

LICENSE AMENDMENT NO. 3

PROJECT: Alameda Point

LICENSE AREA: 641 West Red Line Avenue, Alameda, CA

LICENSOR: The CITY OF ALAMEDA, a charter city and municipal corporation

LICENSEE: AMBER KINETICS, INC., a California corporation

LICENSE DATE: April 1, 2014, for reference purposes only

This Amendment No. 3 to the License ("Third Amendment"), is dated as of July 1, 2020 for reference purposes only, and is entered into by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("Licensor"), and AMBER KINETICS, INC., a California corporation ("Licensee").

NOW, THEREFORE, in consideration of the foregoing and of their mutual covenants contained herein, the parties hereby agree as follows:

1. **Background.** Licensor and Licensee entered into a License Agreement dated April 1, 2014 for reference purposes only, as amended by that certain First Amendment to License Agreement dated as of January __, 2016 (undated), and that certain Second Amendment to License Agreement dated as of February 14, 2018 (collectively, the "License"), for a certain area described therein and referred to as 641 West Red Line Avenue, Alameda, California ("License Area"). Licensor and Licensee desire to extend the License on the same terms and conditions set forth in the License, except to the extent modified in this Third Amendment. Capitalized terms used in this Third Amendment without definition shall have the same meaning given to such terms in the License.

2. **Term.** The term of the License is hereby extended from May 4, 2020 ("Extension Commencement Date") for an additional twelve (12) months ("Extension Term") effective as of the date that this Third Amendment is approved by the Alameda City Council (estimated to be _____, 2020).

3. **Option to Extend.**

A. Licensee shall have one (1) option ("Extension Option") to extend the term of License for a period of twelve (12) months ("Extension Term"). The Extension Term shall be subject to approval by the City Manager for the City of Alameda in his or her reasonable discretion. Licensee shall exercise the Extension Option, if at all, by written notice ("Election Notice") from Licensee to Licensor, given not more than six (6) months nor less than three (3) months prior to expiration of the then current Term. Any such notice given by Licensee to Licensor shall be irrevocable. If Licensee fails to exercise the Extension Option in a timely manner as provided for above, the Extension Option shall be void.

B. If Licensee exercises the Extension Option, the Term shall be extended for an additional period of twelve (12) months upon the same terms and conditions set forth in the License, as hereby amended, except that the fee for use and occupancy of the License Area shall be as set out in Section 4.

4. Fee. Effective as of Extension Commencement Date, the fee for Licensee's use and occupancy of the License Area shall be Three Thousand Eight Hundred and 00/100 Dollars (\$3,800.00) per month.

5. Prevailing Wage. Licensee acknowledges that the Premises are within a public building and, as such, alterations, improvements or additions ("Alterations") are subject to the payment of prevailing wage under the provisions of the California Labor Code. To the extent any such work is subject to prevailing wage requirements, the following shall apply:

A. Licensee shall and shall cause its contractors and subcontractors to: pay prevailing wages in the construction of any Alterations as those wages are determined pursuant to Labor Code Sections 1720 et seq.; employ apprentices as required by Labor Code Sections 1777.5 et seq.; and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and the implementing regulations of the Department of Industrial Relations (the "DIR") for all such Labor Code sections.

B. Licensee shall indemnify, hold harmless and defend (with counsel selected by Licensor), to the extent permitted by applicable law, Licensor, its councilmembers, commissioners, officials, employees and agents, against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Licensee, or its contractors or subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and the implementing regulations of the DIR in connection with any Alterations to the License Area. The provisions of this Section 5.B shall survive termination of the License.

6. Delivery of Possession. Licensee hereby agrees that the License Area shall continue to be licensed in its "AS-IS" condition, and Licensor shall have no obligation to make any repairs or modifications to the License Area. Licensee acknowledges and agrees that Licensor has made no representations or warranties regarding the License Area, including, without limitation, its suitability for Licensee's use.

7. City Council Approval. Licensee acknowledges that this Third Amendment is subject to approval by the City Council for the City of Alameda, and review and approval by Licensor of Licensee's financial condition.

