

# Attachment 2

This page intentionally left blank.



## Monterey County Board of Supervisors

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066  
www.co.monterey.ca.us

### Board Order

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor Jane Parker to:

**Agreement No.: A-12442**

- a. Approve Amendment No. 8 to Professional Services Agreement No. A-12442 with Denise Duffy & Associates, Inc. to provide continued services associated with completion of an Environmental Impact Report for projects located in the Carmel River Lagoon Area and Carmel River Lagoon Restoration and Management Plan for Phases 1 and 2 to update the Schedule of Rates; reallocate unused funding in the amount of \$88,193 to expand existing and new tasks; increase the not-to-exceed amount of \$824,554 by \$722,699, for a total amount not to exceed \$1,547,253; and extend the expiration date for six (6) additional months through June 30, 2022, for a revised term from April 23, 2013 to June 30, 2022 (REF120051);
- b. Authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute: 1) Amendment No. 8 to Professional Services Agreement No. A-12442, and 2) up to three (3) future amendments to Professional Services Agreement No. A-12442 to extend the term beyond the original term where the amendments do not exceed more than five (5) years cumulatively and do not substantially alter the scope of work or increase the approved amount of the Agreement, subject to the review and approval of the Office of the County Counsel as to form.

PASSED AND ADOPTED on this 24<sup>th</sup> day of March 2020, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams

NOES: None

ABSENT: None

(Government Code 54953)

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting March 24, 2020.

Dated: March 24, 2020

File ID: A 20-048

Agenda Item No.: 31

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

Joel G. Pablo, Deputy

**AMENDMENT NO. 8  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN COUNTY OF MONTEREY AND  
DENISE DUFFY & ASSOCIATES, INC.**

**THIS AMENDMENT NO. 8** to Professional Services Agreement No. A-12442 between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Denise Duffy & Associates, Inc. (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the "Parties") and effective as of the last date opposite the respective signatures below.

**WHEREAS**, CONTRACTOR entered into Professional Services Agreement No. A-12442 with County on May 1, 2013 (hereinafter, "Agreement") to provide a Programmatic Biological Assessment (BA) and Initial Study (IS) for projects located in the Carmel River Lagoon Area and Carmel River Lagoon Restoration and Management Plan for Phases 1 and 2 (hereinafter, "Project") through April 23, 2014 for an amount not to exceed \$353,100; and

**WHEREAS**, Agreement was amended by the Parties on April 10, 2014 (hereinafter, "Amendment No. 1") to extend the term for one (1) additional year through April 23, 2015 with no increase in the not to exceed amount; and

**WHEREAS**, Agreement was amended by the Parties on June 13, 2014 (hereinafter, "Amendment No. 2", including Exhibit A-1 – Scope of Services/Payment Provisions) to increase the amount by \$193,571 which resulted in a total not to exceed amount of \$546,671 to revise the original scope of the Agreement to provide for a Focused Environmental Impact Report (EIR) (hereinafter, "services") for completion of Phase 2 of the Project with no extension to the term; and

**WHEREAS**, Agreement was amended by the Parties on April 23, 2015 (hereinafter, "Amendment No. 3") to extend the term for approximately fourteen (14) additional months through June 30, 2016 with no increase in the not to exceed amount; and

**WHEREAS**, Agreement was amended by the Parties on October 19, 2015 (hereinafter, "Amendment No. 4", including Exhibit A-2 – Scope of Services/Payment Provisions) to extend the term for six (6) additional months through December 31, 2016 and to increase the amount by \$277,883 which resulted in a total not to exceed amount of \$824,554; and

**WHEREAS**, Agreement was amended by the Parties on December 9, 2016 (hereinafter, "Amendment No. 5") to extend the term for eighteen (18) additional months through June 30, 2018 with no increase in the not to exceed amount; and

**WHEREAS**, Agreement was amended by the Parties on May 31, 2018 (hereinafter, "Amendment No. 6") to extend the term for eighteen (18) additional months through December 31, 2019 with no increase in the not to exceed amount; and

**WHEREAS**, Agreement was amended by the Parties on December 9, 2019 (hereinafter, "Amendment No. 7") to extend the term for two (2) additional years through December 31, 2021 with no increase in the not to exceed amount; and

**WHEREAS**, all tasks identified in Exhibits A, A-1 and A-2 of this Agreement have either been completed or updated as identified in Exhibit A-3 of this Agreement; and

**WHEREAS**, the Parties wish to reallocate funding in the amount of \$88,192.97 to expand existing tasks or new tasks as included in Exhibit A-3; and

**WHEREAS**, CONTRACTOR's Schedule of Rates require an update effective upon the date of final execution of this Amendment No. 8 which is the last date opposite the respective signatures below, as further set out in Exhibit A-3, attached hereto and incorporated herein by reference; and

**WHEREAS**, due to delays in the ongoing coordination with landowners and stakeholders related to the environmental review process, completion of Phase 2 of the Project has not been completed; and

**WHEREAS**, additional time and funding are necessary to allow CONTRACTOR to expand existing tasks and to include additional technical studies, analyze an additional alternative in the EIR and complete the environmental review and permitting process to complete Phase 2 of the Project; and

**WHEREAS**, the Parties wish to further amend the Agreement to extend the term for six (6) additional months to June 30, 2022, to update the Schedule of Rates, reallocate unused funding in the amount of \$88,192.97 and increase the amount by \$722,698.83 for a total amount not to exceed \$1,547,252.83 to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 8.

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

1. Amend the first sentence of Paragraph 1, "Services to be Provided", to read as follows:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibits A, A-1, A-2 and A-3** in conformity with the terms of this Agreement.

2. Amend Paragraph 2, "Payment Provisions", to read as follows:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibits A, A-1, A-2 and A-3**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$1,547,252.83.

3. Amend the first sentence of Paragraph 3, "Term of Agreement", to read as follows:

The term of this Agreement is from April 23, 2013 to June 30, 2022, unless sooner terminated pursuant to the terms of this Agreement.

4. Amend Paragraph 4, "Additional Provisions/Exhibits", by adding "Exhibit A-3, Scope of Services/Payment Provisions".
5. Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6, Payment Conditions, of the Agreement. All invoices shall reference **Multi-Year Agreement (MYA) #3000\*844**, the Project name and associated Delivery Order (DO) number, and an original hardcopy shall be sent to the following address or via email to RMA-Finance-AP@co.monterey.ca.us:

County of Monterey  
Resource Management Agency (RMA) – Finance Division  
1441 Schilling Place, South 2<sup>nd</sup> Floor  
Salinas, California 93901-4527

Any questions pertaining to invoices under this Agreement shall be directed to the RMA – Finance Division at (831) 755-4800 or via email to: RMA-Finance-AP@co.monterey.ca.us.

6. All other terms and conditions of the Agreement, including all Exhibits thereto, remain unchanged and in full force.
7. This Amendment No. 8 and all previous amendments shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
8. The recitals to this Amendment No. 8 are incorporated into the Agreement and this Amendment No. 8.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 8 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

**COUNTY OF MONTEREY**

**CONTRACTOR\***

By: \_\_\_\_\_  
Contracts/Purchasing Officer

Denise Duffy & Associates, Inc.  
Contractor's Business Name

Date: \_\_\_\_\_

By: Denise Duffy  
(Signature of Chair, President or Vice President)

Approved as to Form  
Office of the County Counsel  
Leslie J. Girard, County Counsel

Its: Denise Duffy, President  
(Print Name and Title)

Date: 2/26/2020

By: \_\_\_\_\_  
Brian P. Briggs  
Deputy County Counsel

By: Denise Duffy  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Date: \_\_\_\_\_

Its: Denise Duffy, Secretary  
(Print Name and Title)

Date: 2/26/2020

Approved as to Fiscal Provisions

By: \_\_\_\_\_  
Auditor/Controller

Date: \_\_\_\_\_

Approved as to Indemnity and Insurance Provisions  
Office of the County Counsel-Risk Management  
Leslie J. Girard, County Counsel-Risk Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 8 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR\*

By: [Signature]  
Contracts/Purchasing Officer

Denise Duffy & Associates, Inc.  
Contractor's Business Name

Date: 04-02-2020

By: [Signature]  
(Signature of Chair, President or Vice President)

Its: Denise Duffy, President  
(Print Name and Title)

Approved as to Form  
Office of the County Counsel  
Leslie J. Girard, County Counsel

By: [Signature]  
Brian P. Briggs  
Deputy County Counsel

Date: 2/26/2020

By: [Signature]  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Its: Denise Duffy, Secretary  
(Print Name and Title)

Date: 2-28-20

Approved as to Fiscal Provisions

By: [Signature]  
Auditor/Controller

Date: 2/26/2020

Date: 3/3/2020

Approved as to Indemnity and Insurance Provisions  
Office of the County Counsel-Risk Management  
Leslie J. Girard, County Counsel-Risk Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\*INSTRUCTIONS: IF CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

## EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS

**To Agreement by and between**  
**County of Monterey, hereinafter referred to as “County”**  
**and**  
**Denise Duffy & Associates, Inc., hereinafter referred to as “CONTRACTOR”**

**Subject: Carmel Lagoon EIR Project (Project) – Amendment No. 8 Request for Phase 2**

CONTRACTOR is submitting the following budget amendment request to the approved Agreement. CONTRACTOR received comments on the Public Draft Carmel Lagoon Ecosystem Protective Barrier, Scenic Road Protection Structure (SRPS), and Interim Sandbar Management Program Environmental Impact Report (EIR) and, in coordination with County, have determined that additional technical studies are necessary to complete the environmental review and permitting processes. In addition, County requested CONTRACTOR to provide a scope of work and budget to analyze an additional alternative in the EIR. The following scope of work outlines the tasks necessary to perform the additional technical studies, analyze an additional alternative to the proposed Project, and complete the environmental review process. In addition, any remaining budget for tasks previously outlined in Exhibits A, A-1, and A-2 of this Agreement shall be reallocated to the tasks outlined below.

### **TASK 6.0 ENVIRONMENTAL DOCUMENTATION – CEQA/NEPA**

#### **Task 6.8 Respond to Comments/Prepare Draft Final EIR and Mitigation Monitoring and Reporting Program (MMRP)**

##### Task 6.8.1 Respond to Comments/Prepare Draft Final EIR

CONTRACTOR shall respond to Public comments received on the Draft EIR received during the 45-day review period. CONTRACTOR, in consultation with County, shall prepare formal responses to these comments. The comment letters and responses, as well as any necessary changes to the text of the Draft EIR, will be incorporated into the Final EIR. The Final EIR Response to Comments and the Recirculated Draft EIR (RDEIR) Response to Comments (please see Task 8.6 below), along with any revisions to the Draft EIR and RDEIR, shall constitute the Final EIR. CONTRACTOR shall provide electronic copies of the Draft Final EIR to County for review and comment. This scope assumes two (2) rounds of comments, including review and comment by County’s Office of the County Counsel.

##### Task 6.8.2 Draft MMRP

CONTRACTOR shall prepare a Draft MMRP in accordance with the California Environmental Quality Act (CEQA) and County requirements, including the identification all mitigation measures, and implementation and monitoring responsibility, timing, and schedule. CONTRACTOR shall provide electronic copies of the Draft MMRP to County for review and comment. This scope assumes two (2) rounds of comments, including review and comment by County’s Office of the County Counsel.

## EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS

### **Task 6.9 Prepare Final EIR and MMRP/Hearing Attendance**

Upon conclusion of the two (2) rounds of comments on the Draft Final EIR and MMRP, CONTRACTOR shall finalize the EIR and MMRP. The tasks required for Project approval/EIR certification (e.g., preparation of staff reports, resolution, CEQA Findings/Statement of Overriding Considerations, etc.) and preparation, posting, and distribution of the notices (e.g., Notice of Determination) shall be completed by CONTRACTOR in coordination with County. CONTRACTOR shall provide drafts of each of these documents to County for review and comment prior to finalization. CONTRACTOR shall provide one (1) electronic copy of the Final EIR and MMRP to County. This scope assumes that all Public mailings and posting of documentation, notices, etc. shall be conducted and paid for by County, including County Clerk and California Department of Fish and Wildlife (CDFW) filing fees. Additional copies beyond those identified above are not included in this scope. CONTRACTOR shall attend the Public Hearing for Project approval and certification of the EIR and shall be available to answer questions, as needed. CONTRACTOR shall coordinate with County to prepare and provide hearing and presentation materials; however, it is assumed that County shall be responsible for preparing and conducting the presentation.

### **TASK 7.0 DRAFT AND FINAL EIR MEETINGS AND PROJECT MANAGEMENT**

#### **Task 7.1 Meetings**

##### Task 7.1.1 Meetings

CONTRACTOR shall attend meetings at County offices assuming two (2) hours per month for eighteen (18) months within the estimated budget.

#### **Task 7.2 Conference Calls**

##### Task 7.2.1 Conference Calls

CONTRACTOR shall be available for eight (8), two (2) hour phone calls led by County with up to two (2) members of CONTRACTOR's staff participating in each call.

#### **Task 7.3 Project Management**

##### 7.3.1 Project Management

CONTRACTOR shall provide project management services, including subconsultant administration and management, status progress reporting and tracking, schedule and budget monitoring and reporting, and client/agency coordination up to the total estimated budget provided.

### **TASK 8.0 OPTIONAL TASKS**

#### **Task 8.2 Other Optional/Out of Scope Tasks**

##### **Task 8.2.2 Additional Response and Revisions to Prepare Final EIR**

Due to the significant number of Public comment letters received on the Draft EIR, this task includes additional CONTRACTOR's staff time to respond to Public comments and revise the Draft EIR.

## EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS

### **Task 8.3 Technical Advisory Committee (TAC) & Stakeholder Engagement**

CONTRACTOR's sub-consultant, Moffatt & Nichol (M&N), in coordination with County and CONTRACTOR, shall contact local academia, professionals, experts, and others as needed, to form a TAC. The TAC shall be formed and involved in the review of the technical studies described in Task 8.4, Additional Technical Studies. In addition, this scope assumes outreach and coordination with stakeholders, including, but not limited to, the resource and permitting agencies, Carmel Area Wastewater District (CAWD), and County Service Area (CSA)-1. This scope assumes four (4) meetings with stakeholders, and one (1) conference call or meeting per month with the TAC within the estimated budget.

### **Task 8.4 Additional Technical Studies**

CONTRACTOR shall provide Project management to support the technical analysis tasks identified below. In addition, this scope assumes two (2) conference calls and one (1) in-person meeting per month.

#### Task 8.4.1 Evaluate the Natural Stream Alignment and Location of Breach Assuming No Management

CONTRACTOR's sub-consultant, M&N, shall complete an evaluation report on the natural stream alignment of the Carmel River and location of breach of the sandbar at the Carmel Lagoon, including but not limited to reviewing aerial photo history, flow records, ocean wave conditions, and work with the TAC to identify whether the assertion of a northerly breach is correct. Also, M&N shall determine if a longer closed lagoon condition for juvenile rearing steelhead is appropriate and if it can be accomplished by alternate means. M&N shall submit a draft technical memorandum for review and comment, and then finalize upon receipt of comments. This scope assumes one (1) round of comments and includes one (1) conference call.

#### Task 8.4.2 Evaluate Impacts of Wall Option on Beach

CONTRACTOR's sub-consultant, M&N, shall prepare an assessment of wave energy and transport potential for a range of beach widths simulating the natural progression from summer/fall (when beach is widest) to winter/spring (when beach is narrowest) and assuming beach build-up potential. M&N shall submit a draft technical memorandum for review and comment, and then finalize upon receipt of comments. This scope assumes one (1) round of comments and includes one (1) conference call.

#### Task 8.4.3 SRPS Preliminary Design and Alternatives

CONTRACTOR'S sub-consultant, M&N, shall develop the preliminary design of the wall option, continuing from the thirty percent (30%) conceptual design prepared for the Draft EIR. Based on the results of the studies in the tasks above, M&N shall begin to establish the basis of design, working to describe the location, dimensions, type of wall, and constructability of the wall option, as well as how to address sea level rise and identifying adaptive measures. A brief memorandum outlining the preliminary basis of design shall be provided to County, CONTRACTOR, and TAC for review and comment, and then finalize upon receipt of comments. This scope assumes one (1) round of comments and includes one (1) conference call.

#### Task 8.4.4 Sediment Transport Study

CONTRACTOR's sub-consultant, M&N, shall conduct a Sediment Transport Study to obtain a better understanding of how much sand is in the system, how much moves by fluvial action and under what flow condition, how much it moves by ocean waves and tides, and where it moves. This typically requires a multi-year simulation of waves and flows with various antecedent beach

## EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS

profile shapes, elevation, and widths, and then combining them together to estimate net and gross littoral (longshore) transport as well as cross-shore transport rates. M&N shall prepare a technical memorandum for review and comment, and then finalize upon receipt of comments. This scope assumes one (1) round of comments and two (2) conference calls.

### **Task 8.5 Analysis of Additional EIR Alternative**

Per the request of County, this task would involve bringing forward the Ecosystem Protection Barrier (EPB) at Property Line Alternative as an alternative to be analyzed in the RDEIR. As described in the Draft EIR, this alternative would reduce encroachment into State Parks property and reduce biological resources impacts; however, it may also result in increased aesthetic, noise, drainage, and water quality impacts. This task includes analyzing the potential environmental impacts of this alternative at a more detailed level; conceptual site plans, visual assessment, noise assessment, drainage analysis, and water quality assessment are anticipated. As a result, CONTRACTOR's other sub-consultants, Whitson and Associates, Inc. dba Whitson Engineers (Whitson), Balance Hydrologic, Inc. (Balance), and Ambient Air Quality & Noise Consulting, LLC (AMBIENT) shall assist in supporting this analysis. This scope assumes one (1) round of comments and two (2) conference calls.

