conditions. Plaintiffs are still not informed of all causes or entire  
26     results of the full extent of these defects and/or deficiencies, nor are Plaintiffs, and each of them,  
27     inclusive, fully informed of the potential causes of the resultant distress and/or damages due to the  
28     loss being continual in nature and discovery being ongoing.



1       46.     Plaintiffs are informed and believe and thereon allege that Defendants AMERICAN  
2     WEST HOMES, INC. and DOES 1 through 100, inclusive, did inspect and market said homes and  
3     appurtenances with full knowledge of the causes and effects of defects in the construction of the  
4     Classics Development, the defects and/or deficiencies in design, installation and supervision thereof  
5     and, in disregard of the defective conditions, causes and results. In particular, Plaintiffs, and each of  
6     them, inclusive, are informed and believe and thereon allege that said Defendants, and each of them,  
7     inclusive, including those Defendants designated herein as DOES 1 through 100, in the inspection,  
8     design, installation and supervision of Classics Development, engaged in a calculated course of  
9     conduct to reduce the costs of development by the use of substandard, deficient and inadequate  
10    design, architectural, plumbing, HVAC, engineering and construction techniques, specifications and  
11    materials.

12       47.     These deficiencies and inadequacies may include but are not limited to choices of  
13    windows, window framing, slab foundations, doors, roof structures, footings for wall blocks, toilet  
14    mounting rings (also known as closet rings or closet flanges), tub/shower valve leaks at the trim  
15    assembly, roof mounted forced air units lack provisions for condensate overflow protection,  
16    windows without sealant behind nail fin, roof valleys with obstructed water flow to the roof  
17    perimeter, chimneys with cap top fastened allowing water penetration to the framing, roof ridges and  
18    hips with missing weather blocking, eaves with missing edge metal, b-vents with missing storm  
19    collar, electrical panels with missing flashing, unsealed sliding glass door thresholds, pot shelves  
20    with inadequate waterproofing installation, weather exposed entry doors with missing pan flashing,  
21    failure of basement structure, architecture, wind proofing and/or waterproofing, breach in the one  
22    hour firewall construction, glass block windows with no flashing, sheet metal flashing improperly  
23    installed at deck perimeter, sliding glass doors on balconies with missing pan flashing under  
24    thresholds, OSB sheathing used instead of exterior grade plywood on decks, balcony wall tops and  
25    columns with inadequate waterproofing, oversized anchor bolt holes for securing the framing to the  
26    slab, hold down nailing which missed or split studs, non-code compliant Romex cables, lack of  
27    grounding electrode connections to bond the hot and cold water lines to the electrical ground at the  
28    panel, and fire rated spaces above electrical panels not fire sealed. Plaintiffs are further informed

1 and believe and thereupon allege that the structures may be additionally defective in ways and to an  
2 extent not precisely known, but which will be established at the time of trial, according to proof.

3 48. These deficiencies and inadequacies include violations of local building codes and  
4 ordinances, industry standards, manufacturers' recommendations and other applicable building law  
5 and/or statute(s).

6 49. Plaintiffs, and each of them, inclusive, are informed and believe and thereon allege  
7 Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, ignored curing  
8 the causes of the defects and pursued a course of development and construction of the Classics  
9 Development so as to increase their profit from the project at the expense of the eventual  
10 homeowner(s).

11 50. Plaintiffs are informed and believe and based thereon allege that any and all repair  
12 attempts by Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive,  
13 have failed or will hereafter fail to adequately correct said property damages, defects and  
14 deficiencies thereby resulting in further property damages caused thereby.

15 51. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege  
16 that instead of causing the necessary and required reconstruction and repair of the Classics  
17 Development, Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive,  
18 have caused cosmetic, temporary or ineffective repairs to be made to various portions of the Classics  
19 Development, if any, for the purpose of leading Plaintiffs to believe that said Defendants were  
20 resolving and correcting all deficiencies. By virtue of such conduct, said Defendants are estopped to  
21 assert that the Plaintiffs have not commenced this action in a timely fashion and are further estopped  
22 to assert that the Plaintiffs may not seek the damages herein sought.

23 52. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege  
24 that the above-described defects arose out of, were attributable to, and are directly and proximately  
25 caused by the above-described defects and/or deficiencies in the design, specification, planning,  
26 supervision, observation of construction, development and/or improvement and any repairs of the  
27 Classics Development, and that prior to the time when the defects were discovered by Plaintiffs as  
28 set forth herein, could not have been discovered by the exercise of reasonable diligence. Said



1 defects were not apparent or visible from a casual inspection.

2 53. Plaintiffs, and each of them, inclusive, have been compelled to retain counsel to  
3 represent them in this action and are, therefore, entitled to an award of their reasonable attorney's  
4 fees and the costs of suit herein incurred.

5 **FIRST CAUSE OF ACTION**

6 **(Negligence Against All Defendants and DOES 1 - 100)**

7 54. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 53, inclusive of  
8 the Complaint as though fully set forth herein.

9 55. Plaintiffs are informed and believe and based thereon allege that the items generally  
10 referred to and particularly described herein were constructional defects within the meaning of  
11 Nevada Revised Statutes sections 11.203-205 in that the above-described defects arose out of, and  
12 were and are attributable to and are directly and proximately caused by deficiencies in the design,  
13 specifications, planning, supervision, observation of construction, construction, development and/or  
14 improvement of the subject premises and subject structures, and that prior to the time when it was  
15 discovered by Plaintiffs as set forth herein, could not have been discovered by the exercise of  
16 reasonable diligence.

17 56. Plaintiffs are informed and believe and thereon allege that the deficiencies described  
18 herein regarding the analysis, preparation, design, specifications, planning, supervision, observation  
19 of construction, construction, development and/or improvement of the subject premises and subject  
20 structures were known, or in the exercise of reasonable diligence should have been known, by  
21 Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100.

22 57. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege  
23 that Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, were and  
24 are builders, contractors, general contractors, subcontractors, suppliers, material men, architects  
25 and/or engineers, or other persons, entities, and/or professionals and/or their agents, successors  
26 and/or assigns, who participated in the process of design, engineering, manufacture and/or  
27 construction of homes, appurtenances, buildings, improvements and structures of the Classics  
28 Development and/or who performed works of labor, supplied materials, equipment and/or services

1 necessary for the building and construction, including supervision of construction of the Classics  
2 Development with the knowledge that the homes and appurtenances thereto would be sold to and  
3 used by members of the public. In so doing, said Defendants, including Defendants herein named as  
4 DOES 1 through 100, in the capacity as builders, contractors, subcontractors, suppliers, material  
5 men, architects, engineers, sellers and/or general contractors or otherwise, caused the subject  
6 premises and subject structures to be designed, engineered and/or constructed through their own  
7 works of labor, their supplying of materials, equipment and services, and through causing other  
8 contractors and subcontractors, including other Defendants to perform works of labor, to supply  
9 materials, equipment and services in order to properly complete the Classics Development and  
10 subject structures so that the Development could be marketed, sold to and used by members of the  
11 public. As a result, Defendants, and each of them, owed Plaintiffs, and each of them, a duty of  
12 ordinary and reasonable care to prevent defect, injury or other damage to the structures, buildings,  
13 improvements, and other appurtenances to the real property of Plaintiffs, and each of them.

14 58. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege  
15 the Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, whether  
16 builders, contractors, subcontractors, suppliers, material men, architects, engineers or otherwise,  
17 negligently, carelessly, tortiously, wrongfully and in breach of their duty to Plaintiffs, failed to use  
18 reasonable care in the analysis, preparation, design, manufacture, construction, and/or installation of  
19 the real property and structures thereon, including without limitation: civil engineering, grading,  
20 foundations, roofs, windows, concrete, framing, stucco, electrical systems, plumbing systems,  
21 architectural systems, mechanical systems, and walls.

22 59. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege  
23 the Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, whether  
24 builders, contractors, subcontractors, suppliers, material men, architects, engineers or otherwise,  
25 performed work, labor and/or services for the construction of the Classics Development, and each  
26 knew or should have known that if the Classics Development was not properly or adequately  
27 prepared, designed, engineered, supervised and/or constructed, that the owners and users would be  
28 substantially damaged thereby, and that the residences, homes appurtenances, buildings,



1 improvements and structures and improvements would be defective within the meaning of Nevada  
2 Revised Statutes section 11.203.

3       60. The Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100,  
4 inclusive, were under a duty to exercise ordinary care as builders, contractors, subcontractors,  
5 suppliers, material men, architects, engineers or otherwise to avoid reasonably foreseeable injury and  
6 damages to users and purchasers of the homes, appurtenances, buildings, improvements and  
7 structures, and knew or should have foreseen with reasonable certainty that purchasers and/or users  
8 would suffer the damages set forth herein if said Defendants, and each of them, failed to perform  
9 their duties to cause the subject premises and subject structures to be designed, engineered and  
10 constructed in a proper workmanlike manner and fashion.

11       61. In performing the works of builders and/or contractors, subcontractors, suppliers,  
12 material men, architects, engineers or otherwise, Defendants AMERICAN WEST HOMES, INC.  
13 and DOES 1 through 100, inclusive, failed and neglected to perform the work, labor and services  
14 properly or adequately in that each said Defendant so negligently, carelessly and in an  
15 unworkmanlike manner performed the aforesaid work, labor and/or services such that the subject  
16 premises and subject structures as described herein were designed, prepared, engineered and/or  
17 constructed improperly, negligently, carelessly and/or in an unworkmanlike manner within the  
18 meaning of Nevada Revised Statutes sections 11.203-205.

19       62. These acts of Defendants and each of them were both the actual and proximate cause  
20 of the damages to Plaintiffs' homes, as set forth herein, because but for these acts, Plaintiffs would  
21 not have suffered these harms.

22       63. In the preceding four (4) years, Plaintiffs and each of them as similarly and/or  
23 identically situated have discovered their homes in the Classics Development have been and are  
24 presently experiencing defective conditions of the real property and structures thereon, including  
25 without limitation: civil engineering, grading, foundations, roofs, windows, concrete, framing,  
26 stucco, electrical systems, plumbing systems, HVAC, mechanical systems, architectural systems and  
27 walls, and that said homes, residences, structures and/or improvements within the subject  
28 development and the components thereof are not of merchantable quality nor were they designed,

1 erected, constructed or installed in a workmanlike manner but instead, are defective and, as now  
2 known, the subject components demonstrate improper, nonexistent, and/or inadequate design,  
3 construction, manufacture, and/or installation. Plaintiffs, and each of them, inclusive, are informed  
4 and believe and thereupon allege that the structures may be additionally defective in ways and to an  
5 extent not precisely known, but which will be established at the time of trial, according to proof.

6 64. As a direct and proximate result of the conduct of Defendants AMERICAN WEST  
7 HOMES, INC. and DOES 1 through 100 herein alleged, Plaintiffs, and each of them, inclusive, have  
8 suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this  
9 Court in that they have been and will hereafter be required to perform investigations and works of  
10 repair, restoration, and construction to portions of the structures to prevent further damage to the  
11 structures and other property and to restore the structures to their proper condition and/or will suffer  
12 damages in an amount the full nature and extent of which shall be ascertained according to proof at  
13 trial, but believed to be in excess of Ten Thousand Dollars (\$10,000). Plaintiffs, and each of them,  
14 seek damages available pursuant to NRS section 40.655. Those items of damages include but are  
15 not limited to the following:

16 a. For the costs of expert investigation, redesign and reconstruction of the construction  
17 defects, ongoing and/or to be completed, including but not limited to those set forth herein, and for  
18 which Plaintiffs have suffered and/or will suffer damages in an amount the full nature and extent of  
19 which shall be ascertained according to proof at trial;

20 b. For damages to the real property and structures thereon which are the legal/proximate  
21 consequence of the construction defects, including but not limited to those set forth herein, and for  
22 which Plaintiffs have suffered or will suffer damages in an amount the full nature and extent of  
23 which shall be ascertained according to proof at trial;

24 c. For diminution in value and/or lost profit which is the legal/proximate result of the  
25 construction defects involving structural damages, including but not limited to those specified  
26 herein, and for which Plaintiffs have suffered and/or will suffer damages in an amount the full nature  
27 and extent of which shall be ascertained according to proof at trial;

28 ///



1 d. For lost or diminished rental income which is the legal/proximate consequence of the  
 2 construction defects, including but not limited to those specified herein, for which Plaintiffs have  
 3 suffered and/or will suffer damages the full nature and extent of which shall be ascertained  
 4 according to proof at trial;

5 e. For relocation costs and related costs when repairs are effectuated, which is the  
 6 legal/proximate consequence of the construction defects, including but not limited to those specified  
 7 herein, for which Plaintiffs have suffered and/or will suffer damages the full nature and extent of  
 8 which shall be ascertained according to proof at trial;

9 f. For the lost monetary value of property due to the stigma which is the legal/proximate  
 10 consequence of the construction defect problems, including but not limited to those specified herein,  
 11 and for which Plaintiffs have suffered and/or will suffer damages the full nature and extent of which  
 12 shall be ascertained according to proof at trial; and

13 g. For the costs of certain repairs and expert investigation which were completed which  
 14 are the legal/proximate consequence of the problems, including but not limited to those specified  
 15 herein, and for which Plaintiffs have suffered and/or will suffer damages the full nature and extent of  
 16 which shall be ascertained according to proof at trial.

#### 17 **SECOND CAUSE OF ACTION**

18 **(Fraudulent Concealment (Fraud In the Inducement) Against All Defendants, Defendant**

19 **AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive)**

20 65. Plaintiffs reallege and incorporate by reference paragraphs 1 through 64 inclusive of  
 21 this Complaint as though fully set forth herein.

22 66. Plaintiffs are informed and believe, and based thereon allege, that at all times herein  
 23 mentioned, Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, were the  
 24 principals, agents, masters, servants, employers, employees, co-venturers, co-conspirators, and/or  
 25 joint venturers of each of the other Defendant(s), and in doing the things hereinafter alleged, were  
 26 acting within the scope, course, and authority of such agency, employment, agreement, and/or joint  
 27 venture, and with the knowledge, consent, authority, approval, ratification, and/or permission of each  
 28 of the other Defendant(s).

67. Plaintiffs are further informed and believe, and based thereon allege Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, individually and through their agents and employees acting on their behalf, concealed, suppressed, and failed to disclose material facts pertinent to the defective conditions on the property and structures thereon and the foreseeable damages that result there from, including but not limited to, defective conditions in the civil engineering, grading, foundations, roofs, windows, concrete, framing, stucco, electrical systems, other architectural components, plumbing systems, HVAC, mechanical systems, and walls, improper, nonexistent, and/or inadequate design, construction, manufacture, and/or installation of components, as more fully set forth in Plaintiffs' expert reports. Specifically, said Defendants concealed and suppressed material facts known to Defendants and pertinent to the defective conditions.

68. Specifically, said Defendants engaged in a pattern and practice of misrepresenting the nature and quality of construction of the homes to the purchasing Plaintiffs. In Defendants' actions, including but not limited to advertising, marketing, sales techniques, brochures, literature, and/or sales pitches, Defendants, and each of them, adopted a pattern and practice of misleading homeowners through both affirmative representations and omissions that the homes were built soundly, fit for the purposes for which a home is typically used, intended to last, covered by warranties, that Defendants were building quality homes and/or that the homes complied with building codes and standards and manufacturer specifications.

69. Defendants further represented themselves as trustworthy family company companies who would do right by the homeowner purchasers.

70. By way of illustration, and without limitation, Plaintiff SCOVIL completed a homeowner survey indicating his home's basement window wells were collapsing in. Defendants' advertising and/or marketing materials touted the "innovative storage basements" offered in certain floor plans of the Classics Development, describing them as "spectacular." See American West Homes Classics brochure, a true and correct copy of which is attached hereto as **EXHIBIT A** and incorporated herein by reference, enticing prospective homeowners with the following text: "American West Homes Exquisite Homes. Unmatched Value. What's your idea of luxury? At



1 American West it is sweeping staircases and spectacular storage basements. It is gourmet kitchens  
 2 and opulent master suites. It is five exquisite floorplans built under stunning mountain views. It is  
 3 American West Classics. American West Classics offers complete luxury inside and out. You'll  
 4 find formal dining rooms made for elegant dinner parties, huge family rooms where you can settle in  
 5 with your favorite film and innovative storage basements that are any executive family's dream."  
 6 (emphasis added).

7 71. These representations by Defendants were false when made. In addition, by omitting  
 8 facts and information for which Defendants owed Plaintiffs a duty to disclose, Defendants further  
 9 misled Plaintiffs.

10 72. Said Defendants were under a duty to disclose the true facts concerning the nature of  
 11 the construction of the homes in the Classics Development to Plaintiffs.

12 73. Plaintiffs and said Defendants enjoyed a special relationship, wherein Plaintiffs  
 13 reasonably imparted special confidences in said Defendants and the Defendants would reasonably  
 14 know of this confidence in that the material facts concealed, suppressed, or not disclosed by  
 15 Defendants were particularly with Defendants' knowledge and not within the fair and reasonable  
 16 reach of Plaintiffs. Plaintiffs are further informed and believe and thereon allege the defective  
 17 condition of the property and structures was peculiarly within the knowledge of Defendants and not  
 18 within the fair and reasonable reach of Plaintiffs, thereby imposing a duty on Defendants to disclose  
 19 said defects to Plaintiffs. As a result of Defendants' failure to disclose the defective condition of the  
 20 property and structures, Plaintiffs were prevented from gaining the opportunity to be placed on equal  
 21 footing with Defendants.

22 74. Said Defendants intentionally concealed, suppressed, and failed to disclose these facts  
 23 with the intent to defraud Plaintiffs for the purpose of inducing Plaintiffs to purchase their homes.

24 75. Plaintiffs are informed and believe and based thereon allege, that Defendants and  
 25 each of them, concealed, from Plaintiffs, the nature and extent of the defects. The fraudulent acts  
 26 and omissions of Defendants, and each of them, included the failure to inform the Plaintiffs of  
 27 defects known to Defendants, for the purpose of reducing Defendants' cost of repair and/or  
 28 warranty.

1       76. Plaintiffs are informed and believe and based thereon allege, that Defendants and  
2 each of them, concealed these defects from Plaintiffs in a calculated effort to cause the statute of  
3 repose to run on the homes, so as to avoid the duty to repair the defects, despite advance knowledge  
4 of their existence.

5       77. Plaintiffs are informed and believe and based thereon allege, that Defendants and  
6 each of them, concealed these defects from Plaintiffs in order to increase profits, expedite their  
7 return on investment and meet their obligations to timely deliver residences for sale to the  
8 homeowner market, without consideration for the ultimate damage to homeowners from the  
9 defective construction.

10       78. At the time Defendants AMERICAN WEST HOMES, INC. and DOES 1 - 100  
11 concealed, suppressed, and failed to disclose the material facts set forth above and at the time  
12 Plaintiffs purchased their homes, they were ignorant of the existence of the facts which Defendants  
13 concealed, suppressed, and failed to disclose regarding the defective condition of the property and  
14 structures. Had Plaintiffs known of the defective condition of the property and structures, they  
15 would not have purchased their homes or would not have purchased their homes under the same  
16 terms and conditions.