8. City's Authority. Licensee further acknowledges that Licensor is entering into this License in its proprietary capacity and not in its regulatory or governmental capacity. Nothing in this License shall be construed as restraining, impairing or restricting the City of Alameda in its regulatory capacity, or granting any rights upon Licensee with respect to the use, occupancy or operation of the License Area in a manner inconsistent with any Laws or applicable requirements.

9. Brokers. Both Licensor and Licensee acknowledge that Cushman & Wakefield of California, Inc. ("Licensor's Broker") is Licensor's exclusive broker and that no other real estate broker or agent is entitled to or can claim a commission in connection with this License. Licensor shall pay a commission to Licensor's Broker per Licensor's agreement with Licensor's Broker. Licensee and Licensor each represent and warrant to each other that no other broker has represented either of them or is otherwise entitled to a commission or fee in connection with the transactions contemplated in this Third Amendment. Each party hereby indemnifies, defends and holds the other party harmless from all loss, cost and expense (including reasonable attorneys' fees) arising out of a breach of its representation set forth in this Section 9. The provisions of this Section 9 shall survive the termination of the License.

10. Inspection by Certified Access Specialist. Licensor discloses that the License Area has not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), Licensee acknowledges and agrees that, if Licensee wishes to have the License Area inspected by a CASp: (i) Licensee must notify Licensor on or before the date when Licensee executes this Third Amendment pursuant to the election below; (ii) the inspection will be at Licensee's sole cost and expense; (iii) the inspection must be scheduled through Licensor and in coordination with the building's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Licensee's responsibility; and (v) Licensee must provide a copy of the CASp report to Licensor on completion. By initialing below, Licensee represents that:

Licensee wishes to have a CASp inspection of the License Area - Initials: _____

Licensee waives its right to have a CASp inspection of the Premises - Initials:

MKS

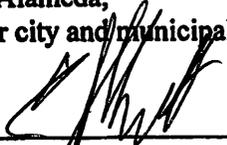
[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

11. Ratification: Miscellaneous. Except as modified by this Third Amendment, in all other respects the License is hereby ratified and affirmed and remains in full force and effect. This Third Amendment may be executed in one or more counterparts.

IN WITNESS WHEREOF, the undersigned have executed this Third Amendment as of the day and year first hereinabove set forth.

LICENSOR:

City of Alameda,
a charter city and municipal corporation

By: 

Eric J. Levitt
City Manager

Date: 7/21/2020

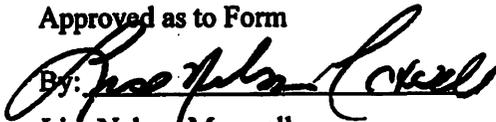
LICENSEE:

AMBER KINETICS, INC.,
a California corporation

By: Matthew K Senesky
Name: Matthew K Senesky
Title: General Manager, Amber Kinetics USA

Date: 05/05/2020

Approved as to Form

By: 

Lisa Nelson Maxwell
Assistant City Attorney

By: 

Name: Edward Chiao

Title: President & Chief Commercial Officer

Date: May 6, 2020

Recommended for Approval

By: Debbie Potter

Debbie Potter
Community Development Director



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/3/2019

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

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

PRODUCER Arthur J. Gallagher & Co. Insurance Brokers of CA., Inc. 160 West Santa Clara Street Suite 300 San Jose CA 95113 License#: 0726293 AMBEKIN-01	CONTACT NAME: PHONE (A/C, No, Ext): 408-973-9500 FAX (A/C, No): 408-257-2985 E-MAIL ADDRESS: <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A : Atlantic Specialty Insurance Company</td> <td style="text-align: center;">27154</td> </tr> <tr> <td>INSURER B : Illinois Union Insurance Company</td> <td style="text-align: center;">27960</td> </tr> <tr> <td>INSURER C : Peleus Insurance Company</td> <td style="text-align: center;">34118</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Atlantic Specialty Insurance Company	27154	INSURER B : Illinois Union Insurance Company	27960	INSURER C : Peleus Insurance Company	34118	INSURER D :		INSURER E :		INSURER F :	
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INSURER F :															