### **Task 8.6 Recirculated Draft EIR**

#### Task 8.6.A Administrative Draft Recirculated Draft EIR

Based on the results of the additional technical studies conducted for the Project, CONTRACTOR shall prepare a detailed Administrative Draft RDEIR for the Project. In addition to the required information, the RDEIR shall include, but shall not be limited to, the recirculation of the following environmental topic sections: aesthetics; biological resources; geology, soils, and seismicity; hydrology and water quality; noise; public services, recreation, and utilities, and alternatives. The Administrative Draft document shall be provided electronically to County, technical consultants, and County's Office of the County Counsel for review and comment. This scope assumes two (2) rounds of comments and two (2) in-person meetings.

#### Task 8.6.B Screencheck Draft RDEIR and Public RDEIR & Noticing

After the Project Team's review of the Administrative Draft RDEIR, CONTRACTOR shall incorporate the comments received and prepare a Screencheck Draft RDEIR for final review by the Project Team prior to Public distribution. This scope assumes that the Screencheck Draft RDEIR will require minor revisions and one (1) round of comments. Upon receipt of comments on the Screencheck Draft RDEIR, CONTRACTOR shall prepare the Public RDEIR and required noticing. CONTRACTOR shall submit one (1) electronic copy of the Public RDEIR to County for Public distribution. CONTRACTOR shall also prepare all of the necessary Public notices as required pursuant to CEQA and submit the required notices and Public RDEIR to the State Clearinghouse and Monterey County County Clerk. This task assumes that County shall be responsible for the distribution of the Public RDEIR. In addition, this task also assumes that County shall provide CONTRACTOR with an updated list of persons and/or interested groups that should be provided notification of the availability of the Public RDEIR. This task assumes that County shall be responsible for coordinating the publication of the Notice of Availability in the newspaper.

## EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS

### 8.6.C Response to Comments on Public RDEIR

As part of this task, CONTRACTOR shall initially review all comments received during the course of the Public RDEIR Public-review period. CONTRACTOR shall subsequently confer with County Staff and County's Office of the County Counsel to determine the extent of comments and appropriate responses. As part of this task, CONTRACTOR, in consultation with County, shall update and amend the scope if significant comments are received on the Public RDEIR which will require additional staff time to prepare written responses. At this time, CONTRACTOR anticipates that comments shall be similar in nature given the scope of anticipated revisions. Nevertheless, if additional time is necessary to respond to comments and revision to the scope is required, these additional services cannot be provided until the additional work is presented to County and with County's approval, amended into the Agreement. Once the amendment to the Agreement is fully executed, CONTRACTOR will be authorized to proceed with the additional services.

This task assumes that comments will be limited to the revised sections of the Public RDEIR and will not raise any new significant environmental issues. This task also assumes that any comments received related to litigation will be addressed by County's Office of the County Counsel. CONTRACTOR shall provide an electronic copy of the written responses to the Project Team for review and comment. This scope assumes two (2) rounds of comments and three (3) in-person meetings. Upon receipt of comments, CONTRACTOR shall revise the response to comments and incorporate into the Final EIR (please see Task 6.8.1).

### **Task 8.7 Additional Services**

Due to the complex and multi-dimensional nature of the Project, there is the potential that the estimated services for the tasks identified in this Exhibit A-3, Scope of Services/Payment Provisions, may be widened at the discretion of County during the term of this Agreement. These "Additional Services" are defined as other related services associated with identified tasks as requested in writing by County. Additional Services related to the tasks described herein shall not be provided unless authorized in writing by County prior to Additional Services being provided. Additional Services completed by CONTRACTOR prior to receiving County's written authorization to proceed shall not be eligible for compensation.

Any newly identified tasks not included herein shall not be conducted by CONTRACTOR until presented to County and with County approval, amended into this Agreement.

In the event that CONTRACTOR identifies that costs are to exceed the task allocated budget amount(s) in this Exhibit A-3, CONTRACTOR shall notify County in advance and as soon as possible in writing and clearly describe how CONTRACTOR will achieve net fiscal neutrality.

## EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS



### Denise Duffy & Associates, Inc.

PLANNING AND ENVIRONMENTAL CONSULTING

January 1, 2020 – June 30, 2022

### SCHEDULE OF RATES

#### HOURLY PERSONNEL RATES

Principal	\$230.00
Senior Project Manager/Engineering Specialist	\$194.00
Principal Planner	\$173.00
Senior Project Manager	\$166.00
Senior Botanist	\$154.00
Senior Planner/Scientist II	\$153.00
Project Manager	\$145.00
Senior Planner/Scientist	\$135.00
Assistant Project Manager	\$121.00
Environmental Biologist	\$115.00
Associate Planner/Scientist	\$110.00
Assistant Planner/Scientist	\$ 99.00
GIS/Computer Specialist	\$105.00
Administrative Manager	\$ 86.00
Database/Designer/Graphics	\$ 81.00
Planning Technician	\$ 73.00
Field Technician	\$ 69.00
Administrative Assistant	\$ 64.00

*Direct reimbursable costs associated with the execution of a project are charged at cost plus 15% to cover general and administrative services. These expenses may include, but are not limited to: subconsultant services, printing and graphic charges, permit charges and filing fees, authorized travel charges, courier, postage, mileage and field supplies. Mileage will be charged at the current IRS mileage rate. Communication and miscellaneous office expenses (including cell phones, phone, fax, electronic data transmittal, photos etc.) are billed at 3% of total labor.*

Above rates are effective from 1/1/2020 through 6/30/2022 and may be adjusted thereafter.

EXHIBIT A-3 – SCOPE OF SERVICES/PAYMENT PROVISIONS

Denise Duffy & Associates, Inc. Estimated Budget for Carmel River Lagoon Project														Task Total						
Environmental Impact Report														Subtask Totals						
February 23, 2020																				
Task Description	Recess	Principal	Senior Project Manager	Senior Project Scientist II	Senior Project Scientist	Senior Project Scientist	Associate Planner/Scientist	Technical Planner/Scientist	Out Reaches	Dropouts	Admin	Written Engineers	Balance Hydrologist	AGREEMENT	Monitor/Models	Total Subcontract Cost	Expenses (see note 1)	Admin Fee for Task 6.0 - 6.7	Task Total	
	\$168	\$230	\$168	\$153	\$135	\$110	\$88	\$105	\$91	\$54									\$	
<b>ENVIRONMENTAL DOCUMENTATION CROANEA</b>																				
6.0 Respond to Comments/Prepare Draft Final EIR and Draft EIS																			\$ 121,980.50	
6.1 Response to Comments/Prepare Draft Final EIR and Draft EIS		20	40	20	60	120	120	120	120	12	30	2,000	2,000			6,000	250	527.50	\$ 68,350.50	
6.2 Draft MURP		2	16	8	4		28			4									\$ 7,770.00	
6.3 Prepare Final EIR and MURP/Notice of Abandonment		12	60	40	40	100	120	120	6	16	14						120	18.00	\$ 51,610.00	
<b>Draft and Final EIR Meetings and Project Management</b>																				
7.0 County Staff/Commissioners Meetings																			\$ 56,718.29	
7.1 County Staff/Commissioners Meetings (minimum 20 times for 18 weeks)		2	72	10		10	2									500	1,400	50	\$ 17,653.00	
7.2 Conference Calls																				
7.2.1 Conference Calls (minimum 6, 27 hours for two EIR/EIS staff and one and Subcom Chair)		2	10	10		0	4									500	1,900	27	\$ 9,109.05	
7.2 Project Management																				
7.2.1 Project Management		4	42	10													135	20.25	\$ 9,577.25	
8.0 Optional Tasks																				
8.1 Other Optional/Out of Scope Tasks																				
8.2 Additional Responses and Revisions to Prepare Final EIR		4	24	10	20	40	120	32				1,000	2,000			5,000	100	785.00	\$ 34,830.00	
8.2.1 Technical Advisory Committee & Stakeholder Meetings		4	40	6			4				2	8,000	7,500			60,000	300	9,970.00	\$ 85,200.00	
8.4 Additional Technical Studies																				
8.4.1 Additional Technical Studies (Agreement and Location of Branching)		2	10	6									4,000			30,000	24,000	5,100.00	\$ 42,150.00	
8.4.2 Evaluate Impacts of Vial Option on Beach		2	10	6								2,000			30,000	22,000	4,875.00	\$ 40,415.00		
8.4.3 BRPS Preliminary Design and Alternatives		2	14												35,000	25,000	5,250.00	\$ 43,024.00		
8.4.4 Specific Transport Study		2	18												115,000	115,000	17,250.00	\$ 135,695.00		
8.5 Analysis of Additional EIR Alternatives		4	20	10	8	24	40	18	20			6,000	6,000	4,500		15,500	2,520.00		\$ 35,877.00	
8.6 Reconsidered Draft EIR																				
8.6.1 Administrative Draft Reconsidered Draft EIR		20	80	40	60	80	120	20	16	24	30	6,000	6,000	2,000	6,000	21,000	100	3,185.00	\$ 81,519.00	
8.6.2 Supplemental Draft Reconsidered Draft EIR		10	20	20	40	40	40	10	10	30								22.50	\$ 20,392.50	
8.6.3 Responses to Comments on Public EIR		20	80	20	60	80	120	10	10	10	24	2,000	4,000	500	10,000	17,000	250	2,587.00	\$ 68,655.50	
8.6.4 Additional Services															0	0	0	0	\$ 60,000.00	
<b>Total Budget:</b>		\$ 267,760	\$ 80,972	\$ 42,220	\$ 55,220	\$ 74,874	\$ 12,930	\$ 7,128	\$ 9,664	\$ 25,850	\$ 34,300	\$ 7,000	\$ 280,500	\$ 347,500	\$ 1,892	\$ 113,351.00	\$ 610,284.00	\$	\$ 810,891.00	
<b>Total Budget Increase:</b>																				\$ 89,192.97

Note: Expenses include: Photocopying, supplies, travel expenses (i.e. mileage to meetings), reproduction, printing, phone, business, meals, etc. Unless otherwise noted or specified, DDA's services shall be subject to availability of staff. The exception would be documents receding agency or public distribution, such as the required technical studies that will be submitted relevant agencies. If not available stated in the task description within the scope of work, DDA's staff and staff will be used to provide the services. In addition to standard expenses of DDA, DDA's staff will be used to provide the services. Amendment No. 8 includes revised fee schedule of \$38,142.97 and further increases the Agreement not to exceed amount of \$124,894.00 by \$722,688.00 for a total Agreement amount not to exceed \$1,547,222.83.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/5/2019

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

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

PRODUCER (HD) Heffernan Insurance Brokers 1350 Carback Avenue Walnut Creek CA 94596	CONTACT NAME: Elizabeth Lee
	PHONE (AC, No, Ext): 925-934-8500 FAX (AC, No): 925-934-8278
	E-MAIL Address: elizabeth@heffins.com
	INSURER(S) AFFORDING COVERAGE
	INSURER A: Citizens Insurance Company of America NAIC # 31534
	INSURER B: The Hanover American Insurance Company 36064
	INSURER C: Continental Casualty Company 20443
	INSURER D:
	INSURER E:
	INSURER F:

INSURED  
Denise Duffy & Associates  
947 Cass Street, Suite 5  
Monterey CA 93940

**COVERAGES**

CERTIFICATE NUMBER: 1803014648

REVISION NUMBER:

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

INBR LTR	TYPE OF INSURANCE	ADDL SUBR INSD   WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	OB39169912	9/1/2019	9/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	OB39169912	9/1/2019	9/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ Included in GL BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTIONS \$		OB39169912	9/1/2019	9/1/2020	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	WZ3916990609	9/1/2019	9/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability		EEH276196480	11/6/2019	11/5/2020	PER CLAIM 2,000,000 AGGREGATE 2,000,000

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

Re: As Per Contract or Agreement on File with the Insured - All Projects.

County of Monterey Contracts & Purchasing Division, The County of Monterey, Its Officers, Agents and Employees are included as an additional insured with respects to the General Liability and Automobile Liability policies per the attached endorsements, if required. General Liability policy is primary and non-contributory per the attached endorsement, if required.

**CERTIFICATE HOLDER****CANCELLATION**

County of Monterey Contracts & Purchasing Division 168 W. Alisal St., 3rd Fl. Salinas, CA 93901	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

© 1988-2015 ACORD CORPORATION. All rights reserved

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## GENERAL LIABILITY SUPPLEMENTARY ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESSOWNERS COVERAGE FORM

#### A. Additional Insured by Contract, Agreement or Permit

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured:**

#### Additional Insured by Contract, Agreement or Permit

a. Any person or organization with whom you agreed in a written contract, written agreement or permit that such person or organization to add as an additional insured on your policy is an additional insured only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit including "bodily injury" or "property damage" included in the "products-completed operations hazard" only if this Coverage Part provides such coverage.
- (2) Premises you own, rent, lease or occupy; or
- (3) Your maintenance, operation or use of equipment leased to you.

b. The insurance afforded to such additional insured described above:

- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.
- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.
- (4) Will not be broader than coverage provided to any other insured.
- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

c. This provision does not apply:

- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal

injury and advertising injury".

- (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (3) To any lessor of equipment:
  - (a) After the equipment lease expires; or
  - (b) If the "bodily injury", "property damage", or "personal and advertising injury" arises out of sole negligence of the lessor.
- (4) To any:
  - (a) Owners or other interests from whom land has been leased if the "occurrence" or offense takes place or the offense is committed after the lease for the land expires; or
  - (b) Managers or lessors of premises if:
    - (i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or
    - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.

d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:**

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations.

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

**B. Aggregate Limits of Insurance per Project or per Location**

The following changes are made to **SECTION II - LIABILITY**:

1. The following is added to **SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance, paragraph 4**:

The Aggregate Limits of Insurance apply separately to each of "your projects" or each "location" listed in the Declarations.

2. For the purpose of coverage provided by this endorsement only, the following is

added to **SECTION II - LIABILITY, F. Liability And Medical Expenses Definitions**:

1. "Your project" means:
  - a. Any premises, site or "location" at, on, or in which "your work" is not yet completed; and
  - b. Does not include any "location" listed in the Declarations.
2. "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

**ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.**

## BUSINESSOWNERS COVERAGE FORM

### Table of Contents

#### SECTION I - PROPERTY

	Page Number
<b>A. Coverage</b> .....	4
<b>1. Covered Property</b> .....	4
<b>2. Property Not Covered</b> .....	5
<b>3. Covered Causes of Loss</b> .....	6
<b>4. Limitations</b> .....	6
<b>5. Additional Coverages</b> .....	7
Business Income.....	10
Business Income from Dependent Properties.....	17
Civil Authority.....	13
Collapse.....	8
Commercial Tools and Small Equipment.....	27
Computer Equipment.....	20
Computer and Funds Transfer Fraud.....	34
Debris Removal.....	7
Deferred Payments.....	31
Electronic Vandalism.....	31
Employee Theft including ERISA Compliance.....	18
Equipment Breakdown.....	22
Extra Expense.....	12
Fine Arts.....	28
Fire Department Service Charge.....	8
Fire Protection Equipment Recharge.....	18
Forgery or Alteration.....	13
Glass Expenses.....	18
Installation.....	27
Interruption of Computer Operations.....	32
Leasehold Interest (Tenants only).....	29
Limited Coverage for Fungl, Wet Rot, or Dry Rot.....	33
Money and Securities.....	21
Money Orders and Counterfeit Money.....	13
Ordinance or Law.....	14
Preservation of Property.....	8
Pollutant Clean-Up and Removal.....	12
Rewards - Arson, Theft and Vandalism.....	20
Sales Representative Samples.....	29
Tenant Building Insurance - When Your Lease Requires You to Provide Insurance.....	34
Tenant Business Personal Property Insurance - When Your Lease Requires You to Provide Insurance.....	34
Tenant Signs (Tenants Only).....	22
Theft of Telephonic Services.....	34
Unauthorized Business Credit Card Use.....	30
Utility Services.....	30
Water Damage, Other Liquids, Powder or Molten Material Damage.....	10

<b>6. Coverage Extensions</b> .....	35
Accounts Receivable.....	37
Business Personal Property Temporarily In Portable Storage Units.....	39
Appurtenant Structures.....	38
Inventory and Loss Appraisal.....	39
Key Replacement and Lock Repair.....	38
Newly Acquired or Constructed Property.....	35
Outdoor Property.....	36
Paved Surfaces.....	39
Personal Effects.....	36
Personal Property Off Premises.....	36
Personal Property In Translt.....	38
Valuable Papers and Records (Other Than Electronic Data).....	36
Underground Pipes.....	40
<b>B. Exclusions</b> .....	40
<b>C. Limits of Insurance</b> .....	45
<b>D. Deductibles</b> .....	46
<b>E. Property Loss Conditions</b> .....	47
1. Abandonment.....	47
2. Appraisal.....	47
3. Duties in the Event of Loss or Damage.....	47
4. Legal Action Against Us.....	48
5. Loss Payment.....	48
6. Recovered Property.....	50
7. Vacancy.....	50
8. Pair, Sets or Parts.....	51
<b>F. Property General Conditions</b> .....	51
1. Control of Property.....	51
2. Mortgageholders.....	51
3. No Benefit to Bailee.....	52
4. Policy Period, Coverage Territory.....	52
5. Protective Devices.....	52
6. Increase in Hazard.....	52
<b>G. Property Definitions</b> .....	52
 <b>SECTION II - LIABILITY</b>	
<b>A. Coverages</b> .....	59
1. Business Liability.....	59
2. Medical Expenses.....	61
<b>B. Exclusions</b> .....	62
1. Applicable to Business Liability Coverage.....	62
2. Additional Exclusions Applicable only to Personal and Advertising Injury.....	68
3. Additional Exclusions Applicable to Medical Expenses Coverage Only.....	69
4. Additional Exclusions Applicable to Both Business Liability Coverage and Medical Expenses Coverage - Nuclear Energy Liability Exclusion.....	70
<b>C. Who is an Insured</b> .....	71
<b>D. Liability and Medical Expenses Limits of Insurance</b> .....	72

E. Liability and Medical Expenses General Conditions.....	73
1. Bankruptcy.....	73
2. Duties in the Event of Occurrence, Offense, Claim or Suit.....	73
3. Legal Action Against Us.....	73
4. Separation of Insureds.....	73
F. Liability and Medical Expenses Definitions.....	74
 <b>SECTION III - COMMON POLICY CONDITIONS (APPLICABLE TO SECTION I - PROPERTY AND SECTION II - LIABILITY)</b>	
A. Cancellation.....	77
B. Changes.....	78
C. Concealment, Misrepresentation or Fraud.....	78
D. Examination of Your Books and Records.....	78
E. Inspections and Surveys.....	78
F. Insurance Under Two or More Coverages.....	78
G. Liberalization.....	79
H. Other Insurance.....	79
I. Premiums.....	80
J. Premium Audit.....	80
K. Transfer of Rights of Recovery Against Others to Us.....	80
L. Transfer of Your Rights and Duties Under This Policy.....	81

## BUSINESSOWNERS 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 Coverage Form 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.

