

IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT  
DAVIDSON COUNTY, TENNESSEE

**RUDE HAM, LLC, f/k/a Downtown  
Nashville Bar Limited Partnership, d/b/a  
Beer Sellar; and DOWNTOWN  
NASHVILLE BAR GENERAL PARTNER,  
INC., d/b/a Beer Sellar,**

**Plaintiffs,**

v.

**UNITED STATES LIABILITY  
INSURANCE COMPANY,**

**Defendant.**

No. \_\_\_\_\_

**COMPLAINT**

Plaintiffs Rude Ham, LLC, f/k/a Downtown Nashville Bar Limited Partnership, d/b/a Beer Sellar (“Rude Ham”), and Downtown Nashville Bar General Partner, Inc., d/b/a Beer Sellar (“Downtown Bar Inc.,” and collectively with Rude Ham, the “Beer Sellar”), file this Complaint against the Defendant United States Liability Insurance Company (“Defendant”), and would respectfully state and show as follows:

**I.  
PARTIES & JURISDICTION**

1. Rude Ham is a Tennessee limited liability company with its principal place of business located at 107 Church Street, Nashville, Tennessee 37201-1609. Rude Ham was formally known as Downtown Nashville Bar Limited Partnership and converted from a limited partnership effective January 1, 2021.

2. Downtown Bar Inc. is a Tennessee corporation with its principal place of business located at 107 Church Street, Nashville, Tennessee 37201-1609. Downtown Bar Inc. was the general partner of Downtown Nashville Bar Limited Partnership, was the intended party to be

insured under the Policy (as defined herein) as it was the owner and operator of the business at issue for all relevant times prior to the Loss (as defined herein).

3. For all times relevant hereto, Beer Sellar operated a bar, tavern, and/or restaurant located at premises located at 107 Church Street, Nashville, Tennessee 37201 (the “Insured Premises”).

4. The Defendant United States Liability Insurance Company (“Defendant”) is organized under the laws of the Commonwealth of Pennsylvania, and is headquartered in Wayne, Pennsylvania. Defendant is authorized to sell property insurance policies regarding property within the State of Tennessee, and sold Beer Sellar an insurance policy providing coverage for the Insured Premises.

5. This Complaint originates as the result losses suffered by the Beer Sellar from the detonation of a bomb within a recreational vehicle occurring near the Insured Premises on December 25, 2020, and resulting in (and continuing) building and road closures, and Defendant’s wrongful failure and refusal to fully and promptly pay Beer Sellar for the insured losses it sustained.

6. Jurisdiction is proper in this Court pursuant to Tenn. Code Ann. §§ 16-11-101, 16-11-102, *et seq.*

7. Venue is proper under Tenn. Code Ann. § 20-4-104 because a substantial part of the events or omissions giving rise to Beer Sellar’s claim occurred within Davidson County.

## **II.** **FACTS**

### **The Policy**

8. At all times relevant hereto, Beer Sellar was an insured policyholder pursuant to an insurance contract whereby Defendant agreed to insure the commercial building in which Beer Sellar operated its business (again, the Insured Premises) as well as the personal property located

therein against property damage and business losses, among other things, bearing Policy No. H3V-251-967104-40 1 7 (the “Policy”). A true and correct copy of the Policy is attached hereto as

**Exhibit 1.**

9. Defendant issued the Policy to Beer Sellar at its address located in Myrtle Beach, South Carolina. As a result, South Carolina substantive law governs all issues related to interpretation and/or enforcement of the Policy.

10. The Insured Premises consisted of the commercial space in which Beer Sellar operated its business. Beer Sellar did not own the Insured Premises, but was instead a tenant of other businesses unrelated to Beer Sellar.

11. Beer Sellar was a long-standing business that had operated in the Insured Premises for over twenty (20) years, during which time Beer Sellar provided considerable labor, materials, and monies to improve the building in which the business operated.

12. The Policy provided insurance coverage for direct physical loss to the Insured Premises, personal property located on the Insured Premises, lost business income coverage, and such other insurance coverage, as specifically set forth in the Policy. The Policy also provides coverage for acts of terrorism.

13. The Commercial Property Coverage Part Declarations page within the Policy reveals that coverage was provided in the following amounts:

|                                    |                       |
|------------------------------------|-----------------------|
| Terrorism Coverage                 | No limits noted       |
| Business Income with Extra Expense | \$154,000             |
| Business Personal Property         | \$650,000             |
| Outdoor Sign                       | \$7,500               |
| Loss of Use of Insured Location    | Actual Loss Sustained |

14. Notably, among other coverages, within the Building and Personal Property Coverage Form, Form CP 00 10 06 07, the Policy defines “Your Business Personal Property” to include not only “Furniture and fixtures” and “Machinery and equipment”, it also includes Beer Sellar’s “interest as tenant in improvements and betterments . . . made a part of the building of the building or structure [Beer Sellar] occup[ies] but do[es] not own” and those improvements or betterments that Beer Sellar “made at [its] expense but cannot legally remove.” See **Ex. 1**, at page 77 of 137.

15. At all times relevant to this Complaint, Beer Sellar paid its annual premium to Defendant in exchange for insurance coverage as set forth in the Policy.

#### **The Loss & Claim Investigation**

16. On December 25, 2020, at approximately 6:30 a.m. local prevailing time an explosion occurred in downtown Nashville near to the Insured Premises. Upon information and belief, Anthony Quinn Warner, deceased, detonated a vehicle-borne explosive device that caused significant damage to the property, roads, sidewalks, businesses in the area, and other structures in the area, including the Insured Premises.

17. On that date, as a result of the bombing, the Insured Premises suffered immediate and direct physical loss, including damage to exterior components, which led to water intrusion and other damages within the Insured Premises over time, but also immediate sprinkler activation resulting in water intrusion within the bar’s interior space causing damages to machinery, equipment, and personal property found therein. Moreover, the Metropolitan Government of Nashville & Davidson County (“Metro”) has prevented access to the Insured Premises, preventing Beer Sellar from continuing to operate therein and causing continuing business income losses (the “Loss”).

18. Beer Sellar avers that the Loss was an act of terrorism that qualifies for coverage under the Policy's Terrorism Coverage. In the alternative, Beer Sellar avers the Loss constituted a loss covered under the Policy's other remaining coverages.

19. To this day, Metro and Beer Sellar's landlord have not allowed Beer Sellar into the Insured Premises or to re-open its business due to the damage associated with the bombing and the Loss.

20. Due to the fact that Metro and Beer Sellar's landlord have not allowed Beer Sellar access to retrieve its items or to conduct business at the Insured Premises, Beer Sellar has suffered a constructive total loss at the Insured Premises. Also, many of the improvements and betterments that Beer Sellar made to the Insured Premises cannot be removed by Beer Sellar.

21. Beer Sellar promptly reported the Loss to Defendant upon discovery of the damage, no later than December 28, 2020.

22. Defendant assigned the Loss a claim number — K156693.

23. Defendant did not request a sworn proof of loss from Beer Sellar, and Beer Sellar did not provide one to Defendant.

24. Defendant acknowledged that the Loss is a compensable claim and issued the following payments to Beer Sellar or with regard to the Loss:

- |    |   |               |
|----|---|---------------|
| a. | April 19, 2021 – Gary Hammond [Beer Sellar]               | - \$25,000.00 |
| b. | April 20, 2021 – Gary Hammond [Beer Sellar]               | - \$28,906.00 |
| c. | June 10, 2021 – Gary Hammond [Beer Sellar]                | - \$83,405.04 |
| d. | October 1, 2021 – Lewis R. Johnson d/b/a: Ken's Amusement | - \$12,814.95 |
| e. | October 1, 2021 – Ardnos, Inc.                            | - \$24,626.46 |

(collectively "the Payments").

25. Defendant has not issued any additional payments following the Loss other than those noted above. Particularly egregious, Defendant issued no lost business income payments to Beer Sellar after June 2021, even though Beer Sellar has not been able to re-open its business and has been unable to access the Insured Premises.

**The Dispute Concerning the Amount of Loss**

26. Defendant admits that the Loss is covered by the Policy, agrees it owes for such damages under the Policy, and has issued the Payments to Beer Sellar (or on its behalf).

27. Defendant also admits that covered damages to the Insured Premises occurred as a result of the Loss and such damages occurred during the Policy's effective period.

28. As a result, the remaining, relevant dispute is the amount of the Loss.

29. The Payments listed above are insufficient to indemnify Beer Sellar for the Loss.

30. Beginning on August 19, 2022, Beer Sellar reached out to Defendant to inquire about what payments had been made under the Policy, and whether further payments would be made related to the claim related to the Loss.

31. While slow to respond, Defendant eventually advised Beer Sellar of the Payments (including those made to third parties) and offered to consider making additional payments for business income, but at no time did it give notice to Beer Sellar that it was only seeking to delay further payment, so that it could claim, for the first time in March 2023, that Beer Sellar's claim related to the Loss is time-barred.

32. Defendant's actions induced Beer Sellar to believe Defendant was going to pay the claim or otherwise satisfy the claims of Beer Sellar, and Beer Sellar relied on such representations by Defendant.

33. When attempting to confer with Defendant regarding the Payments, after initially indicating that it would consider making additional payments to Beer Sellar related to the Loss, on March 30, 2023, Defendant advised, for the first time and without prior notice, that Beer Sellar's right to seek additional payments under the Policy is time-barred. *See* March 30, 2023, email attached hereto as *Exhibit 2*.

34. Defendant took the position that the Policy barred Beer Sellar from seeking additional payments under the Policy, because the Policy required Beer Sellar to bring a lawsuit "within 2 years after the date on which the direct physical loss or damage occurred" and the Loss occurred on December 25, 2020.

35. Defendant further took the position that email correspondence it sent on or about October 8, 2021 to Beer Sellar supported Defendant's position that Beer Sellar's claims are time-barred. *See* October 8, 2021, email attached hereto as *Exhibit 3*.

36. Since the Policy was issued to Beer Sellar in South Carolina, South Carolina substantive law governs all issues related to the Policy. *Gov't Employees Ins. Co. v. Bloodworth*, 2007 WL 1966022, at \*27 (Tenn. Ct. App. June 29, 2007) (citing *Dunn v. Hackett*, 833 S.W.2d 78 (Tenn. Ct. App. 1992) (holding "[w]ith regard to insurance contracts particularly, Tennessee courts will generally apply the law of the state where an insurance policy was issued."); *Blackwell v. Sky High Sports Nashville Operations, LLC*, 523 S.W.3d 624, 632 (Tenn. Ct. App. 2017). Under S.C. Code Ann. § 15-3-140 the Policy's two-year suit limitation provision is rendered unenforceable and of no effect, and thereby this action is timely filed, because South Carolina has a three-year statute of limitations applicable to breach of contract actions like the one at issue here. *See* S.C. Code Ann. § 15-5-530(8) (applying three-year statute of limitations to "an action on any policy of insurance, either fire or life.")

37. The Insured Premises is believed to be in substantially the same condition it was following the Loss due to Metro's prohibition on persons or entities entering the area.

38. To the extent the Court determines Tennessee substantive law governs interpretation of the Policy, Beer Sellar's cause of action against Defendant has not yet accrued.

39. Beer Sellar avers that the October 8, 2021 email does not constitute a "denial" of Beer Sellar's claims related to the Loss; indeed, the word "denial" appears nowhere therein.

40. But in the event the Court construes such letter as a denial, to the extent Tennessee substantive law is found applicable, the October 8, 2021, email is the earliest date on which Beer Sellar's cause of action could have accrued.

41. Further, to the extent the Court determines Tennessee substantive law governs all or a portion of this dispute, Defendant failed to provide Beer Sellar thirty (30) days' prior notice of the Policy's suit limitation provision prior to the attempted enforcement of same, as required by Tennessee's Unfair Trade Practices Act, Tenn. Code Ann. § 56-18-105. *See also* Tenn. Comp. R. & Regs. § 00780-01-05-.08(5) ("(5) Insurers shall give notice of an applicable statute of limitations to first party claimants at least thirty (30) days before the date on which such statute of limitations may expire.").

42. Beer Sellar has timely filed this action under either South Carolina or Tennessee law.

### **Beer Sellar's Demand & Defendant's Response**

43. By letter and email dated April 5, 2023, counsel for Beer Sellar advised Defendant that neither South Carolina nor Tennessee law supported Defendant's untenable position that Beer Sellar's demand for further payments under the Policy was time-barred, requested Defendant



reconsider its position, and made an initial bad faith demand. *See* April 5, 2023, correspondence attached hereto as **Exhibit 4**.

44. Defendant has not yet made a substantive response to Beer Sellar's April 5, 2023, correspondence.

45. Beer Sellar files this action at this time in the event the Court construes Defendant's March 30, 2023, email as notice that Defendant intends to rely upon the Policy's suit limitation provision and to otherwise preserve Beer Sellar's rights.

46. As of the time of filing the Complaint, Defendant still has not properly paid Beer Sellar's claim related to the Loss.

**The Loss is Compensable under the Policy**

47. The Policy was in full force and effect at the time of the Loss.

48. The Loss is a compensable claim under the terms of the Policy.

49. As it relates to the Loss, there are no applicable exclusions or limitations.

50. Beer Sellar fulfilled all duties imposed upon it by the Policy.

51. Even though Beer Sellar fulfilled all duties imposed upon it by the Policy and are not at fault in this matter, Defendant has wrongfully failed and refused to fully and promptly pay Beer Sellar's full claim for insurance proceeds related to the Policy, including, without limitation, additional losses for loss business income, personal property.

52. Defendant's refusal to pay Beer Sellar the amounts owed under the Policy is without justification and constitutes a breach of contract.

53. As a direct and proximate cause of Defendant's breach of contract, Beer Sellar has and continues to sustain substantial, compensable losses, including, without limitation, all amounts due to Beer Sellar under the Policy.

54. Defendant's alleged reasons for refusing to fully pay Beer Sellar's claim under the Policy are fabricated, wrongful, and done with the intent to injure/harm Beer Sellar.

55. Defendant's failure to pay the money and benefits due and owing Beer Sellar under the Policy, and its unsupported position that Beer Sellar is barred from pursuing this claim, has caused Beer Sellar to initiate this Complaint to recover the insurance proceeds to which they are entitled.

56. In an effort to allow the appraisal process to be completed and avoid potentially unnecessary litigation, Beer Sellar asked Defendant to reconsider its position and the claim to move forward.

57. Defendant refused Beer Sellar's request for reconsideration of its decision to deny the claim as untimely and Beer Sellar's effort to enter into a Tolling Agreement.

58. As a result, Beer Sellar is forced filed this suit to preserve their rights under the Policy and applicable law.

### **III. CAUSES OF ACTION**

#### **Count 1— Breach of Contract**

59. The allegations contained in the paragraphs above in this Complaint are incorporated herein by reference as if set forth verbatim.

60. The Policy issued by Defendant is a binding contract and is supported by valid consideration.

61. Defendant is in total, material breach of the Policy, and Defendant is liable to Beer Sellar related to the Loss. Specifically, Defendant's breach of contract includes, without limitation, the following: (a) Defendant's failure and refusal to pay the amounts owed to Beer Sellar for the

Loss under the coverage afforded by the Policy; and (b) Defendant's failure and refusal to pay such other amounts to Beer Sellar as may be required by the Policy.

62. As further evidence of Defendant's breach of contract, Beer Sellar avers Defendant's position taken in the March 30, 2023 correspondence violates the terms of Tennessee's Unfair Claim Practices Act. Tenn. Code. Ann. § 56-8-105.

63. As a result of Defendant's breach of contract, Beer Sellar has sustained substantial, compensable losses for the amounts claimed under the Policy.

64. Defendant is liable to Beer Sellar for the amounts owed pursuant to the Policy, plus interest and consequential damages.

### **Count 2 — Declaratory Judgment**

65. The allegations contained in the paragraphs above in this Complaint are incorporated herein by reference as if set forth verbatim.

66. An actual controversy exists between Beer Sellar and Defendant, and this Court is vested with the power to declare and adjudicate the rights and legal relationships of Beer Sellar and Defendant with respect to the issues raised herein.

67. Beer Sellar invokes the power of this Court to declare its rights as it relates to Defendant's payment obligations to Beer Sellar as a result of the Loss, as well as the parties' rights and responsibilities pursuant to the Policy.

68. Beer Sellar further invokes the power of this Court to declare the following:

- Declare South Carolina substantive law, including, without limitation, S.C. Code Ann. § 15-3-140, governs all relevant issues regarding interpretation and enforcement of the Policy, and thus, the two-year suit limitation provision in the Policy is unenforceable and the lawsuit is timely filed;
- To the extent the Court determines Tennessee substantive law applies, declare that Beer Sellar's cause of action has not yet accrued, or in the alternative, the cause of action did not accrue until less than two (2) years prior to the filing of the lawsuit;

- To the extent the Court determines Tennessee substantive law applies, declare that Defendant's violation of Tennessee's Unfair Trade Practices Act, Tenn. Code Ann. § 56-18-105, and Tenn. Comp. R. & Regs. § 00780-01-05-.08(5), estops and bars Defendant from relying on the Policy's suit limitations provision, or otherwise means Defendant has waived its ability to rely on same against Beer Sellar;
- To the extent the Court finds the Complaint was filed outside the applicable statute of limitations period, declare the applicable statute of limitations should be tolled pursuant to the doctrines of equitable estoppel and waiver; and
- Declare Defendant has breached the Policy and additional coverages and payments are due to Beer Sellar under the terms of the Policy.

**WHEREFORE**, as a result of the foregoing, Beer Sellar respectfully requests this Honorable Court award a judgment to Beer Sellar, as follows:

- A. For payment of all contractual benefits for all coverages afforded under the Policy for damage caused by the Loss;
- B. For compensatory damages pursuant to the Policy, plus consequential damages, in an amount to be determined by the jury;
- C. For all costs, expenses, and disbursements incurred by Beer Sellar as a result of this action;
- D. For pre- and post-judgment interest at the maximum rate allowed by law;
- E. Allow Beer Sellar leave to amend its Complaint to add additional claims related to statutory bad faith after the expiration of the applicable tolling period(s); and
- F. For such other further and general relief as this Court deems just and equitable.

**JURY DEMAND**

Beer Sellar demands a jury comprised of the maximum number of jurors allowed.

Dated this 28th day of April 2023.

Respectfully submitted,

*/s/ J. Patrick Warfield*

Kenneth M. Bryant (BPR No. 012582)

J. Patrick Warfield (BPR No. 030502)

Burr Forman, LLP

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(615) 724-3230

(615) 724-3330 (facsimile)

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[pwarfield@burr.com](mailto:pwarfield@burr.com)

*Counsel for Plaintiffs*

United States Liability Insurance Company

1190 Devon Park Drive, Wayne, Pennsylvania 19087

A Member Company of United States Liability Insurance Group

NAMED INSURED AND ADDRESS:

DOWNTOWN NASHVILLE BAR GENERAL PARTNER INC.

DBA: BEER SELLAR

3600-C HWY 17 S

MYRTLE BEACH, SC 29572

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus lines coverage pursuant to the Tennessee insurance statutes.

POLICY PERIOD: (MO. DAY YR.) From: 02/19/2020 To: 02/19/2021

12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

FORM OF BUSINESS: Corporation

BUSINESS DESCRIPTION: Bar/Tavern

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

|                                    | PREMIUM     |
|------------------------------------|-------------|
| Commercial Liability Coverage Part | \$8,135.00  |
| Commercial Property Coverage Part  | \$10,770.00 |
| Liquor Liability Coverage Part     | \$12,601.00 |

|                       |                    |
|-----------------------|--------------------|
| Wholesaler Broker Fee | \$125.00           |
| Surplus Lines Tax     | \$1,581.55         |
| Service Fee           | \$55.35            |
| <b>TOTAL:</b>         | <b>\$33,267.90</b> |

"This company has been approved by the director or his designee of the South Carolina Department of Insurance to write business in this state as an eligible surplus lines insurer, but it is not afforded guaranty fund protection."