COVERAGES CERTIFICATE NUMBER: 214609592 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			711-01-68-90-0000	10/4/2019	10/4/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			711-01-68-90-0000	10/4/2019	10/4/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			711-01-68-90-0000	10/4/2019	10/4/2020	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ PER STATUTE OTH-ER
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B C	Contractors Pollution Liability Directors & Officers			CPY G71747967 001 CDO4209930-1	10/4/2019 9/26/2019	10/4/2020 9/26/2020	Limit \$1,000,000 Limit \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Evidence of Insurance

OK 5/21/20
JC

CERTIFICATE HOLDER Evidence of Insurance	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)

10/9/2019

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

PRODUCER NAME, CONTACT PERSON AND ADDRESS Arthur J. Gallagher & Co. Insurance Brokers of CA., Inc. 160 West Santa Clara Street Suite 300 San Jose, CA 95113		PHONE (A/C. No. Ext): 408-973-9500 License#: 0726293	COMPANY NAME AND ADDRESS Atlantic Specialty Insurance Company One Beacon Lane Canton, MA	NAIC NO: 27154
FAX (A/C. No.): 408-257-2985	E-MAIL ADDRESS:	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH		
CODE:	SUB CODE:	POLICY TYPE		
AGENCY CUSTOMER ID #:		LOAN NUMBER	POLICY NUMBER 711-01-68-90-0000	
NAMED INSURED AND ADDRESS Amber Kinetics Inc 32920 ALVARADO NILES RD STE 250 Union City, CA 94587		EFFECTIVE DATE 10/04/2019	EXPIRATION DATE 10/04/2020	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
ADDITIONAL NAMED INSURED(S)		THIS REPLACES PRIOR EVIDENCE DATED:		

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required) BUILDING OR BUSINESS PERSONAL PROPERTY

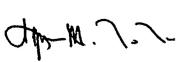
LOCATION / DESCRIPTION
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY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

COVERAGE INFORMATION		PERILS INSURED	BASIC	BROAD	<input checked="" type="checkbox"/>	SPECIAL	
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$ 1,781,568							DED: 1,000
	YES	NO	N/A				
<input checked="" type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> RENTAL VALUE	X					If YES, LIMIT: 275,000	Actual Loss Sustained; # of months:
BLANKET COVERAGE	X					If YES, indicate value(s) reported on property identified above: \$	
TERRORISM COVERAGE	X					Attach Disclosure Notice / DEC	
IS THERE A TERRORISM-SPECIFIC EXCLUSION?			X				
IS DOMESTIC TERRORISM EXCLUDED?			X				
LIMITED FUNGUS COVERAGE	X					If YES, LIMIT: 15,000	DED: 1,000
FUNGUS EXCLUSION (if "YES", specify organization's form used)			X				
REPLACEMENT COST	X						
AGREED VALUE			X				
COINSURANCE			X			If YES, %	
EQUIPMENT BREAKDOWN (If Applicable)	X					If YES, LIMIT: Included	DED:
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg			X			If YES, LIMIT:	DED:
- Demolition Costs			X			If YES, LIMIT:	DED:
- Incr. Cost of Construction			X			If YES, LIMIT:	DED:
EARTH MOVEMENT (If Applicable)			X			If YES, LIMIT:	DED:
FLOOD (If Applicable)			X			If YES, LIMIT:	DED:
WIND / HAIL INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:			X			If YES, LIMIT:	DED:
NAMED STORM INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:			X			If YES, LIMIT:	DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS			X				

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

<input type="checkbox"/> CONTRACT OF SALE <input type="checkbox"/> MORTGAGE	<input type="checkbox"/> LENDER'S LOSS PAYABLE <input type="checkbox"/> LOSS PAYEE	LENDER SERVICING AGENT NAME AND ADDRESS
NAME AND ADDRESS City of Alameda C/O RiverRock Real Estate Group 950 West Mall Square STE 239 Alameda, CA 94501		AUTHORIZED REPRESENTATIVE 

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Policy Number: 711-01-68-90-0000

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**BROAD FORM GENERAL LIABILITY ENDORSEMENT –
TECHNOLOGY COMPANIES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This endorsement extends certain coverages. The following listing and the headers in this endorsement are only for convenience. Provisions in this endorsement might be modified by other endorsements. Read the entire policy carefully to determine rights, duties and what is and is not covered.