In **SECTION II - LIABILITY**, the word "insured" means any person or organization qualifying as such under paragraph C. **Who is an Insured.**

Other words and phrases that appear in quotation marks have special meaning. Refer to paragraph G. **Property Definitions** in **SECTION I - PROPERTY** and paragraph F. **Liability and Medical Expenses Definitions** in **SECTION II - LIABILITY.**

### SECTION I - PROPERTY

#### 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 includes Buildings as described in paragraph a. below, Business Personal Property as described in paragraph b. below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property. Regardless of whether coverage is shown in the Declarations for Buildings, Business Personal Property, or both, there is no coverage for property described in **SECTION I - PROPERTY, A. Coverage, 2. Property Not Covered.**

a. Buildings, meaning the buildings and structures at the premises described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery; and
  - (b) Equipment;
- (4) Your personal property in apartments, rooms or common areas furnished by you as the landlord;
- (5) Personal property owned by you that is used to maintain or service the buildings or structures or the premises, including:
  - (a) Fire protection equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and

(d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(6) If not covered by other insurance

(a) Additions under construction, alterations and repairs to the buildings or structures;

(b) Materials, equipment, supplies and temporary structures, on or within 1,000 feet of the described premises, used for making additions, alterations or repairs to the buildings or structures.

(7) Signs, whether or not they are attached to covered buildings or structures;

(8) Interior and Exterior Building glass if you are a building owner;

(9) Fences and retaining walls located on or within 1,000 feet of a covered building or structure, whether or not attached to buildings or structures, except for retaining walls that are used, in whole or in part, to contain water.

b. Business Personal Property located in or on the buildings or structures at the described premises or in the open (or in a vehicle) within 1,000 feet of the building or structures or within 1,000 feet of the premises described in the Declarations, whichever distance is greater, including:

(1) Property you own that is used in your business;

(2) Property of others that is in your care, custody or control, including the cost of labor, materials or services furnished or arranged by you on personal property of others, except as otherwise provided in **SECTION I -**

**PROPERTY, E. Property Loss Condition, 5. Loss Payment paragraph d., subparagraph (3)(b);**

- (3) Tenant's 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.
- (4) Leased personal property for which you have a written contractual responsibility to insure, unless otherwise provided in paragraph (2) above;
- (5) Exterior building glass, if you are a tenant and no Limit of Insurance is shown in the Declarations for Building property. The glass must be owned by you or in your care, custody or control;
- (6) Physical damage sustained to a building leased to you caused by or resulting from "theft" or attempted "theft", burglary or robbery of your Business Personal Property.

**2. Property Not Covered**

Covered Property does not include:

- a. Aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration;
- b. Contractor's equipment, which is used or operated principally away from the premises described in the Declarations, or parts and equipment, whether attached or unattached to contractor's equipment, unless such parts and equipment is held for sale by you, or sold by you but not delivered unless specifically endorsed and scheduled, or as provided for in **SECTION I - PROPERTY, B. Additional Coverages, v. Commercial Tools and Small Equipment;**
- c. "Money" or "securities" except as provided in the:
  - (1) Money and Securities Additional Coverage; or
  - (2) Employee Theft Additional Coverage;
- d. Contraband or property in the course of illegal transportation or trade;
- e. Land, whether or not resurfaced with stone, gravel or similar layer (including

land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof), except as provided in **SECTION I - PROPERTY, A. Coverage, 6. Coverage Extension, i. Paved Surfaces;**

- f. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are part of a vegetated roof), all except as provided in **SECTION I - PROPERTY, A. Coverage, 6. Coverage Extension, c. Outdoor Property;**
- g. Watercraft (including motors, equipment and accessories);
- h. Accounts, bills, food stamps, other evidences of debt, accounts receivable or "valuable papers and records"; except as otherwise provided in this Coverage Form;
- i. "Computer equipment", which is permanently installed or designed to be permanently installed in any aircraft, watercraft, motortruck or other vehicle subject to motor vehicle registration. This paragraph does not apply to "computer equipment" while held as "stock";
- j. "Electronic Data", except as provided under the Computer Equipment and Electronic Vandalism Additional Coverages. This paragraph does not apply to your "stock" of prepackaged "software" or to "electronic data" which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
- k. Animals, unless owned by others and boarded by you, or held for sale by you, or sold but not delivered, and only while inside of buildings;
- l. The cost of excavations, grading, backfilling, or filling;
- m. Bulkheads, pilings, piers, wharves or docks;
- n. Retaining walls that are used, in whole or in part, to contain water.
- o. "Computer Equipment", except as provided for under the:
  - (1) Computer Equipment Additional Coverage;
  - (2) Equipment Breakdown Additional Coverage; or

(3) Electronic Vandalism Additional Coverage.

- p. Commercial tools and small equipment except as provided in SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, v. Commercial Tools and Small Equipment or for contractor's equipment specifically endorsed and scheduled. This does not apply to your commercial tools and small equipment permanently installed or exclusively used at the described premises;
- q. Employee tools and small equipment except as provided for in SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, v. Commercial Tools and Small Equipment or when added by separate endorsement;
- r. Bridges (unless the bridge is made a part of a covered Building), roadways, walks, patios or other paved surfaces, except as provided in SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions, i. Paved Surfaces;
- s. Underground pipes, flues or drains except as provided in SECTION I - PROPERTY, A. Coverage, 6. Coverage Extensions, m. Underground Pipes; and
- t. Personal Property while airborne or waterborne.

3. Covered Causes of Loss

Risks of direct physical loss unless the loss is:

- a. Excluded in SECTION I - PROPERTY, B. Exclusions; or
- b. Limited in SECTION I - PROPERTY, A. Coverages, 4. Limitations

4. Limitations

- a. We will not pay for loss of or damage to:
  - (1) 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. This limitation does not apply to SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, s. Money and Securities.
  - (2) Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
  - (3) 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:

- (a) 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
  - (b) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
- (4) Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:
- (a) Dampness or dryness of atmosphere or of soil supporting the vegetation;
  - (b) Changes in or extremes of temperature;
  - (c) Disease;
  - (d) Frost or hail; or
  - (e) Rain, snow, ice or sleet.
- b. We will not pay for loss of or damage to the following types of property unless caused by any of the "specified causes of loss" or building glass breakage:
- (1) Animals, and then only if they are killed or their destruction is made necessary.
  - (2) Fragile articles such as glassware, statuary, marble, chinaware and porcelain, if broken. This restriction does not apply to:
    - (a) Glass that is part of the exterior or interior of a building or structure;
    - (b) Containers of property held for sale; or
    - (c) Photographic or scientific instrument lenses.
- c. For loss or damage by "theft", the following types of property are covered only up to the limits shown:
- (1) \$10,000 for furs, fur garments and garments trimmed with fur.
  - (2) \$10,000 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 \$250 or less per item.



## 5. Additional Coverages

### a. Debris Removal

- (1) Subject to paragraphs (2), (3) and (4) below, we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris 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 of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
  - (a) Remove debris of property of yours that is not insured under this Coverage Form, or property in your possession that is not Covered Property;
  - (b) Remove debris of property owned or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this Coverage Form;
  - (c) Remove any property that is Property Not Covered except as provided under the Outdoor Property Coverage Extension;
  - (d) Remove property of others of a type that would not be Covered Property under this Coverage Form;
  - (e) Remove deposits of mud or earth from the grounds of the described premises;
  - (f) Extract "pollutants" from land or water; or
  - (g) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in paragraph (4) below, the following provisions apply:
  - (a) The most that 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 paragraph (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. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.

- (4) We will pay up to an additional \$25,000 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 paragraphs (a) and/or (b) above 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 \$25,000.

### (5) Examples

#### 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) above.

**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	\$ 40,000
Debris Removal Expense Payable	
Basic Amount	\$ 10,500
Additional Amount	\$ 25,000

The basic amount payable for debris removal expense under the terms of paragraph (3) above 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) above, because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because (from paragraph (3) (a)) the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under paragraph (4) above. Thus the total payable for debris removal expense in this example is \$35,500; \$4,500 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 of 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 90 days after the property is first moved.

This Additional Coverage does not increase the applicable Limit of Insurance.

**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 \$25,000 for service at each premises described in the Declarations, unless a higher Limit of Insurance is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to your liability for fire department services charges:

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

**d. Collapse**

The coverage provided under this Additional Coverage - Collapse applies only to an abrupt collapse as described and limited in paragraphs (1), (2), (3), (4), (5), (6) and (7) below.

- (1) For the purpose of this Additional Coverage - Collapse, abrupt collapse means an abrupt failing 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 of or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this policy or that contains Covered Property

insured under this policy, 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 any insured prior to collapse;
  - (b) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to any 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; or
  - (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:
    - (i) A cause of loss listed in paragraphs (a) or (b) above of this Additional Coverage;
    - (ii) One or more of the "specified causes of loss";
    - (iii) Breakage of building glass;
    - (iv) Weight of people or personal property; or
    - (v) 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) Awnings;
  - (b) Gutters and downspouts;

- (c) Yard Fixtures;
- (d) Outdoor swimming pools;
- (e) Beach or diving platforms or appurtenances;
- (f) Retaining walls; and
- (g) Walks, roadways and other paved surfaces;

If an abrupt collapse is caused by a cause of loss listed in paragraph (2), subparagraphs (a), (b), (c) and (d) of this Additional Coverage, we will pay for loss or damage to that property only if such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form and 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 abrupt collapse of personal property was caused by a cause of loss listed in paragraph (2), subparagraphs (a), (b), (c) and (d) of this Additional Coverage;
  - (b) The personal property which collapses is inside a building; and
  - (c) The property which collapses is not of a kind listed in paragraph (4) above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in 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 **SECTION I - PROPERTY, C. Limits of Insurance**.
- (8) The term Covered Cause of Loss includes the Additional Coverage -

Collapse as described and limited in paragraphs (1), (2), (3), (4), (5), (6) and (7) above.

**e. 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.

We will not pay the cost to repair any defect that caused the loss or damage; but we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

- (1) Results in discharge of any substance from an automatic fire protection system; or
- (2) Is directly caused by freezing.

**f. Business Income**

When Business Income Coverage is provided under this policy:

**(1) Business Income**

- (a) 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 a described premises shown 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 1,000 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises mean:

- (i) The portion of the building which you rent, lease or occupy;

- (ii) The area within 1,000 feet of the building or within 1,000 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and

- (iii) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

- (b) We will only pay for loss of Business Income that you sustain during the "period of restoration" and that occurs within the designated, consecutive number of months found on the Declarations Page beginning immediately after the date of direct physical loss or damage. For purposes of this insurance, all recoverable loss ceases when the "period of restoration" ends.

**(c) Business Income means the:**

- (i) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as 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;

- (ii) Continuing normal operating expenses incurred, including "payroll expenses". However, if your business is not generating any income because you are primarily in research or development or have not yet brought your product to market, your continuing normal operating expenses, including "payroll expenses", will not be offset by the Net Loss; and

- (iii) "Rental Value".

For manufacturing risks, Net Income includes the net sales value of production.

**(2) Extended Business Income**

If no Business Income Coverage is provided under this Coverage Form, then there is no Extended Business Income Coverage afforded under this Coverage Form.

**(a) Extended Business Income - Other Than Rental Value**

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this Coverage Form, we will pay for the actual loss of Business Income you incur during the period that:

(i) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced (to the extent necessary to resume "operations") and "operations" are resumed; and

(ii) Ends on the earlier of:

1) 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

2) The number of consecutive days shown in the Additional Property Coverage Schedule for Extended Business Income after the date determined in **(a) Extended Business Income - Other Than Rental Value**, paragraph (i) 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.

**(b) Extended Business Income - Rental Value**

If the necessary "suspension" of your "operations" produces a "rental value" loss payable under this Coverage Form, we will pay for the actual loss of "rental value" you incur during the period that:

(i) Begins the date property is actually repaired, rebuilt or replaced and tenantability is restored; and

(ii) Ends the earlier of:

1) 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

2) The number of consecutive days shown in the Additional Property Coverage Schedule for Extended Business Income after the date determined in **(b) Extended Business Income - Rental Value**, paragraph (i) 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.

(iii) We will reduce the amount of your:

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.

- (iv) 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.

This Additional Coverage is not subject to **SECTION I - PROPERTY, C. Limits of Insurance.**

**g. Extra Expense**

When Business Income Coverage is provided under this Coverage Form:

- (1) We will pay the necessary Extra Expense 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 at the described premises. 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 1,000 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises mean:

- (a) The portion of the building which you rent, lease or occupy;
- (b) The area within 1,000 feet of the building or within 1,000 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- (c) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

- (2) Extra Expense means expense incurred:

- (a) To avoid or minimize the "suspension" of business and

to continue "operations":

- (i) At the described premises; or
- (ii) At replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary locations.
- (b) To minimize the "suspension" of business if you cannot continue "operations".
- (c) To:
- (i) Repair or replace any property; or
- (ii) Research, replace or restore the lost information on damaged "valuable papers and records"

to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverage, f. Business Income.**

With regard to paragraph (i) above, we will pay only for those expenses necessary to expedite the repair or replacement of the property. Under this provision we will not pay for any portion of the ordinary and expected cost to actually repair or replace property.

- (3) We will only pay for Extra Expense that occurs within 12 consecutive months beginning immediately after the date of direct physical loss or damage.
- (4) We will reduce the amount of your Extra Expense loss payment to the extent you can return "operations" to normal and discontinue such Extra Expense.
- (5) 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.

This Additional Coverage is not subject to **SECTION I - PROPERTY, C. Limits of Insurance.**

**h. 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 for each location under this Additional Coverage is \$25,000 for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

#### I. Civil Authority

When Business Income Coverage is provided under this Coverage Form:

(1) 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 due to direct physical loss or damage to property within one mile of the described premises, provided that both of the following apply:

(a) 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;

(b) 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.

(2) 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:

- (a) Four consecutive weeks after the date of that action; or
- (b) When your Civil Authority Coverage for Business Income ends;

whichever is later.

(3) The definitions of Business Income and Extra Expense contained in SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income; and g. Extra Expense also apply to this Additional Coverage.

#### J. Money Orders and Counterfeit Money

(1) We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:

(a) Money orders issued by any post office, express company or "financial institution" that are not paid upon presentation; or

(b) "Counterfeit money" that is acquired during the regular course of business.

(2) Under this Additional Coverage, all loss:

(a) Caused by one or more persons; or

(b) Involving a single act or series of related acts;

is considered one occurrence.

(3) The most we will pay for any loss under this Additional Coverage is \$5,000.

#### K. Forgery or Alteration

(1) We will pay for loss resulting directly from forgery or alteration of any:

(a) Check, draft, promissory note, bill of exchange or similar written promises of payment in "money" that you or your agent has issued, or that was issued

by someone who impersonates you or your agent; and

- (b) Credit, debit or charge slips or documents, including signatures or the entry of a Personal Identification Number (PIN) into a "payment processing device" required with the use of any credit, debit, or charge card issued to you or any "employee" for business purposes.

- (2) Under this Additional Coverage, all loss:

- (a) Caused by one or more persons; or
- (b) Involving a single act or series of related acts;

is considered one occurrence.

- (3) If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promises of payment in "money", on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.

- (4) For purposes of this Additional Coverage, check includes a substitute check as defined by the United States Congress in the Check Clearing for the 21<sup>st</sup> Century Act and will be treated the same as the original it replaced.

- (5) The most we will pay for any loss, including legal expenses, under this Additional Coverage is \$25,000, unless a higher Limit of Insurance is shown in the Schedule of Amended Limits of Insurance.

#### I. Ordinance or Law

- (1) This Additional Coverage applies only to buildings insured on a replacement cost basis.

#### (2) Application of Coverages:

The coverages provided under this Additional Coverage applies only if paragraphs (a) and (b) below, are satisfied and are then subject to the qualifications found in (c) below.

#### (a) The ordinance or law:

- (i) Regulates the demolition, construction or repair of buildings, or establishes

zoning or land use requirements at the described premise;

- (ii) Is in force at the time of loss; and

- (iii) Was not in force at the time the involved construction was completed.

But coverage under this Additional Coverage applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered under this Additional Coverage.

#### (b) The building sustains direct physical damage:

- (i) That is covered under this Coverage Form and as a result of such damage, you are required to comply with the ordinance or law; or

- (ii) That is covered under this Coverage Form and direct physical damage that is not covered under this Coverage Form and as a result of the building damage in its entirety, you are required to comply with the ordinance or law.

- (iii) But if the damage is not covered under this Coverage Form and such damage is the subject of the ordinance or law, then there is no coverage under this Additional Coverage even if building has also sustained covered direct physical damage.

#### (c) In the situation described in

- (2) Application of Coverages, paragraph (b), subparagraph (ii) above, we will not pay the full amount of loss otherwise payable under the terms of coverages for Coverage for Loss to the Undamaged Portion of the Building, Demolition Cost Coverage or Increased Cost of Construction Coverage. Instead, we will pay a proportion of such loss, meaning the proportion that

the covered direct physical damage bears to the total direct physical damage. Paragraph (7) of this coverage provides an example of this procedure.

However, if the covered direct physical damage alone would have resulted in a requirement to comply with the ordinance or law, then we will pay the full amount of the loss otherwise payable under the terms of Coverages for Loss to the Undamaged Portion of the Building, Demolition Cost Coverage or Increased Cost of Construction Coverage under this Additional Coverage.