Coverage Form(s) and Endorsement(s) made a part of this policy at time of issue

See Endorsement EOD (1/95)

Agent: NBS INSURANCE AGENCY, INC. (DBA TRIPLE I INSURANCE AGENCY OF OHIO - CA) (1776) 280 N. High Street, Suite 300 Columbus, OH 43215-2535
Broker: Robert D Alton 1010 W 15th Street Washington, NC 27889

Issued: 01/09/2020 3:18 PM

By: Thomas P. Kinney Authorized Representative

UPD (08-07) THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

**COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS**

Policy No. CP XXXX4145A

Effective Date: 02/19/2020  
12:01 AM STANDARD TIME

**LIMITS OF INSURANCE**

|   |                    |
|---|--------------------|
| Each Occurrence Limit   | <b>\$1,000,000</b> |
| Personal & Advertising Injury Limit (Any One Person/Organization) | <b>\$1,000,000</b> |
| Medical Expense (Any One Person)                                  | <b>\$5,000</b>     |
| Damages To Premises Rented To You (Any One Premises)              | <b>\$100,000</b>   |
| Products/Completed Operations Aggregate Limit                     | <b>\$2,000,000</b> |
| General Aggregate Limit   | <b>\$2,000,000</b> |
| Hired and Non-owned Auto Each Occurrence                          | <b>Included</b>    |
| Hired and Non-owned Auto Aggregate                                | <b>Included</b>    |

**LIABILITY DEDUCTIBLE** **\$0**

**LOCATIONS OF ALL PREMISES YOU OWN, RENT OR OCCUPY**

| <i>Location</i> | <i>Address</i>                         | <i>Territory</i> |
|-----------------|--|------------------|
| 1               | 107 Church Street, Nashville, TN 37201 | 003              |

**PREMIUM COMPUTATION**

| <i>Loc</i> | <i>Classification</i>  | <i>Code No.</i> | <i>Premium Basis</i>        | <i>Rate</i>  |                  | <i>Advance Premium</i> |                  |
|------------|--|-----------------|-----------------------------|--------------|------------------|------------------------|------------------|
|            |  |                 |                             | <i>Pr/Co</i> | <i>All Other</i> | <i>Pr/Co</i>           | <i>All Other</i> |
| 1          | Non-Owned & Hired Automobile Liability   | 90099           | Flat                        | 0.000        | 220.500          | \$0                    | \$220            |
| 1          | Terrorism Coverage   | 08811           | 5.00% of prem.<br>(\$7,748) |              |                  |                        | \$387            |
| 1          | Additional Insured - Managers or Lessors of Premises   | 49950           | 1 Per Additional Insured    | 0.000        | 100.000          | \$0                    | \$100            |
| 1          | Restaurant - with sale of alcoholic beverages that are 75% or more of the total annual food and liquor receipts of the restaurant - with tables and table service, without a dance floor | 16930           | 800,000 Per 1,000 Sales     | 0.724        | 8.499            | \$579                  | \$6,799          |
| 1          | Waiver of Rights of Recovery   | 49956           | 1 Person Or Organization    | 0.000        | 50.000           | \$0                    | \$50             |

**MINIMUM PREMIUM FOR GENERAL LIABILITY COVERAGE PART: \$1,012**

**TOTAL PREMIUM FOR GENERAL LIABILITY COVERAGE PART: \$8,135**

(This Premium may be subject to adjustment.) MP - minimum premium

Coverage Form(s)/Part(s) and Endorsement(s) made a part of this policy at time of issue:

**See Form EOD (01/95)**

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

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# EXTENSION OF DECLARATIONS

Policy No. CP ■■■4145A

Effective Date: 02/19/2020

12:01 AM STANDARD TIME

## FORMS AND ENDORSEMENTS

### The following forms apply to multiple coverage parts

| <i>Endt#</i> | <i>Revised</i> | <i>Description of Endorsements</i>                             |
|--------------|----------------|--|
| 2110         | 04/15          | Service Of Suit  |
| IL0017       | 11/98          | Common Policy Conditions                                       |
| IL0021       | 09/08          | Nuclear Energy Liability Exclusion Endorsement                 |
| IL0935       | 07/02          | Exclusion Of Certain Computer-Related Losses                   |
| Jacket       | 07/19          | Policy Jacket  |
| L 541        | 01/15          | Extension Of Terrorism Coverage                                |
| L-367        | 04/15          | Minimum Earned Premium Endorsement                             |
| L-610        | 11/04          | Expanded Definition Of Bodily Injury                           |
| TRIADN       | 02/15          | Policyholder Disclosure Notice of Terrorism Insurance Coverage |

### The following forms apply to the Commercial Liability coverage part

| <i>Endt#</i> | <i>Revised</i> | <i>Description of Endorsements</i>   |
|--------------|----------------|--|
| CG0001       | 12/07          | Commercial General Liability Coverage Form   |
| CG0068       | 05/09          | Recording And Distribution Of Material Or Information In Violation Of Law Exclusion  |
| CG2011       | 04/13          | Additional Insured - Managers or Lessors of Premises   |
| CG2107       | 05/14          | Exclusion - Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability - Limited Bodily Injury Exception Not Included |
| CG2147       | 12/07          | Employment-Related Practices Exclusion   |
| CG2404       | 05/09          | Waiver Of Transfer Of Rights Of Recovery Against Others To Us  |
| CG2407       | 01/96          | Products/Completed Operations Hazard Redefined   |
| L 816        | 01/18          | Amendment of Conditions - Insurance Under Two or More Coverage Forms   |
| L-428        | 04/15          | Absolute Firearms Exclusion  |
| L-461        | 04/15          | Assault Or Battery Exclusion   |
| L-488        | 02/11          | Non-Owned And/Or Hired Auto Liability  |
| L-526        | 01/15          | Absolute War Or Terrorism Exclusion  |
| L-599        | 04/15          | Absolute Exclusion For Pollution, Organic Pathogen, Silica, Asbestos And Lead With A Hostile Fire Exception  |
| L-606        | 04/15          | Exclusion For Injury To Performers, Entertainers And Participants  |
| L-618C       | 09/09          | Amendment Of Premium Audit Conditions  |
| L-686        | 04/15          | Absolute Exclusion For Liquor And Other Related Liability  |
| L-787        | 05/18          | Infringement of Copyright, Patent, Trademark, Trade Secret or Trade Dress Exclusion Endorsement  |
| LLQ100       | 04/15          | Who Is An Insured Clarification Endorsement  |
| LLQ368       | 04/15          | Separation Of Insureds Clarification Endorsement   |

### The following forms apply to the Commercial Property coverage part

| <i>Endt#</i> | <i>Revised</i> | <i>Description of Endorsements</i> |
|--------------|----------------|------------------------------------|
|--------------|----------------|------------------------------------|



## EXTENSION OF DECLARATIONS

Policy No. CP ■■■4145A

Effective Date: 02/19/2020

12:01 AM STANDARD TIME

### FORMS AND ENDORSEMENTS

|        |       |   |
|--------|-------|---|
| CP 112 | 04/15 | "Equipment Breakdown" Enhancement Endorsement               |
| CP 141 | 04/15 | Actual Cash Value Definition                                |
| CP 142 | 04/14 | Protective Devices Or Services Provisions                   |
| CP 224 | 04/15 | Asbestos Material Exclusion                                 |
| CP 225 | 04/15 | Exclusion - Lead Contamination                              |
| CP 226 | 04/15 | Absolute Pollution Exclusion – Property                     |
| CP 227 | 02/11 | Mold, Fungus, Bacteria, Virus Or Organic Pathogen Exclusion |
| CP 245 | 09/15 | Earth Movement Exclusion                                    |
| CP 249 | 11/17 | Building Tenant Obligations                                 |
| CP0010 | 06/07 | Building And Personal Property Coverage Form                |
| CP0030 | 06/07 | Business Income (And Extra Expense) Coverage Form           |
| CP0090 | 07/88 | Commercial Property Conditions                              |
| CP1030 | 06/07 | Causes Of Loss - Special Form                               |
| CP1032 | 08/08 | Water Exclusion Endorsement                                 |
| CP1033 | 06/95 | Theft Exclusion   |
| CP1440 | 06/07 | Outdoor Signs   |
| P 246  | 01/15 | Exclusion of War, Military Action and Terrorism             |

**The following forms apply to the Liquor Liability coverage part**

| <i>Endt#</i> | <i>Revised</i> | <i>Description of Endorsements</i>                                   |
|--------------|----------------|--|
| CG0033       | 12/07          | Liquor Liability Coverage Form                                       |
| L 590        | 10/16          | Exclusion - New Entities   |
| L 657        | 10/16          | Absolute Pollution Exclusion - Liability                             |
| L 816        | 01/18          | Amendment of Conditions - Insurance Under Two or More Coverage Forms |
| L-224        | 12/17          | Punitive or Exemplary Damages Exclusion                              |
| L-584A       | 03/17          | Policy Conditions Endorsement  |
| L-618C       | 09/09          | Amendment Of Premium Audit Conditions                                |
| LLQ100       | 04/15          | Who Is An Insured Clarification Endorsement                          |
| LLQ368       | 04/15          | Separation Of Insureds Clarification Endorsement                     |
| LQ 354       | 10/16          | Limitation of Coverage to Insured Premises                           |
| LQ-203       | 08/07          | Additional Insured - Liquor License Holder                           |
| LQ-346       | 09/06          | Definition of "Receipts"   |
| LQ-428       | 10/16          | Absolute Firearms Exclusion  |

**COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS**

Policy No. CP ████4145A

Effective Date: 02/19/2020

12:01 AM STANDARD TIME

**DESCRIPTION OF PREMISES**

| Prem | Bldg | Location, Construction, Occupancy and Other Information | Territory                | Fire Code |
|------|------|---|--------------------------|-----------|
| 1    | 1    | 107 Church Street, Nashville, TN 37201                  | 003                      | 0542      |
|      |      | Description: <b>Bar/Tavern</b>                          |                          |           |
|      |      | Covered Causes of Loss: <b>Special Excluding Theft</b>  | Protection Class         | <b>6</b>  |
|      |      | Construction: <b>Joisted Masonry</b>                    | Square Footage:          |           |
|      |      | Special Deductible: <b>None</b>                         | Special Deductible Type: |           |

**COVERAGES PROVIDED** - INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN

| Prem  | Bldg | Coverage                           | Limits of Insurance | Deductible | Coinsurance % or Monthly Indemnity | + Valuation | Premium         |
|---|------|------------------------------------|---------------------|------------|------------------------------------|-------------|-----------------|
| All   |      | Terrorism Coverage                 |                     | \$0        |                                    |             | \$513           |
| 1   | 1    | Business Income with Extra Expense | \$154,000           | \$0        | 80%                                |             | \$1,101         |
| 1   | 1    | Business Personal Property         | \$650,000           | \$1,000    | 80%                                | RC          | \$8,515         |
| 1   | 1    | Equipment Breakdown                | Included            | \$1,000    |                                    |             | \$370           |
| 1   | 1    | Outdoor Sign                       | \$7,500             | \$500      | 100%                               | RC          | \$271           |
| <b>MINIMUM PREMIUM FOR PROPERTY COVERAGE PART:</b>  |      |                                    |                     |            |                                    |             | <b>\$1,508</b>  |
| <b>TOTAL PREMIUM FOR PROPERTY COVERAGE PART:</b>  |      |                                    |                     |            |                                    |             | <b>\$10,770</b> |
| MP - minimum premium  |      |                                    |                     |            |                                    |             |                 |
| + Valuation: ACV - Actual Cash Value; RC - Replacement Cost; RC/ACV - Replacement Cost/ACV Roof<br>FBV - Functional Building Value; AA - Agreed Amount; ALS - Actual Loss Sustained |      |                                    |                     |            |                                    |             |                 |

**LOSS PAYABLE(S): NONE**

Coverage Form(s)/Part(s) and Endorsement(s) made a part of this policy at time of issue:

**See Endorsement EOD (01/95)**

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

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**LIQUOR LIABILITY COVERAGE PART DECLARATIONS**

**Policy No. CP [REDACTED] 4145A**

Effective Date: 02/19/2020  
12:01 AM STANDARD TIME

**LIMITS OF INSURANCE**

|                                |                    |
|--------------------------------|--------------------|
| Liquor Each Common Cause Limit | <b>\$1,000,000</b> |
| Liquor Aggregate Limit         | <b>\$2,000,000</b> |

**LIABILITY DEDUCTIBLE** **\$0**

**LOCATIONS OF ALL PREMISES YOU OWN, RENT OR OCCUPY**

| <i>Location</i> | <i>Address</i>                         | <i>Territory</i> |
|-----------------|--|------------------|
| 1               | 107 Church Street, Nashville, TN 37201 | 003              |

**PREMIUM COMPUTATION**

| <i>Loc</i> | <i>Classification</i>   | <i>Code No.</i> | <i>Premium Basis</i>    | <i>Pr/Co</i> | <i>Rate</i>      |              | <i>Advance Premium</i> |  |
|------------|---|-----------------|-------------------------|--------------|------------------|--------------|------------------------|--|
|            |   |                 |                         |              | <i>All Other</i> | <i>Pr/Co</i> | <i>All Other</i>       |  |
| 1          | Restaurant - with sale of alcoholic beverages that are 50% or more of the total food and alcohol receipts of the restaurant | 00010           | 760,000 Liquor Receipts | N/A          | 1.243            | N/A          | \$9,447                |  |
| 1          | Top Shelf including Assault or Battery at full limits   | 01097           | 760,000 Liquor Receipts | N/A          | 0.415            | N/A          | \$3,154                |  |

**MINIMUM PREMIUM FOR LIQUOR LIABILITY COVERAGE PART: \$996**

**TOTAL PREMIUM FOR LIQUOR LIABILITY COVERAGE PART: \$12,601**

(This Premium may be subject to adjustment.) **MP - minimum premium**

Coverage Form(s)/Part(s) and Endorsement(s) made a part of this policy at time of issue:

**See Form EOD (01/95)**

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

*Case 3:23-cv-00581 Document 1-2 Filed 06/08/23 Page 19 of 161 PageID #: 25*

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# Bar, Tavern or Restaurant Loss Control Passport

This is your Passport to Bar, Tavern or Restaurant loss control for a safer environment for your employees, customers or vendors and your peace of mind.

United States Liability Insurance Group and your agent are committed to assist you in managing your business loss exposures. The following checklist will help identify areas that may need improvement and distinguish your business from your competitors.

**Talk to your agent today if you have questions about what you find.**

## Vehicles

- Are Motor Vehicle Reports (MVR) obtained for all drivers and checked every year (Fair Credit Reporting Act requires written consent to order MVR)
- Are prearranged Taxi's called if an intoxicated customer needs a ride home. Are signs posted for patrons to know who to call
- Are certificates of insurance (COI) obtained from all employees that could use their own auto on company business with adequate limits
- Is a maintenance log kept on all owned vehicles
- Are quarterly driver safety meetings held with all drivers
- Have proper loading and unloading techniques been taught and stressed
- If Valet Parking is offered, are keys kept at a locked attendant's booth and does the booth have an attendant present during all hours of operation.

## Parking Lot and Sidewalks

- Is adequate lighting provided for all parking and sidewalks
- Parking lot free of potholes, debris and any slip and fall hazard
- Sidewalks level and free of hazards
- Snow and ice removal completed promptly and kept clean
- When sidewalk basement access is used are employee on the sidewalk when opened and hazard signs posted when in use
- Do steps have sturdy handrails on both sides of steps that are easily gripped and of the correct height
- Are all steps of standard height and width
- Is there a snow removal contract/with certificates of insurance
- Are parking lot wheel stops in good condition and handicapped marked spaces available

## Liquor Service

- Are signs posted that patrons must be 21 years old to purchase alcohol
- Is identification checked for all customers of questionable age
- Is training provided on age verification procedures
- Procedures established for not selling to intoxicated persons or habitually intoxicated persons
- Formal procedure established for dealing with intoxicated persons
- How are obviously intoxicated persons encouraged not to drive
- Is complimentary, low sugar, foods offered to obviously intoxicated persons
- Establish and promote a "designated driver" program – example: free sodas
- Are taxicab companies called where available for intoxicated customers
- Have all servers/managers passed a Training for Intervention Procedures by Servers of Alcohol (TIPS) course and take periodic refresher courses

## Dinning Room/Bar

- Do you strictly adhere to established maximum capacity limits and are required signs posted
- Are background checks made and training provided for bouncers or security guards
- Are there mats in place at entrance doors
- Is there a designated person to check patrons I.D.'s when required
- Is an evacuation procedure posted
- Choke Saving Chart posted
- Are walkways sufficiently wide to accommodate traffic
- Are "Wet Floor" signs available and used
- Is there emergency backup lighting
- Is there an adequate number of illuminated exit signs
- Do all doors open out and are unlocked/unblocked to allow easy exit
- Are sonic/alarm panic bars installed on exit doors to the exterior.
- Is all flooring in good condition and interior steps properly lighted.
- Surge protection on all electronic equipment
- Is extension cord use minimized and taped down to prevent trips and falls
- Is all electrical wiring connected to functioning circuit breakers
- Candle use is discouraged, flowers or other center pieces are a better alternative, but if used double check that all are extinguished nightly
- Is furniture properly assembled, cleaned and maintained
- Glasses should not be stored over or placed directly in ice
- Are smoking material discarded in water or separate metal bin. (Not in trash)
- Are No Smoking signs posted when and where required
- Central Station heat or smoke detection on premises
- Are drinks prohibited from dance floor
- All entertainment/amusement devices in good condition
- Have you ever been cited for violations by the Board of Health
- Is there a written Accident investigation program in place





## Important Communication to Policyholders

Thank you for your purchase of an insurance policy from USLI; we appreciate your business!  
We want to inform and help prepare you for your eventual premium audit.

The premium quoted was calculated based on information provided by you in your application for insurance. The premium quoted may be adjusted based on an audit of your books and records during and/or at the conclusion of the policy period to determine actual receipts, payroll and other factors used to calculate earned premium. Please review the forms and endorsements attached to this policy for additional information.

### TYPES OF AUDITS WE MAY PERFORM:

1. **Pre-audit** – conducted at the beginning of the policy period, based on your previous policy term
2. **Mid-term audit** – conducted after your policy has been in force for six months
3. **Term audit** – conducted at the end of your policy period
4. **Cancellation audit** – conducted in the event your policy is cancelled

Our audit representative will contact you to schedule a mutually convenient appointment with you or your representative to complete any requested audit.

**Please contact your professional insurance agent or broker if you have any questions about the types or timing of possible audits.**

## **Service Of Suit**

Pursuant to any statute of any state, territory or district of the United States which makes provisions therefore, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the Statute, or his successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured(s) or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the below named as the person to whom the said officer is authorized to mail process or a true copy thereof.

It is further agreed that service of process in such suit may be made upon the General Counsel of the Company, or his nominee, at 1190 Devon Park Drive, Wayne, Pennsylvania 19087 and that in any suit instituted against any one of them upon this policy, the Company will abide by the final decision of such Court or any Appellate Court in the event of an appeal.

