

**CITY OF DUBUQUE, IOWA
IMPROVEMENT CONTRACT**

THIS IMPROVEMENT CONTRACT (the Contract), made in triplicate, dated for reference purposes the 17th day of September, 2014, between the City of Dubuque, Iowa, by its City Manager, through authority conferred upon the City Manager by its City Council (City) and Drew Cook and Sons Excavating, Inc. of the City of Dubuque, Iowa.

For and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

CONTRACTOR AGREES:

1. To furnish all material and equipment and to perform all labor necessary for the SRF Green Alley Project, Bid Set 2 – Year 2 (the Project).

The Project shall be made to the established grade and to the grades as shown on the profiles and cross-sections on file in the City Engineer's office for this Project, in strict accordance with the requirements of the laws of the State of Iowa and ordinances of the City of Dubuque relating to public works, and in accordance with the Contract Document shall of which provisions and documents are each and all hereby referred to and made a part of this Contract just as much as if the detail statements thereof were repeated herein.

2. Contract Documents shall mean and include the following: All ordinances and resolutions heretofore adopted by the City Council having to do with the Project; the Notice to Bidders; the Contractor's Proposal; and the Plans, Specifications, and General Requirements as adopted by the City Council for the Project.
3. All materials used by the Contractor in the Project shall be the best of their several kinds and shall be put in place to the satisfaction of the City Manager.
4. The Contractor shall remove any materials rejected by the City Manager as defective or improper, or any of said work condemned as unsuitable or defective, and the same shall be replaced or done anew to the satisfaction of the City Manager at the cost and expense of the Contractor.
5. Five percent (5%) of the Contract price shall be retained by the City for a period of thirty (30) days after final completion and acceptance of the Project by the City Council to pay any claim that may be filed within said time for labor and materials done and furnished in connection with the performance of this Contract and for a longer period if such claims are not adjusted within that time, as provided in Iowa Code Chapter 573. The City shall also retain additional sums to protect itself against any claim that has been filed against it for damages to persons or property arising through the prosecution of the work and such sums shall be held by the City until such claims have been settled, adjudicated or otherwise disposed of.
6. The Contractor has read and understands the specifications including General Requirements and has examined and understands the plans herein referred to and agrees not to plead

misunderstanding or deception because of estimates of quantity, character, location or other conditions surrounding the same.

7. In addition to the guarantee provided for in the specifications, the Contractor shall also make good any other defect in any part of the Project due to improper construction notwithstanding the fact that said Project may have been accepted and fully paid for by the City, and the Contractor's bond shall be security therefore.
8. The Contractor shall fully complete the Project under this Contract on or before: November 29, 2014.
9. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City from and against all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Contract, provided that such claim, damages, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of property (other than the Project itself) including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, the Contractor's subcontractor, or anyone directly or indirectly employed by the Contractor or the Contractor's subcontractor or anyone for whose acts the Contractor or the Contractor's subcontractor may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

THE CITY AGREES:

Upon the completion of the Contract, and the acceptance of the Project by the City Council, the City agrees to pay the Contractor as full compensation for the complete performance of this Contract, the amount determined for the total number of units completed at the unit prices stated in the Contractor's Proposal and less any liquidated damages provided for in the Contract Documents. The number of units stated in the plans and specifications is approximate only and the final payment shall be made by the work covered by the Contract.

CONTRACT AMOUNT \$ 1,006,608.30

FURTHER CONDITIONS

The Contractor hereby represents and guarantees that it has not, nor has any other person for or in its behalf, directly or indirectly, entered into any arrangement or agreement with any other bidder, or with any public officer, whereby it has paid or is to pay any other bidder or public officer any sum of money or anything of value whatever in order to obtain this Contract; and it has not, nor has another person for or in its behalf directly or indirectly, entered into any agreement or arrangement with any other person, firm, corporation or association which tends to or does lessen or destroy free competition in the letting of this Contract and agrees that in case it hereafter be established that such representations or guarantees, or any of them are false, it will forfeit and pay not less than ten percent (10%) of the Contract price but in no event be less than \$500.00 (Five Hundred Dollars) as liquidated damages to the City.

The surety on the bond furnished for this Contract, shall in addition to all other provisions, be obligated to the extent provided for by Iowa Code § 573.6, relating to this Contract, which provisions apply to said bond.