17       79. In the preceding three (3) years, Plaintiffs and each of them as similarly and/or  
18 identically situated have discovered their homes in the Classics Development have been and are  
19 presently experiencing defective conditions of the real property and structures thereon, including  
20 without limitation: civil engineering, grading, foundations, roofs, windows, concrete, framing,  
21 stucco, electrical systems, plumbing systems, HVAC, mechanical systems, and walls, and that said  
22 homes, residences, structures and/or improvements within the subject development and the  
23 components thereof are not of merchantable quality nor were they designed, erected, constructed or  
24 installed in a workmanlike manner but instead, are defective and, as now known, the subject  
25 components demonstrate improper, nonexistent, and/or inadequate design, construction,  
26 manufacture, and/or installation. Plaintiffs and each of them did not discover the true nature of these  
27 defects until Plaintiffs' experts completed their inspections. Plaintiffs, and each of them, inclusive,  
28 are informed and believe and thereupon allege that the structures may be additionally defective in

# EXHIBIT 40

## (Part 2)

Plaintiffs' Construction Defect Complaint filed on March 3, 2008, in Clark County District Court, Nevada, in the action captioned *Bennett v. American West Homes, Inc.*, Case No. A558243 ("*Bennett* action") (with Exhibits to Complaint) (ISIC 4968-5815) Part 2 (ISIC 4988-5815, ¶¶ 79-end and Exh. F)



ways and to an extent not precisely known, but which will be established at the time of trial, according to proof.

80. As a direct and proximate result of Defendants' concealment, suppression and failure to disclose the facts, as described above, Plaintiffs sustained damages, in an amount precisely unknown but believed to be within the jurisdiction of this Court, in that Plaintiffs have been and will hereafter be required to perform investigations and works of repair, restoration, and construction to portions of the structures to prevent further damage and to restore the structures to their proper condition and/or will suffer damages in an amount in excess of Ten Thousand Dollars (\$10,000), the full nature and extent of which shall be ascertained according to proof at trial.

### **THIRD CAUSE OF ACTION**

**(Fraudulent Concealment Against All Defendants, Defendant AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive)**

81. Plaintiffs reallege and incorporate by reference paragraphs 1 through 80 inclusive of this Complaint as though fully set forth herein.

82. Plaintiffs are further informed and believe and based thereon allege that Defendants' acts of fraudulent concealment are not limited to the time of sale. Defendants, in addition, perpetuated the fraud by concealing the defects in the homes once they were sold and/or passed on to subsequent purchasers.

83. Following purchase, Plaintiffs are informed and believe and based thereon allege, that Defendants and each of them, concealed, from both original and subsequent purchaser Plaintiffs, the nature and extent of the defects. The fraudulent acts and omissions of Defendants, and each of them, included the failure to inform the original and subsequent purchaser Plaintiffs of defects known to Defendants, for the purpose of reducing Defendants' cost of repair and/or warranty. In addition, the fraudulent acts and omissions of Defendants, and each of them, may on information and belief include: doing nothing, stonewalling, charging Plaintiffs for repairs for which Defendants themselves should have paid, providing "band-aid" type repairs such as paint and patch repairs which did not address greater underlying structural and other defects, and/or giving Plaintiffs the runaround, in order to cause the statute of repose to run on the homes, so as to avoid the duty to

1 repair the defects.

2 84. Plaintiffs are further informed and believe and based thereon allege as examples of  
3 the fraud perpetrated by Defendants on Plaintiffs, the following, without limitation:

4 85. In or about Fall 2004, homeowner surveys revealed numerous defects in Plaintiffs'  
5 homes, including but not limited to the following:

6 (a) Homeowners, the CORWINS at 3708 Plum Blossom Court, complained of stucco cracks,  
7 doors not closing properly, block wall cracks, window seal failures, plumbing problems, and large  
8 cracks in the driveway.

9 (b) Homeowner, GREEN, at 9172 Lawton Pine Avenue, complained of drywall cracks,  
10 stucco cracks, window seal failures, water stains on ceilings, windows with moisture between them,  
11 basement leaking, glass block leaking, bedroom, living room and kitchen leaking etc.

12 (c) Homeowner, SCOVIL, at 9148 Lawton Pine Avenue, complained of drywall cracks,  
13 stucco cracks, doors not closing properly, balcony leaks, window seal failures, water stains on  
14 ceiling and window sills, plumbing problems, electrical problems, roof leaks, basement window  
15 wells collapsing in, etc.

16 (d) Additional homeowners offered different statements about defects they began to discover  
17 in their homes, including but not limited to the following: "We have had to contact them [American  
18 West Homes, Inc.] several times and still nothing has been corrected or repaired" by Plaintiff  
19 SCOVIL; "I've complained a lot but have not had results" by Plaintiffs, the THOMPSONS; "had  
20 house repainted to cover cracks" by Plaintiffs the JACKSONS; and "The big storm that took place  
21 last year took out my basement window and I had leaks in several bedrooms, living room, kitchen  
22 and they did take care of some of it. Stucco in living room is all cracking and peeling due to all the  
23 water that came in through the glass block" by Plaintiff GREEN.

24 86. True and correct copies of the homeowner surveys are attached hereto as **EXHIBIT**  
25 **B** and made a part hereof.

26 87. Plaintiffs thereafter sent their respective Chapter 40 Notices to Defendants pursuant  
27 to NRS section 40.645 *et seq.* True and correct copies of Plaintiffs' Chapter 40 Notices are attached  
28 hereto as **EXHIBIT C** and made a part hereof.



1        88. On information and belief, based on similar construction defect cases against the  
2 same Defendants in nearby developments and based on Defendants' responses to the Chapter 40  
3 Notices Plaintiffs sent in this case, Plaintiffs believe the Defendants' expert report and cost of repair  
4 will admit to numerous defects including but not limited to the following categories: roofs, exterior  
5 finishes, balconies, sliding glass doors, fire resistive construction, wall board, fireplaces and chases,  
6 miscellaneous architectural and windows.

7        89. In light of these expected defense reports, the responses to Chapter 40 Notices by  
8 Defendants, the homeowners' surveys and Chapter 40 notices along with prior written and oral  
9 complaints, Defendants knew Plaintiffs' homes were suffering from these types of defects, yet did  
10 not properly act to remedy the defects. Instead, Defendants engaged in a calculated campaign to  
11 delay and conceal the defects through techniques which include but are not limited to  
12 misinformation, posturing, and or providing partial or inadequate response so as to mislead Plaintiffs  
13 to believe nothing was wrong with their homes or that the defects were a result of their own lack of  
14 maintenance or Plaintiffs' additions or changes to the subject property following completion of  
15 construction by Defendants.

16        90. Despite notice of, and knowledge of, these defects and similar defects reported by the  
17 Plaintiffs to Defendants, Defendants failed and refused to repair the defects. Instead, Defendants  
18 failed to respond and/or failed to adequately respond to homeowner concerns, for the purpose of  
19 reducing Defendants' cost of repair and/or warranty. In addition, the fraudulent acts and omissions  
20 of Defendants, and each of them, included doing nothing, stonewalling, charging Plaintiffs for  
21 repairs for which Defendants themselves should have paid, providing "band-aid" type repairs such as  
22 paint and patch repairs which did not address greater underlying structural and other defects, and/or  
23 giving Plaintiffs the runaround, in order to cause the statute of repose to run on the homes, so as to  
24 avoid the duty to repair the defects.

25        91. To further illustrate Defendants' lack of response, starting in or about mid-March  
26 2007, Defendants responded to certain of Plaintiffs' NRS Chapter 40 Notices concerning these  
27 defects as follows, without limitation:

28 ///

1 (a) With respect to the CORWIN residence, Defendants responded that the Chapter 40 notice  
2 was insufficient and that many of the items alleged to be defective were not observed during  
3 inspection or voiced by the homeowner. Defendants further responded that they would repair  
4 various conditions "to the extent it can be ascertained to exist and result from original construction."  
5 Numerous other defects received a response from Defendants that the defective condition was due to  
6 a "homeowner maintenance issue" Defendants alleged was attributable to the actions of the  
7 homeowner and not the acts of Defendants. Defendants further claimed several other defects were  
8 not required by the applicable building codes or were not attributable to the original construction and  
9 declined to repair them. Subsequently, in late April 2007, Defendants claimed to have agreed to  
10 perform certain enumerated repairs, including certain repairs to the tile roofs and doors. However,  
11 the repairs were inadequate, and Plaintiffs' claims remain.

12 (b) With respect to the SCOVIL residence, Defendants similarly responded that the Chapter  
13 40 notice was insufficient and that many of the items alleged to be defective were not observed  
14 during inspection or voiced by the homeowner. Defendants further responded that they would repair  
15 various conditions "to the extent it can be ascertained to exist and result from original construction."  
16 Numerous other defects received a response from Defendants that the defective condition was due to  
17 a "homeowner maintenance issue" Defendants alleged was attributable to the actions of the  
18 homeowner and not the acts of Defendants. Defendants insisted "the majority of the conditions  
19 observed on February 8, 2007, are minor maintenance items not unexpected in a nearly ten (10) year  
20 old home." Defendants further claimed several other defects were not required by the applicable  
21 building codes or were not attributable to the original construction and declined to repair them.  
22 Subsequently, in late April 2007, Defendants claimed to have agreed to perform certain enumerated  
23 repairs, including certain repairs to the tile roofs and doors. Conspicuously absent from Defendants'  
24 response to Plaintiff SCOVIL's homeowner survey and Chapter 40 notice is any response to the  
25 issues Plaintiff raised concerning leaking windows and/or window defects (Category 16.0 in the  
26 RHA Incorporated Preliminary Defect Report attached to and incorporated by reference in Plaintiff  
27 SCOVIL's Chapter 40 Notice). Shockingly, Defendants failed to address Plaintiff SCOVIL's  
28 statement in his homeowner survey that his basement window wells were collapsing in. Defendants'



1 repairs were, for these and other reasons, inadequate, and Plaintiff's claims remain.

2 (c) With respect to the JACKSON residence, Defendants similarly responded that the  
3 Chapter 40 notice was insufficient. Defendants further responded that they would repair various  
4 conditions "to the extent it can be ascertained to exist and result from original construction."  
5 Numerous other defects received a response from Defendants that the defective condition was due to  
6 a "homeowner maintenance issue" Defendants alleged was attributable to the actions of the  
7 homeowner and not the acts of Defendants. Defendants further claimed several other defects were  
8 not required by the applicable building codes or were not attributable to the original construction and  
9 declined to repair them. Subsequently, in late April 2007, Defendants claimed to have agreed to  
10 perform certain enumerated repairs, including certain repairs to the tile roofs, doors and wallboard.  
11 Defendants did not address the fact that Plaintiffs the JACKSONS "had house repainted to cover  
12 cracks" at their own expense or otherwise address these cracks. In March 2007, Defendants further  
13 noted a "ceiling shadow" Defendants claimed might be a stain. Defendants represented that if they  
14 determined the "shadow" was indeed a stain, then the "condition will be addressed." However,  
15 Defendants did not address this issue in the subsequent April 2007 repairs. Defendants' repairs  
16 were, for these and other reasons, inadequate, and Plaintiffs' claims remain.

17 92. True and correct copies of Defendants' March 2007 and April 2007 Chapter 40  
18 Notice response letters are attached hereto as **EXHIBITS D and E**, respectively, and are made a part  
19 hereof.

20 93. Despite oral and written notice of these and similar defects throughout the Classics,  
21 Development, Defendants continued to deny their existence or properly investigate or repair. This  
22 lack of action on Defendants' part represents a pattern and practice Defendants engaged in both  
23 before and after Plaintiffs gave their Chapter 40 notices, in a calculated effort to cause the statute of  
24 repose to run on the homes, so as to avoid the duty to repair the defects, despite advance knowledge  
25 of their existence.

26 94. In or about the end of August 2006, Plaintiffs, through their experts, became aware of  
27 the extent of the defects Defendants had been concealing.

28 ///



1           95.     Plaintiffs are further informed and believe and based thereon allege Defendants knew  
 2 of various violations of the industry standards, manufacturer specifications and building code when  
 3 they built the subject homes at Classics. Nonetheless, Defendants proceeded to build the homes in  
 4 violation of these codes, standards and specifications in order to increase profits, expedite their  
 5 return on investment and meet their obligations to timely deliver residences for sale to the  
 6 homeowner market, without consideration for the ultimate damage to homeowners from the  
 7 defective construction. These violations include but are not limited to the following:

8           (a) With respect to Windows: 1991 Uniform Building Code Chapter 17 Section 1708(a)-(a)  
 9 "All weather exposed surfaces shall have a weather-resistive barrier to protect the interior wall  
 10 covering."; 1991 Handbook to the Uniform Building Code "An Illustrative Commentary" Chapter  
 11 17, Section 1708; AAMA 502 Specifications for Field Testing of Windows and Sliding Glass  
 12 Doors."; and various other codes, specifications, manufacturers specifications etc., referenced in  
 13 Plaintiffs' Expert Reports attached to their Chapter 40 Notices.

14           (b) With respect to Wallboard: Plaster and Drywall Systems Manual, 3<sup>rd</sup> Edition, 1988,  
 15 Chapter 12, pages 110-112 and 226-227, 229; 1997 Uniform Building Code Chapter 14 Section  
 16 1402.1 and 1994 Uniform Building Code Chapter 14 Section 1402.2-.1; 1997 Handbook to the  
 17 Uniform Building Code; and various other codes, specifications, manufacturers specifications etc.,  
 18 referenced in Plaintiffs' Expert Reports attached to their Chapter 40 Notices.

19           (c) With respect to Balconies: 1994 Uniform Building Code Chapter 14 Section 1402.3; 1994  
 20 Uniform Building Code Chapter 15 Section 1506.1-.3; 1994 Handbook to the Uniform Building Code,  
 21 Chapter 14 Section 1402; and various other codes, specifications, manufacturers specifications etc.,  
 22 referenced in Plaintiffs' Expert Reports attached to their Chapter 40 Notices.

23           (d) With respect to Roofs: 1991 Uniform Building Code, Chapter 17, Section 1708(a),  
 24 Chapter 32, Sections 3201(a), 3208(b)5, 3208(c)1C, Table 32-D-2; 1994 Uniform Building Code,  
 25 Chapter 14, Section 1402.1, Chapter 15, Section 1501.1, 1507.7, Table 15-D-2; 1997 Uniform  
 26 Building Code, Chapter 14, Section 1402.1, Chapter 15, Sections 1503, 1507.7, Table 15-D-2; and  
 27 various other codes, specifications, manufacturers specifications etc., referenced in Plaintiffs' Expert  
 28 Reports attached to their Chapter 40 Notices.

1        96. These examples do not represent the only instances of fraudulent activity alleged by  
 2 Plaintiffs. These instances are offered for purposes of illustration. Out of an abundance of caution,  
 3 Plaintiffs further incorporate by reference the facts and circumstances set forth in the homeowner  
 4 surveys, Chapter 40 defect notices and defense responses to the Chapter 40 notices and Plaintiffs'  
 5 expert reports, attached thereto.

6        97. Furthermore, as much of the pattern of fraudulent concealment by Defendants  
 7 involves omissions, Plaintiffs are informed and believe and based thereon allege that additional  
 8 specific facts are not available to them. However, Plaintiffs reserve the right to amend to allege  
 9 additional specific facts as they become known through written discovery and/or depositions.  
 10 Plaintiffs further aver they are entitled to a relaxed pleading standard as additional information is in  
 11 the Defendants' possession.

12        98. Plaintiffs are further informed and based thereon allege that Defendants further  
 13 committed fraud on original and subsequent purchaser Plaintiffs by employing company  
 14 representatives, who may include but are not limited to Ms. Tina Goode<sup>1</sup> to wage a campaign to  
 15 dissuade homeowners from maintaining actions against Defendants, and each of them.

16        99. Specifically, Plaintiffs are informed and believe and based thereon allege that on or  
 17 about August 6, 2003, Defendants filed a Motion to Dismiss or for Summary Judgment in the matter  
 18 entitled, *Price, et al. v. American West Homes, Inc., et al.*, Case No. A468301, in the District Court,  
 19 Clark County, Nevada. Plaintiffs in the current case, the COLEMAN-GRAYSONS were  
 20 inadvertently included in the *Price* case, which was one of the bases for Defendants' Motion.  
 21 Defendants attached to their Motion in the *Price* case, statements by AMERICAN WEST HOMES  
 22 to Plaintiffs, the COLEMAN-GRAYSONS, in a letter dated July 3, 2003. In that letter, Defendants'  
 23 agent and/or employee, Ms. Tina Goode, who to Defendants' knowledge, is not an Attorney,  
 24 purports to advise Plaintiffs, the COLEMAN-GRAYSONS of their disclosure duties pursuant to  
 25 NRS 40.688. This letter from Defendants is clearly calculated and intended on Defendants' part, to

26 \_\_\_\_\_  
 27 <sup>1</sup> Plaintiffs are informed and believe and based thereon allege that Ms. Tina Goode was an employee of American  
 28 West Homes. Plaintiffs are further informed and believe and based thereon allege that Ms. Goode was, at all times  
 pertinent hereto, acting within the course and scope of her duties to Defendants, directly and/or through its subsidiary or  
 related entity.



1 dissuade Plaintiffs the COLEMAN-GRAYSONS from pursuing their construction defect claims.<sup>2</sup>  
 2 A true and correct copy of the July 3, 2003 letter to the COLEMAN-GRAYSONS is attached hereto  
 3 as **EXHIBIT F** and made a part hereof.

4 100. On or about September 8, 2003, at the Court's Hearing on the Motion in the *Price*  
 5 case, the Honorable Michael Cherry noted concern over defense contacts with represented Plaintiffs.

6 101. These events reveal a pattern of Defendants, and each of them, applying pressure to  
 7 represented Plaintiffs to attempt to garner an advantage in proceedings then before the Court. Ms.  
 8 Goode contacted represented Plaintiffs in a situation in which they did not have advice of counsel to  
 9 evaluate her statements. On information and belief, at no time did Ms. Goode represent to the  
 10 Plaintiffs that her letter would be used for the purpose of supporting a motion adverse to their  
 11 interest, i.e. Defendants' Motion to Dismiss in the *Price* matter. Defendants' efforts aimed to limit  
 12 their liability in the *Price* matter as well as in this matter.

13 102. These acts reveal a pattern of conduct calculated to escape liability to the entire class  
 14 of approximately 100 residences in the Classics Development by improperly convincing Plaintiffs  
 15 not to pursue litigation, accept inadequate repairs and/or to run out the statute of repose.

16 103. Plaintiffs are further informed and believe, and based thereon allege Defendants  
 17 AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, in doing these further acts  
 18 of fraudulent concealment as set forth in paragraphs 75-102, above, individually and through their  
 19 agents and employees acting on their behalf, concealed, suppressed, and failed to disclose material  
 20 facts pertinent to the defective conditions on the property and structures thereon and the foreseeable  
 21 damages that result there from, including but not limited to, defective conditions in the civil  
 22 engineering, grading, foundations, roofs, windows, concrete, framing, stucco, electrical systems,  
 23 plumbing systems, HVAC, mechanical systems, and walls, improper, nonexistent, and/or inadequate  
 24 design, construction, manufacture, and/or installation of components, as further set forth in  
 25 Plaintiffs' expert reports. Specifically, said Defendants concealed and suppressed material facts  
 26

27 <sup>2</sup> At the time of Defendants' Motion in the *Price* matter, Plaintiffs' counsel in the *Price* matter were not aware  
 28 that there were two separate developments, the Classics Development, which is the subject of this action, and the  
 Diamond Ridge Development, which is the subject of the *Price* action. Defendants successfully dismissed the  
 COLEMAN-GRAYSONS from the *Price* action.