(3) We will not pay under this Additional Coverage for:

- (a) Enforcement of or compliance with any ordinance or law which requires the 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 "fungi", wet rot or dry rot; or
- (b) The costs associated with the enforcement of or compliance with any 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", "fungi", wet rot or dry rot.

(4) Coverage

(a) Coverage for Loss to the Undamaged Portion of the Building

With respect to the building that has sustained covered direct physical damage, we will pay under this Additional Coverage for the loss in value of the undamaged portion of the building as a consequence of a requirement to comply with an ordinance or law that requires demolition of undamaged parts of the same building. Coverage for Loss to the Undamaged Portion of the Building is included within the Limit of Insurance shown in the

Declarations as applicable to the covered building. Coverage for Loss to the Undamaged Portion of the Building does not increase the Limit of Insurance.

(b) Demolition Cost Coverage

With respect to the building that has sustained covered direct physical damage, we will pay the cost to demolish and clear the site of the undamaged parts of the same building, as a consequence of a requirement to comply with an ordinance or law that requires demolition of such undamaged property.

**SECTION I - PROPERTY, E. Property Loss Conditions, 5. Loss Payment, paragraph d. does not apply to Demolition Cost Coverage.**

(c) Increased Cost of Construction

With respect to the building that has sustained covered direct physical damage, we will pay the increased cost to:

- (i) Repair or reconstruct damaged portions of that building; and/or
- (ii) Reconstruct or remodel undamaged portions of that building, whether or not demolition is required;

when the increased cost is a consequence of a requirement to comply with the minimum standards of the ordinance or law.

However:

- (i) This coverage applies only if the restored or remodeled property is intended for similar occupancy as the current property, unless such occupancy is not permitted by zoning or land use ordinance or law.
- (ii) We will not pay for the increased cost of construction if the building is not repaired, reconstructed or remodeled.

**SECTION I - PROPERTY, E. Property Loss Conditions, 5. Loss Payment, paragraph d. does not apply to the increased Cost of Construction Coverage.**

**(5) Loss Payment**

(a) Loss Payment provisions (b), (c), (d) and (e) below are subject to the apportionment procedure set forth in above **Application of Coverages**, paragraph (2)(c).

(b) When there is a loss in value of an undamaged portion of the building to which Coverage for Loss to the Undamaged Portion of the Building applies, the loss payment for that building, including damaged and undamaged portions, will be determined as follows:

(i) If the property is repaired or replaced on the same or another premise, we will not pay more than the lesser of:

- 1) The amount you actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same premises and to the same height, floor area, style and comparable quality of the original property insured; or
- 2) The Limit of Insurance shown in the Declarations as applicable to the covered building.

(ii) If the property is not repaired or replaced. We will not pay more than the lesser of:

- 1) The actual cash value of the building at the time of loss; or
- 2) The Limit of Insurance shown in the Declarations as applicable to the covered building.

(c) The most we will pay for the total of all covered losses for Demolition Cost Coverage and Increased Cost of Construction is the Limit of Insurance shown in paragraph (d) below. Subject to this combined Limit of Insurance, the following loss payment provisions apply:

(i) For Demolition Cost Coverage, we will not pay for more than the amount

you actually spend to demolish and clear the site of the described premises.

(ii) Loss payment under Increased Cost of Construction Coverage will be determined as follows:

- 1) We will not pay for the increased cost of construction until the property is actually repaired or replaced at the same or another premises; and
- 2) Unless the repairs or replacement is 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.

(iii) 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 Coverage is the lesser of:

- 1) The increased cost of construction at the same premises; or
- 2) The Limit of Insurance described in paragraph (d) below.

(iv) If the ordinance or law requires relocation to another premise, the most we will pay for the increased cost of construction is the lesser of:

- 1) The increased cost of construction at the new premises; or
- 2) The Limit of Insurance described in paragraph (d) below.

(d) The most we will pay for the total of all covered losses for Demolition Cost and Increased Cost of Construction for each building described in the Declarations is \$5,000 or the amount shown in the Additional Property Schedule.

If a damaged building(s) is covered under a Blanket Limit of Insurance and the Blanket Limit of Insurance applies to more than one building or item of property, then the most we will under this Additional Coverage, for each building, is \$5,000, or the amount shown in the Additional Property Coverage Schedule.

- (6) Under this coverage, we will not pay for loss due to any ordinance or law that:
- You were required to comply with before the loss, even if the building was undamaged; and
  - You failed to comply with.
- (7) Example of Proportionate Loss Payment for Ordinance or Law Coverage losses (procedures as set forth in paragraph (2)(c) of this Additional Coverage).

Assume:

- Wind is a Covered Cause of Loss; "Flood" is an excluded Cause of Loss
- The building has value of \$200,000
- The total direct physical damage to the building: \$100,000;
- The ordinance or law in this jurisdiction is enforced when building damage equals or exceeds 50% of the building's value;
- Portion of direct physical damage that is covered (caused by wind): \$30,000;
- Portion of direct physical damage that is not covered (caused by "flood"): \$70,000; and
- Loss under Increased Cost of Construction: \$60,000

**Step 1:** Determine the proportion that the covered direct physical damage bears to the total direct physical damage.

$$\$30,000 \text{ divided by } \$100,000 = .30$$

**Step 2:** Apply that portion to the Ordinance or Law loss.

$$\$60,000 \times .30 = \$18,000$$

In this example, the most we will pay under this Additional Coverage for the Increased Cost of

Construction loss is \$18,000, subject to the applicable Limit of Insurance and any other applicable provisions.

Note: The same procedure applies to losses under Loss to the Undamaged Portion of the Building and Demolition Cost of this Additional Coverage.

#### m. Business Income from Dependent Properties

When Business Income Coverage is provided under this Coverage Form:

- (1) We will pay for the actual loss of Business Income you sustain due to direct physical loss or damage at the premises of a "dependent property" caused by or resulting from any Covered Cause of Loss.

However, this Additional Coverage does not apply when the only loss at the premises of a "dependent property" is loss or damage to "electronic data", including destruction or corruption of "electronic data". If the "dependent property" sustains loss or damage to "electronic data" and other property, coverage under this Additional Coverage will not continue once the other property is repaired, rebuilt or replaced.

- (2) The most we will pay under this Additional Coverage is \$5,000 per occurrence, regardless of the number of "dependent properties" affected.
- (3) We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:
- Source of materials; or
  - Outlet for your products.
- (4) 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.
- (5) The coverage period for Business Income under this Additional Coverage:
- Begins 72 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the "dependent property"; and

(b) Ends on the date when the property at the premises of the "dependent property" should be repaired, rebuilt or replaced (to the extent necessary to resume "operations") with reasonable speed and similar quality or 12 months immediately following the date of direct physical loss or damage, whichever is shorter.

(6) The Business Income coverage period, as stated in paragraph (4) above, does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:

(a) Regulates the construction, use or repair, or requires the tearing down of any property; or

(b) 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 Coverage Form will not reduce the Business Income coverage period.

(7) The definition of Business Income contained in the Business Income Additional Coverage also applies to this Business Income from Dependent Properties Additional Coverage.

**n. Glass Expenses**

When glass is damaged from a Covered Cause of Loss we will pay for your expenses incurred to:

(1) Put up temporary plates or board up openings if repair or replacement of damaged glass is delayed;

(2) Replace lettering, artwork, signs or other items permanently affixed to, or a part of, the damaged glass; and

(3) Remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

**o. Fire Protection Equipment Recharge**

(1) We will pay:

(a) The cost of recharging or replacing, whichever is less, your fire extinguishers and fire extinguishing systems

(including hydrostatic testing if needed) if they are discharged on or within 1,000 feet of the described premises; and

(b) For loss or damage to Covered Property if such loss or damage is the result of an accidental discharge of chemicals from a fire extinguisher or a fire extinguishing system.

(2) No coverage will apply if the fire extinguishing system is discharged during installation or testing.

(3) The most we will pay under this Additional Coverage is \$25,000 in any one occurrence. The deductible does not apply to these expenses.

**p. Employee Theft Including ERISA Compliance**

(1) We will pay for loss or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", clergy, or any non-compensated person whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Additional Coverage, "theft" shall also include "forgery".

(2) This Additional Coverage terminates as to any "employee" as soon as:

(a) You; or

(b) Any of your partners, "members", "managers", officers, directors or trustees not in collusion with the "employee";

"Discovered" the "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you.

(3) Under this Additional Coverage, all loss:

(a) Caused by one or more persons; or

(b) Involving a single act or series of related acts;

is considered one occurrence.

(4) We will pay only for loss you sustain through acts committed or events occurring anytime which is "discovered" by you:

(a) During the policy period; or



- (b) No later than 1 year from the date of termination or cancellation of this Insurance. However this extended period to "discover" loss terminates immediately upon the effective date of any other Insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this Additional Coverage, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (5) You may extend this coverage to apply to loss caused by any "employee" while temporarily outside the Coverage Territory for a period of not more than 90 days.
- (6) The most we will pay for all loss resulting directly from an occurrence is \$10,000 or the Limit of Insurance shown in the Additional Property Coverage Schedule. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year.
- (7) Special Employee Theft Exclusions**  
We will not pay for:
- (a) Loss resulting from "theft" or any other dishonest act committed by:
- (i) You; or
  - (ii) Any of your partners or "members";
- Whether acting alone or in collusion with other persons.
- (b) Loss caused by an "employee" if the "employee" has also committed "theft" or any other dishonest act prior to the effective date of this policy and you or any of your partners, "managers", officers, directors or trustees, not in collusion with the "employee", learned of that "theft" or dishonest act prior to the policy period shown in the Declarations.
- (c) Loss resulting from "theft" or any other dishonest act committed by any of your "employees", "managers", directors, trustees or authorized representatives:
- (i) Whether acting alone or in collusion with other persons; or
  - (ii) While performing services for you or others;
- Except when covered under this Additional Coverage.
- (d) Loss that is an indirect result of an occurrence covered by this Additional Coverage, including, but not limited to, loss resulting from:
- (i) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property";
  - (ii) Payment of damages of any type for which you are legally liable;
  - (iii) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this Additional Coverage.
- (e) Fees, costs and expenses incurred by you which are related to any legal action.
- (f) Loss or that part of any loss, the proof of which as to its existence or amount is dependent upon:
- (i) An inventory computation; or
  - (ii) A profit and loss computation.
- However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.
- (g) Loss resulting from trading, whether in your name or in a genuine or fictitious account.
- (h) Loss resulting from fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.
- (i) Loss resulting from:
- (i) The unauthorized disclosure of your

confidential information including, but not limited to, patents, trade secrets, processing methods or customer lists; or

- (ii) The unauthorized use or disclosure of confidential information of another person or entity which is held by you including, but not limited to, financial information, personal information, credit card information or similar non public information.

**(8) Welfare and Pension Plan ERISA Compliance**

- (a) The "employee benefit plan" (hereafter referred to as Plan) is included as an insured under this Additional Coverage.
- (b) If any Plan is insured jointly with any other entity under this Additional Coverage, you or the Plan Administrator must select a Limit of Insurance for this Additional Coverage that is sufficient to provide a Limit of Insurance for each Plan that is at least equal to that required if each Plan were separately insured.
- (c) With respect to loss sustained or "discovered" by any such Plan, paragraph (1) above, of this Additional Coverage is replaced by the following:
  - (1) We will pay for loss of or damage to "funds" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons.
- (d) If the first Named Insured is an entity other than a Plan, any payment we make for loss sustained by any Plan will be made to the Plan sustaining the loss.
- (e) If two or more Plans are insured under this Additional Coverage, any payment we make for loss:
  - (i) Sustained by two or more Plans; or
  - (ii) Of commingled "funds" or "other property" of two or more Plans;

Resulting from an occurrence, will be made to each Plan sustaining loss in the proportion that the Limit of Insurance required for each Plan bears to the total Limit of Insurance of all Plans sustaining loss.

- (f) The deductible does not apply to this Additional Coverage.

**q. Rewards - Arson, Theft and Vandalism**

- (1) We will reimburse you for payment of any reward offered on your behalf and for information that leads to the arrest and conviction of the person or persons responsible for:
  - (a) Arson;
  - (b) "Theft" or
  - (c) Vandalismto Covered Property.
- (2) The arrest or conviction must involve a covered loss caused by arson, "theft" or vandalism.
- (3) The most we will pay under this Additional Coverage is \$10,000 unless a higher Limit of Insurance is shown in the Additional Property Coverage Schedule. The amount we pay is not increased by the number of persons involved in providing the information.
- (4) The amount payable under this Additional Coverage is additional insurance.
- (5) The deductible does not apply to this Additional Coverage.

**r. Computer Equipment**

- (1) We will pay for direct physical loss of or damage to the following Covered Property which is your property or property in your care, custody or control while at or away from the described premises when loss or damage is caused by or resulting from a Covered Cause of Loss:
  - (a) "Computer equipment"; and
  - (b) Programming documentation and instruction manuals.
- (2) We will pay for the actual loss of Business Income you sustain as described in the Business Income Additional Coverage and we will pay for any necessary Extra Expense you incur during the "period of restoration".

as described in the Extra Expense Additional Coverage.

- (3) In the event of a loss of or damage to "Computer equipment" by a Covered Cause of Loss, we will pay your costs to modify or replace undamaged "hardware" or "software" when it:

(a) Was dependent on the damaged "hardware" or "software" prior to the covered loss; and

(b) Is not compatible with the "hardware" or "software" that is replacing the property that was involved in the covered loss.

We will only pay for your costs to modify or replace undamaged "hardware" or "software" at a premises described in the Declarations.

The most we will pay for your costs covered in any one occurrence is \$10,000.

- (4) We will not pay for any loss of or damage to the following property:

(a) Property you rent, loan or lease to others while it is away from the described premises;

(b) Property you hold for sale, distribute or manufacture except as provided in **SECTION I - PROPERTY, A. Coverage, 1. Covered Property**, paragraph b.; or

(c) "Software" that cannot be duplicated or replaced with similar property of equal quality and/or substantially similar functionality.

- (5) If we provide Building coverage only, we will only pay for loss to "computer equipment" that service building operations at the described premises and are located at the described premises.

- (6) The most we will pay for any loss or damage to property described in paragraphs (1) and (2) above, is \$35,000 unless a higher Limit of Insurance is shown in the Additional Property Coverage Schedule for Computer Equipment. The most we will pay for Extra Expense is \$5,000 unless a higher Limit of Insurance is shown in the Additional Property Coverage Schedule for Extra Expense.

- (7) The following in **SECTION I - PROPERTY, B. Exclusions**, paragraph 1, do not apply to this Additional Coverage:

(a) b. Earth Movement; and

(b) g. Water.

- (8) **Special Computer Equipment Exclusions**

We will not pay for loss or damage to portable electronic devices when caused by, resulting from, or arising out of "theft" or unexplained loss when the property is checked baggage with a carrier for transit. Portable electronic devices includes laptops, tablets, e-readers, smartphones or other lightweight, hand-held or wearable devices capable of storing, retrieving and processing data.

**s. Money and Securities**

- (1) We will pay for loss of "money" and "securities":

(a) Inside a building at the described premises or "financial institution" resulting directly from "theft" committed by a person present inside a building at the described premises or "financial institution";

(b) Inside a building at the described premises or "financial institution" resulting directly from disappearance or destruction; or

(c) Outside of a building at or away from the described premises in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.

- (2) For the purposes of this Additional Coverage, all loss:

(a) Caused by one or more persons; or

(b) Involving a single act or series of related acts;

is considered one occurrence.

- (3) You must keep records of all "money" and "securities" so we can verify the amount of any one loss or damage.

- (4) The amount payable under this Additional Coverage is additional insurance.

(5) The most we will pay for loss in any one occurrence is:

(a) \$10,000 or the amount shown in the Additional Property Coverage Schedule while:

(i) Inside a building at the described premises; or

(ii) Within a "financial institution" in the Coverage Territory; and

(b) \$5,000 or the amount shown in the Additional Property Coverage Schedule while outside of a building at the described premises or when away from the described premises in the Coverage Territory.

**(6) Special Money and Securities Exclusions**

We will not pay for loss:

(a) Resulting from accounting or arithmetic errors or omissions;

(b) Resulting from giving or surrendering of property in any exchange or purchase;

(c) Of property contained in any money-operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device; or

(d) Loss or damage to "money" and "securities" following and directly related to the use of any computer to fraudulently cause a transfer of that property.

**t. Tenant Signs (Tenants only)**

(1) This Additional Coverage is available only when the Named Insured is a tenant and a Limit of Insurance is shown in the Declarations Page for Business Personal Property.

We will pay for direct physical loss of or damage to all signs:

(a) Owned by you; or

(b) Owned by others but in your care, custody or control;

when loss or damage is caused by or resulting from a Covered Cause of Loss.

(2) **SECTION I - PROPERTY, A. Coverage, 3. Covered Causes of Loss** does not apply to this Additional Coverage and **SECTION I -**

**PROPERTY, B. Exclusions, paragraph 1.** does not apply to this Additional Coverage except for the following:

(a) **c. Government Action;**

(b) **d. Nuclear Hazard;** and

(c) **f. War and Military Action.**

(3) We will not pay for loss or damage caused by or resulting from:

(a) Wear and tear;

(b) Hidden or latent defect;

(c) Rust;

(d) Corrosion; or

(e) Mechanical Breakdown, except as provided for in **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, u. Equipment Breakdown.**

(4) The most we will pay for loss or damage in any one occurrence is \$5,000 regardless of the number of locations or buildings involved.

**u. Equipment Breakdown**

(1) We will pay for direct physical damage to Covered Property that is the direct result of an "accident" or "electronic circuitry impairment". We will consider "electronic circuitry impairment" to be physical damage to "covered equipment".