The Contractor agrees, and its bond shall be surety therefore, that it will keep and maintain the Project in good repair for a period of two years after acceptance of the same by the City Council and its bond shall be security therefore.

The Contractor agrees, and its bond shall be surety therefore, that it will keep and maintain the Project in good repair for a period of two years after acceptance of the same by the City Council and its bond shall be security therefore.

The City of Dubuque and the Contractor agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1958 (H) et. seq.) and the Federal Water Pollution Act (33 U.S.C. 1368 et. seq.) as amended, Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15). Contractor shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) and Department of Labor Regulations (29 CFR, Part 5).

CITY OF DUBUQUE, IOWA

By



City Manager

PRINCIPAL

Drew Cook, Sons Excavating
Contractor

By:



Signature

Title

Drew Cook

President

CERTIFICATE OF CITY CLERK

This is to certify that a certified copy of the above Contract has been filed in my office on the 3rd day of October, 2014.



Kevin S. Firnstahl, CMC City Clerk

**CITY OF DUBUQUE, IOWA
PERFORMANCE, PAYMENT AND MAINTENANCE BOND**

KNOWN ALL MEN BY THESE PRESENTS: That Drew Cook & Son's Excavating, Inc. as Principal (Contractor) and IMT Insurance Company as Surety are held firmly bound unto the City of Dubuque, Iowa (City), in the penal sum of \$ 1,006,608.30 the same being 100% of the total price of the Contract for the Project herein referred to, lawful money of the United States of America, well and truly to be paid to said City of Dubuque, and to all other parties who, under the provisions of the laws of Iowa, are intended to be protected and secured hereby for which payment we bind ourselves, our heirs, executors, successors and assigns, jointly and severally by these presents.

Dated at Dubuque, Iowa, this 24th day of September, 2014, and duly attested and sealed.

WHEREAS, the said Contractor by a Contract dated September 16, 2014, incorporated herein by reference, has agreed with said City of Dubuque to perform all labor and furnish all materials required to be performed and furnished for the SRF Green Alley , Bid Set 2 – Year 2 (the Project) according to the Contract and Construction Documents prepared therefore.

It is expressly understood and agreed by the Contractor and Surety bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

1. **PERFORMANCE BOND:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of said Contract and Contract Documents, by reference made a part hereof, for the Project, and shall indemnify and save harmless the City from all outlay and expense incurred by the City by reason of the Contractor's default of failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT BOND:** The Contractor and the Surety shall pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the contract price which the City is required to retain until completion of the improvement, but the Contractor and Surety shall not be liable to said persons, firms, or corporations unless the claims of said claimants

against said portion of the Contract price shall have been established as provided by law. The Contractor and Surety hereby bind themselves to the obligations and conditions set forth in Chapter 573, Code of Iowa, which by this reference is made a part hereof as though fully set out herein.

3. MAINTENANCE BOND: The Contractor and the Surety hereby agree, at their own expense:

- A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of two (2) year(s) from the date of acceptance of the work under the Contract by the City Council of the City of Dubuque, Iowa, by reason of defects in workmanship or materials used in construction of said work;
- B. To keep all work in continuous good repair; and
- C. To pay the City the reasonable costs of monitoring and inspection to assure that any defects are remedied, and to repay the City all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's and Surety's agreement herein made extends to defects in workmanship or materials not discovered or known to the City at the time such work was accepted.

NOW, THEREFORE, the condition of this obligation is such that if the said Contractor shall perform all of the work contemplated by the Contract in a workmanlike manner and in strict compliance with the plans and specifications, and will pay all claims for labor and materials used in connection with said Project, to indemnify the said City for all damages, costs and expense incurred by reason of damages to persons or property arising through the performance of said Contract, and will reimburse the City for any outlay of money which it may be required to make in order to complete said Contract according to the Construction Documents and will maintain in good repair said Project for the period specified in the Contract where this bond is obligated for maintenance, and will faithfully comply with all of the provisions of Section 573 of the Code of Iowa, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

All the conditions of this bond must be fully complied with before the Contractor or the Surety will be released.

The Contract, Contractor's Proposal, and Construction Documents shall be considered as a part of this Bond just as if their terms were repeated herein.

Dated at Dubuque, Iowa this 24th day of September, 2014.