1 pertinent to defective conditions.

2 104. Plaintiffs are further informed and believe and based thereon allege that when doing  
3 these further acts of fraudulent concealment as set forth in paragraphs 75-102, said Defendants were  
4 under a duty to disclose these facts to Plaintiffs.

5 105. Plaintiffs are further informed and believe and based thereon allege that in doing  
6 these further acts of fraudulent concealment as set forth in paragraphs 75-102, said Defendants  
7 intentionally concealed, suppressed, and failed to disclose these facts with the intent to defraud  
8 Plaintiffs for the purpose of inducing Plaintiffs not to take legal action, to unwittingly curtail their  
9 legal rights and/or to run out their respective statutes of repose.

10 106. Plaintiffs are further informed and believe and based thereon allege at the time  
11 Defendants AMERICAN WEST HOMES, INC. and DOES 1 – 100 concealed, suppressed, and  
12 failed to disclose the material facts set forth above, Plaintiffs were ignorant of the existence of the  
13 facts which Defendants concealed, suppressed, and failed to disclose regarding the defective  
14 condition of the property and structures. Had Plaintiffs known of the defective condition of the  
15 property and structures, they would have told Plaintiffs' counsel and pursued their legal rights to the  
16 fullest extent.

17 107. Plaintiffs and said Defendants enjoyed a special relationship, wherein Plaintiffs  
18 reasonably imparted special confidences in said Defendants and the Defendants would reasonably  
19 know of this confidence in that the material facts concealed, suppressed, or not disclosed by  
20 Defendants were particularly with Defendants' knowledge and not within the fair and reasonable  
21 reach of Plaintiffs. Plaintiffs are further informed and believe and thereon allege the defective  
22 condition of the property and structures was peculiarly within the knowledge of Defendants and not  
23 within the fair and reasonable reach of Plaintiffs, thereby imposing a duty on Defendants to disclose  
24 said defects to Plaintiffs. As a result of Defendants failure to disclose the defective condition of the  
25 property and structures, Plaintiffs were prevented from gaining the opportunity to be placed on equal  
26 footing with Defendants.

27 ///

28 ///



1       108. In the preceding three (3) years, Plaintiffs and each of them as similarly and/or  
 2 identically situated have discovered their homes in the Classics Development have been and are  
 3 presently experiencing defective conditions of the real property and structures thereon, including  
 4 without limitation: civil engineering, grading, foundations, roofs, windows, concrete, framing,  
 5 stucco, electrical systems, plumbing systems, HVAC, mechanical systems, and walls, and that said  
 6 homes, residences, structures and/or improvements within the subject development and the  
 7 components thereof are not of merchantable quality nor were they designed, erected, constructed or  
 8 installed in a workmanlike manner but instead, are defective and, as now known, the subject  
 9 components demonstrate improper, nonexistent, and/or inadequate design, construction,  
 10 manufacture, and/or installation. Plaintiffs and each of them did not discover the true nature of these  
 11 defects until Plaintiffs' experts began issuing reports showing the existence of these pervasive  
 12 defects. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege that  
 13 the structures may be additionally defective in ways and to an extent not precisely known, but which  
 14 will be established at the time of trial, according to proof.

15       109. As a direct and proximate result of Defendants' concealment, suppression and failure  
 16 to disclose the facts, as described above, both original and subsequent purchaser Plaintiffs sustained  
 17 damages, in an amount precisely unknown but believed to be in excess of Ten Thousand Dollars  
 18 (\$10,000) and within the jurisdiction of this Court, in that Plaintiffs have been and will hereafter be  
 19 required to perform investigations and works of repair, restoration, and construction to portions of  
 20 the structures to prevent further damage and to restore the structures to their proper condition and/or  
 21 will suffer damages in an amount the full nature and extent of which shall be ascertained according  
 22 to proof at trial.

#### 23                               **FOURTH CAUSE OF ACTION**

##### 24                               **(Willful Misconduct Against All Defendants and DOES 1 - 100)**

25       110. Plaintiffs reallege and incorporate by reference paragraphs 1 through 109, inclusive of  
 26 this Complaint as though fully set forth herein.

27       111. Plaintiffs are informed and believe, and based thereon allege, that at all times herein  
 28 mentioned, Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100 were the

1 principals, agents, masters, servants, employers, employees, co-venturers, co-conspirators, and/or  
2 joint venturers of each of the other Defendant(s), and in doing the things hereinafter alleged, were  
3 acting within the scope, course, and authority of such agency, employment, agreement, and/or joint  
4 venture, and with the knowledge, consent, authority, approval, ratification, and/or permission of each  
5 of the other Defendant(s).

6 112. Plaintiffs are informed and believe, and based thereon allege Defendants  
7 AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, individually and through  
8 their agents and employees acting on their behalf, knew of the defective conditions on the property  
9 and structures thereon and the foreseeable serious injury that would probably result there from,  
10 including but not limited to, the defective conditions in the civil engineering, grading, foundations,  
11 roofs, windows, concrete, framing, stucco, other architectural components, electrical systems,  
12 plumbing systems, HVAC, mechanical systems, and walls, and improper, nonexistent, and/or  
13 inadequate design, construction, manufacture and/or installation of components.

14 113. Despite such knowledge, Defendants AMERICAN WEST HOMES, INC. and DOES  
15 1 through 100, inclusive, intentionally built and sold, and intentionally continued to build and sell,  
16 the defective property and structures with wanton and reckless disregard for the consequences of  
17 building and selling such defective property and structures to Plaintiffs who were initial purchasers  
18 and to any subsequent purchasers who owned the homes thereafter.

19 114. For example, Defendants engaged in a deliberate pattern and practice of violating  
20 applicable building codes and ordinances and manufacturers' and industry standards, including but  
21 not limited to those referenced below.

22 115. With respect to windows, Defendants violated, without limitation, 1991 Uniform  
23 Building Code Chapter 17 Section 1708(a)-(a) "All weather exposed surfaces shall have a weather-  
24 resistive barrier to protect the interior wall covering."; 1991 Handbook to the Uniform Building  
25 Code "An Illustrative Commentary" Chapter 17, Section 1708; AAMA 502 Specifications for Field  
26 Testing of Windows and Sliding Glass Doors."; and various other codes, specifications,  
27 manufacturers specifications, industry standards, etc., referenced in Plaintiffs' Expert Reports  
28



1 attached to their Chapter 40 Notices.

2 116. With respect to wallboard, Defendants violated, without limitation, Plaster and  
3 Drywall Systems Manual, 3<sup>rd</sup> Edition, 1988, Chapter 12, pages 110-112 and 226-227, 229; 1997  
4 Uniform Building Code Chapter 14 Section 1402.1 and 1994 Uniform Building Code Chapter 14  
5 Section 1402.2-.1; 1997 Handbook to the Uniform Building Code; and various other codes,  
6 specifications, manufacturers specifications, industry standards, etc., referenced in Plaintiffs' Expert  
7 Reports attached to their Chapter 40 Notices.

8 117. With respect to balconies, Defendants violated, without limitation, 1994 Uniform  
9 Building Code Chapter 14 Section 1402.3; 1994 Uniform Building Code Chapter 15 Section 1506.1-  
10 .3; 1994 Handbook to the Uniform Building Code, Chapter 14 Section 1402; and various other codes,  
11 specifications, manufacturers specifications, industry standards etc., referenced in Plaintiffs' Expert  
12 Reports attached to their Chapter 40 Notices.

13 118. With respect to roofs, Defendants violated, without limitation, 1991 Uniform  
14 Building Code, Chapter 17, Section 1708(a), Chapter 32, Sections 3201(a), 3208(b)5, 3208(c)1C,  
15 Table 32-D-2; 1994 Uniform Building Code, Chapter 14, Section 1402.1, Chapter 15, Section  
16 1501.1, 1507.7, Table 15-D-2; 1997 Uniform Building Code, Chapter 14, Section 1402.1, Chapter  
17 15, Sections 1503, 1507.7, Table 15-D-2; and various other codes, specifications, manufacturers  
18 specifications, industry standards, etc., referenced in Plaintiffs' Expert Reports attached to their  
19 Chapter 40 Notices.

20 119. These building code, industry standard and manufacturers' specification violations  
21 constitute a deliberate effort by Defendants, and each of them, to increase their profits, expedite  
22 Defendants' return on investment and meet their obligations to deliver the residences for sale, all to  
23 both the original and subsequent purchaser Plaintiffs' detriment and expense.  
24

25 120. In addition to the foregoing, Defendants and each of them intentionally misled  
26 Plaintiffs by falsely accusing Plaintiffs of being the ones responsible for the defects because of their  
27 own lack of maintenance on the homes, or their additions or alterations to the homes, when in fact  
28 Plaintiffs' experts define these defects as construction defects, which therefore existed from the time

1 of construction.

2 121. These acts of Defendants constitute willful and wanton misconduct that Defendants  
3 knew or should have known would very probably cause harm to Plaintiffs.

4 122. Furthermore, special circumstances exist with regard to the willful and intentional  
5 acts and pattern and practice of Defendants in constructing Plaintiffs' residences in the Classics  
6 Development. Numerous defects identified by Plaintiffs expert pose life safety risks creating a  
7 serious risk of harm to Plaintiffs of which Defendants knew or had reason to know due to their  
8 willful violations of statutes and deliberate course of conduct in building substandard housing  
9 motivated by profits. *See* Plaintiffs' expert reports regarding life safety issues, e.g., without  
10 limitation, missing protection bollard in front of garage water heaters, attic access size inadequate,  
11 unsealed plumbing protections, etc. As such, Defendants knew or should of know of the dangers  
12 posed by building in such a defective manner yet built Plaintiffs' homes and placed them in the  
13 stream of commerce in a defective condition nonetheless.

14 123. At the time Plaintiffs purchased their homes, they were ignorant of the defective  
15 condition of the property and structures. Had Plaintiffs known of the defective condition of the  
16 property and structures, they would not have purchased their homes or would not have purchased  
17 their homes under the same terms and conditions.

18 124. In the preceding three (3) years, Plaintiffs and each of them as similarly and/or  
19 identically situated have discovered their homes in the Classics Development have been and are  
20 presently experiencing defective conditions of the real property and structures thereon, including  
21 without limitation: civil engineering, grading, foundations, roofs, windows, concrete, framing,  
22 stucco, other architectural components, electrical systems, plumbing systems, HVAC, mechanical  
23 systems, and walls, and that said homes, residences, structures and/or improvements within the  
24 subject development and the components thereof are not of merchantable quality nor were they  
25 designed, erected, constructed or installed in a workmanlike manner but instead, are defective and,  
26 as now known, the subject components demonstrate improper, nonexistent, and/or inadequate  
27 design, construction, manufacture, and/or installation. Plaintiffs, and each of them, inclusive, are  
28 informed and believe and thereupon allege that the structures may be additionally defective in ways



1 and to an extent not precisely known, but which will be established at the time of trial, according to  
2 proof.

3 125. As a direct and proximate result of Defendants' willful misconduct, as described  
4 above, Plaintiffs sustained damages, in an amount precisely unknown but believed to be within the  
5 jurisdiction of this Court, in that Plaintiffs have been and will hereafter be required to perform  
6 investigations and works of repair, restoration, and construction to portions of the structures to  
7 prevent further damage and to restore the structures to their proper condition and/or will suffer  
8 damages in an amount in excess of Ten Thousand Dollars (\$10,000), the full nature and extent of  
9 which shall be ascertained according to proof at trial.

10  
11 WHEREFORE, judgment is prayed for herein against Defendants AMERICAN WEST  
12 HOMES, INC. and DOES 1 through 100, inclusive, and each of them, as follows:

13  
14 **ON THE FIRST, SECOND, THIRD AND FOURTH**

15 **CAUSES OF ACTION**

- 16 1. For general and special damages in excess of \$10,000.00, according to proof;  
17 2. For prejudgment interest;  
18 3. For cost of suit and reasonable attorneys' fees incurred by Plaintiffs herein; and  
19 4. For such other and further relief as the Court may deem just and proper.

20 DATED: February 29, 2008

FULLER JENKINS

21  
22 By: 

23 CRAIG D. FULLER,  
24 Nevada Bar # 8075  
4250 Executive Square, Suite 555  
La Jolla, CA 92037

25 MARK A. LOBELLO  
26 (Nevada State Bar No. 3994)  
The LoBello Law Firm  
27 2061 E. Sahara, 2<sup>nd</sup> Floor  
Las Vegas, NV 89104  
28 (702) 870-8000  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

TO: THE CLERK OF THE ABOVE-ENTITLED COURT:

PLAINTIFFS, by and through their undersigned counsel hereby demand that a trial of the above entitled action be heard before a jury.

DATED THIS 29th day of February, 2008.


By: 

CRAIG D. FULLER,  
Nevada Bar # 8075  
4250 Executive Square, Suite 555  
La Jolla, CA 92037

MARK A. LOBELLO  
(Nevada State Bar No. 3994)  
The LoBello Law Firm  
2061 E. Sahara, 2<sup>nd</sup> Floor  
Las Vegas, NV 89104  
(702) 870-8000  
Attorneys for Plaintiffs

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**EXHIBIT F**

ISIC 5813

AA002872

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AMERICAN WEST HOMES

017

## American West Homes

250 Pilot Road, Suite 140 • Las Vegas, Nevada 89119 • 702-736-6434 • Fax (702) 736-7970

July 3, 2003

Mr. and Mrs. Joseph Grayson  
9056 Lawson Pine Ave.  
Las Vegas, NV 89129

Dear Mr. and Mrs. Grayson:

Last week, your builder, American West, was informed that you have filed a lawsuit against us for miscellaneous concrete, drywall and stucco cracking, block wall issues, and window issues. We have enclosed the citation page for your reference.

We were somewhat shocked to learn that you have been named in this lawsuit. We were in your home just a few short months ago. In January of 2003, you contracted with Home Service Plus to seal stucco cracks and paint the stucco on your home. During this time, Home Service Plus completed courtesy repairs, including drywall repairs, a stair squeak, sealing glass blocks at the fireplace and regrouting tile on the fireplace to your 6 year old home. We learned of your potential concerns through the filing of this lawsuit and find it regrettable that you have elected to pursue litigation before contacting us.

As our valued homeowner, we want you to be aware of the following: When you file a construction defect lawsuit on your home, you are making your declaration of defects public knowledge. From this point forward you will be required by state law to adhere to provisions outlined in Nevada Revised Statutes as follows:

**"NRS 40.688 Disclosure of defects by claimant to prospective purchaser of residence required; timing and contents of disclosure; duty of attorney to inform claimant of disclosure requirement.**

1. If a claimant attempts to sell a residence that is or has been the subject of a claim governed by NRS 40.600 to 40.695, inclusive, he shall disclose, in writing, to any prospective purchaser of the residence, not less than 30 days before the close of escrow for the sale of the residence or, if escrow is to close less than 30 days after the execution of the sales agreement, then immediately upon the execution of the sales agreement or, if a claim is initiated less than 30 days before the close of escrow, within 24 hours after giving written notice to the contractor pursuant to subsection 1 of NRS 40.645 or subsection 1 of NRS 40.682.

(a) All notices given by the claimant to the contractor pursuant to NRS 40.600 to 40.695, inclusive, that are related to the residence;

SOUTHERN NEVADA'S #1 HOME BUILDER





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AMERICAN WEST HOMES

0018

(b) All opinions the claimant has obtained from experts regarding a constructional defect that is or has been the subject of the claim;

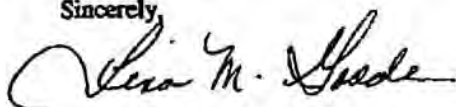
(c) The terms of any settlement, order of judgment relating to the claim; and

(d) A detailed report of all repairs made to the residence by or on behalf of the claimant as a result of a constructional defect that is or has been the subject of the claim.

2. Before taking any action on a claim pursuant to NRS 40.600 to 40.695, inclusive, the attorney for a claimant shall notify the claimant in writing of the provisions of this section."

Please contact us and we can discuss your concerns and avoid litigation.

Sincerely,



Tina M. Goode

Enclosure

ISIC 5815

AA002874



# EXHIBIT 40

## (Part 3)

Plaintiffs' Construction Defect Complaint filed on March 3, 2008, in Clark County District Court, Nevada, in the action captioned *Bennett v. American West Homes, Inc.*, Case No. A558243 ("*Bennett* action") (with Exhibits to Complaint) (ISIC 4968-5815)

Part 3 (Exhs. C-D Excerpts) ((selected pages from ISIC 5026-5075)

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EXHIBIT **C**

ISIC 5026

AA002876

## FULLER JENKINS

4250 EXECUTIVE SQUARE, SUITE 555  
LA JOLLA, CALIFORNIA 92037  
TELEPHONE (858) 450-4050  
FACSIMILE (858) 450-4051

CRAIG D. FULLER \*  
ERIK C. JENKINS  
KELLIE A. WRIGHT  
KARISA K. McNAMARA  
KAREN L. WISHNEV \*

\* Also admitted in Nevada  
\* Also admitted in Arizona  
° Also admitted in Louisiana

March 26, 2007

American West Homes, Incorporated  
250 Pilot Road, Suite 140  
Las Vegas, NV 89119

Attn: Lawrence D. Canarelli

Via Certified Mail, return receipt requested

RE: Classics Development

### NOTICE TO AMERICAN WEST HOMES, INCORPORATED:

Your legal rights are affected by this written Notice, which is given pursuant to Nevada Revised Statutes Section 40.645. The purpose of this Notice is to inform you that FULLER JENKINS on behalf of homeowner(s) **Linda L. Bennett** (hereinafter "Claimant"), makes a claim against you for defects in the design and/or construction of the real property located at 3717 Heather Lily Court, Las Vegas, Nevada 89129. You should carefully read Nevada Revised Statutes Section 40.645 and consult with an attorney to determine your specific rights and obligations.

Notice is hereby given that Claimant asserts a claim for defects in the design and/or construction of the property located at 3717 Heather Lily Court, City of Las Vegas, County of Clark, State of Nevada. Except as provided in Nevada Revised Statutes section 40.645 and notwithstanding any other provision of law, as of the date of its mailing as reflected in the accompanying certificate of mailing, this Notice shall toll all statutes of limitation and statutes of repose on actions against all parties who may be responsible for the constructional defects, whether named in this Notice or not.

### **Preliminary List of Defects**

Pursuant to Nevada Revised Statutes Section 40.645, with reservation to amend, modify or add to the notice required by this provision, Claimant provides you with a Preliminary Defect Report by R.H.A., Inc., dated March 23, 2007 attached hereto as Exhibit 1.

ORANGE COUNTY OFFICE  
110 E. WILSHIRE AVENUE, SUITE 501  
FULLERTON, CALIFORNIA 92832  
TELEPHONE: (714) 449-9100  
FACSIMILE: (714) 449-1577

RESPOND TO:  
LA JOLLA OFFICE

Consultant/Clerk  
Eric S. Fuller, J.D.  
Julie L. Cabou, J.D.