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT**

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:
  - A. Under any Liability Coverage, to "bodily injury" or "property damage":
    - (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
    - (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.
  - C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:
    - (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
    - (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
    - (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.
2. As used in this endorsement:
 

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a)** Any "nuclear reactor";
- (b)** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

**(c)** Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

**(d)** Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES**

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
STANDARD PROPERTY POLICY

- A.** We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.
- 1.** The failure, malfunction or inadequacy of:
    - a.** Any of the following, whether belonging to any insured or to others:
      - (1)** Computer hardware, including micro-processors;
      - (2)** Computer application software;
      - (3)** Computer operating systems and related software;
      - (4)** Computer networks;
      - (5)** Microprocessors (computer chips) not part of any computer system; or
      - (6)** Any other computerized or electronic equipment or components; or
    - b.** Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph **A.1.a.** of this endorsement;
 

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.
  - 2.** Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph **A.1.** of this endorsement.
- B.** If an excluded Cause of Loss as described in Paragraph **A.** of this endorsement results:
- 1.** In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or
  - 2.** Under the Commercial Property Coverage Part:
    - a.** In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss – Special Form; or
    - b.** In a Covered Cause of Loss under the Causes Of Loss – Basic Form or the Causes Of Loss – Broad Form;
 

we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.
- C.** We will not pay for repair, replacement or modification of any items in Paragraphs **A.1.a.** and **A.1.b.** of this endorsement to correct any deficiencies or change any features.

# INSURANCE

# POLICY

## UNITED STATES LIABILITY INSURANCE GROUP

A STOCK COMPANY

A BERKSHIRE HATHAWAY COMPANY

1190 Devon Park Drive  
Wayne, PA 19087-2191  
888-523-5545 – [USLI.COM](http://USLI.COM)

This policy jacket together with the policy declarations, coverage forms and endorsements, if any, complete this policy.

The enclosed declarations designates the issuing company.

# INSURANCE POLICY

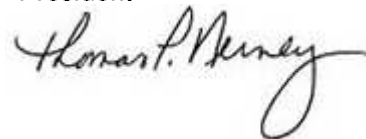
Read your policy carefully!

**In Witness Whereof**, the company has caused this Policy to be executed and attested. Where required by law, this Policy shall not be valid unless countersigned by a duly authorized representative of the company.

Secretary



President



**This endorsement modifies the following:**

BP 101 Exclusion of Certified Acts of Terrorism (Coverage for Certain Fire Losses); BP 102 Exclusion of War, Military Action and Terrorism; BP 103 Exclusion of War, Military Action and Terrorism (Coverage for Certain Fire Losses); BP 104 Exclusion of Certified Acts of Terrorism; CG2173 Exclusion of Certified Acts of Terrorism ; L 526 Absolute War or Terrorism Exclusion; P 246 Exclusion of War, Military Action and Terrorism ; P 247 Exclusion of Certified Acts of Terrorism; P 248 Exclusion of Certified Acts of Terrorism (Coverage for Certain Fire Losses); P 249 Exclusion of War, Military Action and Terrorism (Coverage for Certain Fire Losses)

**Extension Of Terrorism Coverage**

For the additional premium specified in this Policy, it is hereby agreed that the Exclusion referenced above and attached to this Policy is amended as follows:

The referenced Exclusion shall not apply to loss or damage caused directly or indirectly by “certified acts of terrorism” under the provisions of the federal Terrorism Risk Insurance Program Reauthorization Act of 2015 ("The Act") and any amendments thereto. The referenced Exclusion also does not apply when “certified acts of terrorism” as defined in The Act result in insured losses of \$5 million or less in the aggregate. This Extension of Terrorism Coverage extends coverage under this Policy only to “insured losses” (as defined in The Act) and is subject to the application of any clause in The Act which results in a cap on liability for payments for terrorism losses.

This Extension does not provide coverage for damages arising, directly or indirectly, out of “certified acts of terrorism” as defined in The Act that are awarded as punitive damages.

The terms and conditions of the referenced Exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this policy, including but not limited to losses excluded by one or more of the above referenced exclusions.

Coverage provided by this Policy for losses caused by “certified acts of terrorism” is partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays the Federal Share percentage shown in the table below by calendar year for covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. Under The Act, the maximum amount that insurers and the federal government are required to pay in respect of terrorism loss(es) in any given calendar year is \$100 billion. The premium charged for this coverage does not include any charges for the portion of loss covered by the federal government under The Act.

| <b>Year</b> | <b>Federal Share</b> |
|-------------|----------------------|
| <b>2015</b> | 85%                  |
| <b>2016</b> | 84%                  |
| <b>2017</b> | 83%                  |
| <b>2018</b> | 82%                  |
| <b>2019</b> | 81%                  |
| <b>2020</b> | 80%                  |

The federal government may participate in paying for some of the losses from a "certified act of terrorism". However, if aggregate insured losses attributable to terrorist acts certified under The Act exceed \$100 billion in a calendar year, the federal government shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion. Further, this coverage is subject to a limit on our liability pursuant to the federal law, that is, if aggregate insured losses attributable to terrorist acts

certified under The Act exceed \$100 billion in a calendar year and we have met our insurer deductible under The Act, we shall not be liable for the payment of any portion of the amount of such losses that exceed \$100 billion. In such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
COMMERCIAL UMBRELLA POLICY  
EXCESS LIABILITY POLICY**

### **MINIMUM EARNED PREMIUM ENDORSEMENT**

In the event of cancellation of this policy by the insured, a Minimum Earned Premium of twenty-five percent (25%) of the total premium shall become earned.

Failure to make timely payments will be considered a request by you for us to cancel your policy. In the event of such cancellation for non-payment of premium, the greater of the Pro-rata or Short-Rate premium (whichever is applicable) and the Minimum Earned Premium shall be retained as consideration for the coverage provided.

In the event of cancellation by us, the Earned Premium shall be computed on a Pro-Rata basis, and will not be subject to the Minimum Earned Premium.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.



**UNITED STATES LIABILITY INSURANCE GROUP  
WAYNE, PENNSYLVANIA**

This Endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
BUSINESSOWNERS COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM**

**EXPANDED DEFINITION OF BODILY INJURY**

The Definition of "bodily injury" is removed in its entirety and replaced with the following:

1. "Bodily injury" means:
  - a. bodily injury,
  - b. sickness,
  - c. disease; or
  - d. mental anguish or emotional distress arising out of a., b., or c., above,

sustained by a person, including death resulting from any of these at any time.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

## POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

You are hereby notified that under the Terrorism Risk Insurance Act ("the Act"), as amended you have a right to purchase insurance coverage for losses arising out of acts of terrorism. *As defined in Section 102(1) of the Act* : The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

You should know that any coverage for losses caused by certified acts of terrorism is partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The premium charged for this coverage is provided below and does not include any charges for the portion of loss covered by the federal government under the Act.

Coverage for "insured losses", as defined in the Act, is subject to the coverage terms, conditions, amounts and limits in this policy applicable to losses arising from events other than acts of terrorism.

You should know that the Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement, as well as insurers' liability, for losses resulting from certified acts of terrorism, when the amount of such losses in any one calendar year exceeds \$100 billion. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

You should also know that, under federal law, you are not required to purchase coverage for losses caused by certified acts of terrorism.

### REJECTION OR SELECTION OF TERRORISM INSURANCE COVERAGE

Please "X" one of the boxes below and return this notice to the Company.

|          |   |
|----------|---|
|          | <b>I decline to purchase Terrorism Coverage. I understand that I will have no coverage for losses arising from acts of Terrorism.</b> |
| <b>X</b> | <b>I elect to purchase coverage for certified acts of Terrorism for a premium of \$<u>900</u></b>                                     |

**Note: if you do not respond to our offer and do not return this notice to the Company, you will have no Terrorism Coverage under this policy.**

|                                    |   |
|------------------------------------|---|
| On File with the Company           | DOWNTOWN NASHVILLE BAR GENERAL PARTNER INC. |
| Applicant Name (Print)             | DBA: BEER SELLAR                            |
| Signature on File with the Company | Named Insured                               |
| Authorized Signature               | On File with the Company                    |
|                                    | Date  |

**TRIADN (02-15)**

## Commercial General Liability Coverage Form

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – COVERAGES

#### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.
- No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.
- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

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

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

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

### c. Liquor Liability

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

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

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

### d. Workers' Compensation And Similar Laws

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

### e. Employer's Liability

"Bodily injury" to:

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

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

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

**f. Pollution**

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

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

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

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

**g. Aircraft, Auto Or Watercraft**

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

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

This exclusion does not apply to:

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

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) the operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;





- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage To Your Product**

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

**l. Damage To Your Work**

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

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

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

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

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

**q. Distribution Of Material In Violation Of Statutes**

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

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

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

## **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

### **1. Insuring Agreement**

**a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

**b.** This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

### **2. Exclusions**

This insurance does not apply to:

#### **a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

#### **b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

#### **c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

#### **d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

#### **e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

#### **f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

#### **g. Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

#### **h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

#### **i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

#### **j. Insureds In Media And Internet Type Businesses**

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

(1) Advertising, broadcasting, publishing or telecasting;

(2) Designing or determining content of websites for others; or



- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-Related**

Any loss, cost or expense arising out of any:

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

**o. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**p. Distribution Of Material In Violation Of Statutes**

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

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

**COVERAGE C MEDICAL PAYMENTS**

**1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
- provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.



## 2. Exclusions

We will not pay expenses for "bodily injury":

### a. Any Insured

To any insured, except "volunteer workers".

### b. Hired Person

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

### c. Injury On Normally Occupied Premises

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

### d. Workers Compensation And Similar Laws

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

### e. Athletics Activities

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

### f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

### g. Coverage A Exclusions

Excluded under Coverage A.

## SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

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

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
  - (1) Agrees in writing to:
    - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - (c) Notify any other insurer whose coverage is available to the indemnitee; and
    - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (2) Provides us with written authorization to:
    - (a) Obtain records and other information related to the "suit"; and

- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

## **SECTION II – WHO IS AN INSURED**

### **1. If you are designated in the Declarations as:**

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

### **2. Each of the following is also an insured:**

- a.** Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

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

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

#### **(2) "Property damage" to property:**

- (a)** Owned, occupied or used by,
- (b)** Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

**SECTION III – LIMITS OF INSURANCE**

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
- 2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage **C**;
  - b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage **B**.

- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to Paragraph **2.** above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to Paragraph **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage **A**; and
  - b. Medical expenses under Coverage **C**
 because of all "bodily injury" and "property damage" arising out of any one "occurrence".
- 6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
- 7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

**1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

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

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and



(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

#### b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) 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

(iv) 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.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

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



(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

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

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

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

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

c. We have issued this policy in reliance upon your representations.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
- 2. "Auto" means:
  - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
  - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".



3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
  - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
  - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
  - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

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

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

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

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

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

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

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

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

**10.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

**11.** "Loading or unloading" means the handling of property:

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

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

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

- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b.** Vehicles maintained for use solely on or next to premises you own or rent;
- c.** Vehicles that travel on crawler treads;
- d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1)** Power cranes, shovels, loaders, diggers or drills; or
  - (2)** Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2)** Cherry pickers and similar devices used to raise or lower workers;
- f.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

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

**(1)** Equipment designed primarily for:

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

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

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

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

**13.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

**14.** "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a.** False arrest, detention or imprisonment;
- b.** Malicious prosecution;
- c.** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d.** Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e.** Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f.** The use of another's advertising idea in your "advertisement"; or
- g.** Infringing upon another's copyright, trade dress or slogan in your "advertisement".



15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

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

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

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

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

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

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

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

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a) You;
  - (b) Others trading under your name; or
  - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

**22. "Your work":**

**a. Means:**

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

**b. Includes:**

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

(2) The providing of or failure to provide warnings or instructions.

## RECORDING AND DISTRIBUTION OF MATERIAL OR INFORMATION IN VIOLATION OF LAW EXCLUSION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion **q.** of Paragraph **2. Exclusions** of Section **I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

#### **2. Exclusions**

This insurance does not apply to:

##### **q. Recording And Distribution Of Material Or Information In Violation Of Law**

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

- (1)** The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2)** The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3)** The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4)** Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

B. Exclusion **p.** of Paragraph **2. Exclusions** of Section **I – Coverage B – Personal And Advertising Injury Liability** is replaced by the following:

#### **2. Exclusions**

This insurance does not apply to:

##### **p. Recording And Distribution Of Material Or Information In Violation Of Law**

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

- (1)** The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2)** The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3)** The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4)** Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Name of Person(s) Or Organization(s) (Additional Insured):**

Effective Date: 02/19/2020  
DW RESTAURANT HOLDER LLC  
1815 THE EXCHANGE  
ATLANTA, GA 30339

#### **Designation of Premises (Part Leased To You):**

107 CHURCH STREET  
NASHVILLE, TN 37201

#### **Additional Premium: \$**

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**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 liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person (s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## Exclusion – Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability – Limited Bodily Injury Exception Not Included

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion 2.p. of **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

#### 2. Exclusions

This insurance does not apply to:

p. **Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

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

B. The following is added to Paragraph 2. **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

#### 2. Exclusions

This insurance does not apply to:

**Access Or Disclosure Of Confidential Or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EMPLOYMENT-RELATED PRACTICES EXCLUSION**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

This insurance does not apply to:

"Bodily injury" to:

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

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

This insurance does not apply to:

"Personal and advertising injury" to:

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

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

# WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

## SCHEDULE

### Name of Person Or Organization:

Effective Date: 02/19/2020  
DW RESTAURANT HOLDER LLC  
1815 THE EXCHANGE  
ATLANTA, GA 30339

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights of Recovery Against Others To Us** of **Section IV - Conditions**:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

# **PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

## **SCHEDULE**

### **Description of Premises and Operations:**

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

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

1. On, from or in connection with the use of any premises described in the Schedule, or
2. In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf,

Paragraph **a.** of the definition of "Products-completed operations hazard" in the DEFINITIONS Section is replaced by the following:

"Products-completed operations hazard":

- a.** Includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.



This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM**

**AMENDMENT OF CONDITIONS – INSURANCE UNDER TWO OR MORE  
COVERAGE FORMS**

It is agreed:

The Other Insurance conditions of the applicable coverage forms are changed to include the following:

**Insurance Under Two or More Coverages**

This insurance does not apply to, and will not defend or pay for any loss for which coverage is available to you under other insurance provided by us. The foregoing shall apply even if the aggregate limit of liability under such other insurance has been exhausted.

Nor shall this insurance be excess over other insurance provided by us, whether such other insurance is primary, excess, contributory, contingent or otherwise and whether such other insurance is collected or not.

This condition does not apply to any excess or umbrella insurance issued by us or an affiliate.

All other terms are the same. This endorsement is a part of the Named Insured's policy. It takes effect on the effective date of the Named Insured's policy unless there is another effective date that is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
COMMERCIAL UMBRELLA POLICY  
EXCESS LIABILITY POLICY**

**Absolute Firearms Exclusion**

The policy does not insure against loss or expense, including cost of defense, for any “occurrence”, claim or “suit” for “bodily injury”, “property damage”, “personal and advertising injury” or medical payments arising or resulting from directly, or indirectly, the use of firearms of any kind.

This exclusion applies to any “occurrence”, claim or “suit” regardless of whether the use of firearms is a direct cause, a contributing cause or a concurrent cause of any loss.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
COMMERCIAL UMBRELLA POLICY  
EXCESS LIABILITY POLICY**

**Assault Or Battery Exclusion**

This insurance does not apply to:

Any claim, demand or "suit" based upon any actual or alleged "assault" or "battery", or out of any act or omission in connection with the prevention or suppression of any "assault" or "battery", including the use of reasonable force to protect persons or property, whether caused by or at the instigation or direction of an insured, its "employees", agents, officers or directors, patrons or any other person. Further, no coverage is provided for any claim, demand or "suit" in which the underlying operative facts constitute "assault" or "battery".

This exclusion applies to all "bodily injury", "property damage" or "personal and advertising injury" sustained by any person, including emotional distress and mental anguish, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving "assault" or "battery" whether alleged, threatened or actual including but not limited to "assault" or "battery" arising out of or caused in whole or in part by negligence or other wrongdoing with respect to:

- a. hiring, placement, employment, training, supervision or retention of a person for whom any insured is or ever was legally responsible; or
- b. investigation or reporting any "assault" or "battery" to the proper authorities; or
- c. the failure to so report or the failure to protect any person while that person was in the care, custody or control of the insured, its "employees", agents, officers or directors; or
- d. any acts or omissions of any insured, its "employees", agents, officers, directors, patrons or other persons resulting from any "assault" or "battery" and occurring subsequent in time thereto which caused or are alleged to have caused, directly or indirectly, any "bodily injury", "property damage", or "personal and advertising injury" to any person.

This exclusion supersedes any provision in the attached policy that provides coverage for "bodily injury" arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the use of reasonable force to protect person(s) or property.

"Assault" means the threat of, or use of force on another that causes that person to have apprehension of imminent harmful or offensive conduct, whether or not the threat or use of force is alleged to be negligent, intentional or criminal in nature.

"Battery" means negligent or intentional physical contact with another without consent that results in physical or emotional injury.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

**UNITED STATES LIABILITY INSURANCE GROUP  
WAYNE, PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**NON-OWNED AND/OR HIRED AUTO LIABILITY**

**If shown in the Declarations or Supplemental Declarations page, coverage for Non-Owned and/or Hired Auto Liability is provided subject to the following:**

**NON-OWNED AND/OR HIRED AUTO LIABILITY**

Under this endorsement, the insurance provided under **SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** applies to “bodily injury” or “property damage” arising out of:

1. The use of a “non-owned auto” in the course of your business by any person other than you; and/or
2. The maintenance or use of a “hired auto” in the course of your business by you or your “employees” assumed in a contract or agreement that is an "insured contract" provided the "Bodily Injury" or "Property Damage" occurs subsequent to the execution of the contract or agreement.

**EXCLUSIONS**

With respect to the insurance provided by this endorsement:

**SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, b., c., g., h., j., k., l., m. and n.** do not apply to this Coverage.

**SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions,** is amended by the addition of the following:

This insurance does not apply to:

- (1) “Property damage” to:
  - (a) Property owned or being transported by, or rented or loaned to the insured; or
  - (b) Property in the care, custody or control of the insured.
- (2) “Bodily injury” or “property damage” arising out of any delivery of goods or products, whether or not a charge is made for such delivery.
- (3) Any claims made or “suits” brought for Uninsured Motorists or Underinsured Motorists coverage, Personal Injury Protection, Property Protection or similar no-fault coverage by whatever name called.

**SECTION II – WHO IS AN INSURED, 1., 2., and 3.** are removed and replaced by the following for the purposes of this endorsement only:

Each of the following is an insured under this insurance to the extent set forth below:

1. You;
2. With respect to a “non-owned auto”, any partner or “executive officer” of yours, but only while such “non-owned auto” is being used in the course of your business;
3. Any other person using a “hired auto” with your permission; and
4. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under paragraphs 1., 2. or 3. above

None of the following is an insured:

- a. Any person engaged in the business of his or her employer with respect to “bodily injury” to any co-“employee” of such person injured in the course of employment, or to the spouse, child, parent, brother or sister of that co-“employee” as a consequence of such “bodily injury”, or for any obligation to share damages with or repay someone else who must pay damages because of the injury;
- b. Any partner or “executive officer” with respect to any “auto” owned by such partner or officer or a member of his or her household;
- c. Any person while employed in or otherwise engaged in performing duties related to the conduct of an “auto business”, other than an “auto business” you operate;
- d. (1) The owner or lessee (of whom you are a sub lessee) of a “hired auto”; or  
(2) The owner of a “non-owned auto”, including your employee if the “non-owned auto” is owned by that employee or a member of his or her household; or  
(3) Any agent or “employee” of any such owner or lessee;
- e. Any person or organization with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

**SECTION III – LIMITS OF INSURANCE;** 2. is amended by addition of the following:

- d. Damages under coverage for Non-Owned and/or Hired Auto Liability.

**SECTION III – LIMITS OF INSURANCE** is amended as follows with respect to the insurance provided by this endorsement:

The Limits of Insurance shown in the Declarations or Supplemental Declarations fix the most we will pay for Non-Owned and/or Hired Auto Liability regardless of the number of:

- a. Insureds;
- b. Claims made or “suits” brought; or
- c. Persons or organizations making claims or bringing “suits”.

The Non-Owned and/or Hired Auto Liability Aggregate Limit shown in the Declarations or Supplemental Declarations is the most we will pay for Non-Owned and/or Hired Auto Liability coverage and is included in and is part of the General Aggregate Limit.