CITY OF DUBUQUE, IOWA

By:



City Manager

PRINCIPAL

Drew Cook, Son's Excavating

Contractor

By:



Signature

President

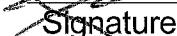
Title

SURETY

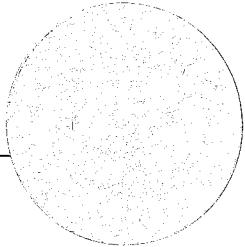
IMT Insurance Company

Surety Company

By:



Signature



Attorney-in-Fact

Title

Dubuque, IA 52001

City, State, Zip Code

563-556-3232

Telephone

John E. Goodmann

Attorney In Fact



POWER OF ATTORNEY

No. 78958

Notice: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

Know All Persons By These Presents, that IMT Insurance Company a corporation duly organized under the laws of the State of Iowa, and having its principal office in the City of West Des Moines, County of Polk, State of Iowa, hath made, constituted and appointed, and does by these presents make, constitute and appoint

John E. Goodman and Barton P. Brown

of Dubuque and State of Iowa its true and lawful Attorney-in-Fact, with full power and authority hereby conferred in its name, place and stead, to sign, execute, acknowledge and deliver in its behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

One Million Five Hundred Thousand and No/100 (\$1,500,000.00) Dollars

and to bind **IMT Insurance Company** thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of **IMT Insurance Company**, and all such acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

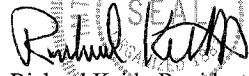
This Power-of-Attorney is made and executed pursuant to and by authority of the following By-Laws adopted by the Board of Directors of **IMT Insurance Company** on December 18, 1998.

ARTICLE VIII, SECTION 4. - The President or any Vice President or Secretary shall have the authority to appoint Attorneys In Fact and to authorize them to execute on behalf of the Company, and attach thereto the Corporate Seal, bonds, undertakings, recognizances, contracts of indemnity or other obligatory writings, excluding insurance policies and endorsements.

ARTICLE VIII, SECTION 5. - The signature of any authorized officer and the Corporate Seal may be affixed by facsimile to any Power of Attorney authorizing the execution and delivery of any of the instruments described in Article VIII, Section 4 of the By-Laws. Such facsimile signature and seal shall have the same force and effect as though manually affixed.

In Witness Whereof, IMT Insurance Company has caused these presents to be signed by its President and its corporate seal to be hereto affixed, this 2nd day of May, 2014.

IMT Insurance Company



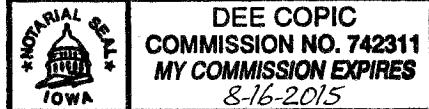
Richard Keith, President

WARNING: THIS POWER IS INVALID IF NOT PRINTED WITH RED BORDER AND RED LOGO.

STATE OF IOWA } ss:
COUNTY OF POLK }

On this 2nd day of May, 2014, before me appeared Richard Keith, to me personally known, who being by me duly sworn did say that he is President of the IMT Insurance Company, the corporation described in the foregoing instrument, and that the Seal affixed to the said instrument is the Corporate Seal of the said Corporation and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of West Des Moines, Iowa, the day and year first above written.



Notary Public, Polk County, Iowa

CERTIFICATE

I, Dalene Holland, Secretary of the IMT Insurance Company do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY, executed by said the IMT Insurance Company, which is still in force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the Company on 24th day of September, 2014.



Dalene Holland, Secretary



CERTIFICATE OF LIABILITY INSURANCE

DRFWG-2

OP ID: KN

DATE (MM/DD/YYYY)

09/24/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFFERS 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 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 Goodmann Insurance Services 2774 University Ave Dubuque, IA 52001 John E Goodmann		CONTACT NAME: John E Goodmann PHONE (A/C, No, Ext): 563-556-3232 FAX (A/C, No): 563-556-2246 E-MAIL ADDRESS:
		INSURER(S) AFFORDING COVERAGE INSURER A : United Fire & Casualty Co*
		NAIC # 13021
INSURED Drew Cook and Sons Excavating Inc 10782 Timber Ridge Dubuque, IA 52001	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

