

## **120 Broadway Insurance Requirements**

*Owner retains the right, in its sole discretion, to amend or waive part or all of any specific insurance requirement described in this Insurance Requirements.*

- 1) The following insurance coverages shall form part of this Agreement and shall be maintained by Vendor and its Subvendors of every and any tier (for purposes of this **Insurance Requirements**, the definition of Vendor shall be deemed to include such Subvendors), if any, at their own cost and expense for the duration of this Agreement unless specifically noted.
  - a) Commercial General Liability Insurance written on a current ISO CG 00 01 occurrence based policy form and providing per location / project coverage limits of \$1,000,000 per occurrence, \$2,000,000 products completed operations and \$2,000,000 aggregate for: (i) bodily injury, including coverage for sickness, disease, death and mental anguish, and property damage arising as a result of the performance of the Services, (ii) premises/operations liability; (iii) products/completed operations liability; (iv) personal and advertising injury liability; (v) independent contractors liability; and (vi) broad form contractual liability coverage arising out of the Services performed by you or on your behalf including indemnity for injuries to Subvendor's employees. Prior to the commencement of any work performed by you or on your behalf, such policy of insurance shall (vii) be endorsed to add the entities as in **Indemnitees and Additional Insureds** above ("Additional insureds") as additional insureds on such form as is acceptable to Owner but inclusive of ongoing operations and products-completed operations coverage for additional insureds with coverage as broad as that afforded to Vendor and without any privity of contract requirements or restrictions. Coverage shall include ongoing and completed operations (viii) be endorsed to be primary and non-contributory to any insurance or self-insurance maintained by the Additional Insureds with respect to Vendors and Subvendors Subvendor's operations; (ix) extend completed operations coverage, for at least ten (10) years or the statute of repose, whichever is greater, after substantial completion of the project, the date of issuance of the certificate of occupancy or the date of completion or termination of this Agreement, whichever date is the latest; (x) policy shall not contain any exclusions or restrictions with respect to residential construction or the type of construction contemplated by this agreement; (xi) contractual liability and additional insured coverage shall not include any limitations for injuries to your own employees; (xii) policy shall contain a full waiver of subrogation in favor of Additional Insureds; (xiii) no limitation or exclusion for the Additional Insured's vicarious liability, strict liability, or statutory liability, including, without limitation, liability pursuant to New York's labor laws or other gravity related injuries exclusions or limitations and (xiv) policies with action over exclusions or injury to employees or Subvendor are not allowed; (xv) no wording for Horizontal Exhaustion shall apply, allowing coverage from an umbrella / excess policy to respond as long as the insurance policy(ies) immediately beneath such umbrella / excess policy have been exhausted, regardless of whether other primary insurance may apply, and; (xvi) there shall be no XCU exclusion relating to Explosion, Collapse and Underground Property Damage; (xvii) contain no limitation or exclusion for resulting or consequential property damage; (xviii) not contain a professional liability exclusion broader than ISO form CG 22 79 04 19 (which includes coverage for "means and methods"); (xix) contain no modification of the definition of "Insured Contract" narrower than from CG 24 26 04 13; (xx) contain no limitation or exclusion based on the existence or applicability of Additional Insureds' project specific insurance, if any (xx) contain exceptions to the pollution exclusion thereby confirming coverage is included for hostile fire and building

heating, cooling, and dehumidifying equipment; (xxi) include a full severability of interests for insureds (i.e. no cross-liability or insured v. insured exclusion); (xxii) if applicable to this jobsite, policy must not contain any exclusion for work within 50 feet of a railroad, light rail, subway or similar tracked conveyance and must contain ISO endorsement form CG 24 17 10 01 – Contractual Liability – Railroads, or its equivalent; (xxiii) defense costs must be outside of policy limits; (xxiv) use of an OCP policy in place of Vendor's practice policy is **not** acceptable.

- b) Automobile Liability Insurance, covering the ownership, maintenance, and operations of any automobile or automotive equipment whether such auto is owned, non-owned and hired, with a minimum combined single limit of \$1,000,000 per accident, including coverage for contractual liability and "upset and overturn;" provided, however, that if commercial trucks or tractors are utilized, a minimum limit equal to the greater of \$6,000,000 (inclusive of coverage through Umbrella or Excess Liability Insurance) or as required by the Motor Carrier Act, shall be required. Vendor's insurance shall be endorsed to add the entities listed in 1) above as Additional Insureds on such form as is acceptable to Owner.
- c) Workers' Compensation Insurance covering statutory benefits in all states where operations are to be performed under this agreement as well as the state in which the employee resides. If applicable, coverage shall contain an "Other States Endorsement." Such policy shall include an Employers Liability coverage part with limits that shall be not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee and policy limit for bodily injury by accident. Such coverage shall have a waiver of subrogation in favor of Additional Insureds (including those in **Indemnitees and Additional Insureds**) for statutory limits in accordance with the law of the State of New York as well as the state in which the employee resides and including, but not limited to, coverage or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability benefits, Jones Act and U.S. Longshoremen's and Harbor Worker's Act, if applicable.  
New York State Disability Insurance (as required by Law).
- d)
- e) If Vendor is providing professional services: Professional Liability/Errors and Omissions Insurance coverage, with a limit of at least \$2,000,000 per claim and in the aggregate providing coverage for the services of Vendor under this Agreement and containing no exclusion for contractual liability. Policy can be written on a claims-made form provided coverage is in effect prior to commencement date of any services provided by Vendor and/ or under this agreement and such coverage remains in effect for three (3) years after completion of the Work or through the applicable Statutes of Repose period, whichever is longer.
- f) If Vendor is providing environmental services, including, but not limited to, remediation or environmental consulting, or if Vendor's activities include the use of solvents or other potential pollutants: Pollution/Environmental Liability Insurance, including coverage for costs of clean-up, third party property damage and bodily injury liability coverage, and completed operations coverage, with limits of the greater of \$5,000,000 or the policy limits. Such coverage must be written on an occurrence form and be maintained for three (3) years after completion of the Work; provided, however, that if coverage is not available on an occurrence form, Vendor shall be required to maintain such coverage for a period of not less than three (3) years following completion of the work and a Certificate of Insurance evidencing such coverage shall be