If the Limits of Insurance are not shown, the Limits of Insurance will be equal to the each occurrence limit for general liability applicable to this policy at the time of the loss.

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance, b. Excess Insurance** is amended by the addition of the following:

This insurance is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis, for any “hired auto” or “non-owned auto”.

**SECTION V – DEFINITIONS** is amended as follows for the purposes of this endorsement only:

1. The definition of “employee” is replaced by the following:

“Employee” means any person employed, supervised or directed by you, whether or not compensated, including volunteers.

2. The following is added to the definitions of “insured contract”:

“Insured contract” also means that part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your “employees”, of any “auto”. However, such contract or agreement shall not be considered an “insured contract” to the extent that it obligates you or any “employees” to pay for “property damage” to any “auto” rented or leased by you or any of your “employees”.

But an “insured contract” does not include that part of any contract or agreement:

- a. That pertains to the loan, lease or rental of an “auto” to you or any of your “employees”, if the “auto” is loaned, leased or rented with a driver; or
  - b. That holds a person or organization engaged in the business of transporting property by “auto” for hire harmless for your use of a covered “auto” over a route or territory that person or organization is authorized to serve by public authority.
3. The following definitions are added:

“Auto business” means the business or occupation of selling, repairing, servicing, storing or parking “autos”.

“Hired auto” means any “auto” you lease, hire, rent or borrow. This does not include any “auto” you lease for a period of more than thirty (30) consecutive days nor does it include any “auto” you lease, hire, rent or borrow from any of your “employees”, your partner or your “executive officers” or members of their household.

“Non-owned auto” means any “auto” you do not own, lease, hire, rent or borrow which is used in connection with your business. However, if you are a partnership, a “non-owned auto” does not include any “auto” owned by any partner.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
COMPREHENSIVE PERSONAL LIABILITY INSURANCE  
PERSONAL - EXCESS LIABILITY POLICY  
COMMERCIAL UMBRELLA POLICY  
COMMERCIAL EXCESS LIABILITY POLICY**

## **ABSOLUTE WAR OR TERRORISM EXCLUSION**

The following supersedes the terms and conditions of this policy.

If the Policy to which this endorsement is attached contains an exclusion for War, that exclusion is deleted in its entirety and replaced with the following. If the Policy to which this endorsement is attached does not contain an exclusion for War, the exclusion below applies.

This insurance does not apply to, and the Company will not defend or pay Loss for, any Claim arising out of, directly or indirectly resulting from, based upon or in any way involving any actual or alleged:

- (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;
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these; or
- (4) "Terrorism", including any action taken in hindering or defending against an actual or expected incident of "terrorism" regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage

The following definition is added to the Definitions Section:

"Terrorism" means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
  - a. Use or threat of force or violence;
  - b. Commission or threat of a dangerous act; or
  - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
  - a. The effect is to intimidate or coerce a government, or to cause chaos among the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - b. It is reasonable to believe the intent is to intimidate or coerce a government, or to seek revenge or retaliate, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**Absolute Exclusion For Pollution, Organic Pathogen, Silica, Asbestos And Lead With A Hostile Fire Exception**

**SECTION I – COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph 2. Exclusions, f. Pollution** is deleted in its entirety and replaced with the following:

**f. Pollution, Organic Pathogen, Silica, Asbestos and Lead**

- (1) “Bodily injury” or “property damage”; or
- (2) Diminishing or lessening in value of property or for damages from the taking, use or acquisition or interference with the rights of others in property or air space; or
- (3) Loss, cost or expense, including but not limited to payment for investigation or defense, fines and penalties, arising out of any governmental or any private party action, that an insured or any other party test for, monitor, clean up, remove, contain, mitigate, treat, detoxify or neutralize or in any way respond to or assess the actual or alleged effects of “pollutants”, “organic pathogens”, “silica”, asbestos, or lead;

arising directly, indirectly, in concurrence with or in any sequence out of the actual, alleged or threatened presence of or exposure to, ingestion, inhalation, absorption, contact with discharge, dispersal, seepage, release or escape of “pollutants”, “organic pathogens”, “silica”, asbestos, or lead, whether or not any of the foregoing are (1) sudden, accidental or gradual in nature; (2) intentional; or (3) expected or intended from the standpoint of the insured.

This exclusion applies even if the “pollutant”, “organic pathogen”, “silica”, asbestos, or lead has a function in, or is used by you in your business, operations, premises, site or location.

This exclusion does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:

- (1) At any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste; or
- (2) At any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the effects of, "pollutants".

This exclusion does not apply to “bodily injury” or “property damage” arising from the consumption of food products intended for human consumption.



“Pollutants” mean[s] any solid, liquid, gaseous, bacterial, fungal, electromagnetic, thermal or other substance that can be toxic or hazardous, cause irritation to animals or persons and/or cause contamination to property and the environment including smoke, vapor, soot, fumes, acids, alkalis, chemicals, toxic materials, “volatile organic compound” and gases therefrom, radon, combustion byproducts and waste. Specific examples identified as pollutants include, but are not limited to, diesel, kerosene, and other fuel oils . . . carbon monoxide, and other exhaust gases . . . mineral spirits, and other solvents . . . tetrachloroethylene, perchloroethylene (PERC), trichloroethylene (TCE), methylene chloroform, and other dry cleaning chemicals . . . chlorofluorocarbons, chlorinated hydrocarbons, adhesives, pesticides, insecticides . . . and all substances specifically listed, identified, or described by one or more of the following references: **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Priority List Hazardous Substances** (1997 and all subsequent editions), **Agency for Toxic Substances And Disease Registry ToxFAQs™**, and/or **U.S. Environmental Protection Agency EMCI Chemical References Complete Index**.

“Silica” means silica in any form and any of its derivatives, including but not limited to silica dust, silicon dioxide, crystalline silica, quartz, or non-crystalline (amorphous) silica.

“Volatile organic compound” means any compound which discharges organic gases as it decomposes or evaporates, examples of which include but are not limited to formaldehyde, pesticides, adhesives, construction materials made with organic chemicals, solvents, paint, varnish and cleaning products.

“Waste” means any property intended to be disposed, recycled, reused or reclaimed by the owner or user thereof.

“Organic pathogen” means any organic irritant or contaminant, including but not limited to mold, fungus, bacteria or virus, including but not limited to their byproduct such as mycotoxin, mildew, or biogenic aerosol.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL UMBRELLA POLICY  
EXCESS LIABILITY POLICY**

**Exclusion For Injury To Performers, Entertainers And Participants**

- 1) This policy does not insure against loss or expense, including but not limited to the cost of defense, arising or resulting from “bodily injury”, “property damage”, “personal and advertising injury” or medical expenses including damages for care and loss of services:
  - a) To any performer, entertainer or participant who is engaged or who volunteers to perform, entertain or participate, formally or informally, as part of an event that is hosted, sponsored, organized, operated or directed by any insured for which any insured may be held liable in any capacity;
  - b) To the spouse, child, parent, brother or sister of a performer, entertainer or participant as a consequence of “bodily injury” or “personal and advertising injury” to such performer, entertainer or participant in any event that is hosted, sponsored, organized, operated or directed by any insured for which any insured may be held liable in any capacity.
- 2) This insurance does not apply to any obligation of any insured to indemnify, defend or contribute jointly or severally with another because of “bodily injury”, “property damage”, “personal and advertising injury” or medical expenses to any performer, entertainer or participant who is engaged or involved, formally or informally, in any event that is hosted, sponsored, organized, operated or directed by any insured.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

**UNITED STATES LIABILITY INSURANCE GROUP  
WAYNE, PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

**LIQUOR LIABILITY COVERAGE FORM  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**AMENDMENT OF PREMIUM AUDIT CONDITIONS**

**SECTION IV**, paragraph **5. Premium Audit**, is hereby deleted in its entirety and replaced with the following:

**5. Inspections, Audits, and Premium adjustment**

- a.** We will compute all premiums for this Coverage Part in accordance with our underwriting guides, rules and rates. We have the right to amend and adjust premium at any time during a policy period based on the results of an audit and/or inspection and our underwriting guides, rules and rates. Inspections may include but are not limited to investigation of records of state liquor control boards, commissions and similar agencies, and review of the insured's Internet websites.
- b.** In addition to the above, we may examine and audit your books and records to compute the total earned premium at any time during the policy period or after the expiration date of a policy issued by the Company. At the close of each audit we may compute the earned premium for the policy period. If the total earned premium for the policy period is less than the advance premium, we will refund the difference, subject to the minimum premium, to the first Named Insured. If the total earned premium for the policy period as determined by an audit is greater than the advance premium, then additional Audit Premium is due and payable as provided herein. The premium for this policy may be amended during the current policy term based on the results of an audit of an expired/prior term. This may result in additional premium due to the Company for coverage under this policy.
- c.** On the first policy issued to the Named Insured, the Company may examine and audit your books and records for policy period(s) prior to the effective date of our policy.
- d.** The first Named Insured must cooperate with our reasonable requests to conduct inspections. Furthermore, the first Named Insured must keep current and accurate books and records and provide copies of such information needed for premium computation as our auditing representatives or we may request from time to time.
- e.** Failure of the first Named Insured to cooperate with an audit at the expiration date may result in an Estimated Audit Premium being applied to this policy and will result in cancellation of any renewal policy issued by the Company. Failure to cooperate with an inspection or audit, or failure to comply with recommendations resulting from an

inspection during a current term policy may result in cancellation of the policy and retention of any unearned premium. If, subsequent thereto, the first Named Insured cooperates with the inspection or audit as requested, earned premium for the policy period will be calculated in accordance with the terms of this Endorsement.

- f.** Audit Premium, Estimated Audit Premium, or premium adjustments under **5.a.**, above are due and payable on notice to the first Named Insured. Failure to pay premium, including any Audit Premium, Estimated Audit Premium, or premium adjustments may result in the cancellation of this policy and/or any renewal policy issued by the Company.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**Absolute Exclusion For Liquor And Other Related Liability**

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, c. Liquor Liability** is deleted in its entirety and replaced by the following:

**c. Liquor Liability**

Loss or expense, including but not limited to the cost of defense, arising from or resulting, directly or indirectly, from:

- (1) The causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age;
- (3) The furnishing of alcoholic beverages to a person who is under the influence of alcohol;
- (4) Violation of any statute, ordinance or regulation relating to the sale, gift, distribution, furnishing or use of alcoholic beverages; or
- (5) The failure of any insured to prevent “bodily injury”, “property damage” or “personal and advertising injury” to any person, including but not limited to an alleged intoxicated person, caused or alleged to be caused by the intoxication of any person(s) whether or not concurrent with other actual or alleged causes or whether or not any insured(s) furnished or served alcoholic beverage to such intoxicated person(s).

This exclusion applies to all injury sustained by any person, including mental anguish or emotional distress, whether alleged, threatened or actual including but not limited to your negligence or other wrongdoing with respect to:

- (1) Hiring, placement, employment, training, supervision, control or retention of a person for whom any insured is or ever was legally responsible; or
- (2) Investigation or reporting to the proper authorities, or failure to so report; or
- (3) The failure to protect any person while that person was in the insured’s care, custody or control, including but not limited to providing or failing to provide transportation with respect to any person that may be under the influence of alcohol.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**INFRINGEMENT OF COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET OR  
TRADE DRESS EXCLUSION ENDORSEMENT**

It is agreed:

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. EXCLUSIONS, I. Infringement Of Copyright, Patent, Trademark Or Trade Secret** is deleted in its entirety and replaced with the following:

**i. Infringement of Copyright, Patent, Trademark Or Trade Secret**

Any damages arising out of the infringement of copyright, patent, trademark, trade secret, trade dress, or other intellectual property rights.

**SECTION V – DEFINITIONS, 14. “Personal and advertising injury”, g.** is deleted in its entirety

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM**

Throughout this policy, with the exception of **SECTION II – WHO IS AN INSURED;** when the word “insured(s)” is used it shall mean “any insured(s)”.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM**

**Separation Of Insureds Clarification Endorsement**

It is agreed that **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** and **SECTION IV – LIQUOR LIABILITY CONDITIONS; 7. Separation Of Insureds** is deleted in its entirety and replaced with the following:

**7. Separation of Insureds**

The Limits of Insurance of this policy applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or “suit” is brought, but nothing in this endorsement shall serve to increase the Limits of Insurance beyond the Per occurrence, per person, per premises, per common cause, aggregate or any similar limit stipulated in the Declarations.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.



This endorsement modifies insurance provided under the following:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
CAUSES OF LOSS – SPECIAL FORM**

**“EQUIPMENT BREAKDOWN” ENHANCEMENT ENDORSEMENT**

With respects to “Equipment Breakdown”, this endorsement changes coverage provided by the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM CP 00 10**, **CONDOMINIUM ASSOCIATION COVERAGE FORM CP 00 17** or **CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM CP 00 18**, whichever is applicable, and the **CAUSES OF LOSS - SPECIAL FORM CP 10 30** and endorsements thereto. Read the entire endorsement carefully to determine rights, duties and what is and is not covered.

Changes to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM CP 00 10**, **CONDOMINIUM ASSOCIATION COVERAGE FORM CP 00 17** or **CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM CP 00 18**, whichever is applicable.

The following are added to **F. Additional Conditions**:

**Suspension**

Whenever **Covered Property** is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss to that **Covered Property** for the perils covered by this endorsement. Coverage can be suspended and possibly reinstated by delivering or mailing a written notice of suspension/coverage reinstatement to:

- a. Your last known address; or
- b. The address where the property is located.

But if we suspend your insurance, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

**Inspections and Surveys**

- a. We have the right to:
  - (1) Make inspections and surveys at any time; and/or
  - (2) Give you reports on the conditions we find; and/or
  - (3) Recommend changes.
- b. are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public and we do not warrant that conditions:
  - (1) Are safe or healthful; or
  - (2) Comply with laws, regulations, codes or standards.
- c. Paragraphs **a.** and **b.** of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization, which makes insurance inspections, surveys, reports or recommendations.

**“Green” Environmental and Efficiency Improvements**

If **Covered Property** requires repair or replacement due to an “Equipment Breakdown”, we will pay:

- a. The lesser of the reasonable and necessary additional cost incurred by the Insured to repair or replace physically damaged **Covered Property** with equipment of like kind and quality that qualifies as “Green”. “Like kind and quality” includes similar size and capacity.
- b. The additional reasonable and necessary fees incurred by the Insured for an accredited professional certified by a “Green Authority” to participate in the repair or replacement of physically damaged **Covered Property** as “Green”.
- c. The additional reasonable and necessary cost incurred by the Insured for certification or recertification of the repaired or replaced **Covered Property** as “Green”.
- d. The additional reasonable and necessary cost incurred by the Insured for “Green” in the removal, disposal or recycling of damaged **Covered Property**.
- e. The business interruption (if covered within the Policy to which this **Equipment Breakdown Enhancement Endorsement – “Green” Environmental and Efficiency Improvements** is attached) loss during the additional time required for repair or replacement of **Covered Property**, consistent with “Green”, in the coverages above.
- f. We will not pay more than one hundred twenty-five percent (125%), to a maximum limit of \$100,000, of what the cost would have been to repair or replace with equipment of like kind and quality inclusive of fees, costs, and any business interruption loss incurred as stated above.

These “**Green” Environmental and Efficiency Improvements** will be part of, and not an addition to, the limit of liability per loss or any other sub-limits of liability of this policy.

**“Green” Environmental and Efficiency Improvements** is subject to the following conditions:

- a. **Covered Property** does not include stock, raw materials, finished goods, “production machinery”, merchandise, electronic data processing equipment not used in the functional support of the real property, process water, molds and dies, property in the open, property of others for which the Insured is legally liable, or personal property of others.
- b. Losses shall not be adjusted on any valuation basis other than a repair or replacement basis as per the Valuation section of this policy.
- c. “Equipment Breakdown” will not cover any loss covered under any other section of this policy.
- d. “Equipment Breakdown will not cover any cost incurred due to any law or ordinance with which the Insured was legally obligated to comply prior to the time of the “Equipment Breakdown”.

#### Changes to **CAUSES OF LOSS - SPECIAL FORM CP 10 30**

The following is added to **B. Exclusions**:

Any accident, loss, damage, cost, claim or expense, whether preventative, remedial, or otherwise, directly or indirectly arising out of or relating to the recognition, interpretation, calculation, comparison, differentiation, sequencing or processing of data by any computer system including any hardware, programs or software.

**Exclusion 1.e. Utility Services** is amended to add the following:

Loss resulting from “Equipment Breakdown” to power or other utility service supplied to the described premises if the failure occurs beyond 1,000 feet from the described premises. Failure includes lack of sufficient capacity and reduction in supply.

But if failure of power or other utility service results in an “Equipment Breakdown”, we will pay for the loss or damage caused by that “Equipment Breakdown”.

However, we will not pay for any loss, damage, cost or expense for which coverage is provided by the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM CP 00 10**, **CONDOMINIUM ASSOCIATION COVERAGE FORM CP 00 17** or **CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM CP 00 18**, whichever is applicable, and the **CAUSES OF LOSS - SPECIAL FORM CP 10 30** and endorsements thereto.

This exclusion does not apply to the Business Income coverage or to Extra Expense coverage. Instead the Special Exclusion in paragraph **B.4.a (1)** applies to these coverages.

The following Exclusions are deleted in their entirety:

- 2. a. **Electrical Disturbance**
- 2. d. **(6)Mechanical breakdown**
- 2. e. **Steam Explosion**

**Special Exclusions 4. a. (1)** is deleted in its entirety and replaced with the following:

**4. Special Exclusions**

- a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused directly or indirectly by the failure of power or other utility service supplied to the described premises, however caused, if the failure occurs outside of a covered building. Failure includes lack of sufficient capacity and reduction in supply.

However, we will pay for loss resulting in a Business Income or Extra Expense loss due to an “Equipment Breakdown” to covered equipment that occurs on or within 1,000 feet of the described premises.

If the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.

However, we will not pay for any loss, damage, cost or expense under this endorsement for which coverage is provided by the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM CP 00 10**, **CONDOMINIUM ASSOCIATION COVERAGE FORM CP 00 17** or **CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM CP 00 18**, whichever is applicable, and the **CAUSES OF LOSS – SPECIAL FORM CP 10 30** and endorsements thereto.

Under Section C. **Limitations**, the following are deleted in their entirety:

- 1. a. **Steam boilers**
- 1. b. **Hot water boilers**

Under Section F. **Additional Coverage Extensions**, the following paragraphs are added:

**4. Expediting Expense**

At our sole discretion, we will pay for the expediting expense loss resulting from an “Equipment Breakdown” causing damage to **Covered Property**. We will pay the “reasonable extra cost” to:

- a. Make temporary repairs; and
- b. Expedite permanent repairs; and
- c. Expedite permanent replacement.

**5. Refrigerant Contamination**

We will pay for contamination by a refrigerant resulting from “Equipment Breakdown” causing damage to **Covered Property**.

The most we will pay for loss or damage under this coverage is the limit shown in the Declaration for Business Personal Property or \$250,000, whichever is less, unless a higher limit is provided by endorsement. In that case, whichever limit is greater will apply. This payment may be adjusted for salvage expenses or recoveries, if any.

**6. Spoilage Coverage**

We will pay for loss of perishable goods due to spoilage resulting from lack of power, light, heat, steam or refrigeration caused by “Equipment Breakdown” to types of property covered by this policy, that are:

- a. located on or within 1,000 feet of the described premises;
- b. owned or used by you, owned by the building owner at the described premises, or owned by a public utility; and
- c. used to supply telephone, electricity, air conditioning, heating, gas, water or steam to the described premises.

However, we will not pay for any loss, damage, cost or expense under this endorsement for which coverage is provided by the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM CP 00 10, CONDOMINIUM ASSOCIATION COVERAGE FORM CP 00 17 or CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM CP 00 18**, whichever is applicable, and the **CAUSES OF LOSS – SPECIAL FORM CP 10 30** and endorsements thereto.