<p>A. Section I – Coverages</p> <ol style="list-style-type: none"> 1. Expected or Intended Injury (Property Damage) 2. Non-Owned Aircraft and Watercraft Under 55 Feet 3. Broadened Property Damage – Rented Premises, Borrowed Equipment and Use of Elevators 4. Personal and Advertising Injury Exclusions <ol style="list-style-type: none"> a. Insureds in Media and Internet Type Businesses b. Electronic Chatrooms or Bulletin Boards 5. Medical Payments – Increased Limits and Time Period 6. Product Recall Expense Coverage 7. Supplementary Payments – Cost of Bail Bonds and Loss of Earnings <p>B. Section II – Who is an Insured</p> <ol style="list-style-type: none"> 1. Broadened Named Insured 2. Additional Insured – Broad Form Vendor 3. Additional Insured – Written Contract, Agreement, Permit or Authorization 	<ol style="list-style-type: none"> 4. Incidental Malpractice by Employed Physicians, Nurses, EMTs and Paramedics 5. User of Covered Watercraft 6. Newly Acquired or Formed Organizations <p>C. Section III – Limits of Insurance – Aggregate Limit Per Location</p> <p>D. Section IV – Commercial General Liability Conditions</p> <ol style="list-style-type: none"> 1. Duties in Event of Occurrence, Offense, Claim or Suit 2. Waiver of Subrogation When Required by Written Contract or Agreement <p>E. Section V – Definitions</p> <ol style="list-style-type: none"> 1. Bodily Injury – Includes Mental Anguish 2. Coverage Territory – Worldwide 3. Mobile Equipment – Self-Propelled Snow Removal, Road Maintenance and Street Cleaning Equipment Less than 1,000 Pounds Gross Vehicle Weight
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A. Section I – Coverages**1. Expected or Intended Injury (Property Damage)**

The following is added to Exclusion 2.a. **Expected Or Intended Injury of Section I – Coverages – Coverage A – Bodily Injury and Property Damage Liability:**

This exclusion does not apply to "property damage" resulting from the use of reasonable force to protect persons or property.

2. Non-Owned Aircraft and Watercraft Under 55 Feet**a. The following is added to Exclusion 2.g. Aircraft, Auto or Watercraft of Section I – Coverages – Coverage A – Bodily Injury and Property Damage Liability:**

This exclusion does not apply to an aircraft that is:

- (a) Hired, chartered or loaned with a paid crew; and
- (b) Not owned by any insured.

b. The following replaces Exclusion 2.g.(2)(a) of Section I – Coverages – Coverage A – Bodily Injury and Property Damage Liability:

- (a) Less than 55 feet long; and

- c. The following is added to Paragraph **b.(1)** in Paragraph **4. Other Insurance of Section IV – Commercial General Liability Conditions**:

This insurance is excess over any of the other valid and collectible insurance available to the insured that provides coverage for aircraft or watercraft not owned by any insured, whether such insurance is primary, excess, contingent or on any other basis.

3. Broadened Property Damage – Rented Premises, Borrowed Equipment and Use of Elevators

- a. The following is added to Exclusion **2.j. Damage To Property of Section I – Coverages – Coverage A – Bodily Injury and Property Damage Liability**:

Paragraph **(1)** of this exclusion does not apply to "property damage" to real property you rent or temporarily occupy with permission of the owner.

Paragraph **(4)** of this exclusion does not apply to "property damage" to equipment you borrow while at a job site if the equipment is not being used by anyone to perform work or operations at the time of loss.

Paragraphs **(3)**, **(4)** and **(6)** of this exclusion do not apply to "property damage" arising out of the use of elevators at premises you own, rent, lease or occupy.