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	X	COMMERCIAL GENERAL LIABILITY				60432947	06/10/2014	06/10/2015	EACH OCCURRENCE	\$ 1,000,000	
A		CLAIMS-MADE	X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	
		Primary &							MED EXP (Any one person)	\$ 5,000	
		Non-contributing							PERSONAL & ADV INJURY	\$ 1,000,000	
		GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$ 2,000,000	
		POLICY X PROJECT	PRO- LOC						PRODUCTS - COMP/OP AGG	\$ 2,000,000	
		OTHER:								\$	
A	X	AUTOMOBILE LIABILITY				60432947	06/10/2014	06/10/2015	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
A	X	ANY AUTO							BODILY INJURY (Per person)	\$	
		ALL OWNED AUTOS							BODILY INJURY (Per accident)	\$	
	X	SCHEDULED AUTOS							PROPERTY DAMAGE (Per accident)	\$	
		Hired AUTOS	X NON-OWNED AUTOS							\$	
A	X	UMBRELLA LIAB	X OCCUR			60432947	06/10/2014	06/10/2015	EACH OCCURRENCE	\$ 3,000,000	
A		EXCESS LIAB							AGGREGATE	\$ 3,000,000	
		DED	RETENTION \$							\$	
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY							X PER STATUTE	OTHE-	
A		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		Y/N	N/A	60432947	06/10/2014	06/10/2015	E.L. EACH ACCIDENT	\$ 100,000	
		If yes, describe under DESCRIPTION OF OPERATIONS below							E.L. DISEASE - EA EMPLOYEE	\$ 100,000	
									E.L. DISEASE - POLICY LIMIT	\$ 500,000	

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

The City of Dubuque, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees and volunteers included as Additional Insured.

Project: SBF Green Alley, Bid Set 2-Year 2

CERTIFICATE HOLDER

CANCELLATION

City of Dubuque
50 W 13th Street
Dubuque, IA 52001

CITYDU1

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

John G. Stach

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IOWA GOVERNMENTAL IMMUNITIES ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
BUSINESS OWNERS COVERAGE FORM

SCHEDULE

Name of Organization:

CITY OF DUBUQUE
50 W 13TH ST
DUBUQUE IA 52001

1. **Nonwaiver of Government Immunity.** The insurance carrier expressly agrees and states that the purchase of this policy and the including of the organization shown in the Schedule as an Additional Insured does not waive any of the defenses of governmental immunity available to the organization shown in the Schedule under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. **Claims Coverage.** The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
3. **Assertion of Government Immunity.** The organization shown in the Schedule shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the organization shown in the Schedule.
4. **Non-Denial of Coverage.** The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the organization shown in the Schedule under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the organization shown in the Schedule.
5. **No Other Change in Policy.** The insurance carrier and the organization shown in the Schedule agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

ENDORSEMENT

60432947

SPEC END
(0000)

THE FOLLOWING IS HOW THE CG7171 ADDITIONAL INSURED FOR THE CITY OF DUBUQUE SHOULD READ:

THE CITY OF DUBUQUE, INCLUDING ALL ITS ELECTED AND APPOINTED OFFICIALS, ALL ITS EMPLOYEES AND VOLUNTEERS, ALL ITS BOARDS, COMMISSIONS AND/OR AUTHORITIES AND THEIR BOARD MEMBERS, EMPLOYEES AND VOLUNTEERS.

All other terms, conditions, limitations and agreements of the policy remain unchanged.

SPEC END
(0000)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Terms and provisions of this endorsement shall supercede any inconsistent language in any other coverage form.

SCHEDULE

Name of Additional Insured Person(s) or Organization(s):
Location And Description of Completed Operations:
Additional Premium:

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

A. 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 your liability for "bodily injury" or "property damage" which may be imputed to that person(s) or organization(s) directly arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and only for that liability included in the "products-completed operations hazard".

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.

C. With respect to the coverage provided under this endorsement, Paragraph **4. SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced with the following language:

4. Other Insurance

a. Primary Insurance

This insurance provided to an additional insured shown in the schedule is primary and non-contributory except when b. below applies.

b. Excess Insurance

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

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk, or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (3) 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
- (4) 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.

**LAND IMPROVEMENT CONTRACTORS ASSOCIATION (LICA) -
ULTRA LIABILITY PLUS ENDORSEMENT**

COMMERCIAL GENERAL LIABILITY EXTENSION ENDORSEMENT SUMMARY OF COVERAGES

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary.