Certified Paralegals  
Karen L. Waldvogel  
Marc P. Behm  
Kimberly A. Carbino, CLA  
Zaldy A. Hidalgo

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Chapter 40 Notice, Page 2

Classics Development

**Builder Response to this Notice**

Any and all responses, notices and other communications to or on for the behalf of Claimant shall be made in writing to Claimant at the address set forth above.

Be advised that as to the named Claimant you have ninety (90) days after receipt of this Notice to respond. The response must be in writing and sent by certified mail. Your response must address each defect in the Notice and whether you choose to repair the defect of cause the defect to be repaired, and if necessary, to pay the costs of temporary housing and removal and relocation of the personal contents and property of the occupants, or whether you shall pay monetary compensation for each construction defect. Should you disclaim liability for any constructional defect, you must state the reasons for such a disclaimer in writing.

**Notice to Subcontractor, Supplier or Design Professional**

Not later than 30 days after the date on which you received this Notice you must forward a copy of the notice by certified mail, return receipt requested to the last known address of each subcontractor, supplier or design professional whom you reasonably believe is responsible for a defect specified in the Notice. Failure to do so can prohibit your from commencing an action against the subcontractor, supplier or design professional related to the constructional defect.


**Selection of Mediator**

Pursuant to Nevada Revised Statutes Section 40.680, Claimant selects Gary Nagle as the mediator for this case.

DATED this 26<sup>th</sup> day of March, 2007.

FULLER JENKINS

By:

  
Craig D. Fuller,  
Attorney for:  
Linda L. Bennett

C-3

**Certificate of Mailing**

The below signed hereby certifies that on March 26, 2007, I served the forgoing NOTICE TO CONTRACTOR PURSUANT TO NEVADA REVISED STATUTES SECTION 40.645 by placing a copy in the United States Mail, certified mail, return receipt requested with postage fully prepaid, addressed as follows:

American West Homes, Incorporated  
250 Pilot Road, Suite 140  
Las Vegas, NV 89119

Attention Lawrence D. Canarelli

(Sign)   
(Print Name): Karen L. Waldvogel

**EXHIBIT 1 - Preliminary Defect Reports, Prepared by R.H.A, Incorporated, on March 23, 2007:**

See accompanying Classics Preliminary Defect Reports attached.

Notable defects include a comprehensive window systems failure involving each and every window installed at this residence,

Improper installation of roof tiles and underlayments across the entire roofing system,

Electrical wiring below code standard throughout the residence, and more particularly located at junction boxes and circuit panels,

Observable stucco system failures visible across the exterior of the house.

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**AMERICA WEST CLASSICS**

Preliminary Defect List

March 23, 2007

FOR MEDIATION PURPOSES ONLY

This document is protected under,

NRS §48.109 and NRS § 40.680

**AMERICA WEST CLASSICS**

Las Vegas, NV

**PRELIMINARY DEFECT LIST**

March 23, 2007

Prepared by:

**R.H.A. INCORPORATED**

3550 Camino Del Rio North

Suite 305

San Diego, CA 92108

(619) -624-9272

619-624-9566 Fax

R.H.A., Inc.

i  
C - 32

ISIC 5058

AA002880

**AMERICA WEST CLASSICS**

Preliminary Defect List

March 23, 2007

FOR MEDIATION PURPOSES ONLY

This document is protected under,

NRS §48.109 and NRS § 40.680

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5.0 Siding & Wood Trim	Not Used
6.0 Sheet Metal	Not Used
7.0 Sliding Glass Door	29
8.0 Doors	32
9.0 Concrete	33
10.0 Fire Resistive Construction	35
11.0 Wallboard	36
12.0 Interior Stairs	Not Used
13.0 Fireplace & Chase	41
14.0 Sub-floors	42
15.0 Miscellaneous Architectural	43
16.0 Windows	53
17.0 Plumbing	61

R.H.A., Inc.

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**AMERICA WEST CLASSICS**

Preliminary Defect List

March 23, 2007

FOR MEDIATION PURPOSES ONLY

This document is protected under,

NRS §48.109 and NRS § 40.680

**INTRODUCTION**

At the request of the **LAW OFFICES OF CRAIG D. FULLER**, we have prepared a Preliminary Defect List based upon the defects observed during our visual investigations at **AMERICA WEST CLASSICS**, located in Las Vegas, Nevada.

This report lists the construction defects observed and identified as well as any resulting damages, and it is our opinion that other similarly situated units in the project have the same or similar defective conditions and damages. To the extent that additional inspections and testing may take place at the project, this report may be updated to include relevant information.

Due to construction years covering 1995, 1997, and 1999, the 1991, 1994 and 1997 Uniform Building Code is used throughout this report until verification by address is confirmed through the City of Las Vegas Building Department.

This report lists the construction defects observed and identified as well as any resulting damages, and it is our opinion that other similarly situated addresses in the project have the same or similar defective conditions and damages. To the extent that additional inspections and testing may take place at the project, this report may be updated to include relevant information.

The report identifies a commonality of construction defects found during the visual inspections performed to date. Some of the defects do or do not apply to each address and the defect numbering from the individual reports may be different. The addresses inspected are found in matrix below.

Address	Parcel Number	Year Built	Address	Parcel Number	Year Built
3709Campbell	138-08-218-010	1995	3705Heather Lily	138-08-219-012	1999
3700Deer Flats	138-08-223-018	1997	3716Heather Lily	138-08-219-018	1999
3626Dorrington	138-08-216-011	1995	9056Lawton Pine	138-08-222-013	1997
3725Dorrington	138-08-222-028	1997	9148Lawton Pine	138-08-223-005	1997
3732Dorrington	138-08-222-009	1997	3701Plum Blossom	138-08-223-049	1997
3736Dorrington	138-08-222-010	1997	3708Plum Blossom	138-08-223-039	1997
3717Ferndale Cove	138-08-213-010	1995	9100Songwood	138-08-221-020	1997
3712Fisherking	138-08-221-023	1997	9101Songwood	138-08-221-011	1997
3701Heather Lily	138-08-219-013	1999			
17			Addresses		

R.H.A., Inc.

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ISIC 5060

AA002882

**AMERICA WEST CLASSICS**

Preliminary Defect List

March 23, 2007

**17.0 PLUMBING**

FOR MEDIATION PURPOSES ONLY

This document is protected under,

NRS §48.109 and NRS § 40.680

**17.01 Defect:** Failure of water closet installation; stained vinyl.**Location:** At bathroom water closets.

Observed	Defective at:	Addresses or Areas Inspected:	
3709Campbell		3709Campbell	3705Heather Lily
		3700Deer Flats	3716Heather Lily
		3626Dorrington	9056Lawton Pine
		3725Dorrington	9148Lawton Pine
		3732Dorrington	3701Plum Blossom
		3736Dorrington	3708Plum Blossom
	9100Songwood	3717Ferndale Cove	9100Songwood
	9101Songwood	3712Fisherking	9101Songwood
		3701Heather Lily	
Observed	Defective at:	Addresses or Areas Inspected:	
	3 Addresses	17 Addresses	
Percentage Defective:	18%	of units or areas inspected	

**Violations of Codes and Standards:**

- Standard of Care.

**Resultant Damage:**

- Water intrusion to below grade garages causing damage to framing and interior finishes.
- Not maintainable as constructed.

The end.



## FULLER GLASER JENKINS

4250 EXECUTIVE SQUARE, SUITE 555  
LA JOLLA, CALIFORNIA 92037  
TELEPHONE (858) 450-4050  
FACSIMILE (858) 450-4051

CRAIG D. FULLER \*  
RANDAL L. GLASER  
ERIK C. JENKINS  
KELLIE A. WRIGHT  
KARISA K. MCNAMARA  
KAREN L. WISHNEV \*

\* Also admitted in Nevada  
\* Also admitted in Arizona  
\* Also admitted in Louisiana

December 4, 2006

American West Homes, Incorporated  
250 Pilot Road, Suite 140  
Las Vegas, NV 89119

Attn: Lawrence D. Canarelli

Via Certified Mail, return receipt requested

RE: Classics Development

### NOTICE TO AMERICAN WEST HOMES, INCORPORATED:

Your legal rights are affected by this written Notice, which is given pursuant to Nevada Revised Statutes Section 40.645. The purpose of this Notice is to inform you that The Law Offices of Craig D. Fuller on behalf of homeowner(s) **Gary M. Medina** (hereinafter "Claimant"), makes a claim against you for defects in the design and/or construction of the real property located at 9101 Songwood Court, Las Vegas, Nevada 89129. You should carefully read Nevada Revised Statutes Section 40.645 and consult with an attorney to determine your specific rights and obligations.

Notice is hereby given that Claimant asserts a claim for defects in the design and/or construction of the property located at 9101 Songwood Court, City of Las Vegas, County of Clark, State of Nevada. Except as provided in Nevada Revised Statutes section 40.645 and notwithstanding any other provision of law, as of the date of its mailing as reflected in the accompanying certificate of mailing, this Notice shall toll all statutes of limitation and statutes of repose on actions against all parties who may be responsible for the constructional defects, whether named in this Notice or not.

#### **Preliminary List of Defects**

Pursuant to Nevada Revised Statutes Section 40.645, with reservation to amend, modify or add to the notice required by this provision, Claimant provides you with a Preliminary Defect Report by R.H.A., Inc., dated August 31, 2006, attached hereto as Exhibit 1.

ORANGE COUNTY OFFICE  
110 E. WILSHIRE AVENUE, SUITE 501  
FULLERTON, CALIFORNIA 92832  
TELEPHONE: (714) 449-9100  
FACSIMILE: (714) 449-1577

RESPOND TO:  
LA JOLLA OFFICE

Consultant/Clerk  
Eric S. Fuller, J.D.  
Julie L. Cabou, J.D.

Certified Paralegal:  
Karen L. Waldvogel  
Marc P. Behm  
Kimberly A. Carbino, C.L.A.  
Zaldy A. Hidalgo  
Yvette K. Dancel

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Chapter 40 Notice, Page 2

Classics Development

**Builder Response to this Notice**

Any and all responses, notices and other communications to or on for the behalf of Claimant shall be made in writing to Claimant at the address set forth above.

Be advised that as to the named Claimant you have ninety (90) days after receipt of this Notice to respond. The response must be in writing and sent by certified mail. Your response must address each defect in the Notice and whether you choose to repair the defect of cause the defect to be repaired, and if necessary, to pay the costs of temporary housing and removal and relocation of the personal contents and property of the occupants, or whether you shall pay monetary compensation for each construction defect. Should you disclaim liability for any constructional defect, you must state the reasons for such a disclaimer in writing.

**Notice to Subcontractor, Supplier or Design Professional**

Not later than 30 days after the date on which you received this Notice you must forward a copy of the notice by certified mail, return receipt requested to the last known address of each subcontractor, supplier or design professional whom you reasonably believe is responsible for a defect specified in the Notice. Failure to do so can prohibit your from commencing an action against the subcontractor, supplier or design professional related to the constructional defect.

**Selection of Mediator**

Pursuant to Nevada Revised Statutes Section 40.680, Claimant selects Bruce Edwards of JAMS as the mediator for this case.

DATED this 4th day of December, 2006.

FULLER GLASER JENKINS

By: 

Craig D. Fuller,  
Attorney for:  
Gary M. Medina

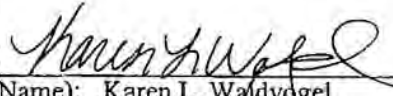
C-431

**Certificate of Mailing**

The below signed hereby certifies that on the 4<sup>th</sup> day of December, 2006, I served the forgoing NOTICE TO CONTRACTOR PURSUANT TO NEVADA REVISED STATUTES SECTION 40.645 by placing a copy in the United States Mail, certified mail, return receipt requested with postage fully prepaid, addressed as follows:

American West Homes, Incorporated  
250 Pilot Road, Suite 140  
Las Vegas, NV 89119

Attention Lawrence D. Canarelli

(Sign)   
(Print Name): Karen L. Waldvogel

**EXHIBIT 1 - Preliminary Defect Reports, Prepared by R.H.A, Incorporated, on August 31, 2006:**

See accompanying Classics Preliminary Defect Reports attached.

Notable defects include a comprehensive window systems failure involving each and every window installed at this residence,

Improper installation of roof tiles and underlayments across the entire roofing system.

Electrical wiring below code standard throughout the residence, and more particularly located at junction boxes and circuit panels,

Observable stucco system failures visible across the exterior of the house.

C-432

**AMERICA WEST CLASSICS**  
Las Vegas, NV

**PRELIMINARY DEFECT  
FOR 9101 SONGWOOD**

August 31, 2006

Prepared by:  
**R.H.A. INCORPORATED**  
3550 Camino Del Rio North  
Suite 305  
San Diego, CA 92108  
(619) -624-9272  
619-624-9566 Fax

*c - 417*

ISIC 5462

AA002887

**AMERICA WEST CLASSICS**  
Preliminary Defect List for  
9101 Songwood  
August 31, 2006

FOR MEDIATION PURPOSES ONLY  
This document is protected under,  
NRS §48.109 and NRS § 40.680

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2.0 Private Balconies	Not Used
3.0 Exterior Stairs & Landings	Not Used
4.0 Exterior Finishes	20
5.0 Siding & Wood Trim	Not Used
6.0 Sheet Metal	Not Used
7.0 Sliding Glass Door	25
8.0 Doors	26
9.0 Concrete	27
10.0 Fire Resistive Construction	28
11.0 Wallboard	29
12.0 Interior Stairs	Not Used
13.0 Fireplace & Chase	Not Used
14.0 Sub-floors	32
15.0 Miscellaneous Architectural	33
16.0 Windows	35
17.0 Plumbing	37

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**AMERICA WEST CLASSICS**

Preliminary Defect List for

9101 Songwood

*August 31, 2006*

**FOR MEDIATION PURPOSES ONLY**

**This document is protected under,**

**NRS §48.109 and NRS § 40.680**

**INTRODUCTION**

At the request of the **LAW OFFICES OF CRAIG D. FULLER**, we have prepared a Preliminary Defect List based upon the defects observed during our visual investigation at 9101 Songwood, located in Las Vegas, Nevada.

This report lists the construction defects observed and identified as well as any resulting damages, and it is our opinion that other similarly situated units in the project have the same or similar defective conditions and damages. To the extent that additional inspections and testing may take place at the project, this report may be updated to include relevant information.



**AMERICA WEST CLASSICS**

Preliminary Defect List for

9101 Songwood

August 31, 2006

**17.0 PLUMBING**

FOR MEDIATION PURPOSES ONLY

This document is protected under,

NRS §48.109 and NRS § 40.680

**17.01 Defect:** Failure of water closet installation; stained vinyl.

**Location:** At bathroom water closets.

**Violations of Codes and Standards:**

- Standard of Care.

**Resultant Damage:**

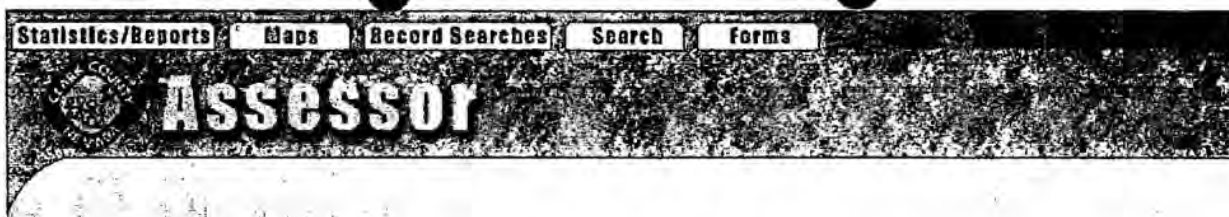
- Water intrusion to below grade garages causing damage to framing and interior finishes.
- Not maintainable as constructed.

The end.

R.H.A, Inc.

37

C-468



## M.W. Schofield, Assessor

### PARCEL OWNERSHIP HISTORY

Assessor Map Aerial View Current Ownership

#### ASSESSOR DESCRIPTION

GOWAN FORT APACHE-PHASE 5 UNIT C PLAT BOOK 68 PAGE 60 LOT 37 BLOCK 17

CURRENT PARCEL NO.	CURRENT OWNER	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DISTRICT	ESTIMATED SIZE
138-08-221-011	BATLEY ROCIO M MEDINA GARY M	*20070423:04120	04/23/2007	JOINT TENANCY	200	SUBDIVIDED LOT

PARCEL NO.	PRIOR OWNER(S)	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DISTRICT	ESTIMATED SIZE
138-08-221-011	MEDINA GARY M	*20040903:00867	09/03/2004	NO STATUS	200	SUBDIVIDED LOT
138-08-221-011	BAILEY ROCIO M	*20040408:03733	04/08/2004	NO STATUS	200	SUBDIVIDED LOT
138-08-221-011	BAILEY ROCIO M MEDINA GARY	*20031205:03571	12/05/2003	JOINT TENANCY	200	SUBDIVIDED LOT
138-08-221-011	BAILEY ROCIO M	*20030314:02508	03/14/2003	NO STATUS	200	SUBDIVIDED LOT
138-08-221-011	DUMAGUINDIN GARY M CORREA ROCIO M	*19990614:00164	06/14/1999	JOINT TENANCY	200	SUBDIVIDED LOT
138-08-221-011	DUMAGUINDIN GARY M & A R ETAL ETAL	*19970312:00647	03/12/1997	JOINT TENANCY	200	SUBDIVIDED LOT
138-08-221-011	AMERICAN WEST HOMES INC	*19960508:00814	05/08/1996	NO STATUS	200	SUBDIVIDED LOT
138-08-221-011	GOWAN PROPERTIES INC	*19950620:01359	06/20/1995	NO STATUS	205	SUBDIVIDED LOT
138-08-201-033	GOWAN PROPERTIES INC	*19920312:00766	03/12/1992	NO STATUS	205	4.35 AC
138-08-201-029	GOWAN PROPERTIES INC	*19920312:00766	03/12/1992	NO STATUS	205	11.73 AC
138-08-201-027	GOWAN PROPERTIES INC	*19920312:00766	03/12/1992	NO STATUS	205	16.90 AC
138-08-201-023	GOWAN PROPERTIES INC	*19920312:00766	03/12/1992	NO STATUS	205	18.26 AC
138-08-201-021	GOWAN PROPERTIES INC	*19920312:00766	03/12/1992	NO STATUS	125	28.08 AC
138-08-201-020	GOWAN PROPERTIES INC	*19920312:00766	03/12/1992	NO STATUS	125	29.21 AC
138-08-201-019	GOWAN PROPERTIES INC	*19920312:00766	03/12/1992	NO STATUS	125	59.39 AC
138-08-201-019	GOWAN PROPERTIES INC	*19920312:00766	03/12/1992	NO STATUS	125	60.70 AC

<http://sandgate.co.clark.nv.us/servlet/Assessor?instance=pci2&parcel=13808221011>

2/11/2008

C-506

Clark County Assessor's Ownership History

Page 2 of 2

\*Note: Only documents from September 15, 1999 through present are available for viewing.

**NOTE:** THIS RECORD IS FOR ASSESSMENT USE ONLY. NO LIABILITY IS ASSUMED  
AS TO THE ACCURACY OF THE DATA DELINEATED HEREON.