- b. The following replaces Paragraph **6. of Section III – Limits Of Insurance**:

6. Subject to Paragraph **5.** above, the Damage to Premises Rented to You Limit shown in the Declarations is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises while rented to you or occupied by you with permission of the owner. If a Damage to Premises Rented to You Limit is not shown in the Declarations, that Limit will be \$500,000.

- c. The following is added to Paragraph **b.(1)** of Paragraph **4. Other Insurance of Section IV – Commercial General Liability Conditions**:

This insurance is excess over any of the other valid and collectible insurance available to the insured that provides coverage for real property you rent or temporarily occupy with the permission of the owner, borrowed equipment or use of elevators, whether such insurance is primary, excess, contingent or on any other basis.

4. Personal and Advertising Injury Exclusions

- a. **Insureds in Media and Internet Type Businesses**

The following replaces Exclusion **2.j. Insureds In Media And Internet Type Businesses of Section I – Coverages – Coverage B – Personal and Advertising Injury Liability**:

"Personal and advertising injury" committed by an insured whose business is:

- (1)** Advertising, broadcasting, publishing or telecasting; or
- (2)** Designing or determining content of web sites for others.

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, is not by itself considered the business of advertising, broadcasting, publishing or telecasting.

- b. **Electronic Chatrooms or Bulletin Boards**

The following replaces Exclusion **2.k. Electronic Chatrooms Or Bulletin Boards of Section I – Coverages – Coverage B – Personal and Advertising Injury Liability**:

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns or maintains for others.

5. Medical Payments – Increased Limits and Time Period

The following provisions are modified only if Coverage **C** is not otherwise excluded by the provisions of this Coverage Part or any endorsement.

- a. The following replaces Paragraph **a.(3)(b)** in Paragraph **1. Insuring Agreement of Section I – Coverage C – Medical Payments**:

(b) The expenses are incurred and reported to us within three years of the date of the accident; and

- b. The following is added to Paragraph 7. of **Section III – Limits Of Insurance**:

The Medical Expenses Limit for Coverage C is the greater of \$15,000 per person or the amount shown in the Declarations.

6. Product Recall Expense Coverage

- a. The following is added to **Section I – Coverages**:

Product Recall Expense Schedule	
Product Recall Aggregate Limit	\$ 50,000
Each Product Recall Limit	\$ 25,000
Each Product Recall Deductible	\$1,000
The limits and deductible in this Schedule apply to Product Recall Expense Coverage unless other amounts are shown in the Declarations.	

PRODUCT RECALL EXPENSE COVERAGE

We will pay "product recall expense" incurred by you or on your behalf for a "covered recall" to which this insurance applies. This insurance applies to "product recall expense" for a "covered recall" that takes place in the "coverage territory" and during the policy period. The amount we will pay for "product recall expense" is limited as described in **Section III – Limits Of Insurance**.

We will only pay the amount of "product recall expense" in excess of the Each Product Recall Deductible shown in the Schedule above. You must pay the Each Product Recall Deductible for each "covered recall" that is initiated.

- b. The following is added to **Section III – Limits Of Insurance**:

The Product Recall Aggregate Limit shown in the Schedule above is the most we will pay for the sum of all "product recall expense" incurred for all "covered recalls" initiated during the policy period.

Subject to the Product Recall Aggregate Limit, the Each Product Recall Limit shown in the Schedule above is the most we will pay for all "product recall expenses" arising out of any one "covered recall" for the same defect or deficiency.