(2) The following coverages also apply to the direct result of an "accident" or "electronic circuitry impairment". However, with respect to coverage **A.5.u.(2)(h) Utility Services - Equipment Breakdown (Accident)** and **A.5.m. Business Income from Dependent Properties** provided in this coverage form, coverage will apply only to the direct result of an "accident" and will not apply to the direct result of an "electronic circuitry impairment". These coverages do not provide additional amounts of insurance.

**(a) Data Restoration**

We will pay for your reasonable and necessary cost to research, replace and restore lost "data".

The most we will pay for loss or expense under this coverage, including actual loss of Business Income you sustain and

necessary Extra Expense you incur is \$50,000.

**(b) Expediting Expenses**

With respect to your damaged Covered Property, we will pay, up to \$50,000, the reasonable extra cost to:

- (i) Make temporary repairs; and
- (ii) Expedite permanent repairs or permanent replacement.

**(c) Fungl, Wet Rot, or Dry Rot**

(i) We will pay the additional cost to repair or replace Covered Property because of contamination by "fungl", wet rot or dry rot. This includes the additional costs to clean up or dispose of such property. This does not include spoilage of personal property that is "perishable goods" to the extent that such spoilage is covered under Spoilage coverage.

(ii) As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no "fungl", wet rot or dry rot been involved.

(iii) We will also pay the cost of testing performed after repair or replacement of the damaged Covered Property is completed only to the extent that there is reason to believe there is the presence of "fungl", wet rot or dry rot.

(iv) This coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

(v) The most we will pay in any "one equipment breakdown" for loss, damage or expense under this coverage, including actual loss of Business Income you sustain and necessary Extra Expense you incur, if shown as covered, is \$15,000 even if the "fungl", wet rot or dry rot continues to be present or active or recurs in a later policy period.

**(d) Hazardous Substances**

We will pay for the additional cost to repair or replace Covered Property because of a contamination by a "hazardous substance".

This includes the additional costs to clean up or dispose of such property. This does not include contamination of "perishable goods" by refrigerant, including but not limited to ammonia, which is addressed in (g) Spoilage below. Additional costs mean those beyond what would have been payable had no "hazardous substance" been involved. The most we will pay for loss, damage or expense under this coverage, including actual loss of Business Income you sustain, and necessary Extra Expense you incur is \$50,000.

**(e) Personal Property Off Premises Equipment Breakdown**

(i) Any direct physical damage for personal property off premises provided under Coverage Extension b. Personal Property Off Premises, also applies to the direct result of an "accident" or "electronic circuitry impairment".

(ii) We will also pay for your reasonable and necessary cost to research, replace and restore lost "electronic data" contained within "covered equipment" when due to covered loss or damage as described in (i) above. This amount may not exceed the limit applicable to Data Restoration coverage.

(iii) The most we will pay for loss, damage or expense under this coverage, including actual loss of Business Income you sustain and necessary Extra Expense you incur and Data Restoration as described in (ii) above is \$50,000.

**(f) Public Relations**

(i) This coverage only applies if you have sustained an actual loss of Business Income.

(ii) We will pay for your reasonable costs for professional services to create and disseminate communications, when the need for such communications arises directly from the interruption of your business. This communication must be directed to one or more of the following:

- 1) The media;
- 2) The public; or
- 3) Your customers, clients or members.

(iii) Such costs must be incurred during the "period of restoration" or up to 30 days after the "period of restoration" has ended.

(iv) The most we will pay for loss or expense under this coverage is \$5,000.

**(g) Spoilage**

(i) We will pay for:

- 1) Physical damage to your "perishable goods" due to spoilage.
- 2) Physical damage to your "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia.
- 3) Any necessary expenses you incur to reduce the amount of loss under this coverage. We will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

(ii) If you are unable to replace "perishable goods" before its anticipated sale, the amount of our payment will be determined on the basis of the sales price of the "perishable goods" at the time of the

"accident" or "electronic circuitry impairment", less discounts and expenses you otherwise would have had. Otherwise our payment will be determined in accordance with the Loss Payment Condition.

(iii) The most we will pay for loss or damage under this coverage is \$50,000.

**(h) Utility Services - Equipment Breakdown (Accident)**

(i) Any insurance provided for Business Income, Extra Expense, Data Restoration or Spoilage is extended to apply to your loss, damage or expense caused by a failure or disruption of service. The failure or disruption of service must be caused by an "accident" to equipment, including overhead transmission lines, that is owned by a utility, landlord, a landlord's utility or other supplier who provides you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, Internet access, telecommunications services, "cloud computing services", wide area networks or data transmission. The equipment must meet the definition of "covered equipment" except that it is not Covered Property.

(ii) "Cloud computing services" must be provided by a professional provider with whom you have a contract.

(iii) With respect to the Data Restoration portion of this Service Interruption coverage, coverage will also apply to "data" stored in the equipment of a provider of "cloud computing services".

(iv) Any insurance provided for Business Income or Data Restoration will not apply



under this Service Interruption coverage unless the failure or disruption of service exceeds 24 hours. Immediately following the "accident", if the interruption exceeds 24 hours, coverage will begin at the time of the disruption, and the applicable deductible will apply.

- (v) The most we will pay in any "one equipment breakdown" for loss, damage or expense under this coverage is the applicable limit for Business Income, Extra Expense, Data Restoration or Spoilage.

### (3) Conditions

#### (a) Suspension

When any "covered equipment" is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" or "electronic circuitry impairment" to that "covered equipment". We can do this by mailing or delivering a written notice of suspension to:

- (i) Your address as shown in the Declarations; or  
(ii) The address where the "covered equipment" is located.

Once suspended in this way, your insurance can be reinstated only by an endorsement for that "covered equipment". If we suspend your insurance, you will get a pro rata refund of premium for that "covered equipment". But the suspension will be effective even if we have not yet made or offered a refund.

#### (b) Jurisdictional Inspections

If any property that is "covered equipment" under this Additional Coverage requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf. We do not warrant that conditions are safe or healthful.

#### (c) Environmental, Safety and Efficiency Improvements

If "covered equipment" requires replacement due to an "accident" or "electronic circuitry impairment", we will pay your additional cost to replace with equipment that is better for the environment, safer for people or more energy or water efficient than the equipment being replaced. However, we will not pay to increase the size or capacity of the equipment and we will not pay more than 150% of what the cost would have been to replace with like kind and quality. This provision does not apply to the replacement of component parts or to any property to which Actual Cash Value applies and does not increase any of the applicable limits.

#### (4) Special Equipment Breakdown Exclusions

- (a) We will not pay for loss, damage or expense caused by or resulting from a hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel, or an electrical insulation breakdown test of any type of electrical equipment.

- (b) With respect to Business Income, Extra Expense and Utility Services coverages, we will also not pay for:

- (i) Loss caused by your failure to use due diligence and dispatch, and all reasonable means to resume business; or  
(ii) Any increase in loss resulting from an agreement between you and your customer or supplier.

- (c) Except as provided under u.2.(c) "Fungi", Wet Rot or Dry Rot coverage we will not pay for loss, damage or expense caused directly or indirectly by the following, whether or not caused by or resulting from an "accident" or "electronic circuitry impairment": Any "fungi," wet rot or dry rot, including any presence, growth, proliferation, spread or any activity of "fungi," wet rot or dry rot. This includes, but is not

limited to, costs arising from clean up, removal, or abatement of such "fungi," wet rot or dry rot. However, this exclusion does not apply to spoilage of personal property that is "perishable goods," to the extent that such spoilage is covered under Spoilage coverage.

(d) This Additional Coverage - Equipment Breakdown does not apply to an "accident" or "electronic circuitry impairment" caused by or resulting from:

(i) Fire (including fire resulting from an "accident" or "electronic circuitry impairment"), or water or other means used to extinguish a fire;

(ii) Explosion of gas or unconsumed fuel within the furnace of any boiler or fired vessel or within the passages from that furnace to the atmosphere;

(iii) Any other explosion, except as specifically covered under this Additional Coverage;

(iv) Vandallism;

(v) Lightning; smoke; aircraft or vehicles; riot or civil commotion; sprinkler leakage; elevator collision;

(vi) Windstorm or hail; However, this exclusion does not apply when:

1) "Covered equipment" located within a building or structure suffers an "accident" or "electronic circuitry impairment" that results from wind-blown rain, snow, sand or dust; and

2) The building or structure did not first sustain wind or hail damage to its roof or walls through which the rain, snow, sand or dust entered.

(vii) Breakage of glass; falling objects; weight of snow, ice or sleet; freezing (caused by cold weather); collapse or molten material;

(viii) "Flood", surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not; mudslide or mudflow; or water that backs up or overflows from a sewer, drain or sump. However, if electrical "covered equipment" requires drying out because of the above, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and deductible for Building or Business Personal Property, whichever applies.

(ix) Any earth movement, including but not limited to earthquake, subsidence, sinkhole collapse, landslide, earth sinking, tsunami or volcanic action.

(e) Special Equipment Breakdown Exclusions (5)(d)(v), (5)(d)(vi) and (5)(d)(vii) shall not apply if:

(i) The excluded cause of loss occurs away from any covered location and causes an electrical surge or other electrical disturbance;

(ii) Such surge or disturbance is transmitted through utility service transmission lines to the covered location and results in an "accident" or "electronic circuitry impairment"; and

(iii) The loss, damage or expense caused by such surge or disturbance is not covered elsewhere under the policy.

(f) We will not pay under this Additional Coverage for any loss or damage to animals.

The most we will pay for loss, damage or expense arising from any "one equipment breakdown" is the applicable Limit of Insurance shown in the Declarations. This Additional Coverage does not provide an additional amount of insurance.



**v. Commercial Tools and Small Equipment**

- (1) This Additional Coverage is available only when a Limit of Insurance is shown in the Declarations for Business Personal Property.
- (2) We will pay for direct physical loss of or damage caused by or resulting from a Covered Cause of Loss to commercial tools and small equipment, including their:
  - (a) Accessories, whether attached or not attached; and
  - (b) Spare parts that are specifically designed and intended for use in the maintenance and operation of property covered under this Additional Coverage;

That is:

- (c) Your property;
  - (d) The property of others in your care, custody or control; or
  - (e) The property of your "employees".
- Damage to the property of your "employees" is limited to while on the described premises.

Commercial Tools and Small Equipment does not include communication devices and diagnostic equipment unless otherwise covered in **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, r. Computer Equipment.**

- (3) This coverage only applies to any one tool or piece of small equipment with a replacement cost value of \$2,500 or less, unless listed on a schedule included with this policy.
- (4) The most we will pay for any loss under this Additional Coverage in any one occurrence is \$5,000 unless a higher Limit of Insurance is shown in the Additional Property Coverage Schedule, but not more than \$2,500 for any one tool, tool box or piece of small equipment.
- (5) In addition to items listed within **SECTION I - PROPERTY, A. Coverage, 2. Property Not Covered**, we will not pay for any loss to the following property:
  - (a) Watercraft or watercraft parts and equipment;

- (b) Commercial tools and small equipment that are permanently mounted to a vehicle, including trailers;

- (c) Tires or tire tubes, attached or unattached, for use with commercial tools and small equipment, unless the loss or damage is caused by "theft", malicious mischief, or any of the "specified causes of loss"; or

- (d) Any property while underground, airborne or waterborne.

- (6) The following **SECTION I - PROPERTY, B. Exclusions**, in paragraph 1, do not apply to this Additional Coverage:

- (a) b. Earth Movement;

- (b) g. Water.

- (7) **Special Commercial Tools and Small Equipment Exclusion**

We will not pay for any loss caused by or resulting from any repair, adjusting, servicing, testing or maintenance process unless fire or explosion ensues, then only for the loss caused by such ensuing fire or explosion.

**w. Installation**

- (1) This Additional Coverage is available only when a Limit of Insurance is shown in the Declarations for Business Personal Property.

- (2) We will pay for direct physical loss of or damage to property sold under an installation agreement where your insurable interest continues until the property is accepted by the purchaser for whom the project is to be performed. Coverage applies under this Additional Coverage when the loss or damage is caused by or resulting from any Covered Cause of Loss.

- (3) The property under which this insurance applies includes:

- (a) Materials, supplies, equipment, machinery, fixtures owned by you or in your care, custody or control, and which are to be installed by you or at your direction; and

- (b) Temporary structures built or assembled on-site, including cribbing, scaffolding and construction forms.

This property is covered while:

- (c) At any jobsite you do not own, lease or operate;
  - (d) Awaiting and during installation, or awaiting acceptance by the purchaser;
  - (e) "In transit"; or
  - (f) At a temporary storage location.
- (4) Coverage provided under this Additional Coverage will end when one of the following first occurs:
- (a) This policy expires or is cancelled;
  - (b) The property covered under this Additional Coverage is accepted by the purchaser;
  - (c) Your interest in the property covered under this Additional Coverage ceases;
  - (d) You abandon the project to be performed by you for the purchaser, with no intention to complete it; or
  - (e) 90 days after the project to be performed by you for the purchaser is completed, unless we specify a different date in writing.
- (5) In addition to **SECTION I - PROPERTY, A. Coverage, 2. Property Not Covered**, the following property is not covered with respect to this Additional Coverage:
- (a) An existing building or structure to which an addition, alteration, improvement or repair is being made;
  - (b) Property stored at a permanent premises that you own;
  - (c) A plan, blueprint, design or specification;
  - (d) Trees, grass, sod, shrubbery or plants; and
  - (e) Machinery, tools, equipment, supplies or similar property that does not become a permanent part of the project. This includes contractor's equipment and other tools belonging to a contractor or sub-contractor.
- (6) **Special Installation Exclusions**  
We will not pay for any loss caused by or resulting from:

- (a) The cost to make good or replace faulty or defective materials or workmanship;
  - (b) Testing. However, if testing results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion;
  - (c) A fault, defect, deficiency, error or omission in a plan, blueprint, design or specification;
  - (d) The weight of a load when it exceeds the designed capacity of any property covered under this Additional Coverage to lift, move or support the load from any position; or
  - (e) Collision, upset or overturn of any property covered under this Additional Coverage to the extent of any loss of or damage to the tires or inner tubes of such property. But we will pay for the loss of or damage to the tires or inner tubes if the same accident causes other covered loss to the same property covered under this Additional Coverage.
- (7) The following in **SECTION I - PROPERTY, B. Exclusions**, paragraph 1. do not apply to this Additional Coverage:
- (a) b. Earth Movement; and
  - (b) g. Water.
- (8) The most we will pay for loss of or damage to property covered under this Additional Coverage in any one occurrence is \$5,000, regardless if the property is located at a jobsite, while "in transit", or at a temporary storage location.

This Additional Coverage does not increase **SECTION I - PROPERTY, C. Limits of Insurance**.

**x. Fine Arts**

- (1) We will pay for direct physical loss to "fine arts" which are your property or the property of others in your care, custody or control while on the described premises. We also cover your "fine arts" while temporarily on display or exhibit away from the described premises or while "in transit" between the described premises and a location where the

"fine arts" will be temporarily on display or exhibit.

- (2) The following of **SECTION I - PROPERTY, B. Exclusions**, paragraph 1. do not apply to this Additional Coverage:

- (a) b. Earth Movement; and
- (b) g. Water

- (3) The most we will pay for any loss under this Additional Coverage is \$10,000 per occurrence regardless of the number of locations or buildings involved.

- (4) **Special Fine Arts Exclusion**

We will not pay for any loss caused by or resulting from:

- (a) Breakage of statuary, glassware, bric-a-brac, marble, porcelain and similar fragile property. But we will pay if the loss or damage is caused directly by a "specified cause of loss", earthquake or "flood"; and

- (b) Any repairing, restoration or retouching of the "fine arts".

**y. Sales Representative Samples**

- (1) We will pay for direct physical loss or damage by a Covered Cause of Loss to samples of your "stock" in trade (including containers) while:

- (a) In the custody of your sales representative, agent or any "employee" who travels with sales samples;

- (b) In your custody while acting as a sales representative; or

- (c) "In transit" between the described premises and your sales representatives.

- (2) The following of **SECTION I - PROPERTY, B. Exclusions**, paragraph 1. do not apply to this Additional Coverage:

- (a) b. Earth Movement; and
- (b) g. Water

- (3) The most we will pay for any loss or damage under this Additional Coverage is \$5,000 unless a higher Limit of Insurance is shown in the Additional Property Coverage Schedule.

- (4) We will not pay for loss to the following property:

- (a) Property which has been sold;
- (b) Jewelry, precious or semiprecious stones, gold, silver, platinum or other precious metals or alloys;
- (c) Fur, fur garments or garments trimmed with fur; or
- (d) Any property while waterborne.

**z. Leasehold Interest (Tenants Only)**

- (1) If your lease is cancelled due to direct physical damage to property at the described premises caused by or resulting from a Covered Cause of Loss, we will pay the net loss you sustain due to increased rent under a replacement lease.

- (2) The most we will pay for loss because of the cancellation of any lease or leases due to the same covered cause of loss is the lesser of:

- (a) If your lease is cancelled and either:

- (i) Your landlord allows you to continue to use your premises under a new lease not to exceed the prevailing lease rate, or

- (ii) You relocate to other permanent premises and enter into a new lease.

For the duration of the lease in effect at the time of the loss, we will pay the increase in rent between what you were paying at the time of loss and the rent you will be required to pay for equivalent premises under the replacement lease;

- (b) \$10,000; or

- (c) Nothing if there is not a written or legally binding lease.

- (3) The following applies to paragraph (2), subparagraphs (a)(i) and (a)(ii) above:

- (a) If the lease in effect at the time of the loss contains a renewal option, the expiration date of the renewal option period will replace the expiration of the current lease.

- (b) If the lease has no end date (open-ended), we will pay the difference in rent for a period of no more than 24 months after the date of the direct physical damage to the property at the described premises.

(4) The following applies to paragraph (2), subparagraphs (a) and (b) above:

(a) \$10,000 will be the maximum amount payable regardless of the number of leases affected by the same Covered Cause of Loss.

(b) Existence of a renewal option will not increase, or have any other effect on this Limit of Insurance.