The most we will pay for loss or damage under this coverage is the limit shown in the Declaration for Business Personal Property or \$250,000, whichever is less, unless a higher limit is provided by endorsement. This payment may be adjusted for salvage expenses or recoveries, if any.

Under Section **G. Definitions**, paragraph 2. “Specified Causes of Loss” also means “Equipment Breakdown”:

The following are added to Section **G. Definitions**:

- 3. “Equipment Breakdown” as used herein means:
  - a. Physical loss or damage both originating within:
    - (1) Boilers, fired or unfired pressure vessels, vacuum vessels, and pressure piping, all normally subject to vacuum or internal pressure other than static pressure of contents, excluding:
      - (a) waste disposal piping; and/or
      - (b) any piping forming part of a fire protective system; and/or
      - (c) furnaces; and
      - (d) any water piping other than:
        - (i) boiler feed water piping between the feed pump and the boiler; or
        - (ii) boiler condensate return piping; or
        - (iii) water piping forming part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes.
    - (2) All mechanical, electrical, electronic or fiber optic equipment; and
  - b. Caused by, resulting from, or consisting of:
    - (1) Mechanical breakdown; or

- (2) Electrical or electronic breakdown meaning breakdown from artificially generated electrical current, including electrical arcing, that disturbs electrical devices, appliances or wires; or
  - (3) Rupture, bursting, bulging, implosion, or steam explosion.  
However, "Equipment Breakdown" does not mean:  
Physical loss or damage caused by or resulting from any of the following;  
however if loss or damage not otherwise excluded results, then we will pay for such resulting damage:
    - (1) Wear and tear;
    - (2) Rust or other corrosion, decay, deterioration, hidden or latent defect, mold or any quality in property that causes it to damage or destroy itself;
    - (3) Smog;
    - (4) Settling, cracking, shrinking or expansion;
    - (5) Nesting or infestation, or discharge or release of waste products or secretions, by birds, rodents or other animals;
    - (6) The following causes of loss to personal property:
      - (a) dampness or dryness of atmosphere;
      - (b) marring or scratching.
- 4. "Green" means products, materials, methods and processes certified by a "Green Authority" that conserve natural resources, reduce energy or water consumption, avoid toxic or other polluting emissions or otherwise minimize environmental impact.
  - 5. "Green Authority" means an authority on "Green" buildings, products, materials, methods or processes certified and accepted by Leadership in Energy and Environmental Design (LEED®), "Green" Building Initiative Green Globes®, Energy Star Rating System or any other recognized "Green" rating system.
  - 6. "Production machinery" means any machine that processes, forms, shapes, or transports raw materials, materials in process, waste materials or finished products.
  - 7. "Reasonable extra cost" shall mean the extra cost of temporary repair and of expediting the repair of such damaged equipment of the insured, including overtime and the extra cost of express or other rapid means of transportation which will be a part of and not an addition to the limit shown on the Declarations Page.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM**

**Actual Cash Value Definition**

It is agreed the following is added to **H. Definitions**:

“Actual Cash Value” means replacement cost less depreciation.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
 CONDOMINIUM ASSOCIATION COVERAGE FORM  
 CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
 BUILDERS RISK COVERAGE FORM  
 BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM  
 BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM  
 EXTRA EXPENSE COVERAGE FORM  
 STANDARD PROPERTY POLICY**

## Protective Devices Or Services Provisions

### SCHEDULE

| Premises Number | Building Number | Protective Safeguard Symbols Applicable | Description of Protective Safeguard  | Effective Date |
|-----------------|-----------------|---|--|----------------|
| ALL             | ALL             | P-6                                     | All electric is on functioning and operational circuit breakers              | 02/19/2020     |
| ALL             | ALL             | P-5                                     | Functioning and operational smoke/heat detectors in all units or occupancies | 02/19/2020     |
| ALL             | ALL             | P-9                                     | Refrigeration maintenance contract on all refrigeration equipment.           | 02/19/2020     |

The following is added to the policy:

#### A. Protective Safeguards

1. As a condition of this insurance, you are required to have and maintain the protective devices or services listed in the Schedule above.
2. The protective safeguards to which this endorsement applies are identified by the following symbols:
  - a. **"P-1"** Automatic Sprinkler System, including related supervisory services.  
Automatic Sprinkler System means:
    - 1) Any automatic fire protective or extinguishing system, including connected:
      - (a) Sprinklers and discharge nozzles;
      - (b) Ducts, pipes, valves and fittings;
      - (c) Tanks, their component parts and supports; and
      - (d) Pumps and private fire protection mains.
    - 2) When supplied from an automatic fire protective system:
      - (a) Non-automatic fire protective systems; and
      - (b) Hydrants, standpipes and outlets.
  - b. **"P-2"** Automatic Fire Alarm, protecting the entire building, that is:
    - 1) Connected to a central station; or
    - 2) Reporting to a public or private fire alarm station.



- c. "P-3" Security Service, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.
- d. "P-4" Service Contract with a privately owned fire department providing fire protection service to the described premises.
- e. "P-5" Functioning and operational smoke/heat detectors in all units or occupancies.
- f. "P-6" All Electric is on functioning and operational circuit breakers.
- g. "P-7" Functioning and operational central station burglar alarms with a monitoring contract.
- h. "P-8" Functioning and operational surge protectors on all computer and audio-video equipment.
- i. "P-9" Refrigeration maintenance contract on all refrigeration equipment.
- j. "P-10" Functioning and operational automatic fire suppression system per NFPA 96 on all cooking equipment.
- k. "P-11" Vacant section(s) secured and locked.
- l. "P-12" No candles left burning unattended in the building.
- m. "P-13" Construction site perimeter is protected with a locked fence.
- n. "P-14" Watchman on premises when work not being conducted at the construction site.
- o. "P-15" Any item on a display rack with a sales price of \$250 or more must be affixed with a security sensor or chained and locked to a rack.
- p. "P-16" The building is protected from lightning with an approved NFPA 780 installation.
- q. "P-17" Flammable liquids must be stored in NFPA #30 approved cabinets.
- r. "P-18" No smoking signs must be posted and enforced.
- s. "P-19" No structural work on the load bearing members of the building.
- t. "P-20" Spray booth is installed with UL approved fixtures, lighting and electrical outlets according to NFPA 33.
- u. "P-21" The protective system described in the schedule.
- v. "P-22" All water is turned off unless the building is 100% sprinklered and the system is drained.
- W. "P-23" Maintain heat at a level throughout the building to prevent pipes from freezing.

3. The following is added to the EXCLUSIONS section of:

- a. **Causes of Loss - Basic Form**
- b. **Causes of Loss - Broad Form**
- c. **Causes of Loss - Special Form**
- d. **Standard Property Policy**

With respect to "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-8", "P-10", "P-11", "P-12", "P-16", "P-17", "P-18", and "P-20" we will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you:

- (1) Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
- (2) Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.



If part of an Automatic Sprinkler System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.

With respect to **“P-3”**, **“P-7”**, **“P-11”**, **“P-13”**, **“P-14”** and **“P-15”**, we will not pay for loss or damage caused by or resulting from vandalism, burglary, theft or any other act of stealing if, prior to vandalism, burglary, theft or any other act of stealing you:

- (1) Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
- (2) Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

With respect to **“P-6”** and **“P-8”** we will not pay for loss or damage caused by or resulting from “equipment breakdown”, electrical disturbance or expediting expenses as a result of an electrical disturbance if, prior to the “equipment breakdown” you:

- (1) Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
- (2) Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

With respect to **“P-9”** we will not pay for loss or damage caused by or resulting from “equipment breakdown”, spoilage, or expediting expenses as a result of spoilage if, prior to the “equipment breakdown” you:

- (1) Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
- (2) Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

With respect to **“P-19”** we will not pay for loss or damage caused by or resulting from collapse.

With respect to **“P-21”** we will not pay for loss or damage caused by or resulting from fire, vandalism, burglary, theft or any other act of stealing, “equipment breakdown”, electrical disturbance or expediting expenses as a result of an electrical disturbance, spoilage, or expediting expenses as a result of spoilage, as applicable, if you:

- (1) Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
- (2) Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

With respect to **“P-22”** and **“P-23”** we will not pay for loss or damage caused by or resulting from “water damage”, if prior to the “water damage” you:

- 1) Know of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
- 2) Failed to maintain any protective safeguard listed in the Schedule above and over which you had control in complete working order.

For the purpose of this endorsement “water damage” means:

- 1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance containing water or steam;

- 2) Loss or damage caused by or resulting from freezing.

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART**

**ASBESTOS MATERIAL EXCLUSION**

It is agreed that this policy does not insure loss or expense resulting from:

- 1) demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating asbestos material.
- 2) any government direction or request declaring that asbestos material present in or part of or utilized on any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART**

**EXCLUSION - LEAD CONTAMINATION**

It is agreed that this policy does not apply to, and we will not defend or pay any loss arising, directly out of or indirectly resulting from, based upon or in any way involving the existence of lead in any form.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART**

**Absolute Pollution Exclusion – Property**

The following supersedes the terms and conditions of this policy. This insurance does not apply:

- 1) to direct physical loss of or damage to Covered Property,
- 2) to your expense to remove debris of Covered Property,
- 3) to any actual loss of Business Income you sustain due to the necessary suspension of your “operations” during the “period of restoration”,
- 4) to any extra expense you incur during the “period of restoration”,
- 5) to damages for the devaluation of property or for the taking, use or acquisition or interference with the rights of others in property or air space,
- 6) to any loss, cost or expense, including but not limited to fines and penalties, arising out of any governmental direction or request, or any private party or citizen action, that an insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize “pollutants”, or
- 7) to any litigation or administrative procedure in which an insured may be involved as a party; arising directly, indirectly, or in concurrence, or in any sequence out of actual, alleged or threatened existence, discharge, dispersal, release or escape of “pollutants”, whether or not such actual, alleged or threatened existence, discharge, dispersal, release or escape is sudden, accidental or gradual in nature.

This exclusion applies even if such “pollutant” has a function in, or is used by you in your business, operations, premises, site or location.

“Pollutants” means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, toxic materials, “volatile organic compound” and gases therefrom, radon, combustion byproducts and “waste.”

“Volatile organic compound” means any compound which discharges organic gases as it decomposes or evaporates, examples of which include but are not limited to formaldehyde, pesticides, adhesives, construction materials made with organic chemicals, solvents, paint varnish and cleaning products.

“Waste” means any property intended to be disposed, recycled, reused or reclaimed by the owner or user thereof.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

**UNITED STATES LIABILITY INSURANCE GROUP  
WAYNE, PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART**

**MOLD, FUNGUS, BACTERIA, VIRUS OR ORGANIC PATHOGEN  
EXCLUSION**

The following supercedes the terms and conditions of this policy. This insurance does not apply:

- 1) to direct physical loss of or damage to Covered Property,
- 2) to your expense to remove debris of Covered Property,
- 3) to any actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration",
- 4) to any extra expense you incur during the "period of restoration",
- 5) to damages for the devaluation of property or for the taking, use or acquisition or interference with the rights of others in property or air space,
- 6) to any loss, cost or expense, including but not limited to fines and penalties, arising out of any governmental direction or request, or any private party or citizen action, that an insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "organic pathogens", or
- 7) to any litigation or administrative procedure in which an insured may be involved as a party; arising directly, indirectly, or in concurrence, or in any sequence out of actual, alleged or threatened existence, discharge, dispersal, release or escape of "organic pathogens", whether or not such actual, alleged or threatened existence, discharge, dispersal, release or escape is sudden, accidental or gradual in nature.

This exclusion applies even if such mold, fungus, bacteria, virus or "organic pathogen" has a function in, or is used by you in your business, operations, premises, site or location.

"Organic pathogen" means any organic irritant or contaminant, including but not limited to mold, fungus, bacteria or virus, including but not limited to their byproduct such as mycotoxin, mildew, or biogenic aerosol.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**CAUSE OF LOSS – BASIC FORM**  
**CAUSE OF LOSS – BROAD FORM**  
**CAUSES OF LOSS – SPECIAL FORM**

### **Earth Movement Exclusion**

It is agreed that the applicable Cause Of Loss Form(s) attached to your policy are revised as follows:

**CAUSES OF LOSS – BASIC FORM and/or CAUSES OF LOSS – BROAD FORM, Section A. Covered Causes Of Loss, 11.** is deleted in its entirety and replaced with the following:

- 11.** Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:
- a.** Airborne volcanic blast or airborne shock waves;
  - b.** Ash, dust or particulate matter; or
  - c.** Lava flow.

With respect to coverage for Volcanic Action as set forth in **11. a., 11.b., and 11.c.**, all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

**CAUSES OF LOSS – BASIC FORM and/or CAUSES OF LOSS – BROAD FORM, Section B. Exclusions, 1. b. Earth Movement,** is deleted in its entirety and replaced with the following:

**b. Earth Movement**

- (1)** Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
- (2)** Landslide, including any earth sinking, rising or shifting related to such event;
- (3)** Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- (4)** Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b. (1) through (4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5)** Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

This exclusion applies regardless of whether any of the above, in paragraphs **(1) through (5)**, is caused by an act of nature or is otherwise caused.

**CAUSES OF LOSS – SPECIAL FORM, Section B. Exclusions, 1. b. Earth Movement**, is deleted in its entirety and replaced with the following:

**b. Earth Movement**

- (1) Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b. (1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

With respect to coverage for Volcanic Action as set forth in **(5)(a)**, **(5)(b)** and **(5)(c)**, all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

This exclusion applies regardless of whether any of the above, in paragraphs **(1)** through **(5)**, is caused by an act of nature or is otherwise caused.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.



This endorsement modifies insurance provided under the following:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM**

**BUILDING TENANT OBLIGATIONS**

**Paragraph A. Coverage, 5. Coverage Extensions** is amended to add the following:

**(g) Building Tenant Obligation**

You may extend the insurance that applies to Your Business Personal Property if you are a tenant and your lease makes you contractually responsible to insure or pay for loss of damage to any part of a building you occupy at the described premises.

This Coverage Extension does not apply to any otherwise covered tenant's improvements or betterments.

The most we will pay for loss or damage from a Covered Cause Of Loss under this Extension is \$5,000 at each described premise.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

# BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **H.**, Definitions.

## A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

### 1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2.**, Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

**a. Building**, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery and
  - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
  - (a) Fire-extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
  - (a) Additions under construction, alterations and repairs to the building or structure;

**(b)** Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

**b. Your Business Personal Property** located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property – Separation Of Coverage form:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

**c. Personal Property Of Others** that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

**2. Property Not Covered**

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns;
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;

- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to your "stock" of prepackaged software;

- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;

- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
  - (1) Are licensed for use on public roads; or
  - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
- (c) Rowboats or canoes out of water at the described premises; or
- (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers;

q. The following property while outside of buildings:

- (1) Grain, hay, straw or other crops;
- (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

**3. Covered Causes Of Loss**

See applicable Causes Of Loss Form as shown in the Declarations.

**4. Additional Coverages**

**a. Debris Removal**

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
  - (a) Extract "pollutants" from land or water; or
  - (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
  - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
  - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.
- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
- (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.

**(5) Examples**

The following examples assume that there is no Coinsurance penalty.

**EXAMPLE #1**

|                                 |                                |
|---------------------------------|--------------------------------|
| Limit of Insurance:             | \$ 90,000                      |
| Amount of Deductible:           | \$ 500                         |
| Amount of Loss:                 | \$ 50,000                      |
| Amount of Loss Payable:         | \$ 49,500                      |
|                                 | (\$50,000 – \$500)             |
| Debris Removal Expense:         | \$ 10,000                      |
| Debris Removal Expense Payable: | \$ 10,000                      |
|                                 | (\$10,000 is 20% of \$50,000.) |

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

**EXAMPLE #2**

|                                |                    |
|--------------------------------|--------------------|
| Limit of Insurance:            | \$ 90,000          |
| Amount of Deductible:          | \$ 500             |
| Amount of Loss:                | \$ 80,000          |
| Amount of Loss Payable:        | \$ 79,500          |
|                                | (\$80,000 – \$500) |
| Debris Removal Expense:        | \$ 30,000          |
| Debris Removal Expense Payable |                    |
| Basic Amount:                  | \$ 10,500          |
| Additional Amount:             | \$ 10,000          |

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows:  $\$80,000 (\$79,500 + \$500) \times .25 = \$20,000$ ; capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense ( $\$79,500 + \$30,000 = \$109,500$ ) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

**b. Preservation Of Property**

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

**c. Fire Department Service Charge**

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000, unless a higher limit is shown in the Declarations, for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

**d. Pollutant Clean-up And Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

**e. Increased Cost Of Construction**

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.
- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.

(4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:

- (a) You were required to comply with before the loss, even when the building was undamaged; and
- (b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

- (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
- (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

- (a) We will not pay for the Increased Cost of Construction:
  - (i) Until the property is actually repaired or replaced, at the same or another premises; and

- (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the same premises.

- (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the new premises.

(8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

(9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(6) of this Additional Coverage, is not subject to such limitation.

#### f. Electronic Data

(1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data.

(2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.



- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

## 5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more, or a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

### a. Newly Acquired Or Constructed Property

#### (1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
  - (i) Similar use as the building described in the Declarations; or
  - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

#### (2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
  - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
  - (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
  - (iii) Business personal property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

- (b) This Extension does not apply to:
  - (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
  - (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

**(3) Period Of Coverage**

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

**b. Personal Effects And Property Of Others**

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

**c. Valuable Papers And Records (Other Than Electronic Data)**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

**d. Property Off-premises**

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
  - (a) Temporarily at a location you do not own, lease or operate;
  - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
  - (c) At any fair, trade show or exhibition.



- (2) This Extension does not apply to property:
  - (a) In or on a vehicle; or
  - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

**e. Outdoor Property**

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

**f. Non-owned Detached Trailers**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
  - (a) The trailer is used in your business;
  - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
  - (c) You have a contractual responsibility to pay for loss or damage to the trailer.

- (2) We will not pay for any loss or damage that occurs:
  - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
  - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

**B. Exclusions And Limitations**

See applicable Causes Of Loss Form as shown in the Declarations.

**C. Limits Of Insurance**

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is \$2,500 per sign in any one occurrence.

The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) of Insurance shown in the Declarations for any other coverage:

- 1. Fire Department Service Charge;
- 2. Pollutant Clean-up And Removal;
- 3. Increased Cost Of Construction; and
- 4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

#### D. Deductible

In any one occurrence of loss or damage (herein after referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

#### EXAMPLE #1

(This example assumes there is no Coinsurance penalty.)

|                                   |           |
|-----------------------------------|-----------|
| Deductible:                       | \$ 250    |
| Limit of Insurance – Building #1: | \$ 60,000 |
| Limit of Insurance – Building #2: | \$ 80,000 |
| Loss to Building #1:              | \$ 60,100 |
| Loss to Building #2:              | \$ 90,000 |

The amount of loss to Building #1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Building #1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building #1:

|                                      |
|--------------------------------------|
| \$ 60,100                            |
| <u>– 250</u>                         |
| \$ 59,850 Loss Payable – Building #1 |

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building #2. Loss payable for Building #2 is the Limit of Insurance of \$80,000.

Total amount of loss payable:  
\$59,850 + \$80,000 = \$139,850

#### EXAMPLE #2

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example #1.

|  |            |
|--|------------|
| Loss to Building #1:                         | \$ 70,000  |
| (Exceeds Limit of Insurance plus Deductible) |            |
| Loss to Building #2:                         | \$ 90,000  |
| (Exceeds Limit of Insurance plus Deductible) |            |
| Loss Payable – Building #1:                  | \$ 60,000  |
| (Limit of Insurance)                         |            |
| Loss Payable – Building #2:                  | \$ 80,000  |
| (Limit of Insurance)                         |            |
| Total amount of loss payable:                | \$ 140,000 |

#### E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

##### 1. Abandonment

There can be no abandonment of any property to us.