- c. The following is added **Section IV – Commercial General Liability Conditions**:

Duties In The Event Of "Covered Recall"

1. You must report a "covered recall" to us as soon as practicable and no later than 30 days after you discover or are made aware of such recall.
2. 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. You must see to it that the following are done as soon as practicable after an actual or anticipated "covered recall" that may result in "product recall expense":
 - (a) Give us notice of any discovery or notification that "your product" must be withdrawn or recalled, including a description of "your product" and the reason for the withdrawal or recall;
 - (b) Cease any further release, shipment, consignment or any other method of distribution of such product, as well as any similar products, until it has been determined that all such products are free from defects that could result in "product recall expense";
 - (c) As often as may be reasonably required, permit us to:
 - (1) Inspect "your product" and take damaged and undamaged samples of "your products" for inspection, testing and analysis; and
 - (2) Examine and make copies from your books and records;
 - (d) Within 60 days of our request and providing you the necessary forms, send us a signed, sworn proof of loss containing the information we request to settle the claim; and

- (e) Permit us to examine any insured under oath, while not in the presence of any other insured, at such times as may reasonably be required, about any matter relating to this insurance or your claim, including an insured's books and records. An insured's answers to the examination must be signed.

d. The following are added to **Section V – Definitions**:

"Covered recall" means a recall of "your product" made necessary because the insured or a government entity has determined that a known or suspected defect, deficiency, inadequacy or dangerous condition in "your product" has resulted in, or will result in, "bodily injury" or "property damage".

"Product recall expense":

- a. Means the following necessary and reasonable extra expenses incurred by you or on your behalf exclusively for the purpose of recalling "your product":
 - (1) Expenses for communications, including broadcast announcements or printed "advertisements" and associated stationery, envelopes and postage;
 - (2) Expenses for shipping the recalled products from any purchaser, distributor or user to the place or places designated by you;
 - (3) Expenses for overtime paid to your regular non-salaried "employees";
 - (4) Expenses for hiring "temporary workers";
 - (5) Expenses incurred by "employees", including transportation and accommodations;
 - (6) Expenses to rent additional warehouse or storage space; or
 - (7) Expenses for proper disposal of "your product" if the disposal is necessary to avoid "bodily injury" or "property damage" and is other than regularly used to discard, trash or dispose of "your product".
- b. Does not include the following:
 - (1) Damages, fines or penalties;
 - (2) Defense expenses;
 - (3) The cost of regaining your market share, goodwill, revenue or profit; or
 - (4) Any expenses resulting from:
 - (a) Failure of any product to accomplish its intended purpose;
 - (b) Breach of warranties of fitness, quality, durability or performance;
 - (c) Loss of customer approval, or any cost incurred to regain customer approval;
 - (d) Redistribution or replacement of "your product" that was recalled with like products or substitutes;
 - (e) The insured's caprice or whim;
 - (f) A condition any insured knew, or had reason to know, of at the inception of this insurance that was likely to cause loss; or
 - (g) Recall of "your products" that have no known or suspected defect solely because a known or suspected defect in another of "your products" has been found.

7. Supplementary Payments – Cost of Bail Bonds and Loss of Earnings

The following replaces Paragraphs 1.b. and 1.d. of **Supplementary Payments – Coverages A and B** in **Section I – Coverages**:

- b. Up to \$2,500 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.
- 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.

B. Section II – Who is an Insured

1. Broadened Named Insured

Section II – Who Is An Insured is amended to include as a Named Insured any legally incorporated entity in which you maintain ownership of more than 50 percent of the voting stock on the effective date of this endorsement, but only if there is no other similar insurance available to that organization. This insurance does not apply to any organization that is an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

2. Additional Insured – Broad Form Vendor

a. **Section II – Who Is An Insured** is amended to include as an additional insured any person or organization (referred to below as “vendor”) with whom you have agreed in a written contract or agreement to provide insurance, but only with respect to “bodily injury” or “property damage” arising out of “your products” that are distributed or sold in the regular course of the vendor’s business. But none of these vendors are an additional insured:

- (1) If the “products-completed operations hazard” is excluded under the Coverage Part or by endorsement;
- (2) If the vendor is a person or organization from whom you have acquired the products, or any ingredient, part or container entering into, accompanying or containing those products;
- (3) For “bodily injury” or “property damage” for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement unless that the vendor would have otherwise been liable for such “bodily injury” or “property damage” in the absence of that contract or agreement; or
- (4) For “bodily injury” or “property damage” caused by or arising out of:
 - (a) Any express warranty not authorized by you;
 - (b) Any physical or chemical change in the product made intentionally by the vendor;
 - (c) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (d) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - (e) Operations to demonstrate, install, service or repair, except those operations performed at the vendor’s premises in connection with the sale of the product;
 - (f) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - (g) The sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf, unless such act or omission is:
 - (i) In the course of repackaging “your products” in the original container after unpacking solely for the purpose of inspection, demonstration, testing or the substitution of parts under instructions from the manufacturer;
 - (ii) A demonstration, installation, servicing or repair operation of “your products” performed at the vendor’s premises in connection with the sale of the product; or
 - (iii) An inspection, adjustment, test or servicing of “your products” the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

b. The insurance afforded to such vendor under Paragraph a. above:

- (1) Applies only to the extent permitted by law; and
- (2) Will not be broader than that which you are required by the contract or agreement to provide to such vendor.

c. The following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of a vendor that qualifies as an additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less. This provision does not increase the applicable Limits of Insurance shown in the Declarations.

3. Additional Insured – Written Contract, Agreement, Permit or Authorization

a. **Section II – Who Is An Insured** is amended to include as an additional insured any person or organization with whom you have agreed in a written contract, agreement, permit or authorization to provide insurance but only with respect to liability for injury or damage caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf for:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" in the performance of your ongoing operations, and only until your operations are completed, for such person or organization at the location designated in the contract, agreement, permit or authorization;
- (2) "Bodily injury", "property damage" or "personal and advertising injury" in the maintenance, operation or use of equipment leased to you by such person or organization; or
- (3) "Bodily injury", "property damage" or "personal and advertising injury" in connection with premises you own, rent, lease or occupy.

b. The insurance afforded to an additional insured under Paragraph a. above does not apply:

(1) Unless:

- (a) The contract or agreement is executed, or the permit or authorization is issued, before the "bodily injury", "property damage" or "personal and advertising injury" occurs; and
- (b) The contract, agreement, permit or authorization is in effect or becomes effective during the policy period.

(2) To any:

- (a) Person or organization included as an insured under any other provision of this policy, including this or any other endorsement;
- (b) Lessor of equipment after the equipment lease terminates or expires;
- (c) Owner or other interests from whom land has been leased;
- (d) Manager or lessor of premises if:
 - (i) The "occurrence" takes place after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage" or "personal and advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- (e) Person or organization if the "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:
 - (i) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (ii) Supervisory, inspection, architectural or engineering activities.

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", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services; or

- (f) "Bodily injury" or "property damage" occurring after:
 - (i) 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
 - (ii) 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. The insurance afforded to an additional insured under Paragraph a. above:
 - (1) Applies only to the extent permitted by law; and
 - (2) Will not be broader than that which you are required by the contract, agreement, permit or authorization to provide to such additional insured.
 - d. With respect to the insurance afforded to an additional insured under Paragraph a. above:
 - (1) The following is added to Paragraph 4. **Other Insurance of Section IV – Commercial General Liability Conditions:**

Regardless of the provisions of Paragraphs a. and b. above, this insurance is primary to, and will not seek contribution from, any other insurance available to an additional insured if:

 - (1) Such additional insured is a Named Insured under that other insurance; and
 - (2) You have agreed in the contract, agreement, permit or authorization that this insurance would be primary and would not seek contribution from any other insurance available to such additional insured.
 - (2) The following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

 - a. Required by the contract, agreement, permit or authorization; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;whichever is less. This provision does not increase the applicable Limits of Insurance shown in the Declarations.
- 4. Incidental Malpractice by Employed Physicians, Nurses, EMTs and Paramedics**
- a. The following is added to Paragraph 2.a.(1)(d) of Section II – **Who Is An Insured:**

But an "employee" or "volunteer worker" employed or volunteering as a physician, dentist, nurse, emergency medical technician or paramedic is an insured if you are not engaged in the business or occupation of providing professional health care services.
 - b. The following is added to Paragraph b.(1) in Paragraph 4. **Other Insurance of Section IV – Commercial General Liability Conditions:**