**(5) Special Leasehold Interest Exclusion**

We will not pay for any loss or damage:

(a) If the unit or suite rented or leased to you where direct damage occurs has been vacant more than 60 consecutive days before the loss or damage occurs, and you have not entered into an agreement to sublease the unit or suite.

(b) Caused by your cancelling the lease, or

(c) Caused by lessors' lease cancellation at the normal expiration date.

**aa. Unauthorized Business Credit Card Use**

(1) We will pay for loss resulting from the "theft" or unauthorized use of Business Credit Cards issued to you or registered in your name.

(2) We do not cover use of a Business Credit Card:

(a) By a person who has been entrusted with the card; or

(b) any of your "employees".

(3) All loss:

(a) Caused by one or more persons; or

(b) Involving a single act or series of related acts;

Is considered one occurrence regardless of the number of individual unauthorized transactions.

(4) If a suit is brought against you for liability, we will pay for reasonable legal expenses incurred in that defense under this Additional Coverage.

(5) The most we will pay for any loss including legal expenses, under this

Additional Coverage is \$5,000 per occurrence.

**bb. Utility Services**

(1) We will pay for loss of or damage to Covered Property caused by an interruption in service to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to property not on the described premises that provides the services shown in paragraph (3) below.

The most we will pay for loss in any one occurrence under this Additional Coverage is \$10,000 at each described premises or the Limit of Insurance shown in the Additional Property Coverage Schedule.

(2) We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur caused by the interruption of service at the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to property not on the described premises that provides the services shown in paragraph (3) below.

We will only pay for loss you sustain after the first 24 hours following the direct physical loss of or damage to the property described above.

The most we will pay for loss in any one occurrence under this Additional Coverage is \$5,000 at each described premises or the Limit of Insurance shown in the Additional Property Coverage Schedule.

(3) Services:

(a) Water Supply Services, meaning the following types of property supplying water to the described premises:

(i) Pumping stations; and

(ii) Water mains.

(b) Communication Supply Services, meaning the following types of property supplying communication services, including but not limited to telephone, radio, microwave, television services, Internet access or access to any electronic, cellular or satellite



network to the described premises, such as:

- (I) Communication transmission lines, including optic fiber transmission lines;
  - (II) Coaxial cables; and
  - (III) Microwave radio relays except satellites.
- (c) Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:
- (I) Utility-generating plants;
  - (II) Switching stations;
  - (III) Substations;
  - (IV) Transformers; and
  - (V) Transmission lines.
- (4) Services under this Additional Coverage do not include overhead transmission lines that deliver utility services to you. Overhead transmission lines include, but are not limited to:
- (a) Overhead transmission and distribution lines;
  - (b) Overhead transformers and similar equipment; and
  - (c) Supporting poles and towers.
- (5) As used in this additional coverage, the term transmission lines includes all lines which serve to transmit communication service or power, including lines which may be identified as distribution lines.
- (6) This coverage is not an additional amount of insurance.
- (7) Coverage under this Additional Coverage for loss or damage to Covered Property does not apply to loss or damage to "electronic data", including destruction or corruption of "electronic data".
- (8) The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Utility Services Additional Coverage.

#### cc. Deferred Payments

- (1) We will pay for your interest in lost or damaged Business Personal Property sold by you under a conditional sale or

trust agreement or any installment or deferred payment plan after delivery to buyers. The loss or damage must be caused by a Covered Cause of Loss.

- (2) When a total loss to that property occurs, deferred payments are valued on the amount shown on your books as due from the buyer. When a partial loss to that property occurs and the buyer refuses to continue payment, forcing you to repossess, deferred payments are valued as follows:

- (a) If the realized value of the repossessed property is greater than or equal to the amount shown on your books as due from the buyer, we will make no payment; but

- (b) If the realized value of the repossessed property is less than the amount shown on your books as due from the buyer, we will pay the difference.

- (3) When loss occurs and the buyer continues to pay you, there will be no loss payment.

- (4) The most we will pay for loss under this Additional Coverage is \$5,000 per occurrence.

#### dd. Electronic Vandalism

- (1) SECTION I - PROPERTY, A. Coverage, 2. Property Not Covered, paragraph o. is deleted.

- (2) We cover direct physical loss of or damage to covered "computer equipment" at the described premises caused by "electronic vandalism".

- (3) The most we will pay in any one occurrence under this Additional Coverage is \$10,000. The most we pay for all covered losses under this Additional Coverage during each separate 12-month period of this policy is \$10,000.

- (4) Special Electronic Vandalism Exclusions

We do not cover:

- (a) Loss of proprietary use of any "electronic data" or "proprietary programs" that have been copied, scanned, or altered;

- (b) Loss of or reduction in economic or market value of any "electronic

data" or "proprietary programs" that have been copied, scanned, or altered; and

- (c) "Theft" from your "electronic data" or "proprietary programs" of confidential information through the observation of the "electronic data" or "proprietary programs" by accessing covered "computer equipment" without any alteration or other physical loss of or damage to the records or programs. Confidential information includes, but is not limited to, customer information, processing methods, or trade secrets.

**ee. Interruption of Computer Operations**

This Additional Coverage is only available if Business Income is covered under this Coverage Form.

- (1) 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" at the described premises caused by an interruption in computer operations due to destruction or corruption of "electronic data" occurring at or away from the described premises resulting from any Covered Cause of Loss.
- (2) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
- (a) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss include "electronic vandalism". 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, modify, maintain, repair or replace that system.
- (b) If the Businessowners Coverage 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.

- (3) The most we will pay under this Additional Coverage - Interruption of Computer Operations 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, is \$10,000 unless a higher Limit of Insurance is shown in the Declarations. 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.

- (4) This Additional Coverage - Interruption of 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 paragraph (3) above has not been exhausted.

- (5) 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 paragraphs (1), (2), (3) and (4) of this Additional Coverage.

- (6) Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by "electronic vandalism", except as provided under paragraphs (1), (2), (3) and (4) of this Additional Coverage.

- (7) This Additional Coverage - Interruption of Computer Operations does not apply when loss or damage to "electronic data" involves only "electronic data" which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

ff. **Limited Coverage for Fungl, Wet Rot, or Dry Rot**

- (1) The coverage described in paragraphs (2) and (6) below only applies when the "fungl", wet rot or dry rot is the result of any of the "specified causes of loss" other than fire or lightning 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.

This Additional Coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

- (2) We will pay for loss or damage by "fungl", wet rot or dry rot. As used in this Limited Coverage, the term loss or damage means:
- (a) Direct physical loss of or damage to Covered Property caused by "fungl", wet rot or dry rot, including the cost of removal of the "fungl", wet rot or dry rot;
  - (b) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungl", wet rot or dry rot; 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 "fungl", wet rot or dry rot is present.
- (3) The coverage described under this Limited Coverage is limited to \$50,000. 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 caused by or resulting from any of the "specified causes of loss" (other than fire or lightning) which take place in a 12 month period (starting with the beginning of the present policy period). With respect to a particular occurrence of loss which results in "fungl", wet rot or dry rot, we will not pay more than the total of \$50,000 even if the "fungl", wet rot or dry rot 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 "fungl", wet rot or dry rot, 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 "fungl", wet rot or dry rot, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungl", wet rot or dry rot 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 in **SECTION I - PROPERTY, A. Coverage, 5 Additional Coverages, d. Collapse; and/or e. Water Damage, Other Liquids, Powder or Molten Material Damage.**
- (6) The following applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all the terms and conditions of the applicable **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income and/or g. Extra Expense:**
- (a) If the loss which resulted in "fungl", wet rot or dry rot does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungl", wet rot or dry rot, then our payment under **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income and/or g. 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 "fungl", wet

rot or dry rot, but remediation of "fungi", wet rot, dry rot 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.

**gg. Theft of Telephonic Services**

- (1) We will pay amounts you are obligated to pay that result from the "theft" of your "telephonic services" when someone who is not an "employee" gains unauthorized access to your "telephonic services" used in your business operations.
- (2) The most we will pay under this Additional Coverage for acts of "theft" of "telephonic services", regardless of the number of "thefts" of "telephonic services" that you sustain in one policy year is \$25,000.

**hh. Computer and Funds Transfer Fraud**

- (1) We will pay for:
  - (a) Loss resulting directly from a fraudulent:
    - (i) Entry of "electronic data" or "computer program" into; or
    - (ii) Change of "electronic data" or "computer program" within;  
any "computer equipment" owned, leased or operated by you, provided the fraudulent entry or fraudulent change causes, with regard to (1)(a)(i) and (1)(a)(ii) in the above paragraph:
    - (iii) "Money", "securities" or "other property" to be transferred, paid or delivered; or
    - (iv) Your account at a "financial institution" to be debited or deleted.
  - (b) Loss resulting directly from a "fraudulent instruction" directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that account.
- (2) As used in (1)(a) above, fraudulent entry or fraudulent change of "electronic data" or "computer program" shall include such entry or

change made by an "employee" acting, in good faith, upon a "fraudulent instruction" received from a computer software contractor who has a written agreement with you to design, implement or service "computer programs" for "computer equipment" covered under this Insuring Agreement.

- (3) The most we will pay per occurrence under this Additional Coverage is \$5,000 unless a higher Limit of Insurance is shown in the Schedule of Amended Limits of Insurance.

- (4) Under this Additional Coverage all loss:

- (a) Caused by one or more persons; or
- (b) Involving a single act or series of acts:

is considered one occurrence.

**ii. Tenant Building Insurance - When Your Lease Requires You to Provide Insurance**

- (1) This Additional Coverage is available only when the Named Insured is a tenant and a Limit of Insurance is shown in the Declarations Page for Business Personal Property.
- (2) We will pay for direct physical loss of or damage to a building on the described premises owned by your landlord and in your care, custody or control for which you have a written contractual responsibility to insure. The loss or damage must be the result of or caused by a Covered Cause of Loss.
- (3) Regardless of the number of described buildings affected, the most we will pay per insured location under this Additional Coverage is \$25,000 in any one occurrence.

**jj. Tenant Business Personal Property Insurance - When Your Lease Requires You to Provide Insurance**

- (1) This Additional Coverage is available only when the Named Insured is a tenant and a Limit of Insurance is shown in the Declarations Page for Business Personal Property.
- (2) Subject to SECTION I - PROPERTY, E. Property Loss Conditions, 5. Loss Payment, paragraph d., subparagraph (3)(b), we will pay for

direct physical loss of or damage to your landlord's personal property located inside of a building on the described premises and in your care, custody or control for which you have a written contractual responsibility to insure. The loss or damage must be the result of or caused by a Covered Cause of Loss.

- (3) Regardless of the number of buildings where the landlord's personal property is located, the most we will pay per insured location under this Additional Coverage in any one occurrence is \$25,000.

## 6. 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 1,000 feet of the described premises:

### a. Newly Acquired or Constructed Property

#### (1) Buildings

If your policy covers Buildings, you may extend the insurance provided under Building to apply to direct physical loss or damage when such loss or damage is caused by a Covered Cause of Loss to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at premises other than the one described, intended for:
- (i) Similar use as the building described in the Declarations; or
- (ii) Used as a warehouse.
- (c) The most we will pay for loss or damage under this Extension for Newly Acquired or Constructed Buildings is \$1,000,000 at each building.

#### (2) Business Personal Property

- (a) If your policy covers Business Personal Property, you may extend the insurance provided under Business Personal Property to apply to direct physical loss or damage when such loss or damage is caused by a Covered Cause of Loss to:

(i) Business Personal Property, including such property that you newly acquire, at any location you acquire; or

(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.

(iii) Business Personal Property that you newly acquire, located at the described premises.

#### (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.

(c) This insurance may not be used to increase your Business Personal Property Limit. It does not apply to personal property you acquire as part of your usual customary business dealings whether or not such acquisition was related to anticipated seasonal demands. Under the terms of this Coverage Form, such property is not considered newly acquired, but falls within the provisions for Business Personal Property.

(d) The most we will pay for loss or damage under this Extension is \$500,000 at each premises.

#### (3) Business Income and Extra Expense

You may extend the insurance that applies to Business Income and Extra Expense to apply to property at any location you acquire. The most we will pay for loss or damage under this Extension is \$250,000 at each premise.

#### (4) Period of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired or Constructed

Property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 180 days 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 Property Off Premises**

(1) If your policy covers Business Personal Property, you may extend the insurance provided in **SECTION I - PROPERTY, A. Coverage, 1. Covered Property, b. Business Personal Property** to apply to direct physical loss or damage when such loss or damage is caused by a Covered Cause of Loss while:

- (a) At a location you do not own, lease or operate; or
- (b) At any fair, trade show or exhibition.

(2) The most we will pay for loss or damage under this Extension is \$50,000 or the amount shown in the Additional Property Coverage Schedule, whichever is greater.

(3) **Special Personal Property Off Premises Exclusions**

This extension does not apply to property:

- (a) In or on a vehicle; or
- (b) In the care, custody or control of your sales representative, unless the property is in such care, custody or control at a fair, trade show or exhibition.

**c. Outdoor Property**

(1) You may extend insurance provided by this Coverage Form to apply to direct physical loss or damage to your radio and television antennas (including satellite dishes), trees, shrubs, plants and lawns (other than trees, shrubs or plants which are "stock" or are a part of a vegetated roof) including debris removal

expense, caused by or resulting from any of the following causes of loss:

- (a) Fire;
- (b) Lightning;
- (c) Explosion;
- (d) Riot or civil commotion;
- (e) Aircraft;
- (f) Windstorm; or
- (g) Ice, snow, sleet and hail.

(2) Coverage under this Extension does not apply to property held for sale by you.

(3) Regardless of the number of described premises involved, the most we will pay for loss or damage under this Extension, including debris removal expense, is \$10,000, but not more than \$1,000 for any one tree, shrub or plant.

**d. Personal Effects**

(1) If your policy covers Business Personal Property, you may extend the insurance provided in **SECTION I - PROPERTY, A. Coverage, 1. Covered Property, b. Business Personal Property** to apply to direct physical loss or damage to personal effects owned by you, your officers, your partners or "members", your "managers" or your "employees" when such loss or damage is caused by a Covered Cause of Loss.

(2) This extension does not apply to:

- (a) Tools or equipment used in your business; and
- (b) "Employees" tools and small equipment;

(3) The most we will pay for loss or damage under this Extension is \$10,000 at each described premises.

**e. Valuable Papers and Records (Other Than Electronic Data)**

(1) If your policy covers Business Personal Property, you may extend the insurance provided under **SECTION I - PROPERTY, A. Coverage, 1. Covered Property, b. Business Personal Property** to apply to direct physical loss or damage to "valuable papers and records" that you own, or that are in your care, custody or control caused by or resulting from a Covered Cause

of Loss. This Coverage Extension includes the cost to research, replace or restore the lost information on "valuable papers and records" for which duplicates do not exist.

- (2) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence at the described premises is \$25,000, unless a higher Limit of Insurance for "valuable papers and records" is shown in the Additional Property Coverage Schedule.
- (3) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence not at the described premises is \$25,000, unless a higher Limit of Insurance for "valuable papers and records" is shown in the Additional Property Coverage Schedule.
- (4) This Coverage Extension does not apply to:
  - (a) Property held as samples or for delivery after sale; or
  - (b) Property in storage away from the premises shown in the Declarations;
- (5) **SECTION I - PROPERTY, B. Exclusions** does not apply to this Coverage Extension except for:
  - (a) Paragraph 1.c. **Governmental Action**;
  - (b) Paragraph 1.d. **Nuclear Hazard**;
  - (c) Paragraph 1.f. **War and Military Action**;
  - (d) Paragraph 2.d. **Dishonesty**;
  - (e) Paragraph 2.e. **False Pretense**;
  - (f) Paragraph 2.k. **Errors or Omissions**; and
  - (g) Paragraph 3.a. **Weather Conditions**, 3.b. **Acts or Decisions** and 3.c. **Negligent Work**.

**f. Accounts Receivable**

- (1) If your policy covers Business Personal Property, you may extend the insurance provided in **SECTION I - PROPERTY, A. Coverage, 1. Covered Property, b. Business Personal Property** to accounts receivable when such loss or damage

is caused by or results from a Covered Cause of Loss. We will pay:

- (a) All amounts due from your customers that you are unable to collect;
- (b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
- (c) Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and
- (d) Other reasonable expenses that you incur to re-establish your records of accounts receivable;

that result from direct physical loss or damage by any Covered Cause of Loss to your records of accounts receivable.

- (2) We will pay under this Coverage Extension for loss or damage in any one occurrence at the described premises. The most we will pay is \$25,000 for accounts receivable at the described premises, unless a higher Limit of Insurance for accounts receivable is shown in the Additional Property Coverage Schedule.
- (3) We will pay under this Coverage Extension for loss or damage in any one occurrence not at the described premises. The most we will pay is \$25,000 for accounts receivable not at the described premises.
- (4) **SECTION I - PROPERTY, B. Exclusions** does not apply to this Coverage Extension except for:
  - (a) Paragraph 1.c. **Governmental Action**;
  - (b) Paragraph 1.d. **Nuclear Hazard**;
  - (c) Paragraph 1.f. **War and Military Action**;
  - (d) Paragraph 2.d. **Dishonesty**;
  - (e) Paragraph 2.e. **False Pretense**; and
  - (f) Paragraph 3.a. **Weather Conditions**, 3.b. **Acts or Decisions** and 3.c. **Negligent Work**.

- (5) **Accounts Receivable Special Exclusion**

We will not pay for:

- (a) Loss or damage caused by or resulting from alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or "other property".

This exclusion applies only to the extent of the wrongful giving, taking or withholding.

- (b) Loss or damage caused by or resulting from bookkeeping, accounting or billing errors or omissions.
- (c) Any loss or damage that requires any audit of records or any inventory computation to prove its factual existence.

#### g. Key Replacement and Lock Repair

- (1) You may extend the Insurance provided under this Coverage Form to cover the reasonable and necessary expense you incur due to a covered "theft" for:

- (a) Replacement of keys if they are stolen;
- (b) Lock repair; or
- (c) Rekeying, replacing or reprogramming undamaged locks to accept new keys or entry codes when the building security has been compromised.