Government Center, 500 South Grand Central Parkway, Las Vegas, Nevada 89155-1401

702-455-3882 (INFORMATION)

Return to Home

<http://sandgate.co.clark.nv.us/servlet/Assessor?instance=pcl2&parcel=13808221011>

C-507  
2/11/2008

ISIC 5537

AA002892

KUMMER  
KAEMPFER

Craig D. Fuller  
April 23, 2007  
Page 2

Without waiving any defenses American West may have it has sent the notices on to the subcontractors for consideration and will notify you of any election to repair that is received.

Sincerely,

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

  
Mark E. Ferrario

MEF/jls

cc: Leslie Bausher

Legal Tabs Co. 1-800-322-3022


Recycled  Stock #WEX-5-B

EXHIBIT **D**

ISIC 5749

AA002894



# American West Development

---

*Southern Nevada's #1 Home Builder*

March 12, 2007

*Certified Mail No. 7004 2890 0004 4509 2985  
Return Receipt Requested*

Craig D. Fuller, Esq.  
Fuller Glaser Jenkins  
4250 Executive Square, Suite 555  
La Jolla, CA 92037

Re: Gary Medina, 9101 Songwood Ct., Las Vegas, NV

Dear Mr. Fuller:

In response to your purported Chapter 40 notice received on December 12, 2007, relative to the above-identified address, we inspected the subject property on Thursday, February 8, 2007.

We deem your notice referenced above to be defective and not in compliance with Chapter 40 requirements relative to specificity of defect and location. Further all items mentioned, if present, would constitute latent and/or patent deficiencies which statutes of repose of six and eight years respectively have expired. However, we are providing the following responses in an act of good faith without waiving the protections afforded us under Nevada state law.

As a result of this initial inspection, and through this letter, we will respond to the alleged deficiencies, to the extent that they could be ascertained. As will be set forth with greater clarity herein, many of the alleged defects were not identified in the notice such that they could be found and assessed. Thus respondent provides this answer in an overarching attempt to comply with the provisions of NRS Chapter 40.600 et seq.; however, reserves the right to modify this response in the event claimant's offers of clarity should be forthcoming.

1.1 Tile Roofs

1.1.01 *Underlayment – Exposed.* Condition will be repaired to the extent it can be ascertained to exist and result from original construction.

1.1.02 *Overexposed Tile.* Condition will be repaired to the extent it can be ascertained to exist and result from original construction.

- 1.1.03 *Unsecured Tile.* Condition will be repaired to the extent it can be ascertained to exist and result from original construction.
- 1.1.04 *Damaged Tile.* Condition will be repaired to the extent it can be ascertained to exist and result from original construction.
- 1.1.05 *Valleys.* Condition will be repaired to the extent it can be ascertained to exist and result from original construction.
- 1.1.07 *Weather Blocking Missing.* Weather blocking was not required by the applicable building code at the time of original construction. No defective condition attributable to original construction was observed.
- 1.1.08 *Open Rake.* Condition will be repaired to the extent it can be ascertained to exist and result from original construction.
- 1.1.09 *Eaves Edge Metal Missing.* Not required by applicable building code at the time of original construction. No defective condition attributable to original construction was observed.
- 1.1.10 *Confined Rake.* Condition will be repaired to the extent it can be ascertained to exist and result from original construction.
- 1.1.12 *Plumbing Penetrations – Pipe / Secondary Flashing Juncture Not Sealed.* Re-sealing of penetrations is a homeowner maintenance issue and as such should be included in an ongoing maintenance regimen. As a courtesy to homeowner, contractor agrees to re-seal penetrations.
- 1.1.13 *B-Vents.* No defective condition observed.
- 1.1.14 *Headwalls.* No defective condition observed.
- 1.2 *Built-up Roofs*
- 1.2.01 *Penetration Flashings.* Condition will be repaired to the extent it can be ascertained to exist and result from original construction.
- 4.0 *Exterior Finish*
- 4.01 *Exterior finish failure, cracking.* Stucco cracks observed were hairline cracks in a nearly ten (10) year old home. These conditions are normal and not unexpected in this climate. Further, stucco requires maintenance including regular painting, and as such should be included in an ongoing regular maintenance regimen.
- 4.02 *Weep screed buried and/or missing.* Weep screed installed and performing as intended.



- 4.03 *Short weep screed.* Alleged defect could not be reviewed due to aftermarket improvements by homeowner consisting of concrete patio.
- 4.04 *Penetrations unsealed and/or not gasketed.* Re-sealing of penetrations is a homeowner maintenance issue and as such is a regular feature of a homeowner maintenance regimen. No defective condition attributable to original construction could be ascertained.
- 4.05 *Fascia board penetration buried in stucco.* No defective condition observed.
- 7.01 *Sliding Glass Doors*
- 7.01 *Sliding glass door threshold vertical frame unsealed; stained tack strip and/or baseboard.* Inspection failed to yield identification of defect alleged.
- 8.0 *Doors*
- 8.01 *Unsealed threshold/jamb intersection.* Re-sealing of threshold/jamb intersections is a homeowner maintenance issue and as such is a regular feature of a homeowner maintenance issue. Upon visual inspection, contractors present could find no evidence of water intrusion and/or damage to structural components and interior finishes. Further, there are no French doors in this home. As a courtesy to this homeowner, contractor will caulk the entry threshold.
- 9.0 *Concrete*
- 9.01 *Concrete slab failure; cracking.* No defective condition attributable to original construction was observed.
- 10.0 *Fire Resistive Construction*
- 10.01 *Unsealed Plumbing Penetrations.* Inspection failed to yield identification of defect alleged.
- 11.0 *Wallboard*
- 11.01 *Failure of wallboard system; cracking.* Hairline drywall cracks were observed by contractors present. This is a homeowner maintenance issue. No defective condition attributable to original construction was observed.
- 11.02 *Ceiling and/or wall stains.* Ceiling stains observed by contractors present in family room and upstairs bedroom. These conditions will be addressed.
- 11.03 *Window sill, jamb and/or head drywall cracking.* The juncture of drywall to the

window frame around the windows was reviewed. Any separation observed were evidence of a maintenance need; therefore no building deficiency could be identified. Re-caulking of these junctures is a homeowner maintenance issue and as such should be included in an ongoing maintenance regimen.

#### 14.0 Sub-Floors

- 14.01 *Floor sheathing is improperly fastened.* This condition is a normal wear item. Wood floors, as well as the sheathing are deflecting with the constant movement of people. Although every effort is made to eliminate all squeaks they are a normal condition of wood floors and are subject to wood's natural characteristics. No defective condition attributable to original construction was observed.

#### 15.0 Miscellaneous Architectural

- 15.01 *Shower Enclosure failure; evidence of water intrusion.* No defective condition attributable to original construction was observed. Shower enclosures require ongoing homeowner maintenance.
- 15.02 *Attic access size is inadequate; less than 22" x 30".* Inspection revealed the attic access size meets the dimensions required by code. The code definition of "Accessible" allows for the removal of construction elements (i.e. HVAC equipment) to access the attic. The decorative frame supporting the access panel can be removed and replaced to remove or replace equipment, which is not present in this attic.

#### 16.0 Windows

- 16.01 *Window system failure; staining at sill jamb, baseboard, carpet/pad.* Inspection failed to yield identification of defect alleged. If such exists anywhere in the home, contractors requests specific location.

#### 17.0 Plumbing

- 17.01 *Failure of water closet installation; stained vinyl.* Inspection failed to yield identification of defect alleged.

Although the contractors present at the inspection displayed a desire to identify and make repairs, they were not able to identify defective conditions as alleged in this home.

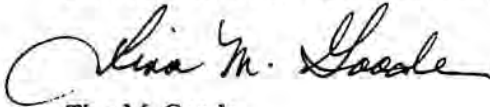
In summary, the majority of the conditions observed on February 8, 2007, are minor maintenance items not unexpected in a nearly ten (10) year old home.

It should be noted that many areas of a home require a regular ownership maintenance regimen. Contractor hereby offers, as a courtesy, to instruct homeowner on routine matters of homeownership.

A representative of our warranty company, Home Service Plus, will be contacting homeowner for possible dates to commence with repairs enumerated above. They will then coordinate the subcontractors to perform the work.

Please don't hesitate to contact us with any questions.

Sincerely,  
AMERICAN WEST DEVELOPMENT, INC.



Tina M. Goode

cc: Mr. Gary Medina  
9101 Songwood Ct.  
Las Vegas, NV 89129



# EXHIBIT 41

Third-Party Complaint filed by American West Homes, Inc. on November 14, 2008 in the *Bennett* action (ISIC 5816-5836)

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16 AMERICAN WEST HOMES, INC.,

17 AMERICAN WEST HOMES INC., and

18 AMERICAN WEST DEVELOPMENT

19 DISTRICT COURT

20 CLARK COUNTY, NEVADA

21 \*\*\*

22 LINDA BENNETT, JOSEPH GRAYSON AND ) CASE NO.: A558243

23 PATRICE COLEMAN-GRAYSON; STEVEN ) DEPT. NO.: XXII

24 AND BARBARA CORWIN; DONALD AND )

25 JENNIFER DERMER; PHILLIP DICKINSON, ) **DEFENDANTS'/THIRD-PARTY**

26 TRUSTEE OF THE P.W. DICKINSON ) **PLAINTIFFS' THIRD-PARTY COMPLAINT**

27 QUALIFIED PERSONAL RESIDENTIAL )

28 TRUST; EVELYN FELICIANO; ROBERT )

29 GREEN; GEORGE AND ELISA HASSE; ) **[Filed Concurrently with Defendants' Answer**

30 CHARLOTTE HUFFMAN; WILLIAM AND ) **To Plaintiffs' Complaint]**

31 LYNN JACKSON; CHRISTOPHER AND ZOE )

32 LAW; JOHN AND CATHERINE LETUS; )

33 TRUSTEES OF THE LETUS TRUST; MARK )

34 AND BECK LILLEY, TRUSTEES OF THE )

35 LILLEY FAMILY TRUST; THEODORE AND )

36 ILEENE MANAHAN; GARY MEDINA; )

37 CONNIE MERTIN; RUTH PRANGE; JEANENE )

38 RUSSELL; BRETT SCOVIL; GLORIA AND )

39 ALMA SMITH; ALEXANDER AND JOYCE )

40 STELLA; EDDIE AND SHARON STUBBS; )

1 ROGER AND JANAN THOMPSON, )

2 Plaintiffs, )

3 vs. )

4 AMERICAN WEST HOMES, INC., a Nevada )  
5 corporation, AMERICAN WEST HOMES INC., )  
6 a Nevada corporation; AMERICAN WEST )  
7 DEVELOPMENT, a Nevada corporation; and )  
8 DOES 1 through 100 )

9 Defendants. )

10 AMERICAN WEST HOMES, INC., a Nevada )  
11 corporation, AMERICAN WEST HOMES INC., )  
12 a Nevada corporation; AMERICAN WEST )  
13 DEVELOPMENT, )

14 Third-Party Plaintiff, )

15 vs. )

16 A & S TILLY MARBLE & GRANITE, a Nevada )  
17 Corporation; NATIONS FLOORING, INC. dba )  
18 CARPET BARN, a Revoked Foreign Corporation; )  
19 CENTRAL VALLEY INSULATION, INC., a )  
20 Dissolved Nevada Corporation; CLASSIC DOOR )  
21 AND TRIM, INC., a Nevada Corporation; CLEAR )  
22 VIEW DISTRIBUTING, LLC, a Nevada Limited )  
23 Liability Company; DAN BRADLEY GLASS )  
24 SHOP, INC., a Nevada Corporation; DAVEY )  
25 ROOFING, a Foreign Corporation; DESERT )  
26 FIREPLACES PLUS, INC., a Dissolved Nevada )  
27 Corporation; DESERT SHORE TILE, INC., a )  
28 Nevada Corporation; NEV-CAL INVESTORS, )  
INC. DBA FAST TRAC ELECTRIC, a Nevada )  
Corporation; FRADELLA IRON WORKS, a )  
Dissolved Nevada Corporation; HAMMOND )  
CAULKING, INC., a Nevada Close Corporation; )  
INTERSTATE PLUMBING & AIR )  
CONDITIONING, dba INTERSTATE )  
SERVICES, a Nevada Limited Liability Company; )  
LEE COPHER INDIVIDUALLY and dba L&L )  
CONSTRUCTION; PHILLIPS PRODUCTS, INC., )  
a Foreign Corporation; **RAYMOND LAIRD** )



1 WHIPPLE INDIVIDUALLY and dba WHIPPLE )  
 2 CONCRETE CONSTRUCTION; REPUBLIC )  
 3 ELECTRIC, INC., a Nevada Corporation; )  
 4 REYBURN LAWN & LANDSCAPE )  
 5 DESIGNERS, INC., a Dissolved Nevada )  
 6 Corporation; SIERRA AIR CONDITIONING, )  
 7 INC., a Nevada Corporation; SIERRA TAHOE, a )  
 8 Revoked Nevada Corporation; LARRY )  
 9 SILECCHIO, INDIVIDUALLY and dba )  
 10 SILECCHIO MASONRY; TRB )  
 11 CONSTRUCTION, INC., a Revoked Nevada )  
 12 Corporation; VEGAS GENERAL )  
 CONSTRUCTION CO., a Merge Dissolved )  
 Nevada Corporation; MOES 1 through 100; MOE )  
 DESIGN PROFESSIONALS 101 through 200; and )  
 MOE INSURERS 201 through 300, )  
 Third-Party Defendants. )

### 13 DEFENDANTS'/THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT

14 COMES NOW, Defendants, AMERICAN WEST HOMES, INC., AMERICAN WEST  
 15 HOMES INC., and AMERICAN WEST DEVELOPMENT (hereinafter collectively "AMERICAN  
 16 WEST"), by and through their attorneys of record, the law firms of LEE, HERNANDEZ, KELSEY,  
 17 BROOKS, GAROFALO & BLAKE, and SPRINGEL & FINK LLP, and for its Third-Party  
 18 Complaint against Third-Party Defendants A & S TILLY MARBLE & GRANITE, a Nevada  
 19 Corporation; NATIONS FLOORING, INC. dba CARPET BARN, a Revoked Foreign Corporation;  
 20 CENTRAL VALLEY INSULATION, INC., a Dissolved Nevada Corporation; CLASSIC DOOR  
 21 AND TRIM, INC., a Nevada Corporation; CLEAR VIEW DISTRIBUTING, LLC, a Nevada Limited  
 22 Liability Company; DAN BRADLEY GLASS SHOP, INC., a Nevada Corporation; DAVEY  
 23 ROOFING, a Foreign Corporation; DESERT FIREPLACES PLUS, INC., a Dissolved Nevada  
 24 Corporation; DESERT SHORE TILE, INC., a Nevada Corporation; NEV-CAL INVESTORS, INC.  
 25 dba FAST TRAC ELECTRIC, a Nevada Corporation; FRADELLA IRON WORKS, a Dissolved  
 26 Nevada Corporation; HAMMOND CAULKING, INC., a Nevada Close Corporation; INTERSTATE  
 27 PLUMBING & AIR CONDITIONING, dba INTERSTATE SERVICES, a Nevada Limited Liability  
 28 Company; LEE COPHER INDIVIDUALLY and dba L&L CONSTRUCTION; PHILLIPS

1 PRODUCTS, INC., a Foreign Corporation; RAYMOND LAIRD WHIPPLE INDIVIDUALLY and  
 2 dba WHIPPLE CONCRETE CONSTRUCTION; Republic Electric, Inc., a Nevada Corporation;  
 3 REYBURN LAWN & LANDSCAPE DESIGNERS, INC., a Dissolved Nevada Corporation;  
 4 SIERRA AIR CONDITIONING, INC., a Nevada Corporation; SIERRA TAHOE, a Revoked Nevada  
 5 Corporation; LARRY SILECCHIO, INDIVIDUALLY and dba SILECCHIO MASONRY; TRB  
 6 CONSTRUCTION, INC., a Revoked Nevada Corporation; VEGAS GENERAL CONSTRUCTION  
 7 CO., a Merge Dissolved Nevada Corporation; MOES 1 through 100, inclusive; MOE DESIGN  
 8 PROFESSIONALS 101 through 200; and MOE INSURERS 201 through 300, inclusive, complains  
 9 and alleges as follows:

#### 10 GENERAL ALLEGATIONS

11 I. At all times relevant herein, Third-Party Defendants A & S TILLY MARBLE &  
 12 GRANITE, a Nevada Corporation; NATIONS FLOORING, INC. dba CARPET BARN, a Revoked  
 13 Foreign Corporation; CENTRAL VALLEY INSULATION, INC., a Dissolved Nevada Corporation;  
 14 CLASSIC DOOR AND TRIM, INC., a Nevada Corporation; CLEAR VIEW DISTRIBUTING, LLC,  
 15 a Nevada Limited Liability Company; DAN BRADLEY GLASS SHOP, INC., a Nevada  
 16 Corporation; DAVEY ROOFING, a Foreign Corporation; DESERT FIREPLACES PLUS, INC., a  
 17 Dissolved Nevada Corporation; DESERT SHORE TILE, INC., a Nevada Corporation; NEV-CAL  
 18 INVESTORS, INC. DBA FAST TRAC ELECTRIC, a Nevada Corporation; FRADELLA IRON  
 19 WORKS, a Dissolved Nevada Corporation; HAMMOND CAULKING, INC., a Nevada Close  
 20 Corporation; INTERSTATE PLUMBING & AIR CONDITIONING, dba INTERSTATE  
 21 SERVICES, a Nevada Limited Liability Company; LEE COPHER INDIVIDUALLY and dba L&L  
 22 CONSTRUCTION; PHILLIPS PRODUCTS, INC., a Foreign Corporation; RAYMOND LAIRD  
 23 WHIPPLE INDIVIDUALLY and dba WHIPPLE CONCRETE CONSTRUCTION; REPUBLIC  
 24 ELECTRIC, INC., a Nevada Corporation; REYBURN LAWN & LANDSCAPE DESIGNERS, INC.,  
 25 a Dissolved Nevada Corporation; SIERRA AIR CONDITIONING, INC., a Nevada Corporation;  
 26 SIERRA TAHOE, a Revoked Nevada Corporation; LARRY SILECCHIO, INDIVIDUALLY and  
 27 dba SILECCHIO MASONRY; TRB CONSTRUCTION, INC., a Revoked Nevada Corporation;  
 28 VEGAS GENERAL CONSTRUCTION CO., a Merger Dissolved Nevada Corporation(hereinafter



1 collectively "Third-Party Defendants"); MOES 1 through 100, inclusive; and MOE DESIGN  
2 PROFESSIONALS 101 through 200, inclusive, and each of them, were legal entities or individuals  
3 doing business in the State of Nevada, and performed work, installed, designed, constructed and/or  
4 supplied material for improvements to the real property that is the subject of Plaintiffs' underlying  
5 Complaint.

6 2. At all times relevant herein, Third-Party Defendants, MOES 1 through 100, inclusive,  
7 and MOE DESIGN PROFESSIONALS 101 through 200, inclusive, and each of them, were  
8 developers, contractors, subcontractors and/or design professionals, who performed construction  
9 activities for AMERICAN WEST at certain single-family homes located in the community  
10 commonly known as "Classics", the subject property, and/or were material suppliers to AMERICAN  
11 WEST or one of its subcontractors, who provided materials and/or other items, which were installed  
12 into and/or became a part of said subject property.