- * Coverage for non-owned watercraft is extended to 51 feet in length
- * Voluntary Property Damage Coverage
 \$10,000 Occurrence with a \$20,000 Aggregate
- * Care, Custody and Control Property Damage Coverage
 \$10,000 Occurrence with a \$20,000 Aggregate - \$500 Deductible
- * Water Damage Legal Liability - \$25,000
- * For newly formed or acquired organizations - extend the reporting requirement to 180 days
- * Automatic Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction Agreement With You
- * Automatic Additional Insured - Vendors
- * Automatic Additional Insured - Lessor of Leased Equipment Automatic Status When Required in Lease Agreement With You
- * Automatic Additional Insured - Managers or Lessor of Premises
- * Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured
- * Additional Insured - Employee Injury to Another Employee
- * Primary Additional Insured
- * Expanded Fire Legal Liability to include Explosion, Lightning and Sprinkler Leakage
- * Automatically included - Aggregate Limits of Insurance (per location)
- * Automatically included - Aggregate Limits of Insurance (per project)
- * Knowledge of occurrence - Knowledge of an "occurrence", "claim or suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee
- * Unintentional failure to disclose all hazards. If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.
- * Liberalization Condition
- * Mobile equipment to include snow removal, road maintenance and street cleaning equipment less than 1,000 lbs GVW
- * Blanket Waiver of Subrogation
- * Property Damage - Borrowed Equipment
- * Property Damage Liability - Elevators
- * Bodily Injury Redefined
- * Extended Property Damage
- * Damage to Media Legal Liability - \$50,000

**REFER TO THE ACTUAL ENDORSEMENT FOLLOWING ON PAGES 2 THROUGH 15 FOR CHANGES AFFECTING
YOUR INSURANCE PROTECTION**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Land Improvement Contractors Association (LICA) - ULTRA LIABILITY PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

The Following changes are made to 2. Exclusions:

Extended Property Damage

Exclusion 2.a., Expected or Intended Injury is replaced with the following:

a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Extended Watercraft Coverage

Exclusion g.(2) is deleted and replaced by the following:

g.(2) A watercraft you do not own that is:

(a) Less than 51 feet long;
(b) Not being used to carry persons or property for a charge;

Property Damage Liability - Borrowed Equipment

The following is added to Exclusion j.:

Paragraph (4) of this exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and while not being used to perform operations. The most we will pay for "property damage" to any one borrowed equipment item under this coverage is \$25,000 per occurrence. The insurance afforded under this provision is excess over any valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

Property Damage Liability - Elevators

The following is added to Exclusion j.:

Under paragraph 2. Exclusions of Coverage A. "Bodily Injury" and "Property Damage" Liability Paragraphs 3, 4 & 6 of this exclusion do not apply to "property damage" resulting from the use of elevators. However, any insurance provided for such "property damage" is excess over any valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

The last paragraph of Item 2. Exclusions is deleted and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, explosion, lightning, smoke resulting from such fire, explosion, or lightning or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of this owner. A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.

THE FOLLOWING COVERAGES ARE ADDED:

Voluntary Property Damage Coverage

The insurance provided under Coverage A (Section I) is amended to include "property damage" to property of others caused by the insured:

- a.** While in your possession; or
- b.** Arising out of "your work".

Coverage applies at the request of the insured, whether or not the insured is legally obligated to pay.

For the purposes of this Voluntary Property Damage Coverage only:

1. Exclusion **j.** Damage to Property under Coverage A (Section I) is deleted and replaced by the following:

j. Damage to Property

"Property damage" to:

- (1)** Property held by the insured for servicing, repair, storage or sale at premises you own, rent, lease, operate or use;
- (2)** Property transported by or damage caused by any "automobile", "watercraft" or "aircraft" you own, hire or lease;
- (3)** Property you own, rent, lease, borrow or use.

Care, Custody and Control Property Damage Coverage

For the purpose of this Care, Custody and Control Property Damage Coverage only:

1. Item **(4)** of Exclusion **j.** of Coverage A (Section I) does not apply.

COVERAGE M. DAMAGE TO MEDIA LEGAL LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of damage to "electronic data" 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 "electronic data" 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 to \$50,000.
- (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 this coverage or any other applicable coverage 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.

- b. This insurance applies to damages to "electronic data" only if:

- (1) The damage to "electronic data" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The damage to "electronic data" 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 damage to "electronic data" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the damage to "electronic data" occurred, then any continuation, change or resumption of such damage to "electronic data" during or after the policy period will be deemed to have been known prior to the policy period.
- c. Damage to "electronic data" 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 damage to "electronic data" after the end of the policy period.
- d. Damage to "electronic data" 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 damage to "electronic data" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the damage to "electronic data"; or
 - (3) Becomes aware by any other means that damage to "electronic data" has occurred or has begun to occur.