- (2) The most we will pay under this Extension is \$1,000. The deductible does not apply to this Extension.

#### h. Appurtenant Structures

- (1) If your policy covers Buildings, you may extend the Insurance provided under Building to apply to direct physical loss or damage to garages, carports, storage buildings and other appurtenant structures, including, but not limited to, swimming pools, spas and the associated equipment within 1,000 feet of the described premises when such loss or damage is caused by or results from a Covered Cause of Loss.

- (2) The most we will pay for loss or damage under this Extension is \$50,000 at each described premises regardless of the number of buildings or structures affected.

#### i. Personal Property In Transit

- (1) If your policy covers Business Personal Property, you may extend the Insurance provided in **SECTION I - PROPERTY, A. Coverage, 1. Covered Property, b. Business Personal Property** to apply to direct physical loss or damage to your property or property of others that is in your care, custody or control while "in transit" when such loss or damage is caused by or results from a Covered Cause of Loss.

- (2) You may extend the Insurance that applies to **SECTION I - PROPERTY, A. Coverage, 1. Covered Property, b. Business Personal Property** to apply to direct physical loss or damage, caused by a Coverage Cause of Loss, to outgoing shipments that have been rejected, while in due course of transit back to you or while awaiting return shipment to you.

- (3) This Extension applies to the property while in:

- (a) A vehicle owned, leased or operated by you; or
- (b) The custody of a common carrier or contract carrier.

- (4) The following in **SECTION I - PROPERTY, B. Exclusions, paragraph 1.** do not apply to this Extension:

- (a) **b. Earth Movement;** and
- (b) **g. Water.**

- (5) The most we will pay for loss or damage under this Coverage Extension is \$10,000 unless a higher Limit of Insurance is shown in the Schedule of Amended Limits of Insurance.

- (6) **Special Personal Property In Transit Exclusions**

This Extension does not apply to:

- (a) Shipments that belong to others that you are transporting for a fee;
- (b) Property while waterborne;
- (c) Salesperson's Samples; or
- (d) Loss to "perishable goods" resulting from a breakdown of refrigeration equipment on any vehicle owned, leased or operated by you or while in the custody of a common or contract carrier.



**j. Inventory and Loss Appraisal**

- (1) We will pay for all reasonable expenses you incur at our written request to assist us in:
  - (a) The investigation of a claim;
  - (b) The determination of the amount of loss, such as taking inventory;
  - (c) The cost of preparing specific loss documents and other supporting exhibits; or
  - (d) Expenses you incur include costs charged to you by others, including property managers, acting on your behalf to assist us with items listed in paragraph (1) above.
- (2) Regardless of the number of premises involved, the most we will pay under this Extension is \$10,000.
- (3) The deductible does not apply to these expenses.
- (4) **Special Inventory and Loss Appraisal Exclusion**

We will not pay for expenses:

- (a) Incurred to perform your duties in the event of a loss under **SECTION I - PROPERTY, E. Property Loss Conditions**;
- (b) To prove that loss or damage is covered;
- (c) Billed by and payable to independent or public adjusters; attorneys; claims advocates; or any of their affiliated or associated entities;
- (d) To prepare claims not covered by this Coverage Form; or
- (e) Incurred under any appraisal provisions within the Coverage Form.

**k. Business Personal Property Temporarily in Portable Storage Units**

- (1) If your policy covers Business Personal Property, you may extend the insurance provided in **SECTION I - PROPERTY, A. Coverage, 1. Covered Property, b. Business Personal Property** to apply to direct physical loss or damage to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 1,000 feet of the buildings or structures

described in the Declarations or within 1,000 feet of the described premises, whichever distance is greater when such loss or damage is caused by or results from a Covered Cause of Loss.

- (2) We will not pay for loss of or damage to Business Personal Property temporarily in portable storage units, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (a) The portable storage unit 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
- (b) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

- (3) Coverage under this Extension:

- (a) Will end 90 days after the Business Personal Property has been placed in the storage unit;
- (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the Business Personal Property has been stored there for 90 or fewer days as of the time of loss or damage.

- (4) Under this Extension, the most we will pay for the total of all loss or damage to Business Personal Property is \$25,000 unless a higher limit is shown in the Additional Property Coverage Schedule for this Extension regardless of the number of storage units.

- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form, and does not apply to loss or damage to the storage unit itself.

**l. Paved Surfaces**

- (1) If your policy covers Buildings, you may extend the insurance provided under **SECTION I - PROPERTY, A. Coverage, 1. Covered Property, a. Building** to apply to direct physical loss or damage to your paved surfaces, including but not limited to bridges, roadways, walks, patios, and parking lots when such loss or

damage is caused by or results from a Covered Cause of Loss.

(2) Regardless of the number of described premises involved, the most we will pay for loss or damage in any one occurrence is \$25,000.

(3) Payment for loss or damage to this property is included in the applicable Limit of Insurance.

**(4) Special Paved Surfaces Exclusion**

We will not pay for loss or damage caused by tree roots, freezing or thawing.

**m. Underground Pipes**

(1) If your policy covers Buildings, you may extend the insurance provided in **SECTION I - PROPERTY, A. Coverage, 1. Covered Property, a. Building** to apply to direct physical loss or damage to underground pipes, flues and drains when such loss or damage is caused by or results from a Covered Cause of Loss.

(2) The most we will pay for loss under this Coverage Extension is the applicable Limit of Insurance.

(3) Payment under this Additional Coverage is included within the Limit of Insurance.

**(4) Special Underground Pipes Exclusion**  
We will not pay for loss or damage caused by tree roots.

**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**

(1) The enforcement of or compliance with any ordinance or law:

(a) Regulating the construction, use or repair of any property; or

(b) Requiring the tearing down of any property, including the cost of removing its debris.

(2) 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.

This exclusion does not apply to the Ordinance or Law Additional Coverage.

**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 paragraphs (1), (2), (3) and (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 paragraph (5), subparagraphs (a), (b) and (c) above, 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 of or damage to Covered Property.

This exclusion applies regardless of whether or not any of the above, in **SECTION I - PROPERTY, B. Exclusions, paragraph 1, b Earth Movement, subparagraphs (1), (2), (3), (4) and (5),** are caused by an act of nature or is otherwise caused.

**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 Form.

**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 services 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.

This exclusion does not apply to loss or damage to "computer equipment" and "electronic data" or to **SECTION I - PROPERTY, 5. Additional Coverages, bb. Utility Services.**

**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 (including tidal wave or 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.
- (5) Waterborne material carried or otherwise moved by any of the water referred to in paragraphs (1), (3) or (4) above, or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of paragraphs (1), (2), (3), (4) and (5) above, are 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 falls in whole or in part, for any reason, to contain the water.

But If Water, as described in paragraphs (1), (2), (3), (4) and (5) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage. If electrical "covered equipment" requires drying out because of paragraphs (1), (2), (3), (4) and (5) above, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and Deductible for Building or Personal Property, whichever applies.

**h. Fungi, Wet Rot or Dry Rot**

Presence, growth, proliferation, spread or any activity of "fungi", wet rot or dry rot.

But If "fungi", wet rot or dry rot results in any of the "specified causes of loss", we will pay for the loss or damage caused by any of the "specified causes of loss".

This exclusion does not apply:

- (1) When "fungi", wet rot or dry rot results from fire or lightning; or
- (2) To the extent that coverage is provided in the **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverage, ff. Limited Coverage for Fungi, Wet Rot or Dry Rot**, with respect to loss or damage by a cause of loss other than fire or lightning.

**i. Virus or Bacteria**

(1) Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

(2) However, the exclusion in paragraph (1) above, does not apply to loss or damage caused by or resulting from "fungi", wet rot or dry rot. Such loss or damage is addressed in **SECTION I - PROPERTY, B. Exclusions, paragraph 1., h. Fungi, Wet Rot or Dry Rot.**

(3) With respect to any loss or damage subject to the exclusion in paragraph (1) above, such exclusion supersedes any exclusion relating to "pollutants".

**SECTION I - PROPERTY, B. Exclusions, paragraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h. and 1.i. 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. Consequential Losses**

Delay, loss of use or loss of market, however caused.

**b. Smoke, Vapor and Gas**

Smoke, vapor or gas from agricultural smudging or industrial operations.

**c. Frozen Plumbing**

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.

**d. Dishonesty**

Dishonest or criminal act by you, any of your partners, "members", officers, managers, 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; but "theft" by employees is not covered.

This exclusion does not apply to coverage that is provided under the Employee Theft including ERISA Additional Coverage.

**e. False Pretense**

Voluntary parting with any property by you or anyone else to whom you have sold, given or otherwise entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

This exclusion does not apply to the Unauthorized Business Card Use Additional Coverage.

**f. Exposed Property**

Rain, snow, ice or sleet to personal property in the open.

**g. Collapse**

(1) Collapse, including any of the following conditions of property or any part of the property:

- (a) An abrupt falling down or caving in;
- (b) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
- (c) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to paragraphs (a) or (b) 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.

(2) This Exclusion g. does not apply:

- (a) To the extent that coverage is provided under **SECTION 1 - PROPERTY, A. Coverage, 5. Additional Coverages, d. Collapse**; or
- (b) To collapse caused by one or more of the following:
  - (i) Any of 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

**h. Pollution**

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 any of the "specified causes of loss", we will pay for the loss or damage caused by any of the "specified causes of loss".

**i. Neglect**

Neglect of an Insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

**j. Other Types of Loss**

- (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; or
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force.

This exclusion does not apply with respect to the breakdown of "computer equipment".

This exclusion does not apply to the Equipment Breakdown Additional Coverage.

(7) The following causes of loss to personal property:

- (a) Dampness or dryness of the atmosphere;
- (b) Changes in or extremes of temperature; or
- (c) Marrying or scratching.

But if an excluded cause of loss that is listed in paragraphs (1), (2), (3), (4), (5), (6) and (7) above, results in any of the "specified causes of loss", "accident", "electronic circuitry impairment" or building glass breakage, we will pay for the loss or damage caused by any of the "specified causes of loss", "accident", "electronic circuitry impairment" or building glass breakage.

**k. Errors or Omissions**

Errors or omissions in:

- (1) Programming, processing or storing "electronic data" or in any "computer equipment" operations; or
- (2) Processing or copying "valuable papers and records".

However, we will pay for direct physical loss or damage caused by resulting fire, "accident", "electronic circuitry impairment" or explosion if these causes of loss would be covered by this Coverage Form.

**l. Installation, Testing, Repair**

Errors or deficiency in design, installation, testing, maintenance, modification or

repair of your "computer equipment" system including "software".

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this Coverage Form.

**m. Electrical Disturbance**

Electrical or magnetic injury, disturbance or erasure of "electronic data", except as provided for in **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, and 6. Coverage Extensions.**

However, we will pay for direct loss or damage caused by lightning.

**n. Artificially Generated Electricity**

Artificially generated electric current including electric arcing, that disturbs electrical devices, appliances or wires except as provided for in **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, u. Equipment Breakdown.** But, if artificially generated electric current results in fire, we will pay for the loss or damage caused by fire.

**o. Computer Processing Exclusion**

- (1) Errors or omissions in programming or incorrect instructions to "hardware";
- (2) Electrical or magnetic damage, disturbance of recordings or erasure of electronic recordings, except as provided under **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, u. Equipment Breakdown.** We will also pay for direct loss caused by lightning;
- (3) Mechanical breakdown or malfunction, component failure, faulty installation or blowouts; except as provided for under **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, u. Equipment Breakdown;** or
- (4) Faulty instruction or incorrect usage, including changes in arrangements or parts.

**p. Loss of Warranty**

Loss of warranty or similar future or potential benefit even when following a covered loss or covered damage.

- (1) Loss of this type does not meet direct physical loss or damage.
- (2) We agree that reasonable repair or reconditioning measures be pursued to ensure soundness of property after loss or damage:

(a) Where proper and adequate report or reconditioning method is debated, you and we agree to follow the usual and customary industry repair and reconditioning practices; or

(b) For situations not resolved by paragraph (a) above, either party may demand that the matter be resolved through Appraisal as provided for elsewhere in the Coverage Form.

**q. Continuous or Repeated Seepage or Leakage of Water**

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.

**r. Authorized Access**

Loss resulting from a fraudulent:

- (1) Entry of "electronic data" or "computer program" into; or
- (2) Change of "electronic data" or "computer program" within;

any "computer equipment" owned, leased or operated by you by a person or organization with authorized access to that "computer equipment", except when covered under **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, hh. Computer and Funds Transfer Fraud,** paragraph b..

**s. Fraudulent Instructions**

Loss resulting from an "employee" or "financial institution" acting upon any instruction to:

- (1) Transfer, pay or deliver "money", "securities" or "other property"; or
- (2) Debit or delete your account; which instruction proves to be fraudulent, except when covered under **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, hh. Computer and Funds Transfer Fraud,** paragraphs a.(2) and b..

3. We will not pay for loss or damage caused by or resulting from paragraphs a., b. and c. below. But if an excluded cause of loss that is listed in paragraphs a., b. and c. below, 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 **SECTION I - PROPERTY, B. Exclusions, paragraph 1.** to produce the loss or damage.

**b. Acts or Decisions**

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

**c. Negligent Work**

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. Additional Exclusion**

The following applies only to the property specified in this Additional Exclusion:

**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.

**5. Business Income and Extra Expense Exclusions**

We will not pay for:

- a. Any Extra Expense or Increase of Business Income loss caused by or resulting from:
  - (1) 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;

- (2) "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" in accordance with the terms of **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, f. Business Income, (2) Extended Business Income.**

- (3) Damage or destruction of "finished stock"; the time required to reproduce "finished stock"; or

- (4) Any other consequential loss.

Paragraph 5.a.(3) does not apply to Extra Expense.

**C. Limits of Insurance**

1. The most we will pay for loss or damage in any one occurrence is the applicable Limits of Insurance of **SECTION I - PROPERTY** shown in the Declarations.

2. The amounts of insurance applicable to the Coverage Extensions and the following Additional Coverages apply in accordance with the terms of such coverages and are in addition to **SECTION I - PROPERTY, C. Limits of Insurance:**

- a. Fire Department Service Charge;
- b. Pollutant Clean-Up and Removal;
- c. Civil Authority;
- d. Money Orders and Counterfeit Money;
- e. Forgery or Alteration;
- f. Ordinance or Law;
- g. Business Income from Dependent Properties;
- h. Glass Expenses;
- i. Fire Protection Equipment Recharge
- j. Employee Theft;
- k. Rewards - Arson and Theft;
- l. Computer Equipment;
- m. Tenant Signs (Tenants Only);
- n. Commercial Tools and Small Equipment;
- o. Installation;
- p. Fine Arts;
- q. Sales Representative Samples;
- r. Leasehold Interest (Tenants Only);
- s. Unauthorized Business Credit Card Use;
- t. Deferred Payments;

- u. Money and Securities;
- v. Electronic Vandallism;
- w. Interruption of Computer Operations;
- x. Theft of Telephonic Services;
- y. Computer and Funds Transfer Fraud;
- z. Tenant Building Insurance - When Your Lease Requires You to Provide Insurance; or
- aa. Tenant Business Personal Property Insurance - When Your Lease Requires You to Provide Insurance.

**3. Building Limit - Increase**

If Covered Property is written on a Replacement Cost basis:

- a. The Limit of Insurance for Buildings will be revised by changes that occurred in the cost of construction during the preceding policy year.
- b. The amount of Increase will be determined by reports of a recognized valuation method.
- c. We will inform you of such adjusted values. Upon their acceptance, you agree to pay any additional premium for the adjusted limit. Payment of your renewal premium, which includes the revised Limit of Insurance, shall constitute acceptance.
- d. We will pay the replacement cost value of the damaged portion of the building at the time of loss, but not more than 125% of the Limit of Insurance for Building if:
  - (1) The amount of any loss covered by this Coverage Form exceeds the Limit of Insurance for Building stated in the Declarations for the damaged Building; and
  - (2) The actual repair or replacement is completed within one year of the date of loss.
- e. The Building Limit - Increase clause will not apply if:
  - (1) You do not accept the adjusted value; or
  - (2) You do not inform us of changes to covered Building:
    - (a) Within sixty (60) days of the date any additions, improvements or enlargements to the building are begun, and
    - (b) When the replacement value of the changes are more than 5% of

the Limit of Insurance for the building.

**4. Business Personal Property Limit - Seasonal Increase**

- a. The Limit of Insurance for Business Personal Property will increase by 25% to provide for seasonal variations.
- b. This increase will apply only if the Limit of Insurance shown for Business Personal Property in the Declarations is at least 100% of your average monthly values during the lesser of:
  - (1) The 12 months immediately preceding the date the loss or damage occurs; or
  - (2) The period of time you have been in business as of the date the loss or damage occurs.

**D. Deductibles**

- 1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable limit in **SECTION I - PROPERTY, C. Limit of Insurance.**
- 2. No Deductible applies to the following Additional Property Coverages and Extensions of Coverage:
  - a. Fire Department Service Charge;
  - b. Fire Protection Equipment Recharge;
  - c. Business Income;
  - d. Extra Expense;
  - e. Civil Authority;
  - f. Key Replacement and Lock Repair;
  - g. Deferred Payment;
  - h. Debris Removal;
  - i. Rewards - Arson, Theft and Vandallism;
  - j. ERISA Compliance;
  - k. Preservation of Property;
  - l. Pollutant Clean-Up and Removal;
  - m. Ordinance or Law;
  - n. Leasehold Interest (Tenants Only);
  - o. Unauthorized Business Credit Card Use;
  - p. Business Income from Dependent Properties; and
  - q. Inventory and Loss Appraisal.
- 3. A \$250 Deductible applies to the following Coverages:
  - a. Glass - Interior and Exterior; and

b. Glass Expenses.