13 3. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-  
14 Party Defendants, MOES 1 through 100, inclusive, and MOE DESIGN PROFESSIONALS 101  
15 through 200, inclusive, and each of them are, and at all times relevant were, sole proprietors,  
16 partnerships, corporations or other business entities doing business in Clark County, Nevada.

17 4. AMERICAN WEST is informed and believes, and on that basis alleges, that the true  
18 names and capacities, whether individual, corporate, associate or otherwise of Third-Party Defendant  
19 MOES 1 through 100 (hereinafter "MOES"), inclusive, are unknown to AMERICAN WEST who  
20 therefore sues said parties as Third-Party Defendants by such fictitious names. Third-Party  
21 Defendants designated as MOES are responsible in some manner as an entity performing  
22 construction related activities and/or providing materials for construction of the subject property and  
23 are responsible for the events and happenings described in Plaintiffs' Complaint and in this Third-  
24 Party Complaint, which proximately caused damages to AMERICAN WEST as alleged herein.  
25 AMERICAN WEST is informed and believes that each of the Third-Party Defendants designated as  
26 MOES in some manner performed work, installed, designed, constructed or supplied materials to the  
27 subject property, pursuant to subcontract agreements, purchase orders, or other written or oral  
28 agreements entered into between AMERICAN WEST, Third-Party Defendants, and each of them, or

1 otherwise. AMERICAN WEST will ask leave of this Court to amend its Third-Party Complaint to  
2 insert the true names and capacities of the MOES and state appropriate charging allegations, when  
3 that information has been ascertained.

4 5. AMERICAN WEST is informed and believes, and on that basis alleges, that the true  
5 names and capacities, whether individual, corporate, associate or otherwise of Third-Party Defendant  
6 MOE DESIGN PROFESSIONALS 101 through 200 (hereinafter "MOE DESIGN  
7 PROFESSIONALS"), inclusive, are unknown to AMERICAN WEST who therefore sues said parties  
8 as Third-Party Defendants by such fictitious names. Third-Party Defendants designated as MOE  
9 DESIGN PROFESSIONALS are responsible in some manner as an entity performing design related  
10 activities and/or professional services for the subject property and are responsible for the events and  
11 happenings described in Plaintiffs' Complaint and in this Third-Party Complaint, which proximately  
12 caused damages to AMERICAN WEST as alleged herein. AMERICAN WEST is informed and  
13 believes that each of the Third-Party Defendants designated as MOE DESIGN PROFESSIONALS  
14 provided professional services at the subject property, pursuant to subcontract agreements or other  
15 written or oral agreements entered into between AMERICAN WEST, Third-Party Defendants, and  
16 each of them, or otherwise. AMERICAN WEST will ask leave of this Court to amend its Third-Party  
17 Complaint to insert the true names and capacities of the MOE DESIGN PROFESSIONALS and state  
18 appropriate charging allegations, when that information has been ascertained.

19 6. AMERICAN WEST is informed and believes, and on that basis alleges, that the true  
20 names and capacities, whether individual, corporate, associate or otherwise of Third-Party Defendant  
21 MOE INSURERS 201 through 300 (hereinafter "MOE INSURERS"), inclusive, are unknown to  
22 AMERICAN WEST who therefore sues said parties as Third-Party Defendants by such fictitious  
23 names. Third-Party Defendants designated as MOE INSURERS are responsible in some manner for  
24 insuring AMERICAN WEST and/or its subcontractors for completed operations at the property and  
25 are obligated to defend and indemnify AMERICAN WEST and/or its subcontractors for the claims  
26 alleged in the Complaint or this Third-Party Complaint but have failed or refused to do so which has  
27 proximately caused damages to AMERICAN WEST as alleged herein. AMERICAN WEST will ask  
28 leave of the Court to amend the Third-Party Complaint to insert the true names and capacities of the



1 MOE INSURERS and state appropriate charging allegations, when that information has been  
2 ascertained.

3 7. AMERICAN WEST specifically complains and alleges a cause of action against the  
4 entity, or entities, that performed work, installed, designed, constructed, supplied materials and/or  
5 were otherwise responsible for the subject property and the improvements made thereon. As of the  
6 filing of this Third-Party Complaint, AMERICAN WEST is unsure as to whether those entities are  
7 individuals, a partnership, a limited partnership, a corporation, an association of individuals or  
8 businesses, or some other form of business ownership. As soon as the exact nature of the entity or  
9 entities that performed work, installed, designed, constructed, supplied materials and/or were  
10 otherwise responsible for the subject property and the improvements made thereon is known,  
11 AMERICAN WEST will amend its Third-Party Complaint and will substitute the exact name of the  
12 proper Third-Party Defendants in place of MOES and MOE DESIGN PROFESSIONALS.

13 8. Third-Party Defendants, MOES, and MOE DESIGN PROFESSIONALS, were at all  
14 times material hereto, entities doing business in Nevada and who performed work, installed,  
15 designed, constructed, supplied materials, provided professional services and/or were otherwise  
16 responsible for the subject property in Clark County, Nevada.

17 9. The work done or materials supplied by each of the Third-Party Defendants, MOES,  
18 and MOE DESIGN PROFESSIONALS was pursuant to a subcontract agreement, purchase order, or  
19 other written or oral agreement entered into between AMERICAN WEST and Third-Party  
20 Defendants or by way of a subcontract agreement or purchase order between Third-Party Defendants  
21 and Plaintiff or another Third-Party Defendant.

22 10. That while working at the subject property, Third-Party Defendants, MOES and MOE  
23 DESIGN PROFESSIONALS, according to the allegations of the Plaintiffs' underlying Complaint,  
24 acted in a negligent and/or careless manner and performed acts or failed to perform acts, which  
25 resulted in breached warranties to Plaintiffs and/or others, including, but not limited to those of  
26 fitness, merchantability, quality, workmanship and habitability, created a nuisance, and/or supplied  
27 defective products in an unreasonably dangerous and/or defective condition, which allegedly injured  
28 and/or caused damages to Plaintiffs, as alleged in Plaintiffs' underlying Complaint. Said acts and/or

1 omissions have also resulted in damages to AMERICAN WEST by subjecting AMERICAN WEST  
2 to suit by Plaintiffs.

3 11. According to the allegations of the Plaintiffs' underlying Complaint, AMERICAN  
4 WEST, individually and through their agents and employees acting on their behalf, failed to disclose  
5 known defects and acted with willful and wanton misconduct in the installation, design, and  
6 construction of the subject property and the improvements made thereon, which allegedly injured  
7 and/or caused damages to Plaintiffs, and which results in either a limitless statutes of limitation and  
8 repose or tolled statutes of limitation and repose. AMERICAN WEST is informed and believes, and  
9 on that basis alleges, that to the extent Plaintiff can prove these allegations of failure to disclose  
10 and/or willful and wanton misconduct, that such failure to disclose and/or willful and wanton  
11 misconduct was actually and proximately caused by the conduct of Third-Party Defendants, MOES,  
12 and MOE DESIGN PROFESSIONALS, while working at the subject property. AMERICAN WEST  
13 alleges that to the extent such failure to disclose and/or willful and wanton misconduct results in  
14 either a limitless statutes of limitation and repose or tolled statutes of limitation and repose, that such  
15 limitless statutes of limitation and repose or tolled statutes of limitation and repose should also apply  
16 to Third-Party Defendants, MOES, and MOE DESIGN PROFESSIONALS. AMERICAN WEST  
17 further alleges that such conduct by Third-Party Defendants, MOES, and MOE DESIGN  
18 PROFESSIONALS has resulted in damages to AMERICAN WEST by subjecting AMERICAN  
19 WEST to suit by Plaintiffs.

20 **FIRST CAUSE OF ACTION**

21 **(Negligence Against All Third-Party Defendants, MOES 1 through 100, and MOE DESIGN**  
22 **PROFESIONALS 101 through 200)**

23 12. AMERICAN WEST repeats and realleges the allegations set forth in Paragraphs 1  
24 through 11 of this Third-Party Complaint as though fully set forth herein.

25 13. Third-Party Defendants, MOES, and MOE DESIGN PROFESIONALS owed a  
26 contractual and/or legal duty to AMERICAN WEST to exercise due and reasonable care in the  
27 design, construction and/or development of the subject property. Third-Party Defendants, MOES,  
28 and MOE DESIGN PROFESIONALS also had a legal duty to abide by local construction practices,



1 industry standards, governmental codes and restrictions, manufacturer requirements, Clark County  
2 Building Codes, product specifications and/or the laws of the State of Nevada.

3 14. If the subject property is defectively designed, developed and/or constructed, as it has  
4 been alleged by Plaintiffs in the main action herein, Third-Party Defendants, MOES, and MOE  
5 DESIGN PROFESIONALS, and each of them, are responsible for such defects in that they failed to  
6 act reasonably in the design, development and construction of the subject property, thereby breaching  
7 their duty owed to AMERICAN WEST.

8 15. If the subject property is defectively designed, developed and/or constructed, as it has  
9 been alleged by Plaintiffs in the main action herein, the acts or omissions of Third-Party Defendants,  
10 MOES, and MOE DESIGN PROFESIONALS, and each of them, were the direct and proximate  
11 cause of any and all damages incurred by Plaintiffs.

12 16. AMERICAN WEST is informed and believes, and on that basis alleges, that  
13 Plaintiffs' damages, if any, were proximately caused by Third-Party Defendants, MOES, and MOE  
14 DESIGN PROFESIONALS, and each of them, and that said Third-Party Defendants, MOES, and  
15 MOE DESIGN PROFESIONALS, and each of them, are liable for the damages sought by Plaintiffs  
16 in their underlying Complaint.

17 17. The breach(es) of the aforementioned duties by each Third-Party Defendant, MOES,  
18 and MOE DESIGN PROFESIONALS as described in Paragraphs 12 through 16 above was and is the  
19 actual and proximate cause of damages to AMERICAN WEST in excess of \$10,000.00.

20 18. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
21 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
22 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
23 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

## 24 **SECOND CAUSE OF ACTION**

### 25 **(Breach of Express and Implied Warranties** 26 **Against All Third-Party Defendants and MOES 1 through 100)**

27 19. AMERICAN WEST repeats and realleges the allegations set forth in Paragraphs 1  
28 through 18 of this Third-Party Complaint as though fully set forth herein.



1           20. AMERICAN WEST is informed and believes, and on that basis alleges, that pursuant  
2 to the agreements between AMERICAN WEST and Third-Party Defendants, and AMERICAN  
3 WEST and MOES, Third-Party Defendants and MOES impliedly and expressly warranted that the  
4 work performed by them at the subject property would be done in a good, workmanlike, and  
5 substantial manner, in full accordance with the provisions and conditions of the agreements and the  
6 plans and specifications.

7           21. AMERICAN WEST relied upon said warranties and believed that said work was  
8 performed pursuant to said agreements and would be of a first class and workmanlike manner for its  
9 intended use and purpose.

10          22. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-  
11 Party Defendants and MOES, and each of them, breached said agreements as it has been alleged by  
12 Plaintiffs in the main action herein, and that numerous deficiencies exist at the subject property as set  
13 forth in Plaintiffs' Complaint, which alleged deficiencies are incorporated herein by reference.

14          23. As a proximate result of the breach of express and implied warranties by Third-Party  
15 Defendants and MOES, and each of them, AMERICAN WEST alleges it will suffer damages in a  
16 sum equal to any sums paid by way of settlement, or in the alternative, judgment rendered against  
17 AMERICAN WEST in the underlying action based on Plaintiffs' Complaint.

18          24. This Third-Party Complaint will serve as notice of such defective conditions and  
19 AMERICAN WEST is informed and believes, and on that basis alleges, that Third-Party Defendants  
20 and MOES, and each of them, declined to acknowledge their responsibilities to repair the alleged  
21 deficiencies as referenced above.

22          25. The breach(es) of the aforementioned warranties by each Third-Party Defendant and  
23 MOES as described in Paragraphs 19 through 24 above was and is the actual and proximate cause of  
24 damages to AMERICAN WEST in excess of \$10,000.00.

25          26. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
26 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
27 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
28 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

**THIRD CAUSE OF ACTION**

**(Breach of Contract Against All Third-Party Defendants, MOES 1 through 100, and MOE DESIGN PROFESSIONALS 101 through 200)**

27. AMERICAN WEST repeats and realleges the allegations set forth in Paragraphs 1 through 26 of this Third-Party Complaint as though fully set forth herein.

28. AMERICAN WEST is informed and believes, and on that basis alleges, that AMERICAN WEST entered into written agreements with the Third-Party Defendants, MOES, and MOE DESIGN PROFESSIONALS.

29. AMERICAN WEST has fully performed all conditions, covenants, and promises required by it to be performed in accordance with the terms and conditions of said written agreements.

30. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-Party Defendants, MOES, and MOE DESIGN PROFESSIONALS, and each of them, have breached said agreements, which were made with AMERICAN WEST by failing to perform their work (a) in compliance with the applicable standard of care, (b) in a good and workmanlike manner, and (c) in a manner that was consistent with their legal obligations as set forth in the various written agreements. Further, AMERICAN WEST is informed and believes, and on that basis alleges, that Third-Party Defendants, MOES, MOE DESIGN PROFESSIONALS, and each of them, have breached their agreements by: (1) failing to defend and indemnify AMERICAN WEST as a result of Plaintiffs' Complaint, (2) failing to name AMERICAN WEST as an additional insured as required under the written agreements, and (3) by failing to take proper steps to ensure that appropriate additional insured endorsements and insurance coverage had been obtained for AMERICAN WEST'S benefit.

31. As a direct and proximate result of Third-Party Defendants', MOES', and MOE DESIGN PROFESSIONALS' breach of their agreements, AMERICAN WEST has been damaged in a sum which is currently unascertainable. AMERICAN WEST will seek leave of this Court to amend its Third-Party Complaint when such sums can be reasonably ascertained.

32. As a direct and proximate result of the breach of the agreements by Third-Party Defendants, MOES, MOE DESIGN PROFESSIONALS, and each of them, it is alleged that



1 AMERICAN WEST has incurred and continues to incur costs and expenses including, but not limited  
 2 to, litigation costs, attorneys' fees, and consultants' fees in connection with Plaintiffs' underlying  
 3 Complaint, to the general damage of AMERICAN WEST, as will be shown according to proof at the  
 4 time of the trial in this matter. AMERICAN WEST will seek recovery of its attorneys' fees,  
 5 consultants' fees and litigation costs incurred to defend against Plaintiffs' claims and to prosecute this  
 6 action.

#### 7 **FOURTH CAUSE OF ACTION**

8 **(Equitable Indemnity Against All Third-Party Defendants,**  
 9 **MOES 1 through 100, and MOE DESIGN PROFESSIONALS 101 through 200)**

10 33. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 32  
 11 of this Third-Party Complaint as though fully set forth herein.

12 34. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-  
 13 Party Defendants, MOES, and MOE DESIGN PROFESSIONALS at all times herein mentioned  
 14 were, either individuals, sole proprietorships, partnerships, registered professionals, corporations, or  
 15 other legal entities which are licensed to do and are doing business in the County of Clark, State of  
 16 Nevada, at all times relevant to the subject matter of this action.

17 35. AMERICAN WEST is informed and believes, and on that basis alleges, that the  
 18 defects and damages sustained by Plaintiffs in their Complaint involve defects and damages or  
 19 destruction of property. AMERICAN WEST is further informed and believes, and on that basis  
 20 alleges, that said damages were caused by Third-Party Defendants, MOES, MOE DESIGN  
 21 PROFESSIONALS, and each of them, arising out of and in connection with, the performance of their  
 22 operations and work at the subject property.

23 36. In equity and good conscience, if Plaintiffs recovers against AMERICAN WEST  
 24 herein, then AMERICAN WEST is entitled to equitable indemnity, apportionment of liability and  
 25 contribution among and from the Third-Party Defendants, MOES, MOE DESIGN  
 26 PROFESSIONALS, and each of them, according to their respective faults for the injuries and  
 27 damages allegedly sustained by Plaintiffs, if any, by way of sums paid by settlement, or in the  
 28 alternative, judgment rendered against AMERICAN WEST based upon Plaintiffs' Complaint.

1           37. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
2 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
3 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
4 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

#### 5                                   **FIFTH CAUSE OF ACTION**

6                                   **(Implied Indemnity Against All Third-Party Defendants,**  
7 **MOES 1 through 100, and MOE DESIGN PROFESSIONALS 101 through 200)**

8           38. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 37  
9 of this Third-Party Complaint as though fully set forth herein.

10          39. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-  
11 Party Defendants, MOES, and MOE DESIGN PROFESSIONALS, and each of them, entered into  
12 written, oral and implied agreements with AMERICAN WEST.

13          40. Based on the foregoing, if Plaintiffs recover against AMERICAN WEST, then  
14 AMERICAN WEST is entitled to implied contractual indemnity from Third-Party Defendants,  
15 MOES, and MOE DESIGN PROFESSIONALS, and each of them, for injuries and damages  
16 sustained by Plaintiffs, if any, for any sums paid by way of settlement, or in the alternative, judgment  
17 rendered against AMERICAN WEST in Plaintiffs' Complaint.

18          41. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
19 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
20 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
21 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

#### 22                                   **SIXTH CAUSE OF ACTION**

23                                   **(Contribution Against All Third-Party Defendants,**  
24 **MOES 1 through 100, and MOE DESIGN PROFESSIONALS 101 through 200)**

25          42. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 41  
26 of this Third-Party Complaint as though fully set forth herein.

27          43. Based upon the acts and/or omissions of the Third-Party Defendants, MOES and MOE  
28 DESIGN PROFESSIONALS, and each of them, if a judgment is rendered on behalf of Plaintiffs,



1 AMERICAN WEST is entitled to contribution from each of the Third-Party Defendants, MOES and  
 2 MOE DESIGN PROFESSIONALS, in an amount proportionate to the amount of negligence and/or  
 3 fault attributable to each of the Third-Party Defendants, MOES and MOE DESIGN  
 4 PROFESSIONALS.

5 44. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
 6 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
 7 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
 8 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

#### 9 SEVENTH CAUSE OF ACTION

10 (Apportionment Against All Third-Party Defendants,  
 11 MOES 1 through 100, and MOE DESIGN PROFESSIONALS 101 through 200)

12 45. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 44  
 13 of this First Amended Third-Party Complaint as though fully set forth herein.

14 46. AMERICAN WEST is entitled to an apportionment of liability among the Third-Party  
 15 Defendants, MOES and MOE DESIGN PROFESSIONALS, and each of them.

16 47. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
 17 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
 18 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
 19 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

#### 20 EIGHTH CAUSE OF ACTION

21 (Express Indemnity Against All Third-Party Defendants and MOES 1 through 100)

22 48. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 47  
 23 of this Third-Party Complaint as though fully set forth herein.

24 49. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-  
 25 Party Defendants and MOES entered into express written indemnity agreements with AMERICAN  
 26 WEST.