2. Exclusions

This insurance does not apply to:

- a. **Expected Or Intended Injury**

Damage to "electronic data" expected or intended from the standpoint of the insured.

- b. **Contractual Liability**

Damage to "electronic data" 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 that the insured would have in the absence of the contract or agreement.

c. Pollution

Damage to "electronic data" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".

d. Aircraft, Auto, Watercraft or Mobile Equipment

Damage to "electronic data" 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.

e. War

Damage to "electronic data" 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.

f. Damage To Property

Damage to "electronic data" that is:

- (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) Property loaned to you;
- (3) Personal property in the care, custody or control of the insured;
- (4) 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
- (5) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

g. Damage To Your Product

Damage to "electronic data" in "your product" or arising out of it or any part of it.

h. Damage To Your Work

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

i. Damage To Impaired Property Or Property Not Physically Injured

Damage to "electronic data" in "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.

j. 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.

k. Personal And Advertising Injury

Damage to "electronic data" arising out of "personal and advertising injury".

COVERAGE W - WATER DAMAGE LEGAL LIABILITY

The Insurance provided under Coverage W (Section I) applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

The Limit under this coverage shall not be in addition to the Damage To Premises Rented To You Limit.

SECTION II - BROAD FORM NAMED INSURED

1. Section II – Who Is An Insured is amended to include as an insured any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period.
2. For the purpose of the coverage provided by this provision only, the following is added to Condition 4.b. Excess Insurance, under Section IV - Commercial General Liability Conditions: This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to an insured solely by reason of ownership by you of more than 50 percent of the voting stock.
3. This provision does not apply to a policy written to apply specifically in excess of this policy.

Item 4.a. is deleted and replaced by the following:

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

The following are added:

5. Additional Insured - Owners, Lessees or Contractors - Automatic Status When Required in Construction or Service Agreement With You

- a. Any person or organization for whom you are performing operations when you 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 your liability which may be imputed to that person or organization directly arising out of your ongoing operations performed for that person or organization. A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

- b. With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

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

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

6. Additional Insured - Vendors

Any person or organization (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products", which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- a. The insurance afforded the vendor does not apply to:

- (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (2) Any express warranty unauthorized by you;
- (3) Any physical or chemical change in the product made intentionally by the vendor;
- (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (5) 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;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(7) 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.

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

7. Additional Insured - Lessor of Leased Equipment - Automatic Status When Required in Lease Agreement With You

a. Any person or organization from whom you lease equipment 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 insured, but only with respect to your liability arising out of the maintenance, operation or use of such leased equipment, which may be imputed to that person or organization as the lessor of equipment. A person's or organization's status as an insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

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

(1) To any "occurrence" which takes place;

(2) To "bodily injury" or "property damage" arising out of the sole negligence of such person or organization.

8. Additional Insured - Managers or Lessors of Premises

Any person or organization, but only with respect to the liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to any:

a. Any "occurrence" which takes place after you cease to be a tenant in that premises.

b. Structural alterations, new construction or demolition operations performed by or on behalf of any person or organization.

9. Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured

Coverage is provided only when the insured is contractually required to add the engineer, architect or surveyor. Coverage is provided with respect to your liability for "bodily injury" or "property damage" or "personal and advertising injury" directly arising out of:

a. Your acts or omissions; or

b. Your acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for that additional insured(s).

10. Additional Insured - Employee Injury to Another Employee

With respect to your "employees" who occupy positions which are supervisory in nature:

Paragraph 2.a.(1) of this section is amended to read:

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

- a. To you, to your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);
- b. For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph (1)(a) above; or
- c. Arising out of his or her providing or failing to provide professional health care services. Paragraph 3.a. is deleted.

For the purpose of this **Item 10** only, a position is deemed to be supervisory in nature if that person performs principal work which is substantially different from that of his or her subordinates and has authority to hire, direct, discipline or discharge.

11. Primary Additional Insured

A. Commercial General Liability Conditions (Section **IV**), paragraph **4.** (Other Insurance) is deleted and replaced by the following:

4. Other Insurance

If valid and collectible "other 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 any of the "other insurance", whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk, or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (3) 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
- (4) 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; or
- (5) That is available to the insured when the insured is an additional insured under any other policy, including any umbrella or excess policy.
- (6) That is provided to any person or organization who qualifies as an additional insured herein, except when you and that person or organization have agreed in writing that this insurance shall be primary.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any provider of "other insurance" has a duty to defend the insured against that "suit". If no provider of "other insurance" defends, we will undertake to do so, but we will be entitled to the insured's rights against all those providers of "other insurance".