##### 2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- Pay its chosen appraiser; and
- Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

### 3. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:
- (1) Notify the police if a law may have been broken.
  - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
  - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
  - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.  
  
Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
  - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

### 4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
- (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.
- We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
- (1) We have reached agreement with you on the amount of loss; or
  - (2) An appraisal award has been made.

**h.** A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

## 5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

## 6. Vacancy

### a. Description Of Terms

- (1)** As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in **(1)(a)** and **(1)(b)** below:
  - (a)** When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

**(b)** When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

- (i)** Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
- (ii)** Used by the building owner to conduct customary operations.

**(2)** Buildings under construction or renovation are not considered vacant.

### b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1)** We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
  - (a)** Vandalism;
  - (b)** Sprinkler leakage, unless you have protected the system against freezing;
  - (c)** Building glass breakage;
  - (d)** Water damage;
  - (e)** Theft; or
  - (f)** Attempted theft.
- (2)** With respect to Covered Causes of Loss other than those listed in **b.(1)(a)** through **b.(1)(f)** above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

## 7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

- a.** At actual cash value as of the time of loss or damage, except as provided in **b.**, **c.**, **d.** and **e.** below.
- b.** If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value even when attached to the building:

- (1) Awnings or floor coverings;
  - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
  - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:
- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
  - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.
- If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- (3) Nothing if others pay for repairs or replacement.

#### F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

#### 1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and
- (4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

#### EXAMPLE #1 (UNDERINSURANCE)

|       |                                       |            |
|-------|---------------------------------------|------------|
| When: | The value of the property is:         | \$ 250,000 |
|       | The Coinsurance percentage for it is: | 80%        |
|       | The Limit of Insurance for it is:     | \$ 100,000 |
|       | The Deductible is:                    | \$ 250     |
|       | The amount of loss is:                | \$ 40,000  |

Step (1):  $\$250,000 \times 80\% = \$200,000$   
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$100,000 \div \$200,000 = .50$

Step (3):  $\$40,000 \times .50 = \$20,000$

Step (4):  $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.



**EXAMPLE #2 (ADEQUATE INSURANCE)**

When: The value of the property is: \$ 250,000  
 The Coinsurance percentage for it is: 80%  
 The Limit of Insurance for it is: \$ 200,000  
 The Deductible is: \$ 250  
 The amount of loss is: \$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 (\$250,000 x 80%). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$39,750 (\$40,000 amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

**EXAMPLE #3**

When: The value of the property is:  
 Building at Location #1: \$ 75,000  
 Building at Location #2: \$ 100,000  
 Personal Property at Location #2: \$ 75,000  
 \$ 250,000  
 The Coinsurance percentage for it is: 90%  
 The Limit of Insurance for Buildings and Personal Property at Locations #1 and #2 is: \$ 180,000  
 The Deductible is: \$ 1,000  
 The amount of loss is:  
 Building at Location #2: \$ 30,000  
 Personal Property at Location #2: \$ 20,000  
 \$ 50,000

Step (1): \$250,000 x 90% = \$225,000  
 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2): \$180,000 ÷ \$225,000 = .80

Step (3): \$50,000 x .80 = \$40,000

Step (4): \$40,000 – \$1,000 = \$39,000

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

**2. Mortgageholders**

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:

- (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

**G. Optional Coverages**

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

**1. Agreed Value**

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.
- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
  - (1) On or after the effective date of this Optional Coverage; and
  - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

**2. Inflation Guard**

- a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
  - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

**EXAMPLE**

If: The applicable Limit of Insurance is: \$ 100,000  
 The annual percentage increase is: 8%  
 The number of days since the beginning of the policy year (or last policy change) is: 146  
 The amount of increase is:  
 $\$100,000 \times .08 \times 146 \div 365 =$  \$ 3,200

**3. Replacement Cost**

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
  - (1) Personal property of others;
  - (2) Contents of a residence;
  - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
  - (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.

- d. We will not pay on a replacement cost basis for any loss or damage:
  - (1) Until the lost or damaged property is actually repaired or replaced; and
  - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

- (3)** If the conditions in **d.(1)** and **d.(2)** above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
  - (4)** We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e.** We will not pay more for loss or damage on a replacement cost basis than the least of **(1)**, **(2)** or **(3)**, subject to **f.** below:
- (1)** The Limit of Insurance applicable to the lost or damaged property;
  - (2)** The cost to replace the lost or damaged property with other property:
    - (a)** Of comparable material and quality; and
    - (b)** Used for the same purpose; or
  - (3)** The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in **e.(2)** above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f.** The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

#### **4. Extension Of Replacement Cost To Personal Property Of Others**

- a.** If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph **3.b.(1)** of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

- b.** With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

#### **H. Definitions**

- 1.** "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2.** "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 3.** "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.



## BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F., Definitions.

### A. Coverage

#### 1. Business Income

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.

Coverage is provided as described and limited below for one or more of the following options for which a Limit of Insurance is shown in the Declarations:

- (1) Business Income Including "Rental Value".
- (2) Business Income Other Than "Rental Value".
- (3) "Rental Value".

If option (1) above is selected, the term Business Income will include "Rental Value". If option (3) above is selected, the term Business Income will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- (a) The portion of the building which you rent, lease or occupy; and
- (b) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

#### 2. Extra Expense

- a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
- b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expense to repair or replace property) to:

- (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.
- (2) Minimize the "suspension" of business if you cannot continue "operations".

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

### 3. Covered Causes Of Loss, Exclusions And Limitations

See applicable Causes Of Loss Form as shown in the Declarations.

### 4. Additional Limitation – Interruption Of Computer Operations

- a. Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage – Interruption Of Computer Operations.
- b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage – Interruption Of Computer Operations.
- c. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

### 5. Additional Coverages

#### a. Civil Authority

In this Additional Coverage – Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
- (2) When your Civil Authority Coverage for Business Income ends;

whichever is later.

#### b. Alterations And New Buildings

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur due to direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss to:

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and

(3) Machinery, equipment, supplies or building materials located on or within 100 feet of the described premises and:

- (a) Used in the construction, alterations or additions; or
- (b) Incidental to the occupancy of new buildings.

If such direct physical loss or damage delays the start of "operations", the "period of restoration" for Business Income Coverage will begin on the date "operations" would have begun if the direct physical loss or damage had not occurred.

**c. Extended Business Income**

**(1) Business Income Other Than "Rental Value"**

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
  - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 30 consecutive days after the date determined in (1)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**(2) "Rental Value"**

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

- (a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- (b) Ends on the earlier of:
  - (i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 30 consecutive days after the date determined in (2)(a) above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**d. Interruption Of Computer Operations**

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.
- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss.

- (3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage – Interruption Of Computer Operations is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage – Interruption Of Computer Operations includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage – Interruption Of Computer Operations.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage – Interruption of Computer Operations is \$2,500 for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (5) This Additional Coverage – Interruption in Computer Operations does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

## 6. Coverage Extension

If a Coinsurance percentage of 50% or more is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

### NEWLY ACQUIRED LOCATIONS

- a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$100,000 at each location.

c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:

- (1) This policy expires;
- (2) 30 days expire after you acquire or begin to construct the property; or
- (3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

The Additional Condition, Coinsurance, does not apply to this Extension.

## B. Limits Of Insurance

The most we will pay for loss in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

Payments under the following coverages will not increase the applicable Limit of Insurance:

1. Alterations And New Buildings;
2. Civil Authority;
3. Extra Expense; or
4. Extended Business Income.

The amounts of insurance stated in the Interruption Of Computer Operations Additional Coverage and the Newly Acquired Locations Coverage Extension apply in accordance with the terms of those coverages and are separate from the Limit(s) of Insurance shown in the Declarations for any other coverage.

## C. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

### 1. Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

## 2. Duties In The Event Of Loss

a. You must see that the following are done in the event of loss:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when, and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (7) Cooperate with us in the investigation or settlement of the claim.
  - (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.



### 3. Loss Determination

- a. The amount of Business Income loss will be determined based on:
  - (1) The Net Income of the business before the direct physical loss or damage occurred;
  - (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
  - (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
  - (4) Other relevant sources of information, including:
    - (a) Your financial records and accounting procedures;
    - (b) Bills, invoices and other vouchers; and
    - (c) Deeds, liens or contracts.
- b. The amount of Extra Expense will be determined based on:
  - (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
    - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
    - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
  - (2) Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

### c. Resumption Of Operations

We will reduce the amount of your:

- (1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
  - (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

### 4. Loss Payment

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:

- a. We have reached agreement with you on the amount of loss; or
- b. An appraisal award has been made.

### D. Additional Condition

#### COINSURANCE

If a Coinsurance percentage is shown in the Declarations, the following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

We will not pay the full amount of any Business Income loss if the Limit of Insurance for Business Income is less than:

- 1. The Coinsurance percentage shown for Business Income in the Declarations; times
- 2. The sum of:
  - a. The Net Income (Net Profit or Loss before income taxes), and
  - b. Operating expenses, including payroll expenses,

that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

Instead, we will determine the most we will pay using the following steps:

- Step (1): Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this policy by the Coinsurance percentage;
- Step (2): Divide the Limit of Insurance for the described premises by the figure determined in Step (1); and
- Step (3): Multiply the total amount of loss by the figure determined in Step (2).

We will pay the amount determined in Step (3) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In determining operating expenses for the purpose of applying the Coinsurance condition, the following expenses, if applicable, shall be deducted from the total of all operating expenses:

- (1) Prepaid freight – outgoing;
- (2) Returns and allowances;
- (3) Discounts;
- (4) Bad debts;
- (5) Collection expenses;
- (6) Cost of raw stock and factory supplies consumed (including transportation charges);
- (7) Cost of merchandise sold (including transportation charges);
- (8) Cost of other supplies consumed (including transportation charges);
- (9) Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
- (10) Power, heat and refrigeration expenses that do not continue under contract (if Form CP 15 11 is attached);
- (11) All ordinary payroll expenses or the amount of payroll expense excluded (if Form CP 15 10 is attached); and
- (12) Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion – not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

### EXAMPLE #1 (UNDERINSURANCE)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000  
The Coinsurance percentage is: 50%  
The Limit of Insurance is: \$ 150,000  
The amount of loss is: \$ 80,000

Step (1):  $\$400,000 \times 50\% = \$200,000$   
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$150,000 \div \$200,000 = .75$

Step (3):  $\$80,000 \times .75 = \$60,000$

We will pay no more than \$60,000. The remaining \$20,000 is not covered.

### EXAMPLE #2 (ADEQUATE INSURANCE)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000  
The Coinsurance percentage is: 50%  
The Limit of Insurance is: \$ 200,000  
The amount of loss is: \$ 80,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ( $\$400,000 \times 50\%$ ). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$80,000 (amount of loss).

This condition does not apply to Extra Expense Coverage.

### E. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

#### 1. Maximum Period Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.

- b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:
  - (1) The amount of loss sustained and expenses incurred during the 120 days immediately following the beginning of the "period of restoration"; or
  - (2) The Limit of Insurance shown in the Declarations.

**2. Monthly Limit Of Indemnity**

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:
  - (1) The Limit of Insurance, multiplied by
  - (2) The fraction shown in the Declarations for this Optional Coverage.

**EXAMPLE**

When: The Limit of Insurance is: \$ 120,000  
 The fraction shown in the Declarations for this Optional Coverage is: 1/4  
 The most we will pay for loss in each period of 30 consecutive days is: \$ 30,000  
 (\$120,000 x 1/4 = \$30,000)  
 If, in this example, the actual amount of loss is:

|             |           |
|-------------|-----------|
| Days 1–30:  | \$ 40,000 |
| Days 31–60: | \$ 20,000 |
| Days 61–90: | \$ 30,000 |
|             | \$ 90,000 |

We will pay:

|             |           |
|-------------|-----------|
| Days 1–30:  | \$ 30,000 |
| Days 31–60: | \$ 20,000 |
| Days 61–90: | \$ 30,000 |
|             | \$ 80,000 |

The remaining \$10,000 is not covered.

**3. Business Income Agreed Value**

- a. To activate this Optional Coverage:
  - (1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":
    - (a) During the 12 months prior to the date of the Work Sheet; and
    - (b) Estimated for the 12 months immediately following the inception of this Optional Coverage.
  - (2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:
    - (a) The Coinsurance percentage shown in the Declarations; multiplied by
    - (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.
- b. The Additional Condition, Coinsurance, is suspended until:
  - (1) 12 months after the effective date of this Optional Coverage; or
  - (2) The expiration date of this policy; whichever occurs first.
- c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:
  - (1) Within 12 months of the effective date of this Optional Coverage; or
  - (2) When you request a change in your Business Income Limit of Insurance.
- d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:
  - (1) The Business Income Limit of Insurance; divided by
  - (2) The Agreed Value.



## EXAMPLE

When: The Limit of Insurance is: \$ 100,000  
The Agreed Value is: \$ 200,000  
The amount of loss is: \$ 80,000

Step (1):  $\$100,000 \div \$200,000 = .50$

Step (2):  $.50 \times \$80,000 = \$40,000$

We will pay \$40,000. The remaining \$40,000 is not covered.

### 4. Extended Period Of Indemnity

Under Paragraph **A.5.c., Extended Business Income**, the number 30 in Subparagraphs **(1)(b)** and **(2)(b)** is replaced by the number shown in the Declarations for this Optional Coverage.

## F. Definitions

1. "Finished stock" means stock you have manufactured.

"Finished stock" also includes whiskey and alcoholic products being aged, unless there is a Coinsurance percentage shown for Business Income in the Declarations.

"Finished stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this Coverage Part.

2. "Operations" means:
  - a. Your business activities occurring at the described premises; and
  - b. The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.
3. "Period of restoration" means the period of time that:
  - a. Begins:
    - (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
    - (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;  
caused by or resulting from any Covered Cause of Loss at the described premises; and
  - b. Ends on the earlier of:
    - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
    - (2) The date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down, of any property; or
- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

4. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
5. "Rental Value" means Business Income that consists of:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
  - b. Continuing normal operating expenses incurred in connection with that premises, including:
    - (1) Payroll; and
    - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
6. "Suspension" means:
  - a. The slowdown or cessation of your business activities; or
  - b. That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

## COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

### A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

### B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

### C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

### D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

### E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

### F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

### G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

**I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.

## CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section **G.**, Definitions.

### A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section **B.**, Exclusions; or
  2. Limited in Section **C.**, Limitations;
- that follow.

### B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; or
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

#### b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b.(1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

#### c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

**d. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

**e. Utility Services**

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

**f. War And Military Action**

- (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.

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings.

But if Water, as described in **g.(1)** through **g.(4)** above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

**h. "Fungus", Wet Rot, Dry Rot And Bacteria**

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- 1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
- 2. To the extent that coverage is provided in the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions **B.1.a.** through **B.1.h.** apply whether or not the loss event results in widespread damage or affects a substantial area.

- 2. We will not pay for loss or damage caused by or resulting from any of the following:
  - a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:
    - (1) Electrical or electronic wire, device, appliance, system or network; or
    - (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or microwaves.

But if fire results, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.

But if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
  - (1) You do your best to maintain heat in the building or structure; or
  - (2) You drain the equipment and shut off the supply if the heat is not maintained.
- h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:
  - (1) Acting alone or in collusion with others; or
  - (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.



k. Collapse, including any of the following conditions of property or any part of the property:

- (1) An abrupt falling down or caving in;
- (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
- (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, k., does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage – Collapse; or
- (b) To collapse caused by one or more of the following:
  - (i) The "specified causes of loss";
  - (ii) Breakage of building glass;
  - (iii) Weight of rain that collects on a roof; or
  - (iv) Weight of people or personal property.

l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.

m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

#### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

##### a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused by or resulting from:
  - (a) Damage or destruction of "finished stock"; or
  - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.

- (3) Any increase of loss caused by or resulting from:

- (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

(4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

(5) Any other consequential loss.

**b. Leasehold Interest Coverage Form**

(1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.

(2) We will not pay for any loss caused by:

- (a) Your cancelling the lease;
- (b) The suspension, lapse or cancellation of any license; or
- (c) Any other consequential loss.

**c. Legal Liability Coverage Form**

(1) The following exclusions do not apply to insurance under this Coverage Form:

- (a) Paragraph **B.1.a.**, Ordinance Or Law;
- (b) Paragraph **B.1.c.**, Governmental Action;
- (c) Paragraph **B.1.d.**, Nuclear Hazard;
- (d) Paragraph **B.1.e.**, Utility Services; and
- (e) Paragraph **B.1.f.**, War And Military Action.

(2) The following additional exclusions apply to insurance under this Coverage Form:

**(a) Contractual Liability**

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

**(b) Nuclear Hazard**

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

**5. Additional Exclusion**

The following provisions apply only to the specified property.

**LOSS OR DAMAGE TO PRODUCTS**

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.



### C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
  - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
  - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
  - d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

    - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
    - (2) Business Income Coverage or Extra Expense Coverage.
  - e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
  - f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
  - a. Animals, and then only if they are killed or their destruction is made necessary.
  - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
    - (1) Glass; or
    - (2) Containers of property held for sale.
  - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

    - (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
    - (2) To Business Income Coverage or to Extra Expense Coverage.
3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
  - a. \$2,500 for furs, fur garments and garments trimmed with fur.
  - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - c. \$2,500 for patterns, dies, molds and forms.
  - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, **C.3.**, does not apply to Business Income Coverage or to Extra Expense Coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:

- a. Results in discharge of any substance from an automatic fire protection system; or
- b. Is directly caused by freezing.

However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

#### D. Additional Coverage – Collapse

The coverage provided under this Additional Coverage – Collapse applies only to an abrupt collapse as described and limited in **D.1.** through **D.7.**

1. For the purpose of this Additional Coverage – Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
  - (1) A cause of loss listed in **2.a.** or **2.b.**;
  - (2) One or more of the "specified causes of loss";
  - (3) Breakage of building glass;
  - (4) Weight of people or personal property; or
  - (5) Weight of rain that collects on a roof.

3. This **Additional Coverage – Collapse** does **not** apply to:

- a. A building or any part of a building that is in danger of falling down or caving in;
- b. A part of a building that is standing, even if it has separated from another part of the building; or
- c. A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

4. With respect to the following property:

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- b. Awnings, gutters and downspouts;
- c. Yard fixtures;
- d. Outdoor swimming pools;
- e. Fences;
- f. Piers, wharves and docks;
- g. Beach or diving platforms or appurtenances;
- h. Retaining walls; and
- i. Walks, roadways and other paved surfaces;

if an abrupt collapse is caused by a cause of loss listed in **2.a.** through **2.d.**, we will pay for loss or damage to that property only if:

- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
- (2) The property is Covered Property under this Coverage Form.

5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
- b. The personal property which collapses is inside a building; and
- c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph **5.** does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

6. This Additional Coverage – Collapse does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
7. This Additional Coverage – Collapse will not increase the Limits of Insurance provided in this Coverage Part.
8. The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in **D.1.** through **D.7.**

**E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria**

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
  - a. A "specified cause of loss" other than fire or lightning; or
  - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
  - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
  - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
  - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under **E.2.** of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.
4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.  
 If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.
5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph **F.2.** (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage – Collapse.
6. The following, **6.a.** or **6.b.**, applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form.

- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

**F. Additional Coverage Extensions**

**1. Property In Transit**

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
  - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
  - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
  - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

**2. Water Damage, Other Liquids, Powder Or Molten Material Damage**

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

**3. Glass**

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, **F.3.**, does not increase the Limit of Insurance.