27 50. Pursuant to the agreements entered into between AMERICAN WEST and Third-Party  
 28 Defendants, and AMERICAN WEST and MOES, AMERICAN WEST is informed and believes, and

1 on that basis alleges, that it has rights of express indemnification from the Third-Party Defendants  
2 and MOES, and each of them as set forth in relevant part below:

3 **12.0 INDEMNIFICATION AND ATTORNEY FEES.**

4 Subcontractor shall forever indemnify, save, and hold Contractor  
5 harmless from and against any obligations, loss, liability, lien, claim,  
6 demand, cause and causes of action whatsoever arising out of or  
7 relating to, or in connection with the performance by the Subcontractor  
8 of the Work, including but not limited to defects in workmanship or  
9 materials, and/or the doing or failure to do anything by Subcontractor,  
10 his agents, servants, employees or invitees. Said indemnification shall  
11 include the reasonable costs of attorneys' fees necessarily incurred in  
12 defending against claims by third parties. In the event Contractor  
engages the services of an attorney for any action brought on under this  
contract, or for its enforcement, or in defending any action brought by  
the owner, for whom this building or buildings are being erected, or by  
any other subcontractor due to the fault of this Subcontractor,  
Subcontractor agrees to pay a reasonable attorney's fee to Contractor.

13 51. Pursuant to the terms of the agreements entered into between AMERICAN WEST and  
14 Third-Party Defendants, and AMERICAN WEST and MOES, AMERICAN WEST is informed and  
15 believes, and on that basis alleges, that Third-Party Defendants and MOES have duties to defend and  
16 indemnify AMERICAN WEST in the underlying action filed by Plaintiffs.

17 52. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
18 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
19 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
20 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

21 **NINTH CAUSE OF ACTION**

22 **(Declaratory Relief Re Indemnification Against All Third-Party Defendants**  
23 **and MOES 1 through 100)**

24 53. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 52  
25 of this Third-Party Complaint as though fully set forth herein.

26 54. A dispute has arisen and an actual controversy now exists between AMERICAN  
27 WEST and Third-Party Defendants and MOES, and each of them with respect to the right to receive,  
28 or duty to give, indemnification in full or in proportion to their comparative fault, if any.



1 AMERICAN WEST contends that it is entitled to be indemnified by Third-Party Defendants and  
 2 MOES and to judgment over and against them. AMERICAN WEST is informed and believes that  
 3 Third-Party Defendants and MOES contend to the contrary. Therefore, an actual controversy exists  
 4 relative to the legal duties and rights of the respective parties pursuant to their written agreements,  
 5 which controversy AMERICAN WEST requests the Court to resolve.

6 55. All of the rights and obligations of the parties hereto arose out of what is actually one  
 7 transaction or one series of transactions, happenings or events, all of which can be settled and  
 8 determined in a judgment in this one action. AMERICAN WEST alleges that an actual controversy  
 9 exists between the parties under the circumstances alleged. A declaration of rights, responsibilities  
 10 and obligation of AMERICAN WEST and Third-Party Defendants and MOES, and each of them, is  
 11 essential to determine their respective obligations in connection with the Third-Party Complaint.  
 12 AMERICAN WEST has no true and speedy remedy at law of any kind.

13 56. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
 14 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
 15 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
 16 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

#### 17 **TENTH CAUSE OF ACTION**

#### 18 **(Declaratory Relief Re Duty to Defend Against All Third-Party Defendant and** 19 **MOES 1 through 100 Only)**

20 57. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 56  
 21 of this Third-Party Complaint as though fully set forth herein.

22 58. A dispute has arisen and an actual controversy now exists between AMERICAN  
 23 WEST and Third-Party Defendants and MOES, and each of them, with respect to AMERICAN  
 24 WEST'S right to receive, and Third-Party Defendants' and MOES' duty to give, a defense (via  
 25 contractual obligation) to AMERICAN WEST, whether immediately upon giving notice or  
 26 retroactively upon proof of liability. AMERICAN WEST contends that it is entitled to be defended  
 27 by Third-Party Defendants and MOES and to judgment over and against them. AMERICAN WEST  
 28 is informed and believes that Third-Party Defendants and MOES contend to the contrary. Therefore,

1 an actual controversy exists relative to the legal duties and rights of the respective parties pursuant to  
2 their written agreements, which controversy AMERICAN WEST requests the Court to resolve.

3 59. All of the rights and obligations of the parties hereto arose out of what is actually one  
4 transaction or one series of transactions, happenings or events, all of which can be settled and  
5 determined in a judgment in this one action. AMERICAN WEST alleges that an actual controversy  
6 exists between the parties under the circumstances alleged. A declaration of rights, responsibilities  
7 and obligation of AMERICAN WEST and Third-Party Defendants and MOES, and each of them, is  
8 essential to determine their respective obligations in connection with the Third-Party Complaint.  
9 AMERICAN WEST has no true and speedy remedy at law of any kind.

10 60. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
11 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
12 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, the insurance  
13 contracts, and Nevada law.

#### 14 **ELEVENTH CAUSE OF ACTION**

#### 15 **(Declaratory Relief Re Duty of Insurers to Defend and Indemnify** 16 **Against MOE INSURERS 201 through 300 Only)**

17 61. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 60  
18 of this Third-Party Complaint as though fully set forth herein.

19 62. A dispute has arisen and an actual controversy now exists between AMERICAN  
20 WEST and the MOE INSURERS, and each of them, as to their duties to defend and indemnify both  
21 AMERICAN WEST as an additional insured or third-party beneficiary and their named insureds for  
22 the claims in this lawsuit. MOE INSURERS, and each of them, contend that their applicable  
23 insurance policies do not provide coverage for this claim while AMERICAN WEST alleges that these  
24 insurers have improperly denied coverage which will prevent the fair and prompt resolution of this  
25 lawsuit in violation of state law and public policy. Therefore, an actual controversy exists regarding  
26 these coverage issues, which controversy AMERICAN WEST requests the Court to resolve.

27 63. All of the rights and obligations of the parties hereto arose out of what is actually one  
28 transaction or one series of transactions, happenings or events, all of which can be settled and



1 determined in a judgment in this one action. AMERICAN WEST alleges that an actual controversy  
 2 exists between the parties under the circumstances alleged. A declaration of rights, responsibilities  
 3 and obligation of AMERICAN WEST and MOE INSURERS, and each of them, is essential to  
 4 determine their respective obligations in connection with the Third-Party Complaint. AMERICAN  
 5 WEST has no true and speedy remedy at law of any kind.

6 64. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
 7 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
 8 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, the insurance  
 9 contracts, and Nevada law.

10 WHEREFORE, AMERICAN WEST prays for judgment against Third-Party Defendants, and  
 11 each of them, as follows:

- 12 1. For general damages in excess of \$10,000.00;
- 13 2. For special damages according to proof;
- 14 3. For indemnity for all damages and/or economic losses that Plaintiffs recover against  
 15 AMERICAN WEST by way of judgment, order, settlement, compromise or trial;
- 16 4. For reasonable attorneys' fees, costs, expert costs and expenses, pursuant to statutory  
 17 law, common law, and contract law;
- 18 5. For prejudgment interest;
- 19 6. For consequential damages in excess of \$10,000.00;
- 20 7. For incidental damages in excess of \$10,000.00;
- 21 8. For an apportionment of liability among the Third-Party Defendants, and each of  
 22 them;

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1 9. For a declaration of rights and obligations as between AMERICAN WEST and Third-
- 2 Party Defendants, and each of them;
- 3 10. For contribution pursuant to NRS 17.225; and
- 4 11. For such other and further relief as this Court may deem just, equitable and proper.

5 DATED this 14<sup>th</sup> day of November, 2008.

6 SPRINGEL & FINK LLP

7  
8 By: 

9 Adam H. Springel, Esq.  
10 Nevada Bar No.: 7187  
11 Darlene M. Cartier, Esq.  
12 Nevada Bar No.: 8775  
13 2475 Village View Dr., Suite 250  
14 Henderson, NV 89074

15 Attorneys for Defendants/Third-Party Plaintiffs  
16 AMERICAN WEST HOMES, INC.  
17 AMERICAN WEST HOMES INC., and  
18 AMERICAN WEST DEVELOPMENT  
19  
20  
21  
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**LINDA BENNETT, ET AL. V. AMERICAN WEST HOMES**  
**District Case No. A558243**

**CERTIFICATE OF MAILING**

I, Lisa Spahr, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 2475 Village View Drive, Suite 250, Henderson, NV 89074.

On November 14, 2008, I served the documents described as **DEFENDANTS'/THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT** on the following parties:

**SEE ATTACHED SERVICE LIST**

XX

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Henderson, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Henderson, Nevada in the ordinary course of business

XX

VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Henderson, Nevada, on November 14, 2008.

  
\_\_\_\_\_  
Lisa Spahr

Service List  
Linda Bennett v. American West Homes, Inc.  
Case No.: A558243

<i>Party</i>	<i>Attorney of Record/Contact</i>	<i>Telephone / Fax</i>
Plaintiff	Craig D. Fuller, Esq <b>Fuller Glaser Jenkins</b> 4250 Executive Square, Suite 555 La Jolla, CA 92037	(858) 450-4050 (858) 450-4051 FAX
Plaintiff	Mark A. LoBello, Esq. <b>The LoBello Law Firm</b> 2061 East Sahara Avenue Second Floor Las Vegas, NV 89104	(702) 870-8000 (702) 733-7761 FAX
American West Homes, Inc.; American West Homes Inc.; American West Development	Jeffery A. Garofalo, Esq. <b>Lee, Hernandez, Kelsey, Brooks, Garofalo &amp; Blake</b> 7575 Vegas Drive, Suite 150 Las Vegas, NV 89128  Co-Counsel	(702) 880-9750 (702) 314-1210 FAX



# EXHIBIT 42

April 29, 2011 letter from Zurich to Ironshore (ISIC 2439-2440)



FIRST CLASS MAIL

→ April 29, 2011

Attn: Claims Professional  
Ironshore Specialty  
PO Box 23198  
Oklahoma City, OK 73213

RE: Bennett, et al v. American West Homes, Inc.

Insured:	Laird Whipple Concrete Construction, Inc.
Claim Number:	9260052664
Policies:	EPA19731448 [8/1/93-8/1/94] EPA22726351 [8/1/94-8/1/95] EPA25991242 [8/1/95-8/1/96] EPA29035657 [8/1/96-8/1/97] EPA31420160 [8/1/97-8/1/98] CON33083339 [8/1/98-8/1/01]
Ironshore:	017BW0905001 [4/15/09-4/15/10] 000242101 [4/15/10-4/15/11]

ZURICH

Construction & Defect Claim Services

P.O. Box 66965  
Chicago, Illinois  
60666-0965

Phone: (702) 408-3844  
Fax (866) 257-1205  
Rachael.Rutherford@zurichna.com

Dear Claims Professional:

The purpose of this letter is to follow up on our previous tender of defense dated February 16, 2011 on behalf of our mutual insured Laird Whipple Concrete Construction, Inc. and/or Southwest Foundations, Inc., under any and all insurance policies issued by Ironshore Specialty.

As you may know, this matter involves 23 homes located within the Classics development in Las Vegas, Nevada. The development is comprised of 253 lots which were constructed between 1996 and 1999. It is our understanding that 19 of the 23 homes accepted offers of judgment issued by American West Homes and American West is looking for reimbursement.

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 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

ISIC 2439

AA002923

Ironshore Specialty  
April 29, 2011

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  
Northern Insurance Company of New York

*Rachael Rutherford*

Rachael Rutherford  
Claims Specialist II

ISIC 2440

AA002924

# EXHIBIT 43

May 27, 2011 letter from Midlands to Ironshore for policy effective  
April 15, 2009-2010 (ISIC 2476-2478)



MIDLANDS



May 27, 2011

**ATTN: JOHN REUSCH  
IRONSHORE INSURANCE SERVICES LLC  
JOHN.REUSCH@IRONSHORE.COM**

Re: Bennett, et al. v. American West Homes  
Insured : Southwest Foundations  
Policy No. : 017BW0905001  
Policy Dates : April 15, 2009 to April 15, 2010  
Claimant : Bennett, et al.  
Project : Classics  
Our File No. : 118149

This will serve as our initial report on the above captioned matter.

**Assignment**

We have been asked to assist Ironshore in the investigation of a construction defect allegation.

**Factual Background**

This action involves single-family residences located in the city of Las Vegas, Nevada. It appears Southwest Foundations completed their work on the homes/lots involved in this case from 1996 through 1999.

The documents supplied to us revealed the construction involved in this project was completed by Southwest Foundations before the policy inception date.

**The Policy**

Ironshore issued Policy Number 017BW0905001 with effective dates of April 15, 2009 to April 15, 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.

The policy is 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).

Midlands Claim Administrators, Inc. • 3503 NW 63<sup>rd</sup> Street, Suite 305, Oklahoma City, OK 73116  
Phone: 405.840.0074 • Fax: 405.840.0584 • [www.midlandsclaim.com](http://www.midlandsclaim.com)

California • New York • Oklahoma • Texas

ISIC 2476

AA002926

To: John Reusch  
Re: Southwest Foundations  
Date: May 27, 2011

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 Southwest Foundations prior to the Ironshore policy's issue date and is excluded under the Continuous or Progressive Injury or Damage Exclusion.

#### **Liability 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.

#### **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.

To: John Reusch  
Re: Southwest Foundations  
Date: May 27, 2011

**Next Report Date**

None, if no response is received in 30 days.

Yours very truly,  
**Midlands Claim Administrators, Inc.**

A handwritten signature in black ink, appearing to read "John P. Spearman", is written over a light gray rectangular background.

John P. Spearman

JPS/mb

# EXHIBIT 44

May 27, 2011 letter from Midlands to Ironshore for policy effective April 15, 2010-2011 (ISIC 2453-2455)



MIDLANDS



May 27, 2011

**ATTN: JOHN REUSCH**  
**IRONSHORE INSURANCE SERVICES LLC**  
**JOHN.REUSCH@IRONSHORE.COM**

Re: Bennett, et al. v. American West Homes  
Insured : Southwest Foundations  
Policy No. : 000242101  
Policy Dates : April 15, 2010 to April 15, 2011  
Claimant : Bennett, et al.  
Project : Classics  
Our File No. : 118151

This will serve as our initial report on the above captioned matter.

**Assignment**

We have been asked to assist Ironshore in the investigation of a construction defect allegation.

**Factual Background**

This action involves single-family residences located in the city of Las Vegas, Nevada. It appears Southwest Foundations completed their work on the homes/lots involved in this case from 1996 through 1999.

The documents supplied to us revealed the construction involved in this project was completed by Southwest Foundations before the policy inception date.

**The Policy**

Ironshore issued Policy Number 000242101 with effective dates of April 15, 2010 to April 15, 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 policy is 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).

Midlands Claim Administrators, Inc. • 3503 NW 63<sup>rd</sup> Street, Suite 305, Oklahoma City, OK 73116  
Phone: 405.840.0074 • Fax: 405.840.0584 • [www.midlandsclaim.com](http://www.midlandsclaim.com)

California • New York • Oklahoma • Texas

ISIC 2453

To: John Reusch  
Re: Southwest Foundations  
Date: May 27, 2011

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 Southwest Foundations prior to the Ironshore policy's issue date and is excluded under the Continuous or Progressive Injury or Damage Exclusion.

#### **Liability 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.

#### **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.

To: John Reusch  
Re: Southwest Foundations  
Date: May 27, 2011

**Next Report Date**

None, if no response is received in 30 days,

Yours very truly,  
**Midlands Claim Administrators, Inc.**

A handwritten signature in dark ink, appearing to read "John P. Spearman", is written over the typed name.

John P. Spearman

JPS/mb

# EXHIBIT 45

May 27, 2011 disclaimer letter from Midlands to Southwest Foundations (dba Stewart & Sundell) for policy effective April 15, 2009-2010 (cc Zurich) (ISIC 2468-2475)



MIDLANDS



May 27, 2011

VIA REGULAR & CERTIFIED MAIL  
(RETURN RECEIPT REQUESTED)

ATTN OFFICE MANAGER  
SOUTHWEST FOUNDATIONS  
513 EASTGATE RD  
HENDERSON NV 89011

Re: Bennett, et al. v. American West Homes  
Insured : Southwest Foundations  
Policy No. : 017BW0905001  
Policy Dates : April 15, 2009 to April 15, 2010  
Claimant : Bennett, et al.  
Project : Classics  
Our File No. : 118149

Dear Southwest Foundations:

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 Southwest Foundations. 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 single-family residences located in the city of Las Vegas, Nevada. It appears Southwest Foundations completed their work on the homes/lots involved in this case from 1996 through 1999.

---

Midlands Claim Administrators, Inc. • 3503 NW 63<sup>rd</sup> Street, Suite 305, Oklahoma City, OK 73116  
Phone: 405.840.0074 • Fax: 405.840.0584 • [www.midlandsclaim.com](http://www.midlandsclaim.com)

California • New York • Oklahoma • Texas

ISIC 2468

AA002934

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

The documents supplied to us revealed the construction involved in this project was completed by Southwest Foundations before the policy inception date.

### **The Policy**

Ironshore issued Policy Number 017BW0905001 with effective dates of April 15, 2009 to April 15, 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.

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. Southwest Foundations 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.

### **Who is an Insured**

The policy contains a description of who is considered an insured under the policy. **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. Your managers are insureds, but only with respect to their duties as your managers.*

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

- 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 (i) (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 (i)(a) or (b) above; or*
  - (d) *Arising out of his or her providing or failing to provide professional health care services.*

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

**SECTION II — WHO IS AN INSURED** is amended by Endorsement – **ADDITIONAL INSURED — OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

*This endorsement modifies the insurance policy and reads as follows:*

- 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 and non-contributory.*

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

*This insurance does not apply to:*

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.
2. "Bodily injury" or "property damage" occurring after:



To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

- a. *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.*
- c. *"Property Damage" which manifests after expiration of the 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, exclusions and conditions of the policy remain unchanged.*

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.*

To: Southwest Foundations  
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*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. The notice of completion date or dates related to this claim indicates that the project was completed by Southwest Foundations prior to inception of the Ironshore policy.

Another important aspect of the Ironshore policy 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 "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, 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:*

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

- 1) *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.*

### **Conclusion**

Based on our review of the materials and information submitted regarding the subject construction project, Ironshore must respectfully decline 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 Southwest Foundations prior to the Ironshore policy's issue date and is excluded under the Continuous or Progressive Injury or Damage Exclusion.

Our reasons for denying your claim as stated in this correspondence, while comprehensive are not necessarily exhaustive, or complete. Ironshore specifically reserves the right to supplement, modify or change its reasons for limiting, or denying coverage under any terms conditions, or provisions of the policy as issued regardless of whether those provisions or reasons are now known, or stated herein. If you believe this denial of coverage is in error, Ironshore would appreciate any new or different information you have regarding our analysis or conclusions as stated herein. Ironshore stands willing to review any information or analysis you wish to provide Ironshore regarding this coverage position. Ironshore reserves the right to review the coverage position again, and change or add to it, should additional facts come to Ironshore's attention.

It is expressly understood that any further action undertaken by Ironshore in the investigation or the handling this action shall not be construed as a waiver of the rights of Ironshore to deny coverage under Southwest Foundations's policy.

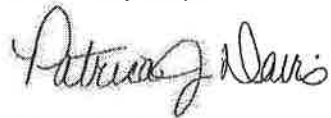
Ironshore reserves the right to commence and prosecute any legal action including but not limited to a declaratory relief action to obtain a judicial determination of whether the policies afford coverage for any of the claims made or damages sought in this matter.

**Note: We appreciate receiving all information electronically whenever possible. Please reference our file number on all correspondence and in the event you**

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

cannot respond electronically, please respond to the undersigned at the address below.