provided annually during such period. The policy shall be endorsed to add the entities listed in Exhibit 2 above as additional insureds on such form as is acceptable to Owner.

- g) Umbrella/Excess Liability Insurance consisting of one or more policies with limits not less than \$5,000,000 per occurrence and in the aggregate unless otherwise agreed to by Owner. Policies shall be excess to the primary commercial general liability, employers liability and business automobile liability coverage and shall be written as follow form or alternatively with a form that provides coverage that is at least as broad as the primary underlying insurance policies and each excess layer shall contain 'duty to defend' coverage terms. The policy shall be specifically endorsed to provide primary and non-contributory coverage with respect to any insurance or self-insurance maintained by the Owner or any additional insured party and shall be endorsed to add the entities listed Exhibit 2 as additional insureds on such form as is acceptable to Owner.
- h) The limits of insurance required in *Sections 1(a), 1(b), 1(d) and 1(g)* hereof may be attained through any combination of Primary Liability and Umbrella/Excess Liability Policies. The limits of insurance stated above are minimum limits. In the event any policy provided by Vendors in compliance with this **Insurance Requirements** provides limits greater than those stated above, the Indemnitees shall be entitled to the full limits of such policy and this **Insurance Requirements** shall be deemed to require such full limits.

2) As respects the insurance provisions outlined in *Section 1* above of this Insurance Requirements, except excluding *Section 1(c)* (Workers' Compensation Insurance) and *Section 1(d)* (Professional Liability/Errors and Omissions Insurance), each of the Indemnitees and any additional parties Owner may from time to time designate shall be included as additional insureds on a primary and noncontributory basis without any privity of contract requirement without liability for payment of premium for all operations performed by Vendor or its Subvendors in connection with this Agreement, including coverage for both premises/operations and products/completed operations, as applicable.

3) Vendor's insurance shall be primary insurance and shall not be considered contributory insurance with any insurance policies of the Indemnitees and, for the purposes of this Agreement, these insurance coverages will apply as if the other insurance available to the Indemnitees that covers such Indemnitees as "named insured" do not exist. Vendor's Umbrella/Excess Liability insurance policy must be endorsed to include an "Excess Liability Policy Priority of Coverage" endorsement and a copy of such endorsement must be provided to Owner along with Vendor's certificate of insurance.

4) All insurance policies shall be procured and maintained by Vendor, at Vendor's expense, and shall be in forms and by insurance carriers authorized to do business in the State of New York with a minimum A.M. Best's rating of "A- VIII" or better or with carriers that are acceptable to Owner, in Owner's sole discretion.

- a) Certificates of Insurance in favor of Owner and including the Indemnitees as additional insureds will be given to Owner as evidence of such continuous insurance coverages as outlined herein (i) prior to the earlier of twenty (20) days after execution of this Agreement and five (5) days prior to the commencement of work hereunder and (ii) annually thereafter within 7 days of any policy renewal thereafter, which certificates shall have attached an additional insured endorsement that shall not have any restrictions requiring privity of contract certificates. Vendor shall furnish copies of all insurance policies required herein as well as Certificates of Insurance ("Certificates") to Owner on Acord 25 or a substitute equivalent form and Acord Form 855 NY for all coverages required herein. These Certificates shall evidence

the following for each and every policy: (i) insurance company name, (ii) policy number, (iii) policy period, (iv) per occurrence (and per location/project where applicable) and aggregate limits, (v) deductibles or self-insured retentions, (vi) confirm coverage is primary and non-contributory as well as provided an affirmative statement that there are no residential exclusions or action over exclusions and (vii) any applicable additional insured or waiver of subrogation endorsements attached. These Certificates shall also expressly provide that the insurance companies issuing the specified policies shall endeavor to mail at least thirty (30) days advance written notice of cancellation or non-renewal to all certificate holders.