**G. Definitions**

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.

b. Falling objects does not include loss or damage to:

- (1) Personal property in the open; or
- (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WATER EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

**A.** The exclusion in Paragraph **B.** replaces the **Water Exclusion** in this Coverage Part or Policy.

**B. Water**

- 1.** Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
- 2.** Mudslide or mudflow;
- 3.** Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;
- 4.** Water under the ground surface pressing on, or flowing or seeping through:
  - a.** Foundations, walls, floors or paved surfaces;
  - b.** Basements, whether paved or not; or
  - c.** Doors, windows or other openings; or

**5.** Waterborne material carried or otherwise moved by any of the water referred to in Paragraph **1.**, **3.** or **4.**, or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs **1.** through **5.**, is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs **1.** through **5.**, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **THEFT EXCLUSION**

This endorsement modifies insurance provided under the following:

### CAUSES OF LOSS – SPECIAL FORM

The following is added to the EXCLUSIONS section:

We will not pay for loss or damage caused by or resulting from theft.

But we will pay for:

1. Loss or damage that occurs due to looting at the time and place of a riot or civil commotion; or
2. Building damage caused by the breaking in or exiting of burglars.

And if theft results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## OUTSIDE SIGNS

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
 CONDOMINIUM ASSOCIATION COVERAGE FORM  
 CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
 STANDARD PROPERTY POLICY

| Prem. No. | Bldg. No. | Construction of Sign |       | Limit of Insurance | Description Of Sign | Coinsurance Percentage | Additional Premium |
|-----------|-----------|----------------------|-------|--------------------|---------------------|------------------------|--------------------|
|           |           | Entirely Metal       | Other |                    |                     |                        |                    |
| 1         | 1         |                      |       | \$7,500            |                     |                        | \$271              |

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

With respect to outside signs described in the Schedule, the provision in the Limits Of Insurance section which pertains to signs does not apply. The limit applicable to each sign is shown in the Schedule. The limit applicable to each sign is the most we will pay for loss or damage to the sign in any one occurrence.

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE FORM  
BUILDERS' RISK COVERAGE FORM  
CONTRACTORS' EQUIPMENT COVERAGE FORM  
INSTALLATION FLOATER COVERAGE FORM  
MISCELLANEOUS ARTICLES COVERAGE FORM**

## **EXCLUSION OF WAR, MILITARY ACTION AND TERRORISM**

If the Policy to which this endorsement is attached contains an exclusion for War, that exclusion is deleted in its entirety and replaced with the following. If the Policy to which this endorsement is attached does not contain an exclusion for War, the exclusion below applies.

### **A. WAR AND MILITARY ACTION**

We will not pay for loss or damage caused directly or indirectly by the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

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.

With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this War And Military Action Exclusion supersedes the Nuclear Hazard Exclusion.

### **B. TERRORISM**

We will not pay for loss or damage caused directly or indirectly by terrorism, including action in hindering or defending against an actual or expected incident of terrorism. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

Terrorism means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
  - a. Use or threat of force or violence;
  - b. Commission or threat of a dangerous act; or
  - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
  - a. The effect is to intimidate or coerce a government, or to cause chaos among the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - b. It is reasonable to believe that the intent is to intimidate or coerce a government, or to seek revenge or retaliate, or to further political, ideological, religious, social or

economic objectives or to express (or express opposition to) a philosophy or ideology.

But with respect to any such activity that also comes within the terms of the War And Military Action Exclusion, that exclusion supersedes this Terrorism Exclusion.

In the event of an act of terrorism that involves nuclear reaction or radiation, or radioactive contamination, this Terrorism Exclusion supersedes the Nuclear Hazard Exclusion.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

## LIQUOR LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – LIQUOR LIABILITY COVERAGE

#### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. 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 "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

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

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 "injury" only if:

- (1) The "injury" occurs during the policy period in the "coverage territory"; and

(2) 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 "injury" or claim, knew that the "injury" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "injury" occurred, then any continuation, change or resumption of such "injury" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Injury" 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 "injury" or claim, includes any continuation, change or resumption of that "injury" after the end of the policy period.

d. "Injury" 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 "injury" or claim:

- (1) Reports all, or any part, of the "injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "injury"; or
- (3) Becomes aware by any other means that "injury" has occurred or has begun to occur.

#### 2. Exclusions

This insurance does not apply to:

##### a. Expected Or Intended Injury

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

##### b. Workers' Compensation And Similar Laws

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

**c. Employer's Liability**

"Bodily injury" to:

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

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the "injury".

**d. Liquor License Not In Effect**

"Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is not in effect.

**e. Your Product**

"Injury" arising out of "your product". This exclusion does not apply to "injury" for which the insured or the insured's indemnitees may be held liable by reason of:

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

**f. Other Insurance**

Any "injury" with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the limits of insurance.

This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

**g. War**

"Injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**SUPPLEMENTARY PAYMENTS**

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- 1. All expenses we incur.
- 2. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- 3. 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.
- 4. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- 5. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- 6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- 7. Expenses incurred by the insured for first aid administered to others at the time of an event to which this insurance applies.

These payments will not reduce the limits of insurance.

**SECTION II – WHO IS AN INSURED**

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.



- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
- a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:
    - (1) "Injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (a) above; or
      - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (a) or (b) above.
    - (2) "Property damage" to property:
      - (a) Owned or occupied by, or
      - (b) Rented or loaned to that "employee", any of your other "employees", by any of your partners or members (if you are a partnership or joint venture), or by any of your members (if you are a limited liability company).
  - b. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.

- c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - b. Coverage does not apply to "injury" that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for all "injury" as the result of the selling, serving or furnishing of alcoholic beverages.
3. Subject to the Aggregate Limit, the Each Common Cause Limit is the most we will pay for all "injury" sustained by one or more persons or organizations as the result of the selling, serving or furnishing of any alcoholic beverage to any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – LIQUOR LIABILITY CONDITIONS

#### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

## 2. Duties In The Event Of Injury, Claim Or Suit

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

## 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

## 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

### a. Primary Insurance

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 **b.** below.

### b. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

## 5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.



- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

## 6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

## 7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

## 8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

## 9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## SECTION V – DEFINITIONS

1. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the "injury" occurs in the course of travel or transportation between any places included in Paragraph a. above; or

- c. All other parts of the world if the "injury" arises out of:

- (1) Goods or products made or sold by you in the territory described in Paragraph a. above; or
- (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

3. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
4. "Executive Officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
5. "Injury" means damages because of "bodily injury" and "property damage", including damages for care, loss of services or loss of support.
6. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
7. "Property damage" means:
  - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it.
8. "Suit" means a civil proceeding in which damages because of "injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
9. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

**10. "Your product":**

**a. Means:**

- (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a)** You;
  - (b)** Others trading under your name; or
  - (c)** A person or organization whose business or assets you have acquired; and
- (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**b. Includes:**

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product", and
  - (2)** The providing of or failure to provide warnings or instructions.
- c.** Does not include vending machines or other property rented to or located for the use of others but not sold.

This Endorsement modifies insurance provided under the following:

**LIQUOR LIABILITY COVERAGE PART**

**EXCLUSION – NEW ENTITIES**

Paragraph **3.** of WHO IS AN INSURED (Section **II**) does not apply.

All other terms and conditions of this Policy remain unchanged. This endorsement is a part of your Policy and takes effect on the effective date of your Policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**LIQUOR LIABILITY COVERAGE FORM**

**ABSOLUTE POLLUTION EXCLUSION – LIABILITY**

**SECTION I – LIQUOR LIABILITY COVERAGE**, Subsection **2. Exclusions** is amended by the addition of the following:

**Pollution:**

- (1) “Bodily injury” or “property damage”; or
- (2) Damages for devaluation of property or for the taking, use or acquisition or interference with the rights of others in property or air space; or
- (3) Any loss, cost or expense, including but not limited to fines and penalties, arising out of any governmental direction or request, or any private party or citizen action, that an insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize “pollutants”; or
- (4) Any litigation or administrative procedure in which an insured may be involved as a party; arising directly, indirectly, or in concurrence or in any sequence out of actual, alleged or threatened existence, discharge, dispersal, release or escape of “pollutants”, whether or not such actual, alleged or threatened existence, discharge, dispersal, release or escape is sudden, accidental or gradual in nature.

In addition, this insurance does not apply to any “bodily injury” or “property damage”, loss, cost or expense arising out of or related to any form of “pollutant”, whether or not such actual, alleged or threatened existence, discharge, dispersal, release or escape is intentionally caused, or whether or not such injury, damage, devaluation, cost or expense is expected or intended from the standpoint of the insured.

This exclusion applies even if such “pollutant” has a function in, or is used by you in your business, operations, premises, site or location.

“Pollutants” means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, toxic materials, “volatile organic compound” and gases therefrom, radon, combustion byproducts and “waste.”

“Volatile organic compound” means any compound which discharges organic gases as it decomposes or evaporates, examples of which include but are not limited to formaldehyde, pesticides, adhesives, construction materials made with organic chemicals, solvents, paint varnish and cleaning products.

“Waste” means any property intended to be disposed, recycled, reused or reclaimed by the owner or user thereof.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM**

**AMENDMENT OF CONDITIONS – INSURANCE UNDER TWO OR MORE  
COVERAGE FORMS**

It is agreed:

The Other Insurance conditions of the applicable coverage forms are changed to include the following:

**Insurance Under Two or More Coverages**

This insurance does not apply to, and will not defend or pay for any loss for which coverage is available to you under other insurance provided by us. The foregoing shall apply even if the aggregate limit of liability under such other insurance has been exhausted.

Nor shall this insurance be excess over other insurance provided by us, whether such other insurance is primary, excess, contributory, contingent or otherwise and whether such other insurance is collected or not.

This condition does not apply to any excess or umbrella insurance issued by us or an affiliate.

All other terms are the same. This endorsement is a part of the Named Insured's policy. It takes effect on the effective date of the Named Insured's policy unless there is another effective date that is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM  
COMMERCIAL UMBRELLA POLICY  
EXCESS LIABILITY POLICY**

**PUNITIVE OR EXEMPLARY DAMAGES EXCLUSION**

Regardless of any other provision of this policy, this policy does not apply to punitive or exemplary damages.

If a “suit” is brought against any insured, and falls within the coverage provided by the policy, seeking both compensatory damages (damages for economic loss and pain and suffering) and punitive or exemplary damages (damages as a means of punishment), no coverage shall be provided by this policy for any costs, interest, defense costs, attorney or legal fees of any type or damages attributable to punitive or exemplary damages.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

**UNITED STATES LIABILITY INSURANCE GROUP  
WAYNE, PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

**LIQUOR LIABILITY COVERAGE FORM**

**POLICY CONDITIONS ENDORSEMENT**

**SECTION I - LIQUOR LIABILITY COVERAGE; 2. Exclusions** is amended to add the following:

Loss or expense, including but not limited to the cost of defense arising or resulting from a claim against any insured for "injury" based on the selling, serving or furnishing of any alcoholic beverage, if at any time, you have breached one or more of the conditions set forth in this Endorsement attached to and made a part of this policy.

**Location**

**Policy Conditions**

1

**The insured represents as follows:**

- The insured has no knowledge of more than 1 liquor liability and/or assault or battery claims or notification of potential liquor liability and/or assault or battery claims for this location arising out of occurrences within five years prior to the date the application is signed (excluding a liquor liability claim closed without payment because insured found not legally liable).
- The insured has no knowledge of more than three (3) citations, violations, charges or enforcement actions at this location within five (5) years of the date of the application. Of those three (3), no more than two (2) relate to the sale or service of alcohol or criminal activities.

**As a condition of coverage, the insured agrees to maintain the following conditions during the term of this policy and any renewals thereof:**

- Employees or other persons are not permitted to consume alcohol during their hours of employment or service.
- Only the insured and its authorized employees or members are permitted to serve alcohol. In the alternative, the insured agrees that persons serving alcohol who are not the insured's authorized employees or members are covered under a policy of liquor liability insurance with limits greater than or equal to the limits of this policy.
- The establishment closes by 3:30 AM daily.
- Alcohol sales cease by 3:00 AM.



**UNITED STATES LIABILITY INSURANCE GROUP  
WAYNE, PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

**LIQUOR LIABILITY COVERAGE FORM  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**AMENDMENT OF PREMIUM AUDIT CONDITIONS**

**SECTION IV**, paragraph **5. Premium Audit**, is hereby deleted in its entirety and replaced with the following:

**5. Inspections, Audits, and Premium adjustment**

- a.** We will compute all premiums for this Coverage Part in accordance with our underwriting guides, rules and rates. We have the right to amend and adjust premium at any time during a policy period based on the results of an audit and/or inspection and our underwriting guides, rules and rates. Inspections may include but are not limited to investigation of records of state liquor control boards, commissions and similar agencies, and review of the insured's Internet websites.
- b.** In addition to the above, we may examine and audit your books and records to compute the total earned premium at any time during the policy period or after the expiration date of a policy issued by the Company. At the close of each audit we may compute the earned premium for the policy period. If the total earned premium for the policy period is less than the advance premium, we will refund the difference, subject to the minimum premium, to the first Named Insured. If the total earned premium for the policy period as determined by an audit is greater than the advance premium, then additional Audit Premium is due and payable as provided herein. The premium for this policy may be amended during the current policy term based on the results of an audit of an expired/prior term. This may result in additional premium due to the Company for coverage under this policy.
- c.** On the first policy issued to the Named Insured, the Company may examine and audit your books and records for policy period(s) prior to the effective date of our policy.
- d.** The first Named Insured must cooperate with our reasonable requests to conduct inspections. Furthermore, the first Named Insured must keep current and accurate books and records and provide copies of such information needed for premium computation as our auditing representatives or we may request from time to time.
- e.** Failure of the first Named Insured to cooperate with an audit at the expiration date may result in an Estimated Audit Premium being applied to this policy and will result in cancellation of any renewal policy issued by the Company. Failure to cooperate with an inspection or audit, or failure to comply with recommendations resulting from an

inspection during a current term policy may result in cancellation of the policy and retention of any unearned premium. If, subsequent thereto, the first Named Insured cooperates with the inspection or audit as requested, earned premium for the policy period will be calculated in accordance with the terms of this Endorsement.

- f.** Audit Premium, Estimated Audit Premium, or premium adjustments under **5.a.**, above are due and payable on notice to the first Named Insured. Failure to pay premium, including any Audit Premium, Estimated Audit Premium, or premium adjustments may result in the cancellation of this policy and/or any renewal policy issued by the Company.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM**

Throughout this policy, with the exception of **SECTION II – WHO IS AN INSURED;** when the word “insured(s)” is used it shall mean “any insured(s)”.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM**

**Separation Of Insureds Clarification Endorsement**

It is agreed that **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** and **SECTION IV – LIQUOR LIABILITY CONDITIONS; 7. Separation Of Insureds** is deleted in its entirety and replaced with the following:

**7. Separation of Insureds**

The Limits of Insurance of this policy applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or “suit” is brought, but nothing in this endorsement shall serve to increase the Limits of Insurance beyond the Per occurrence, per person, per premises, per common cause, aggregate or any similar limit stipulated in the Declarations.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

This endorsement modifies insurance provided under the following:

**LIQUOR LIABILITY COVERAGE FORM**

**LIMITATION OF COVERAGE TO INSURED PREMISES**

It is agreed **SECTION I – LIQUOR LIABILITY COVERAGE; 1. Insuring Agreement, b. (1)** is deleted in its entirety and replaced with the following:

**b.** This insurance applies to “injury” only if:

- (1)** The “injury” occurs during the policy period in the “coverage territory” and the “injury” is a direct result of the selling, serving or furnishing of any alcoholic beverage at the “insured premises”; and

It is agreed **SECTION V – DEFINITIONS** is amended with the addition of the following:

“Insured Premises” means the premises shown in the Declarations.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

**UNITED STATES LIABILITY INSURANCE GROUP  
WAYNE, PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

**LIQUOR LIABILITY COVERAGE FORM**

**ADDITIONAL INSURED – LIQUOR LICENSE HOLDER**

SECTION II – WHO IS AN INSURED, paragraph 2. is amended by the addition of the following:

- d. The license holder for the insured location, but only for acts within the scope of their duties related to the conduct of your business. However, none of these license holders are an insured for:

(1) “Injury”:

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

(2) “Property damage” to property:

- (a) Owned or occupied by, or
- (b) Rented or loaned to that license holder by any of your partners or members (if you are a partnership or limited liability company).

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

**UNITED STATES LIABILITY INSURANCE GROUP  
WAYNE, PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

**LIQUOR LIABILITY COVERAGE FORM**

**DEFINITION OF “RECEIPTS”**

**SECTION V – DEFINITIONS** is amended to add the following:

“Receipts”, when used as the basis for calculating premium under this policy, means the total, gross amount of money collected by an insured or by others on behalf of an insured during the policy period and, where applicable, for the calendar year immediately prior thereto, for the sale of alcoholic beverages, and of other beverages used in connection therewith. “Receipts” does not mean taxes paid by an insured directly to the taxing authority to the extent such payments are segregated from “receipts” and fully documented by an insured.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.



This endorsement modifies insurance provided under the following:

**LIQUOR LIABILITY COVERAGE FORM**

**ABSOLUTE FIREARMS EXCLUSION**

This insurance does not apply to “injury”, including cost of defense, for any claim or “suit” arising or resulting from directly, or indirectly, the use of firearms of any kind.

This exclusion applies to any “injury”, claim or “suit” regardless of whether the use of firearms is a direct cause, a contributing cause or a concurrent cause of any loss.

All other terms and conditions of this policy remain unchanged. This endorsement is a part of your policy and takes effect on the effective date of your policy unless another effective date is shown.

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**From:** Bill (USLI) Rohrman <[REDACTED]@USLI.com>  
**Sent:** Thursday, March 30, 2023 9:45 AM  
**To:** Neal, Brian  
**Cc:** Claims Imaging  
**Subject:** RE: Downtown Nashville Bar General Partner Inc. d/b/a Beer Sellar - Claim No. K156693  
„LD  
**Attachments:** Beer Sellar.K156693.Kirshtein Analytics.Audit Report.2021-03-29.pdf

[EXTERNAL EMAIL]

Brian,

United States Liability Insurance Company (the “Company”) cannot reopen the claim. This is because the time element to pursue action is beyond two years from the date of loss. Please refer to the **CP 00 90 07 88 COMMERCIAL PROPERTY CONDITIONS** that is part of policy number CP 1694145A (the “Policy”) It includes the following terms in relevant part:

**D. LEGAL ACTION AGAINST US**

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

The preceding language applies to this matter because the claim is beyond the two-year time element. Our insured had time to pursue additional claims but failed to respond to my October 8, 2021 email.

Attached is the report provided by the forensic accountant that supported the lost income payments.

Sincerely,

**Bill Rohrman, SCLA**

**Assistant Vice President, Property Claims Team**

888-523-5545 ext. [REDACTED] | [REDACTED]@usli.com | Alt. contact Mike Berry ext. [REDACTED]  
1190 Devon Park Drive, Wayne, PA 19087



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**Ex. 2**

# Kirshtein Analytics, LLC

Forensic Financial Analysis  
Litigation Support  
Atlanta, GA 30305-3704  
2656 Acorn Avenue  
david.kirshtein@gmail.com  
404-234-4065

March 29, 2021

Mike Sanderson  
Bridgewater Group

Bill Rohrman  
USLI

Re: Downtown Nashville Bar General Partner Inc; DBA Beer Seller  
USLI Claim K156693  
DOL 12/25/2020

I have completed my review of the above-captioned business income loss and have estimated the loss through August 2021 at \$54,832, net of the three-day policy waiting period and the coinsurance deficiency that exists. Summary numbers are included on Attachment A.

Sales projections, as shown on Attachment B, are based on both 2019 and 2020 revenues. The historical pre-loss monthly sales included on that attachment show the impact of COVID on 2020 business activity, which made post-pandemic months unusable for 2021 loss and coinsurance projection purposes. The rationale for each month's sales projections is noted.

Saved expenses are detailed on Attachment C, with the exception of payroll.