Yours very truly,



Trisha Davis  
MIDLANDS CLAIM ADMINISTRATORS, INC.,  
P.O. Box 23198  
Oklahoma City, OK 73123  
405-840-0950  
[ipspearman@midman.com](mailto:ipspearman@midman.com)

JPS/mb

cc: Attn: Rachael Rutherford  
Zurich North America  
P.O. Box 66965  
Chicago, IL 60666-0965



# EXHIBIT 46

May 27, 2011 disclaimer letter from Midlands to Southwest Foundations (dba Stewart & Sundell) for policy effective April 15, 2010-2011 (cc Zurich) (ISIC 2445-2452)

MIDLANDS



May 27, 2011

VIA REGULAR & CERTIFIED MAIL  
(RETURN RECEIPT REQUESTED)

ATTN OFFICE MANAGER  
SOUTHWEST FOUNDATIONS  
513 EASTGATE RD  
HENDERSON NV 89011

Re: Bennett, et al. v. American West Homes  
Insured : Southwest Foundations  
Policy No. : 000242101  
Policy Dates : April 15, 2010 to April 15, 2011  
Claimant : Bennett, et al.  
Project : Classics  
Our File No. : 118151

Dear Southwest Foundations:

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 Southwest Foundations. 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 single-family residences located in the city of Las Vegas, Nevada. It appears Southwest Foundations completed their work on the homes/lots involved in this case from 1996 through 1999.

---

Midlands Claim Administrators, Inc. • 3503 NW 63<sup>rd</sup> Street, Suite 305, Oklahoma City, OK 73116  
Phone: 405.840.0074 • Fax: 405.840.0584 • [www.midlandsclaim.com](http://www.midlandsclaim.com)

California • New York • Oklahoma • Texas

ISIC 2445

AA002943

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

The documents supplied to us revealed the construction involved in this project was completed by Southwest Foundations before the policy inception date.

### **The Policy**

Ironshore issued Policy Number 000242101 with effective dates of April 15, 2010 to April 15, 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. Southwest Foundations 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.

### **Who is an Insured**

The policy contains a description of who is considered an insured under the policy, **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. Your managers are insureds, but only with respect to their duties as your managers.*

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

- 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 (i) (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 (i)(a) or (b) above; or*
- (d) *Arising out of his or her providing or failing to provide professional health care services.*

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

**SECTION II — WHO IS AN INSURED is amended by Endorsement — ADDITIONAL INSURED — OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

*This endorsement modifies the insurance policy and reads as follows:*

- 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 and non-contributory.*

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

*This insurance does not apply to:*

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.
2. "Bodily injury" or "property damage" occurring after:



To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

- a. 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.*
- c. "Property Damage" which manifests after expiration of the 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, exclusions and conditions of the policy remain unchanged.*

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.*

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

*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. The notice of completion date or dates related to this claim indicates that the project was completed by Southwest Foundations prior to inception of the Ironshore policy.

Another important aspect of the Ironshore policy 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 "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, 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:*

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

- 1) *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.*

### **Conclusion**

Based on our review of the materials and information submitted regarding the subject construction project, Ironshore must respectfully decline 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 Southwest Foundations prior to the Ironshore policy's issue date and is excluded under the Continuous or Progressive Injury or Damage Exclusion.

Our reasons for denying your claim as stated in this correspondence, while comprehensive are not necessarily exhaustive, or complete. Ironshore specifically reserves the right to supplement, modify or change its reasons for limiting, or denying coverage under any terms conditions, or provisions of the policy as issued regardless of whether those provisions or reasons are now known, or stated herein. If you believe this denial of coverage is in error, Ironshore would appreciate any new or different information you have regarding our analysis or conclusions as stated herein. Ironshore stands willing to review any information or analysis you wish to provide Ironshore regarding this coverage position. Ironshore reserves the right to review the coverage position again, and change or add to it, should additional facts come to Ironshore's attention.

It is expressly understood that any further action undertaken by Ironshore in the investigation or the handling this action shall not be construed as a waiver of the rights of Ironshore to deny coverage under Southwest Foundations's policy.

Ironshore reserves the right to commence and prosecute any legal action including but not limited to a declaratory relief action to obtain a judicial determination of whether the policies afford coverage for any of the claims made or damages sought in this matter.

**Note: We appreciate receiving all information electronically whenever possible. Please reference our file number on all correspondence and in the event you**

To: Southwest Foundations  
Re: Bennett, et al. v. Southwest Foundations  
Date: May 27, 2011

cannot respond electronically, please respond to the undersigned at the address below.

Yours very truly,



Trisha Davis  
MIDLANDS CLAIM ADMINISTRATORS, INC.  
P.O. Box 23198  
Oklahoma City, OK 73123  
405-840-0950

JPS/mb

cc: Attn: Rachael Rutherford  
Zurich North America  
P.O. Box 66965  
Chicago, IL 60666-0965

# EXHIBIT 47

## (Part 1)

Ironshore policy no. 012A80905001 for policy period of March 1, 2009, to  
March 1, 2010 (ISIC 2541-2600)  
Part 1 (ISIC 2641-2572)





**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

This Insurance contract is issued pursuant to the Nevada Insurance laws by an insurer neither licensed 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 claim under this contract is not covered by the Nevada Insurance Guaranty Association Act.

**COMMERCIAL GENERAL LIABILITY DECLARATIONS**

→ Policy Number: 012A80905001

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 & Mailing Address:**

Nevada Concrete Services, Inc.  
1760 West Brooks Avenue  
Las Vegas, NV 89032

**2. Policy Period:**

→ Inception March 01, 2009 to  
Expiration March 01, 2010 at 12:01 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 BI & PD & PI/AI for Commercial Work including LAE Deductible  
\$25,000 BI & PD & PI/AI for all others, including LAE Deductible

**6. Coverage Part Premium Calculation:**

Coverage Part Premium:  
Inspection Fee:  
Terrorism Premium:  
Coverage Part Total:

**REDACTED**

PREMIUM IS MINIMUM AND DEPOSIT

**7. Audit Period: Annual**

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

Page 1 of 3

ISIC 2541

AA002952

Policy Number: 012A80905001

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 Exemption
  19. IB.EX.031 Total Pollution Exclusion Endorsement
  20. IB.EX.032 Emails Fax Phone Calls 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. IB.EX.041 Waiver of Transfer of Rights of Recovery Against Others To Us
  25. IB.EX.008 Automatic Status\_08 edition
  26. IB.EX.038 Supplementary Payments Within the Limits of Insurance
  27. IB.EX.060A Completed Ops (Residential)
  28. IB.EX.011 Designated Construction Projects

9. Producer & Mailing Address

CRC - Sterling West Insurance Services, Inc. (Glendale, CA)  
550 North Brand Blvd., Suite 1990  
Glendale, CA 91203

License Number: 502178

10. Surplus Lines Broker & Mailing Address:

CRC- Sterling West Insurance Services (Santa Ana)  
1551 N Tustin Ave., Suite 600  
Santa Ana, CA 92705

License Number: 591996

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

  
\_\_\_\_\_  
Authorized Representative

March 12, 2009  
Date

Policy Number: 012A80905001

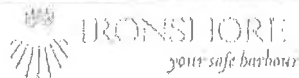
COMMERCIAL GENERAL LIABILITY CLASSIFICATION AND PREMIUM  
SCHEDULE

LOCATION NUMBER	CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/ Ops	Prod/Comp Ops	Prem/ Ops	Prod/Comp Ops
	Driveways, Parking Areas, Sidewalks	92215 (2A)	REDACTED				

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
 \_\_\_\_\_  
 Authorized Representative

March 12, 2009  
 Date

**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
 (55 Broadway) 12<sup>th</sup> Floor  
 New York, NY 10006  
 (877) IRON411

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Policy Number: 012A80905001

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

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

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

- 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.

- 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 "bodily injury" or "property damage" to us or any other insurer;

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- 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 liability for damages:

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

### c. Liquor Liability

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

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

### d. Workers' Compensation And Similar Laws

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

### e. Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

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

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

### f. Pollution

- (1) "Bodily 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;



- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible; 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, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "sue" 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:

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

**i. 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;

(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 "products-completed operations hazard".

**k. Damage To Your Product**

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

**l. 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:

- (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
- (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.

**o. Personal And Advertising Injury**

"Bodily Injury" arising out of "personal and advertising injury".

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

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

a. We will pay those sums that the Insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "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:

- (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 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 Falsity

"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 falsity.

### 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 – Failure 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:

- (1) 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.

### l. 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 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".

**o. War**

"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:

- (1) 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;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

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

**c. Injury On Normally Occupied Premises**

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

**d. Workers Compensation And Similar Laws**

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

**e. Athletics Activities**

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

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. 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 bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- 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 "suit", 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.

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



- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. 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";
- 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 Indemnitee:
  - (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 "suit";
    - (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 "suit"; 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 I – 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:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. 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.
  - 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 for:
    - (1) "Bodily injury" or "personal and advertising injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), 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 you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
- (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.
- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any 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;
  - b. 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.
- SECTION III -- LIMITS OF INSURANCE**
1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
- a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
- a. Medical expenses under Coverage C;
  - b. 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.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal 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.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
- a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C because of all "bodily injury" 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.
7. 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. Duties In The Event Of Occurrence, Offense, Claim Or Suit
- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- 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; and
  - (2) Notify us as soon as practicable.
- You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### 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
- b. 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 insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

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

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

**c. Method Of Sharing**

If all 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 limit of Insurance to the total applicable limits of insurance of all Insurers.

**5. Premium Audit**

- a. 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:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. 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 Insured; and
- b. 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 "suit" 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**

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

**2. "Auto" means:**

- a. 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".

3. "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;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
  - (1) Goods or products made or sold by you in the territory described in a. above;
  - (2) The activities of a person whose home is in the territory described in a. above, but is away for a 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 "suit" on the merits, in the territory described in a. above or in a settlement we agree to.



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

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

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

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

If such property can be restored to use by:

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

9. "Insured contract" means:

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

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:

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

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

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

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:



- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

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

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. Malicious 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 reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed 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:

- 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.

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

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

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

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

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

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

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

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

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", and
- (2) The providing of or failure to provide warnings or instructions.

Ironshore Specialty Insurance Company by:



Secretary



President



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 1**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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
  - 1) The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
  - 2) 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 reason.
  - 3) We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
  - 4) 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.
- 6) If 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
- E) 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 after-ward.
- F) Inspections And Surveys
  - 1) We have the right to:
    - a) Make inspections and surveys at any time;
    - b) 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.
- 4) Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

G) Premiums

H) The first Named Insured shown in the Declarations:

- 1) Is responsible for the payment of all premiums; and
- 2) Will be the payee for any return premiums we pay.

I) Transfer Of Your Rights And Duties Under This Policy

J) Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named 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.

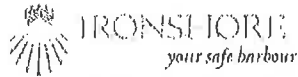
ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



Authorized Representative

March 12, 2009

Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 2**

**Policy Number:** 012A80905001      **Effective Date of Endorsements:** March 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;
- c) Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d) An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e) An elevator maintenance agreement;
- f) That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or 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.

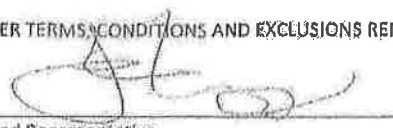
Paragraph f. does not include that part of any contract or agreement:

- 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 drawings, opinions, reports, surveys, field orders, change orders or drawings 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.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 3**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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 "bodily 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 less 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.
  - d) In the event you cancel this Policy, a minimum premium of \_\_\_\_\_ or the applicable pro-rata/short rate earned premium, whichever is greater, will be retained by us.
- 6 Your failure 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

March 12, 2009  
Date

REDACTED



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 4**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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 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 paid admission, tickets, complimentary tickets, or passes.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
Authorized Representative

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 5**

Policy Number: 012A80905001      Effective Date of Endorsements: March 01, 2009

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:

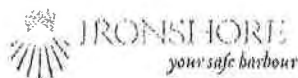
MIDLANDS CLAIM  
PO Box 28198  
Oklahoma City, OK 73123  
Phone: 1-800-498-9758  
Fax: 405-840-0584  
Website: [www.midlandsclaim.com](http://www.midlandsclaim.com)

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
Authorized Representative

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
 (55 Broadway) 12<sup>th</sup> Floor  
 New York, NY 10006  
 (877) IRON411

**Endorsement # 6**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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**

Coverage	SCHEDULE	Amount and Basis of Deductible	
Bodily Injury Liability	\$N/A	per claim	per occurrence
Property Damage Liability	\$N/A	per claim	per occurrence
Bodily Injury Liability and/or Property Damage Liability Combined	\$ N/A	per claim	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:

- 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 "bodily injury" sustained by one person, or
    - b. 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."
- b. 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:
    - a. to all damages because of "bodily injury" as the result of any one "occurrence," or
    - b. 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:

- (1) 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.

3. 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.

4. 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

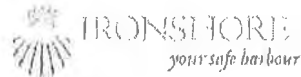
apply irrespective of the application of the deductible amount.

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

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 7**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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 Nevada Concrete Services, Inc.	
Endorsement Effective March 01, 2009	Policy Number 012A80905001

This insurance does not apply to:

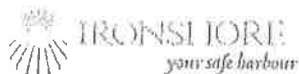
- A) "Bodily Injury", "property damage" or "personal and advertising injury", in whole or in part, either directly or indirectly arising out of, based upon or attributable to any of the following:
1. Asbestos or any asbestos related injury or damage; or
  2. any alleged act, error, omission or duty involving 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

- 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 asbestos "bodily injury", "property damage" or "personal and advertising injury", as described above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
\_\_\_\_\_  
Authorized Representative

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 8**

Policy Number: 012A80905001 Effective Date of Endorsements: March 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":

1. 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

March 12, 2009  
Date





**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 9**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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**

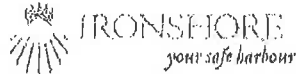
The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

1. 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
  - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.
2. Subject to Paragraph 3. below, professional services include:
  - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, re-ports, surveys, field orders, change orders, or drawings and specifications; and
  - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. 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

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 10**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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 I – 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; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" 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.

**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; 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:

# EXHIBIT 47

## (Part 2)

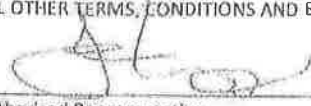
Ironshore policy no. 012A80905001 for policy period of March 1, 2009, to March 1, 2010 (ISIC 2541-2600)

Part 2 (ISIC 2573-2600)

(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

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
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**Endorsement # 11**

Policy Number: 012A80905001 Effective Date of Endorsements: March 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**

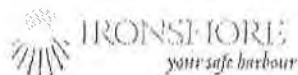
- A. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of, caused by, or attributable to, whether in whole or in part, the following:
1. The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, 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
  2. "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 non-load bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:
1. A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
  2. 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

March 12, 2009  
Date





**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
 (55 Broadway) 12<sup>th</sup> Floor  
 New York, NY 10006  
 (877) IRON411

**Endorsement # 12**

Policy Number: 012A80905001 Effective Date of Endorsements: March 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:

(The following needs to be completed only when this endorsement is issued subsequent to inception of the policy.)

Named Insured Nevada Concrete Services, Inc.	
Endorsement Effective March 01, 2009	Policy Number 012A80905001

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;
6. restrictions on travel due to, or failure 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 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.

- B** 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.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
Authorized Representative

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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**Endorsement # 13**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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 Nevada Concrete Services, Inc.	
Endorsement Effective March 01, 2009	Policy Number 012A80905001

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:



IRONSHORE  
*your safe harbour*

**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
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New York, NY 10006  
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**Endorsement # 14**

Policy Number: 012A80905001 Effective Date of Endorsements: March 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

**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.)

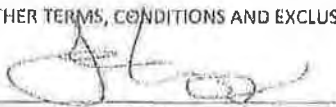
With respect to any premises or classification shown in the Schedule:

1. Section I – Coverage C – Medical Payments does not apply and none of the references to it in the Coverage Part apply; and

2. The following is added to Section I – Supplementary Payments:

- h. Expenses incurred by the Insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

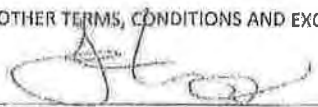
ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED,

  
Authorized Representative

March 12, 2009  
Date

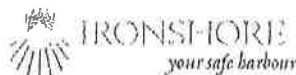
1. The use, installation, storage, withdrawal, removal, encapsulation, destruction, containment, testing, distribution, ownership, presence, ingestion, inhalation, absorption, sale or disposal of lead, lead dust, lead fibers or material containing lead;
  2. Exposure to lead, lead dust, lead fibers or 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.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
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Authorized Representative

March 12, 2009  
Date





**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 15**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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:

- 1 "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.
- 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

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
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**Endorsement # 16**

**Policy Number:** 012A80905001      **Effective Date of Endorsements:** March 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 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 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 "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.

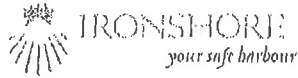
- 2 As used in this endorsement:
- "Hazardous properties" includes radioactive, toxic or explosive properties.
- "Nuclear material" means "source material", "Special nuclear material" or "by-product material".
- "Source material", "special nuclear material", and "by-product material" have the meanings 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 tailings 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

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
New York, NY 10006  
(877) IRON411

**Endorsement # 17**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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 "silica-related 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:

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 Definitions Section:

1. "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

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

1 Exchange Plaza  
(55 Broadway) 12<sup>th</sup> Floor  
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(877) IRON411

**Endorsement # 18**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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
- C. 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

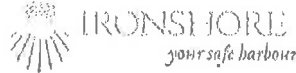
States Secretary of State, and the Attorney General of the United States, in accordance with the United States Terrorism Risk Insurance Act of 2002 (the "Act"):

- 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.

  
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Authorized Representative

March 12, 2009  
Date



**IRONSHORE SPECIALTY INSURANCE COMPANY**

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**Endorsement # 19**

**Policy Number:** 012A80905001      **Effective Date of Endorsements:** March 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 replaced by the following:


This Insurance does not apply to:

**f. Pollution**

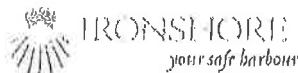
- 1) "Bodily Injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
- 2) Any loss, cost or expense arising out of any:

- a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, re-moving, 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.

  
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Authorized Representative

March 12, 2009  
Date



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**Endorsement # 20**

Policy Number: 012A80905001      Effective Date of Endorsements: March 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 In-  
jury 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:

- a) 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
- 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.

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

2. Exclusions

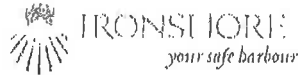
This insurance does not apply to:  
DISTRIBUTION OF MATERIAL IN VIOLATION OF  
STATUTES  
"Personal and advertising injury" arising directly  
or indirectly out of any action or omission that  
violates or is alleged to violate:

- a) 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
- 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

March 12, 2009  
Date



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**Endorsement # 21**

Policy Number: 012A80905001

Effective Date of Endorsements: March 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 – Cover-ages):

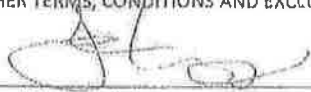
This insurance does not apply to "bodily injury" or  
"property damage" arising out of either your ongoing  
operations or operations included within the  
"products-completed operations hazard" at the  
location described in the Schedule of this  
endorsement, as a consolidated (wrap-up) Insurance

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
- 3) Remains in effect.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

  
Authorized Representative

March 12, 2009  
Date