- 5) Vendor shall not cancel (or permit any lapse of coverage under) any insurance policy required herein. Vendor shall provide the Indemnitees (regardless of whether they hold the status of additional insureds on the policy) with thirty (30) days' prior written notice of cancellation or nonrenewal of any of the policies required hereunder by written notice to Owner, and shall be required to specifically endorse the policies described in *Section 1* hereof to provide Owner with such written notice on behalf of the Indemnitees.
- 6) Vendor and its insurance carriers shall waive all rights of recovery and subrogation against the Indemnitees on each and every insurance policy required to be maintained herein.
- 7) The insurance provided by Vendor pursuant this **Insurance Requirements** shall not be subject to any deductible or retention in excess of \$100,000. Vendor shall be responsible for payment of all deductibles on behalf of itself and any other insured (including the Indemnitees). The insurance provided by Vendors shall not be subject to any self-insured retention unless approved in writing by Owner, in Owner's sole discretion.
- 8) Owner is not responsible for any loss or damage to Vendor's personal property of every description, including the tools and equipment of Vendor's employees, Subvendors or Subvendor's employees, and Vendor and the insurance carriers of Vendor, Subvendors and their respective employees, waive subrogation and any rights of recovery against the Indemnitees and the contractors enrolled in the Owner Controlled Insurance Program for the Building.
- 9) In the event Vendor or a Subvendor fails to maintain the coverages or limits required hereunder, Owner may obtain such insurance as an agent of Vendor or such Subvendor, as applicable. Any premiums paid by Owner to obtain such coverage shall be payable by Vendor or offset by or against the payments provided or payable to Vendor under this Agreement or any other agreement.
- 10) **Duty of Care.** Nothing contained in this Agreement shall relieve Vendor or its Subvendors of their respective obligations to exercise due care in the performance of their duties in connection with the Services and to complete the Services in strict compliance with this Agreement.
- 11) The limits required by this Agreement are minimum limits only. In the event Vendor has in force any insurance coverage with coverages broader and or limits higher than those coverage amounts and terms specified herein, such broader terms and higher limits shall insure and be available to each Additional Insured, and this Agreement shall be deemed to required such broader terms and higher limits.
- 12) Vendor in all respects and in a timely manner shall assist and cooperate with Owner in connection with reporting and adjustment of all claims under all applicable insurance policy(ies). To the extent allowed by law, Vendor agrees to fully defend and indemnify Owner in the event of any claim made against Owner by one of Vendor's employees, Subvendors, or Subvendors' employees.

- 13) No policy shall contain a contractual liability exclusion that would preclude coverage from applying as per this agreement.
- 14) All insurance policies required to be maintained herein shall include terrorism coverage provided TRIA is reasonably available. Should it not be available, this requirement shall be reassessed.
- 15) Vendor may satisfy the insurance requirements by use of a blanket insurance policy(ies) provided coverage applies on the same basis as if the coverage was written outside of a blanket program and does not affect or lessen coverage available to the premises herein, and otherwise meet the requirements set forth in this agreement.
- 16) All insurance limits and coverages required herein are not intended to limit Vendor's liability under this agreement.
- 17) The Vendor shall take all reasonable precautions to prevent damage to property, visible and concealed, and shall restore the Site to substantially the same condition existing prior to the Vendor's entry. All damage shall be repaired or replaced at the sole cost and expense of the Vendor, and as necessary to bring the property back to the same condition as existed at the commencement of this Agreement.

All repairs or replacement will be completed to the satisfaction of Owner. It is agreed and understood that a representative of Owner will review all damage with Vendor and will document, in writing, the required repairs or replacement, timing, as well as the method of said repairs or replacement and who will perform same.

A dollar amount equal to the estimated cost of repairs or replacement of any items may be held from the final payment until all repairs or replacement have been completed and accepted by Owner.

Vendor shall immediately report unsafe conditions or other problems to the Owner and/or property manager. Unsafe conditions or potential hazardous situations should be eliminated immediately upon discovery, sometimes prior to contacting the Owner and/or property manager.

## **Indemnitees and Additional Insureds**

Silverstein Properties, LLC

Silverstein Properties, Inc.

Larry A. Silverstein (as an individual)

Silverstein 120 Broadway LLC

120 Broadway Associates LLC

120 Broadway Acquisition JV, LLC

120 Broadway SM, LLC

120 Broadway Holdings, LLC

120 Broadway Member LLC

120 Broadway, LLC

120 Broadway Condominium

Wells Fargo Bank, N.A.

And their interests, entities, divisions, or other interests including, but not limited to, joint ventures, partnerships, investments and other interests of the Named Insureds but solely as respects the interests of the Named Insureds; and including automatically the interests of the parent(s), trust(s), affiliated, subsidiary, and associated companies or corporations, owner(s), entity(ies) or individual(s) in the Named Insureds which either have existed, exist now, or may exist in the future, and any joint venture or partnership interests in which the Insureds are participants to the extent the Insured are required to insure such interests.

**The certificate holder information is listed below:**

Silverstein Properties, LLC  
120 Broadway  
New York, New York 10271