This insurance is excess over any of the other valid and collectible insurance available to the insured for coverage for insured "employee" or volunteer worker who is a physician, dentist, nurse, emergency medical technician or paramedic, whether such insurance is primary, excess, contingent or on any other basis.
- 5. User of Covered Watercraft**
- a. **Section II – Who Is An Insured** is amended to include as an additional insured any person or organization who uses, or is responsible for the use of, a watercraft covered by this policy if the use is with your express or implied consent. But no such person or organization is an insured with respect to:
 - a. "Bodily injury" to that person's or organization's "employee"; or
 - b. "Property damage" to property:
 - (1) Owned, occupied or used by; or
 - (2) In the care, custody or control of, rented to or over which physical control is being exercised for any purpose by;that person or organization.

- b. The following is added to Paragraph b.(1) in Paragraph 4. **Other Insurance of Section IV – Commercial General Liability Conditions:**

This insurance is excess over any of the other valid and collectible insurance available to the insured for use of, or responsibility for use of, a watercraft covered by this policy, whether such insurance is primary, excess, contingent or on any other basis.

6. Newly Acquired or Formed Organizations

The following replaces Paragraph 3.a. of **Section II – Who Is An Insured:**

- a. Coverage under this provision is afforded only until the end of the policy period;

C. Section III – Limits of Insurance – Aggregate Limit Per Location

The following is added to Paragraph 2. of **Section III – Limits Of Insurance:**

The General Aggregate Limit applies separately to each "location" of yours. As used in this provision, "location" means premises you own, rent or lease involving the same or connecting lots, or whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

D. Section IV – Commercial General Liability Conditions

1. Duties in the Event of Occurrence, Offense, Claim or Suit

The following is added to Paragraph 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions:**

The requirements that you must notify us of an "occurrence", offense, claim or "suit", or send us documents concerning a claim or "suit", apply only if the "occurrence", offense, claim or "suit" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) An "executive officer" or insurance or risk manager, if you are a corporation; or
- (4) A manager, if you are a limited liability company.

The requirement that you must notify us as soon as practicable of an "occurrence" or an offense that may result in a claim does not apply if you report the "occurrence" or offense to your workers' compensation insurer and that "occurrence" or offense later develops into a liability claim for which coverage is provided by this policy. But as soon as you become aware that an "occurrence" or offense is a liability claim rather than a workers' compensation claim, you must comply with all parts of Paragraph 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions.**

2. Waiver of Subrogation When Required by Written Contract or Agreement

The following is added to Paragraph 8. **Transfer of Rights of Recovery Against Others to Us of Section IV – Commercial General Liability Conditions:**

We will waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" included within the "products-completed operations hazard" if the operations or work is done under a written contract or agreement with that person or organization, but only if the contract or agreement is executed before the "bodily injury" or "property damage" occurs and requires you to waive your rights of recovery.

E. Section V – Definitions

1. Bodily Injury – Includes Mental Anguish

The following is added to Paragraph 3. of **Section V – Definitions:**

"Bodily injury" includes mental anguish resulting from bodily injury, sickness, or disease sustained by a person at any time.

2. Coverage Territory – Worldwide

The following replaces Paragraph 4. of **Section V – Definitions:**

- 4. "Coverage territory" means anywhere other than a country or jurisdiction that is subject to trade or other economic sanction or embargo by the United States of America. But the insured's

responsibility to pay damages must be determined in a settlement we agree to or in a "suit" on the merits brought within the United States of America (including its territories and possessions), Puerto Rico or Canada.

3. Mobile Equipment – Self-Propelled Snow Removal, Road Maintenance and Street Cleaning Equipment Less than 1,000 Pounds Gross Vehicle Weight

The following is added after Paragraph 12.f.(1) of Section V – Definitions:

But a self-propelled vehicle of less than 1,000 pounds gross vehicle weight that is maintained primarily for purposes other than transportation of persons or cargo with permanently attached equipment for snow removal, road maintenance (other than construction or resurfacing) or street cleaning will be considered "mobile equipment" and not an "auto".