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 that "other insurance".

We will share the remaining loss, if any, with any "other insurance" that is not described in this Excess Insurance provision.

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 provider of insurance 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, the share of each provider of insurance is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all providers of insurance.

B. For the purposes of this insurance coverage provided by this **Item 11 only, the following definition is added to **DEFINITIONS** (Section **V**):**

"Other Insurance":

a. Means insurance, or the funding of losses, that is provided by, through or on behalf of:

- (1) Another insurance company;
- (2) Us or any of our affiliated insurance companies, except when the Non-cumulation of Each Occurrence Limit section of Paragraph **5 LIMITS OF INSURANCE** (Section **III**) or the Non-cumulation of Personal and Advertising Injury limits sections of Paragraph **4** of **LIMITS OF INSURANCE** (Section **III**) applies;
- (3) Any risk retention group;
- (4) Any self-insurance method or program, other than any funded by you and over which the Coverage Part applies; or
- (5) Any similar risk transfer or risk management method.

b. Does not include umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the Limits of Insurance shown on the Declarations of this Coverage Part.

SECTION III - LIMITS OF INSURANCE**Items 2, 3, and 6 are deleted and replaced by the following:**

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";
 - c. Damages under Coverage **B**; and
 - d. Damages under Coverage **W**.
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" and Coverage **R**.
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, explosion, lightning, smoke resulting from such fire, explosion, or lightning or sprinkler leakage while rented to you or temporarily occupied by you with permission of the owner.

The following are added:

8. Subject to 5. above, \$25,000 is the most we will pay for Under Coverage **W** for Water Damage Legal Liability.

9. Aggregate Limits of Insurance (Per Location)

The General Aggregate Limit applies separately to each of your "locations" owned by or rented to you or temporarily occupied by you with the permission of the owner.

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

10. Aggregate Limits of Insurance (Per Project)

The General Aggregate Limit applies separately to each of your projects away from premises owned by or rented to you.

11. Subject to 5. above, a \$10,000 "occurrence" limit and a \$20,000 "aggregate" limit is the most we will pay under Coverage **A** for damages because of "property damage" covered under Voluntary Property Damage Coverage.
12. Subject to 5. above, a \$10,000 "occurrence" limit and a \$20,000 "aggregate" limit is the most we will pay under Care, Custody and Control Coverage regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".

Deductible - Our obligation to pay damages on your behalf applies only to the amount of damages in excess of \$500.

This deductible applies 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".

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 has been paid by us.

As respects this coverage "Aggregate" is the maximum amount we will pay for all covered "occurrences" during one policy period.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**Condition 2., Items a. and b. are deleted and replaced by the following:****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. Knowledge of an "occurrence" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" 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. Knowledge of a claim or "suit" by your agent, servant or employee shall not in itself constitute knowledge of the named insured unless an officer of the named insured has received such notice from the agent, servant or employee.

Condition 2.c.(5) is added:

(5) Upon our request, replace or repair the property covered under Voluntary Property Damage Coverage at your actual cost, excluding profit or overhead.

Conditions 10., 11. and 12. are added:**10. Blanket Waiver Of Subrogation**

We 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: premises owned or occupied by or rented or loaned to you, ongoing operations performed by you or on your behalf, done under a contract with that person or organization, "your work", or "your products". We waive this right where you have agreed to do so as part of a written contract, executed by you before the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

11. If a revision to this Coverage Part, which would provide more coverage with no additional premium becomes effective during the policy period in the state designated for the first Named Insured shown in the Declarations, your policy will automatically provide this additional coverage on the effective date of the revision.

12. Based on our reliance on your representations as to existing hazards, if you unintentionally should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

SECTION V - DEFINITIONS

The following is added to Item 12. Mobile Equipment

- e. Vehicles with equipment for snow removal, road maintenance and street cleaning less than 1,000 lbs. GVW.

The following definitions are added for this endorsement only:

3. Bodily Injury Redefined.

Under V-Definitions, definition 3. is deleted and replaced with the following:

- 3. "bodily injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.
- 23. "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, tape drives, cells, data processing devices or any other media which are used with electronically controlled equipment.