Payroll details are shown on Attachment D. After the date of loss, all staff except for Mike Penner were laid off, and Mr. Penner's normal \$2,000/month bonus (paid on the last pay check of each month) ceased. Saved staff wages were based on the average bi-weekly payroll for the eight pay periods prior to the loss. Payroll taxes and a 3% estimate for workers compensation insurance were applied. Mr. Penner's base pay of \$1,600 per pay period was not subtracted.

Attachment E contains my coinsurance review and calculation of the 36.01% deficiency.

Please let me know if I can provide additional assistance in resolving this file.

Sincerely



David H Kirshtein

Mike Sanderson  
 Bill Rohrman  
 March 29, 2021

Downtown Nashville Bar General Partner Inc; DBA Beer Seller  
 USLI Claim K156693

**Attachment A**  
**Audit Estimate**

|        | Less Saved Expenses |  |   |            |                 |   |          |            |
|--------|---------------------|--|---|------------|-----------------|---|----------|------------|
|        | Lost Sales          | COGS &<br>Operating<br>Expenses @<br>36.3% of<br>Sales | Monthly<br>Operating<br>Expenses<br>@ \$1,298 | Payroll    | Monthly<br>Loss | Less<br>Coinsurance<br>Deficiency<br>@ 36.01% | Net Loss | Cumulative |
| Dec-20 | \$6,818             | \$(2,475)  | \$(172)                                       | \$(2,552)  | \$1,619         | \$(583)                                       | \$1,036  | \$1,036    |
| Jan-21 | \$42,926            | \$(15,582)   | \$(1,298)                                     | \$(21,991) | \$4,055         | \$(1,460)                                     | \$2,595  | \$3,631    |
| Feb-21 | \$38,810            | \$(14,088)   | \$(1,298)                                     | \$(20,077) | \$3,347         | \$(1,205)                                     | \$2,142  | \$5,773    |
| Mar-21 | \$45,253            | \$(16,427)   | \$(1,298)                                     | \$(21,991) | \$5,537         | \$(1,994)                                     | \$3,543  | \$9,316    |
| Apr-21 | \$58,564            | \$(21,259)   | \$(1,298)                                     | \$(21,353) | \$14,654        | \$(5,277)                                     | \$9,377  | \$18,693   |
| May-21 | \$61,616            | \$(22,367)   | \$(1,298)                                     | \$(21,991) | \$15,960        | \$(5,747)                                     | \$10,213 | \$28,906   |
| Jun-21 | \$47,823            | \$(17,360)   | \$(1,298)                                     | \$(21,353) | \$7,812         | \$(2,813)                                     | \$4,999  | \$33,905   |
| Jul-21 | \$61,977            | \$(22,498)   | \$(1,298)                                     | \$(21,991) | \$16,190        | \$(5,830)                                     | \$10,360 | \$44,265   |
| Aug-21 | \$62,483            | \$(22,681)   | \$(1,298)                                     | \$(21,991) | \$16,513        | \$(5,946)                                     | \$10,567 | \$54,832   |

Mike Sanderson  
 Bill Rohrman  
 March 29, 2021

Downtown Nashville Bar General Partner Inc; DBA Beer Seller  
 USLI Claim K156693

**Attachment B  
 Sales Estimates**

|        | 2021 Sales<br>Estimate @<br>71.17% of<br>2019 levels |                                | Actual<br>Sales | Lost<br>Sales | Waiting<br>Period<br>(3 Days) | Sales<br>Loss |
|--------|--|--------------------------------|-----------------|---------------|-------------------------------|---------------|
| Dec-20 | \$52,843   | Actual, prorated to full month | \$(40,911)      | \$11,932      | \$(5,114)                     | \$6,818       |
| Jan-21 | \$42,926   | @80.00% of 2020 levels         |                 | \$42,926      |                               | \$42,926      |
| Feb-21 | \$38,810   | @80.00% of 2020 levels         |                 | \$38,810      |                               | \$38,810      |
| Mar-21 | \$45,253   | @85.00% of 2019 levels         |                 | \$45,253      |                               | \$45,253      |
| Apr-21 | \$58,564   | @85.00% of 2019 levels         |                 | \$58,564      |                               | \$58,564      |
| May-21 | \$61,616   | @90.00% of 2019 levels         |                 | \$61,616      |                               | \$61,616      |
| Jun-21 | \$47,823   | @90.00% of 2019 levels         |                 | \$47,823      |                               | \$47,823      |
| Jul-21 | \$61,977   | @90.00% of 2019 levels         |                 | \$61,977      |                               | \$61,977      |
| Aug-21 | \$62,483   | @95.00% of 2019 levels         |                 | \$62,483      |                               | \$62,483      |

**Historical Sales**

|                | 2019      | 2020      | 2020 v<br>2019 |
|----------------|-----------|-----------|----------------|
| Jan            | \$37,067  | \$53,657  | 144.76%        |
| Feb            | \$52,329  | \$48,513  | 92.71%         |
| Mar            | \$53,239  | \$38,289  | 71.92%         |
| Apr            | \$68,899  | \$-       | 0.00%          |
| May            | \$68,462  | \$20,298  | 29.65%         |
| Jun            | \$53,137  | \$85,197  | 160.33%        |
| Jul            | \$68,863  | \$12,686  | 18.42%         |
| Aug            | \$65,772  | \$10,770  | 16.37%         |
| Sep            | \$66,971  | \$42,749  | 63.83%         |
| Oct            | \$64,817  | \$42,532  | 65.62%         |
| Nov            | \$59,606  | \$50,939  | 85.46%         |
| Dec            | \$67,012  | \$40,911  | 61.05%         |
| Sept-Nov       | \$191,394 | \$136,220 | 71.17%         |
| Dec (Prorated) | \$67,012  | \$52,843  | 78.86%         |

Mike Sanderson  
 Bill Rohrman  
 March 29, 2021

Downtown Nashville Bar General Partner Inc; DBA Beer Seller  
 USLI Claim K156693

**Attachment C**  
**Saved Expenses**

|                               | 2019      | 2020      | Total       | Per Month | % of Sales |           |
|-------------------------------|-----------|-----------|-------------|-----------|------------|-----------|
| Total Sales                   | \$726,174 | \$446,540 | \$1,172,714 |           | 100.00%    |           |
| Total Cost of Goods Sold      | \$239,078 | \$105,047 | \$344,125   |           | 29.34%     |           |
| Operating Expenses            |           |           |             |           |            |           |
| Repairs & Maintenance/1099    | \$363     | \$-       | \$363       | \$15      |            |           |
| Repair & Maintenance/Non-1099 | \$330     | \$1,620   | \$1,950     | \$81      |            |           |
| Support Services/1099         | \$10,218  | \$1,982   | \$12,200    | \$508     |            |           |
| Support Service/Non-1099      | \$10,352  | \$5,203   | \$15,555    | \$648     |            |           |
| Operating Supplies            | \$2,235   | \$977     | \$3,212     |           | 0.27%      |           |
| Rent/Non-1099                 | \$35,969  | \$16,505  | \$52,474    |           | 4.00%      | Per Lease |
| Bank Charges & Merchant Fees  | \$19,274  | \$12,274  | \$31,548    |           | 2.69%      |           |
| Penalties & Tickets           | \$575     | \$533     | \$1,108     | \$46      |            |           |
|                               |           |           |             | \$1,298   | 36.30%     |           |
| Per Day                       |           |           |             | \$43      |            |           |



Mike Sanderson  
 Bill Rohrman  
 March 29, 2021

Downtown Nashville Bar General Partner Inc; DBA Beer Seller  
 USLI Claim K156693

**Attachment D  
 Saved Payroll**

|           | Staff Payroll |          | Mike Penner Bonus | Monthly Saved Payroll |
|-----------|---------------|----------|-------------------|-----------------------|
| Per Month | 28 day month  | \$17,870 | \$2,213           | \$20,077              |
|           | 30 day month  | \$19,146 | \$2,213           | \$21,353              |
|           | 31 day month  | \$19,785 | \$2,213           | \$21,991              |

| From                                  | To       | Check Date | Gross P/R | Less Mike Penner | Staff P/R | P/R Taxes | Less Mike Penner | Staff P/R Taxes | Staff P/R + Taxes |
|---------------------------------------|----------|------------|-----------|------------------|-----------|-----------|------------------|-----------------|-------------------|
| 8/27/20                               | 9/9/20   | 9/18/20    | \$10,066  | \$(3,600)        | \$6,466   | \$781     | \$(275)          | \$506           | \$6,971           |
| 9/10/20                               | 9/23/20  | 10/2/20    | \$10,013  | \$(1,600)        | \$8,413   | \$748     | \$(122)          | \$626           | \$9,039           |
| 9/28/20                               | 10/11/20 | 10/16/20   | \$9,380   | \$(1,600)        | \$7,780   | \$726     | \$(122)          | \$604           | \$8,383           |
| 10/12/20                              | 10/25/20 | 10/30/20   | \$11,196  | \$(3,600)        | \$7,596   | \$862     | \$(275)          | \$587           | \$8,182           |
| 10/26/20                              | 11/8/20  | 11/13/20   | \$9,796   | \$(1,600)        | \$8,196   | \$757     | \$(122)          | \$635           | \$8,830           |
| 11/9/20                               | 11/22/20 | 11/25/20   | \$12,820  | \$(3,600)        | \$9,220   | \$989     | \$(275)          | \$714           | \$9,933           |
| 11/23/20                              | 12/6/20  | 12/11/20   | \$9,783   | \$(1,600)        | \$8,183   | \$750     | \$(122)          | \$628           | \$8,810           |
| 12/7/20                               | 12/20/20 | 12/23/20   | \$12,324  | \$(3,600)        | \$8,724   | \$946     | \$(275)          | \$671           | \$9,395           |
| Average                               |          |            |           |                  | \$8,072   |           |                  | \$621           | \$8,693           |
| Add Worker's Compensation @ 3% of P/R |          |            |           |                  |           |           |                  |                 | \$242             |
| Total Payroll per pay Period          |          |            |           |                  |           |           |                  |                 | \$8,935           |

Per Day 14 \$638

|                                       |                |
|---------------------------------------|----------------|
| Mike Penner Monthly Bonus             | \$2,000        |
| Employer Taxes on Bonus               | \$153          |
|                                       | \$             |
| Add Worker's Compensation @ 3% of P/R | 60             |
| Total Mike Penner Bonus Cost          | <u>\$2,213</u> |

Mike Sanderson  
 Bill Rohrman  
 March 29, 2021

Downtown Nashville Bar General Partner Inc; DBA Beer Seller  
 USLI Claim K156693

**Attachment E  
 Coinsurance Review**

|                             | <u>Sales</u>       |   |
|-----------------------------|--------------------|---|
| Feb-20                      | \$18,401           | Actual, prorated daily from 2/19                |
| Mar-20                      | \$38,289           | Actual  |
| Apr-20                      | \$-                | Actual  |
| May-20                      | \$20,298           | Actual  |
| Jun-20                      | \$85,197           | Actual  |
| Jul-20                      | \$12,686           | Actual  |
| Aug-20                      | \$10,770           | Actual  |
| Sep-20                      | \$42,749           | Actual  |
| Oct-20                      | \$42,532           | Actual  |
| Nov-20                      | \$50,939           | Actual  |
| Dec-20                      | \$52,843           | Actual, prorated to full month                  |
| Jan-21                      | \$42,926           | @ 80.00% of 2020 levels                         |
| Feb-21                      | \$24,949           | @ 80.00% of 2020 levels, prorated daily to 2/19 |
| Estimated Policy Year Sales | \$442,579          |   |
| <br><u>Less</u>             |                    |   |
| Cost of Goods Sold          | 29.34% \$(129,853) |   |
| Bank/Merchant Fees          | 2.69% \$(11,905)   |   |
| Policy Year Exposure        | \$300,821          |   |
| Coinsurance Requirement     | 80%                |   |
| Required Coverage           | \$240,657          | 100.00%   |
| Coverage in Force           | \$154,000          | 63.99%  |
| Coverage Deficiency         | \$86,657           | 36.01%  |

**From:** Bill (USLI) Rohrman <[REDACTED]@USLI.com>  
**Sent:** Friday, October 8, 2021 5:18 AM  
**To:** 'g[REDACTED]@bellsouth.net'  
**Cc:** Claims Imaging; Mike Sanderson  
**Subject:** FW: Status of Claim No.: K156693 C for Downtown Nashville Bar General Partner Inc.

Dear Mr. Hammond:

The last of payments were mailed on September 30, 2021 for Servpro mitigation services and to the owner of the leased property.

At this time it appears the claim is resolved. If this is not the case or you have additional questions, please contact independent adjuster Mike Sanderson at 770-316-0913 or email at [msanderson@bridgewatergroup.net](mailto:msanderson@bridgewatergroup.net)

Thank you for all of your cooperation and patience during the investigation and resolution process with the claim.

Sincerely,

**Bill Rohrman, SCLA**  
Assistant Vice President  
Property Claims Examiner



1190 Devon Park Drive, Wayne, PA 19087

888-523-5545 ext. [REDACTED]; Direct Dial: 610-971-6347; Fax: 610-688-4391

Alt. contact Mike Berry [REDACTED]@usli.com ext.2509 or Christopher Soley [REDACTED]@usli.com ext. [REDACTED]

If you are an appointed customer of USLI and need to report a claim please use the [USLI-SNAP](#) app

If you are an agent or policyholder, you can also report a claim by calling us at 888-523-5545 and choosing option 3 or by visiting us online at [www.usli.com](http://www.usli.com).

For information on how we store and use personal information, please see our Privacy Policy accessible on our homepage [www.usli.com](http://www.usli.com).



Think GREEN, do you really need to print this email?

**Ex. 3**

Patrick Warfield  
pwarfield@burr.com  
Direct Dial: (615) 724-3230  
Direct Fax: (615) 724-3330

Burr & Forman LLP  
222 Second Avenue South  
Suite 2000  
Nashville, TN 37201

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Office (615) 724-3200  
Fax (615) 724-3290

BURR.COM

April 5, 2023

**VIA EMAIL ( [REDACTED]@USLI.COM)**  
**VIA FEDEX (771766056924)**

United States Liability Insurance Co., Inc.  
Bill Rohrman, SCLA  
Assistant Vice President  
Property Claims Examiner  
1190 Devon Park Drive  
Wayne, Pennsylvania 19087

**Re: Downtown Nashville Bar General Partner Inc. d/b/a Beer Sellar (“Insured”); United States Liability Insurance Co., Inc. (“USLI”); 107 Church Street, Nashville, Tennessee 37201 (“Premises”); and Commercial General Liability Coverage insurance policy to Insured, policy number CP 1694145A (“Policy”).**

Mr. Rohrman:

As you are aware, this firm represents the Insured. As you are also aware, the Insured suffered and continues to suffer losses resulting from the detonation of a bomb within a recreational vehicle occurring on December 25, 2020, and resulting in (and continuing) building and road closures (“Loss”) near the Premises. This letter is in response to your e-mail dated Thursday, March 30, 2023, at 9:45 a.m. (“Email”).

In short, your e-mail response taking the position that the Insured’s claim(s) is/are time-barred is made in bad faith and should be withdrawn immediately.

First, you offered to re-open the claim in November 2022, and the Insured relied upon your statement and availed itself of your offer after it came to understand what it had been paid on its claim under the Policy.

Second, your position regarding the applicable statute of limitations is incorrect. As a threshold matter, the Policy, by its terms, was issued to the Insured in Myrtle Beach, South Carolina. For that reason, the Insured reserves the right to assert South Carolina substantive law governs all issues related to interpretation of the Policy.

As you are aware, S.C. Code Ann. § 15-3-140 renders unenforceable and of no effect the Policy provision you claim in your Email limits the Insured's ability to pursue an action beyond "...2 years after the date on which the direct physical loss or damage occurred." Thus, due to South Carolina law's invalidation of such contractual provision seeking to shorten the statutory time period to bring an action, the Insured has the full three (3) years under South Carolina law to file breach of contract claims and any other actions against USLI, which the Insured expressly reserves its right to do so.

Further, please note that if USLI attempts to take the position that Tennessee substantive law applies, which the Insured expressly reserves the right to argue otherwise, the Insured still has ample time to "pursue action" (as you stated) against USLI.

To that end, Tennessee law also does not support the position that USLI is taking regarding any claims or causes of action being time barred. With respect to contractual limitation provisions shortening an insured's statute of limitation to bring claims against any insurer, Tennessee courts enforce the limitation provision from the "date of accrual," and not the "date of loss" as you contend. The Insured's cause of action for breach of contract did not "accrue" until USLI breached the Policy and ceased making payments owed under the Policy. We have collected for your review a few of the cases on point. *See Sharp v. Allstate Ins. Co.*, 02A01-9204CV00107, 1992 WL 289660, at \*1 (Tenn. App. Oct. 16, 1992) ("for almost one hundred years contractual periods of limitation in insurance contracts having the effect of reducing the statutory period for filing suit have been upheld . . . . [A] provision limiting suit or action on the policy to 'twelve months next after the date of loss' means twelve months 'after the cause of action accrues ... .'"); *Buggs v. Allstate Insurance Co.*, 2007 WL 9706300, at \*1 (W.D. Tenn. 2007) ("A provision limiting suit or action on the policy to 'twelve months next after the date of loss' means twelve months 'after the cause of action accrues . . . . [C]omplainant's right to sue accrued when liability was thus denied by defendant.") (citing *Hill v. Home Ins. Co.*, 125 S.W.2d 189, 192 (Tenn. Ct. App. 1938)); *Mid-South Coin Co., Inc. v. St. Paul Fire and Marine Ins. Co.*, 1987 WL 36439, at \*1 (Tenn. Ct. App. 1987) ("The policy language involved here reads: 'Any lawsuit to recover on a property claim must begin within one year of the date you become aware of the loss.' Although Mid-South became aware of the loss on March 3, 1983, it is clear that the Tennessee courts have construed such language to give an insured one year from the date its cause of action accrues, *i.e.*, the date of claim denial.").

In addition, applicable Tennessee regulations require USLI to provide notice of a suit limitation provision at least thirty (30) days prior to enforcement of the same. *See* Tenn. Comp. R. & Regs. § 00780-01-05-.08(5) ("(5) Insurers shall give notice of an applicable statute of limitations to first party claimants at least thirty (30) days before the date on which such statute of limitations may expire."). No such notice was provided to the Insured prior to the Email. Further, the doctrine of estoppel may apply where an insurer continues to negotiate with an insured before and after the

limitations period expires. *See Imperial Park, LLC v. Penn-Start Insurance Company*, 133 F. Supp. 3d 1003 (M.D. Tenn. 2015).

Third, the Insured contends it did not receive the referenced October 8, 2021, e-mail. Even if it did, such e-mail does not constitute notice of denial of the claim. Indeed, the word “denial” appears nowhere therein.

Based on the above, the Insured demands USLI immediately reconsider its position that the Insured’s claim(s) are time-barred, reopen the claim, and issue further payments to the Insured under the Policy. The Insured contends USLI is acting in bad faith when it (a) claims, in contravention of all legal authority that the claim is time-barred, (b) fails to reopen a timely-filed claim, and (c) failed to advise the Insured of its plans to take such position in accordance with Tennessee regulations.

**Finally, this correspondence constitutes notice of the Insured’s intent to pursue a bad faith claim under Tenn. Code Ann. § 56-7-105 and/or S.C. Code § 38-59-20, unless USLI reconsiders its decision to (a) misrepresent facts or coverage, (b) invokes defenses to discourage a claim, and (c) forces the Insured to file a lawsuit to obtain the payments owed under the Policy, then withdraws its position that the claim is barred by the statute of limitations, and finally issues payment in accordance with the Policy.** Further, the Insured reserves its rights to seek punitive damages and any other remedies available to it under applicable law and sends this correspondence as notice of its intent to seek same.

Regards,

Burr & Forman LLP

  
Patrick Warfield

JPW/twl