

# **RISK TRANSFER**

## *An important part of a Claims Management Program*

**PURPOSE** –To protect yourself from lawsuits due to the negligence from sub-contractors you hire or lease agreements with tenants.

**RESULT** – Maintain a more favorable General Liability claim record to help ensure lower premiums, improve insurance coverage marketability and avoid unwanted cancellations.

**METHOD** – A few examples of how to achieve this loss transfer solution:

1. **Hold Harmless Agreement:** A contract under which your sub-contractor or tenant agrees to assume your liability if you are held liable for their negligent conduct.
2. **Additional Insured Status:** This will usually require the sub-contractor or tenant's insurer to defend and/or indemnify the car wash from any lawsuits arising out of the sub-contractor/tenant's alleged negligent acts. This helps preserve your insurance coverage by transferring the costs to the tenant or sub-contractor's insurance company.

**REQUIRE A CERTIFICATE OF INSURANCE** – This document should be requested by you (the certificate holder) to ensure the following:

- Limits equal to or greater than your own
- Verify solvent insurance companies
- Evidence of Additional Insured status
- Evidence of proper coverage

The documents included are examples of a Hold Harmless agreement from a tenant and/or subcontractor as well as a sample Certificate of Insurance.

Please be advised that the information provided in this packet is intended as a sample only. You should consult your attorney and/or an insurance professional to design the right protection for your particular business.

## **EXAMPLE OF BROAD FORM HOLD HARMLESS CLAUSES**

Tenant will indemnify and hold Landlord harmless from all claims arising from or in connection with (i) the conduct or management of the Premises or of any business therein, or any work or thing whatsoever done, or any condition created in or about the Premises during the Term; (ii) any act, omission or negligence of Tenant or any of Tenant's subtenants or licensees or the partners, directors, officers, agents, employees, invitees or contractors of Tenant or of Tenant's Subtenants or licensees; (iii) any accident, injury or damage whatsoever occurring in or at the Premises. Tenant hereby expressly indemnifies Landlord for the consequences of any negligent act or omission of Landlord, its agents, servants and employees, unless such act or omission constitutes gross negligence or intentional misconduct.

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# Standard Form of Agreement Between Contractor and Subcontractor

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## AGREEMENT

Made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_

**BETWEEN** the Contractor:  
(*Name and Address*)

and the Subcontractor:  
(*Name and Address*)

The contractor and the Subcontractor agree as set forth below.

### **ARTICLE 1.0**

#### **1.0 INDEMNIFICATION**

- 1.0.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner and/or Contractor and employees of either of them from an against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that such claim, damage, loss or expense is attribute able to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work 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 Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph 1.0.
- 1.0.2 In claims against any person or entity indemnified under this Paragraph 1.0, by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 1.0 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 1.0.3 The obligations of the Subcontractor under this Paragraph 1.0 shall not extent to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawing, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by the Architect, the

Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 2.0

INSURANCE AND BONDS

2.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

Comprehensive General Liability	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
Workers' Compensation	Statutory

The owner and/or Contractor are to be listed as an additional insured to the subcontractor's Comprehensive General Liability policy and shown on the Certification of Insurance (Please refer to sample Certificate of Insurance.)

2.2 Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruptions from date of commencement of the Subcontractor's work until date of final payment and termination of any coverage required to be maintained after final payment.

2.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by the Article 2.0 shall contain a provision that coverage's afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required. If an information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

2.4 Waivers of Subrogation. The Contractor and Subcontractor waive all rights against (1) each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors and nay of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Subcontractor

\_\_\_\_\_  
Signature and Title

\_\_\_\_\_  
Signature and Title

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Attest

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID GB  
BENMMI1

DATE (MM/DD/YYYY)  
02/16/05

PRODUCER  
Mang Insurance Agency Oneonta  
297 River St Service Rd Suite1  
Oneonta NY 13820  
Phone: 607-432-4000 Fax: 607-433-1868

INSURED  
Michael A. Benmosche  
56 Clifton Country Road  
Clifton Park NY 12065

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: TEST COMPANY	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

## COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	000G00000	07/20/04	07/20/05	EACH OCCURRENCE	\$
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
						MED EXP (Any one person)	\$
						PERSONAL & ADV INJURY	\$
						GENERAL AGGREGATE	\$
						PRODUCTS - COMP/OP AGG	\$
	X	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
A	X	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	000G0000000	07/02/04	07/02/05	AUTO ONLY - EA ACCIDENT	\$ 1,000,000
						OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
A	X	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	000X0000000	07/20/04	07/20/05	EACH OCCURRENCE	\$ 1,000,000
						AGGREGATE	\$ 1,000,000
							\$
							\$
							\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	000W0000000	07/20/04	07/20/05	WC STATU-TORY LIMITS	
						OTH-ER	
						E.L. EACH ACCIDENT	\$ 500,000
						E.L. DISEASE - EA EMPLOYEE	\$ 500,000
						E.L. DISEASE - POLICY LIMIT	\$ 500,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

THE CERTIFICATE HOLDER IS LISTED AS AN ADDITIONAL INSURED WITH RESPECT TO JOB NUMBER \_\_\_\_\_ OR \_\_\_\_\_ PROJECT.

## CERTIFICATE HOLDER

CARWASHER  
CAR WASH OWNER  
56 CLIFTON COUNTRY ROAD  
CLIFTON PARK NY 12065

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 15 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Bill/Bob/Jeremy