4. A \$500 Deductible applies to all of the Additional Property Coverages and Extensions of Coverage scheduled on the Declarations, except Equipment Breakdown, unless otherwise indicated in paragraphs 2, 3, or 5. of this section.
5. A \$1,000 Deductible applies to the following Additional Property Coverages and Extensions of Coverage:
  - a. Employee Theft (except ERISA Compliance);
  - b. Sales Representative Samples;
  - c. Installation;
  - d. Personal Property Off Premises;
  - e. Personal Property In Transit.
6. The Deductible shown in the Declarations for the Equipment Breakdown Additional Coverage applies to the Additional Coverage for Equipment Breakdown.
7. Each Deductible shall be applied separately, but only to the coverage specified. The total Deductible for all losses in one occurrence will be the highest Deductible amount that applies to that occurrence.
8. The Business Income Waiting Period shown on the Declarations Page for the Business Income and Civil Authority Additional Coverages is applicable in addition to a Deductible.

**E. Property Loss Conditions**

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

If you and we disagree on the amount of a covered 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 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.

**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 **SECTION I - PROPERTY, C. Limits 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.
- (9) 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.

#### 4. Legal Action Against Us

No one may bring a legal action against us under this insurance unless:

- a. There has been full compliance with all of the terms of this insurance; and
- b. The action is brought within 2 years after the date on which the direct physical loss or damage occurred. The 2 year limitation also applies to indirect or consequential loss covered under this Coverage Form.

#### 5. Loss Payment

In the event of loss or damage covered by this Coverage Form:

- a. 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;
  - (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 paragraph d., subparagraph (1)(d) below.
- b. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. We will determine the value of Covered Property as follows:
  - (1) At replacement cost without deduction for depreciation except as provided in paragraphs (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15) and (16) below.
    - (a) You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of 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 on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.

(b) We will not pay on a replacement cost basis for any loss or damage:

- (i) Until the loss or damaged property is actually repaired or replaced;
- (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage; and
- (iii) Unless the repairs or replacement are completed within 24 months for personal property or for buildings and other real property after the loss or damage, unless extended in writing by us.

However, if the cost to repair or replace a damaged building is \$2,500 or less we will determine the value at replacement cost without deduction for depreciation.

(c) We will not pay more for loss or damage on a replacement cost basis than the least of the following amounts:

- (i) The cost to replace, on the same premises, the lost or damaged property with other property:
  - 1) Of comparable material and quality; and
  - 2) Used for the same purpose; or
- (ii) The amount that you actually spend that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new location, the recoverable amount is limited to the cost which would have been incurred had the building been built at the original premises.

- (d) 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.
- (2) If the Declarations indicate the Actual Cash Value applies to Building or Personal Property, paragraph (1) above does not apply to that property. Instead, we will determine the value of that property at the actual cash value.



- (3) The following property at actual cash value:
- (a) Used or second-hand merchandise held in storage or for sale;
  - (b) Property of others. However, 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;
  - (c) Household contents, except personal property in apartments or rooms furnished by you as landlord;
  - (d) Manuscripts;
  - (e) Works of art, "antiques" or rare articles, including but not limited to, etchings, pictures, statuary, marbles, bronzes, porcelains, glassware and bric-a-brac not otherwise covered in SECTION I - PROPERTY, A. Coverage, 5. Additional Coverage, x. Fine Arts; or
  - (f) Commercial Tools and Small Equipment and Contractors Tools and Equipment. This does not apply to your Commercial Tools and Small Equipment permanently installed or exclusively used at the described premises.
- (4) Glass at the cost of replacement with safety glazing material if required by law.
- (5) Tenant's Improvements and Betterments at:
- (a) Replacement cost if you make repairs promptly.
  - (b) A proportion of your original cost if you, as the tenant, do not make repairs promptly. We will determine the proportionate value as follows:
    - (i) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (ii) Divide the amount determined in paragraph (i) 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.
- (c) Nothing if others pay for repairs or replacement.
- (6) "Valuable papers and records" at the cost of restoration or replacement, including the cost of data entry, re-programming, computer consultation services and the "media" on which the data or programs reside. To the extent that the contents of the "valuable papers and records" are not restored, the "valuable papers and records" will be valued at the cost of replacement with blank materials of substantially identical type.
- (7) "Money" at its face value; and
- (8) "Securities" at their value at the close of business on the day the loss is "discovered".
- (9) Accounts Receivable:
- (a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage:
    - (i) We will determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and
    - (ii) We will adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss or damage occurred or for any demonstrated variance from the average for that month.
  - (b) The following will be deducted from the total amount of accounts receivable, regardless of how that amount is established:
    - (i) The amount of the accounts for which there is no loss or damage;

- (ii) The amount of the accounts that you are able to re-establish or collect;
  - (iii) An amount to allow for probable bad debts that you are normally unable to collect; and
  - (iv) All unearned interest and service charges.
- (10) "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- (11) "Finished stock" you manufactured at selling price less discounts and expenses you otherwise would have had.
- (12) Personal Property in Transit (other than "stock" you have sold) at the amount of invoice, including your prepaid or advanced freight charges and other charges which may have accrued or become legally due since the shipment. If you have no invoice, actual cash value will apply.
- (13) Precious metals, such as gold, silver and platinum, at the average market cost of replacements on the date of loss, or the actual cost of the replacement, if less.
- (14) "Fine Arts"
- We will pay the lesser of:
- (a) The market value at the time of loss or damage;
  - (b) The reasonable cost of repair or restoration to the condition immediately before the covered loss or damage; or
  - (c) The cost of replacement with substantially identical property.
- e. Our payment for loss of or damage to personal property of others will only be for the account of the owners of the property. 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 a properly completed sworn proof of loss, provided you have complied with all of the terms of this Coverage Form, and
- (1) We have reached agreement with you on the amount of loss; or
  - (2) An appraisal award has been made.
- h. 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. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. 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 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 SECTION III - COMMON POLICY CONDITIONS, K. Transfer of Rights of Recovery Against Others to Us in this policy.

## 6. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, you may retain the property. But then you must 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 SECTION I - PROPERTY, C the Limits of Insurance.

## 7. 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 paragraphs (a) and (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 leased space 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 operation.

(2) Buildings under construction or renovation are not considered vacant when customary "operations" cannot be conducted as a direct result of the construction or renovation.

**b. Vacancy Provisions**

If the building or leased space 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) Vandallism;

(b) Sprinkler leakage due to freezing, 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 paragraphs (a), (b), (c), (d), (e) and (f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

**8. Pair, Sets or Parts**

For pairs or sets, we will either:

(a) Repair or replace any part to restore the value and condition of the pair or set to that immediately before the covered loss or damage; or

(b) Pay the difference between the value of the pair or set before and after the covered loss or damage.

(c) Covered Property consisting of several parts when complete, we will only pay for the value of the lost or damaged part.

**F. Property General Conditions**

**1. 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 Form 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.

**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 Form, the mortgageholder will still have the right to receive loss payment if the mortgageholder:

(1) Pays any premium due under this policy 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 Form 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 Form:

(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 nonpayment 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.

### 3. No Benefit to Ballee

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

### 4. Policy Period, Coverage Territory

Under **SECTION I - PROPERTY**:

a. We cover loss or damage commencing:

- (1) During the policy period shown in the Declarations; and
- (2) Within the coverage territory or, with respect to property "in transit", while it is between points in the coverage territory.

b. The coverage territory is:

- (1) The United States of America (including its territories and possessions);
- (2) Puerto Rico; and
- (3) Canada.

### 5. Protective Devices

a. If you received a discount to the property premium of this policy because of the existence of one of the following protective devices, you are required to maintain that protective device. Existence of an applicable protective devices credit can be found on the Declarations Page.

b. Protective devices include Automatic Sprinkler Systems including related supervisory services, Automatic Fire Alarms and Central Station Security Alarms.

c. We will not pay for loss or damage caused by a Covered Cause of Loss which a device is intended to protect against if you:

- (1) Knew of any suspension or impairment in any protective device and failed to notify us of that fact; or
- (2) Failed to maintain any protective device 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.

### 6. Increase in Hazard

We will not pay for loss or damage when there has been a material increase in hazard that is within your knowledge or control. This condition applies to any and all portions of a claim.

## G. Property Definitions

### 1. "Accident"

a. "Accident" means a fortuitous event that causes direct physical damage to "covered equipment". The event must be one of the following:

- (1) Mechanical breakdown, including rupture or bursting caused by centrifugal force;
- (2) Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires;
- (3) Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
- (4) Loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
- (5) Loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

b. None of the following is an "accident":

- (1) Defect, programming error, programming limitation, computer virus, malicious code, loss of data, loss of access, loss of use, loss of functionality or other condition within



or involving data or "media" of any kind; or

- (2) Misalignment, miscalibration, tripping off-line, or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance.

However, if an "accident" results, we will pay for the resulting loss, damage or expense caused by that "accident".

2. "Antique" or "antiques" means an object having value because its:
- Craftsmanship is in the style or fashion of former times; and
  - Age is 100 years old or older.
3. "Cloud computing services" means professional, on-demand, self-service data storage or data processing services provided through the Internet or over telecommunications lines. This includes services known as IaaS (Infrastructure as a service), PaaS (platform as a service), SaaS (software as a service) and NaaS (network as a service). This includes business models known as public clouds, community clouds and hybrid clouds. "Cloud computing services" include private clouds if such services are owned and operated by a third party.
4. "Computer equipment" means:
- "Hardware" and related component parts. Component parts include but are not limited to modems, routers, printers, keyboards, monitors, and scanners;
  - "Software"; and
  - "Protection and control equipment".
- "Computer equipment" does not mean "Computer equipment" used to operate production-type machinery or equipment.
5. "Computer hacking" means an unauthorized intrusion by an individual or group of individuals, whether employed by you or not, into "hardware" or "software", a Web site, or a computer network and that results in but is not limited to:
- Deletion, destruction, generation, or modification of "software";
  - Alteration, contamination, corruption, degradation, or destruction of the integrity, quality or performance of "software";
  - Observation, scanning, or copying of "electronic data", "programs and applications", and "proprietary programs";

- Damage, destruction, inadequacy, malfunction, degradation, or corruption of any "hardware" or "media" used with "hardware"; or
  - Denial of access to or denial of services from "hardware", "software", computer network, or Web site including related "software".
6. "Computer program" means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enable the computer or devices to receive, process, store or send "electronic data".
7. "Computer Virus" means the introduction into "hardware", "software", computer network, or Web site of any malicious, self-replicating electronic data processing code or other code and that is intended to result in, but is not limited to:
- Deletion, destruction, generation, or modification of "software";
  - Alteration, contamination, corruption, degradation, or destruction of the integrity, quality, or performance of "software";
  - Damage, destruction, inadequacy, malfunction, degradation, or corruption of any "hardware" or "media" used with "hardware"; or
  - Denial of access to or denial of services from "hardware", "software", computer network, or Web site including related "software".
8. "Counterfeit money" means an imitation of "money" that is intended to deceive and to be taken as genuine.
9. "Covered equipment" means Covered Property which, during normal usage, operates under vacuum or pressure, other than the weight of its contents, or that generates, transmits or utilizes energy.
- "Covered equipment" may utilize conventional design and technology or new or newly commercialized design and technology.
- "Covered equipment" does not include:
- Structure, foundation, cabinet or compartment;
  - Insulating or refractory material;
  - Sewer piping, buried vessels or piping, or piping forming a part of a sprinkler or fire suppression system;
  - Water piping other than boiler feedwater piping, boiler condensate return piping or

- water piping forming a part of a refrigerating or air conditioning system;
- e. Dragline, excavation equipment or construction equipment;
  - f. Vehicle, meaning any machine or apparatus that is used for transportation or moves under its own power or any equipment mounted on a vehicle. Vehicle includes but is not limited to: car, truck, bus, trailer, train, aircraft, watercraft, forklift, bulldozer, tractor or harvester. However, any property that is stationary, permanently installed at a covered location and that receives electrical power from an external power supplier will not be considered a vehicle;
  - g. Equipment manufactured by you for sale or
  - h. Satellite, spacecraft or any equipment mounted on a satellite or spacecraft.
10. "Data" means a representation of information, knowledge, facts, concepts or instructions which are being processed or have been processed in "computer equipment".
  11. "Data records" means files, documents and information in an electronic format and that are stored within "electronic data".
  12. "Denial of service attack" means the malicious direction or a high volume of worthless inquiries to website or e-mail destinations, effectively denying or limiting legitimate access regardless of whether or not damage to "computer equipment" results.
  13. "Dependent property" or "dependent properties" means the property owned by others whom you depend upon to:
    - a. Deliver materials or services to you or to others for your account. But services do not mean water supply services, wastewater removal services, communication supply services or power supply services;
    - b. Accept your products or services;
    - c. Manufacture products for delivery to your customers under contract of sale; or
    - d. Attract customers to your business.

The "dependent property" must be located in the coverage territory of this Coverage Form.
  14. "Discover" or "Discovered" means:
    - a. The time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this policy has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details may not be known.
    - b. "Discover" or "Discovered" also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this policy.
  15. "Electronic circuitry" means microelectronic components, including but not limited to circuit boards, integrated circuits, computer chips and disk drives.
  16. "Electronic circuitry impairment"
    - a. "Electronic circuitry impairment" means a fortuitous event involving "electronic circuitry" within "covered equipment" that causes the "covered equipment" to suddenly lose its ability to function as it had been functioning immediately before such event. This definition is subject to the conditions specified in b., c. and d. below.
    - b. We shall determine that the reasonable and appropriate remedy to restore such "covered equipment's" ability to function is the replacement of one or more "electronic circuitry" components of the "covered equipment."
    - c. The "covered equipment" must be owned or leased by you, or operated under your control.
    - d. None of the following is an "electronic circuitry impairment":
      - (1) Any condition that can be reasonably remedied by:
        - (a) Normal maintenance, including but not limited to replacing expendable parts, recharging batteries or cleaning;
        - (b) Rebooting, reloading or updating software or firmware; or
        - (c) Providing necessary power or supply.
      - (2) Any condition caused by or related to:
        - (a) Incompatibility of the "covered equipment" with any software or equipment installed, introduced or networked within the prior 30 days; or
        - (b) Insufficient size, capability or capacity of the "covered equipment."



- (3) Exposure to adverse environmental conditions, including but not limited to change in temperature or humidity, unless such conditions result in an observable loss of functionality. Loss of warranty shall not be considered an observable loss of functionality.
17. "Electronic data" means files, documents, information and "programs and applications" in an electronic format and that are stored on "media".
18. "Electronic Vandallism" means "computer hacking", "computer virus" or a "denial of service attack". "Electronic vandallism" does not include the "theft" of any property or services.
19. "Employee" or "employees" means:
- Any natural person or persons:
    - While in your service and for 30 days after termination of service; and
    - Who you compensate directly by salary, wages or commissions; and
    - Who you have the right to direct and control while performing services for you;
  - Any natural person who is furnished temporarily to you:
    - To substitute for a permanent employee, as defined in paragraph a. above, who is on leave; or
    - To meet seasonal or short-term workload conditions;
  - Any natural person or persons who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary "employee" as defined in paragraph b. above;
  - Any natural person who is a former "employee", partner, "manager", director or trustee retained as a consultant while performing services for you; or
  - Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody or property outside the described premises;
  - Any natural person who is:
    - A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any "employee benefit plan"; and
- (2) A director or trustee of yours while that person is engaged in handling "funds" or "other property" of any "employee benefit plan";
- "Employee" does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in paragraph 14. of this section.
20. "Financial Institution" means:
- With regard to **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverage, s. Money and Securities**:
    - A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution; or
    - An insurance company.
  - SECTION I - PROPERTY, A. Coverage, 5. Additional Coverage, hh. Computer and Funds Transfer Fraud**:
    - A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution;
    - An insurance company; or
    - A stock brokerage firm or investment company.
  - Other than **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, s. Money and Securities and hh. Computer and Funds Transfer Fraud**, any financial institution.
21. "Fine arts" means paintings, etchings, pictures, tapestries, rare art glass, art glass windows, valuable rugs, statuary, sculptures, "antique" jewelry, bric-a-brac, porcelains and similar property of rarity, historical value or artistic merit.
22. "Finished stock" means stock you have manufactured. "Finished stock" also includes whiskey and alcoholic products being aged.
- "Finished stock" does not include "stock" you have manufactured that is held for sale on the premises of any retail outlet.
23. "Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas due to:
- Surface water or waves, tides, tidal waves, tsunami, overflow of any body of water or their spray, all whether driven by wind or not (including storm surge);

- b. The unusual or rapid accumulation of runoff of surface waters from any source;
  - c. Mudslides or mudflows which are caused by "flood" water. A mudslide or mudflow involves a river of liquid and flowing mud on the surface of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.
  - d. The release of water impounded by a dam, levee, dike, seawall or "flood" control device, whether driven by wind or not (including storm surge).  
When a "flood" is a continuous or protracted event it will constitute a single "flood" occurrence.
24. "Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.
25. "Fraudulent instruction" means:
- a. An electronic, telegraphic, cable, teletype, tele facsimile or telephone instruction which purports to have been transmitted by you, but which was in fact fraudulently transmitted by someone else without your knowledge or consent;
  - b. A written instruction (other than those described in **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, k. Forgery or Alteration**) issued by you, which was forged or altered by someone other than you without your knowledge or consent or which purports to have been issued by you, but was in fact fraudulently issued without your knowledge or consent.
26. "Funds" means "money" and "securities".
27. "Fungi" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by "fungi".
28. "Hardware" means a network of electronic machine components (microprocessors) capable of accepting instructions and information, processing the information according to the instructions, and producing desired results. "Hardware" includes but is not limited to:
- a. Mainframe and mid-range computers and servers;
  - b. Personal computers and workstations;
  - c. Portable electronic devices. Portable electronic devices include laptops, tablets, e-readers, smartphones or other lightweight, hand-held or wearable devices capable of storing, retrieving and processing data; and
  - d. Peripheral data processing equipment, including but not limited to printers, keyboards, monitors, and modems.
- "Hardware" does not mean electronic items that are not similar to the items listed in a., b., c. and d. above. "Hardware" does not include:
- e. Diagnostic equipment;
  - f. Electronic items that contain a computer to perform functions other than "hardware"; and
  - g. Peripheral data processing equipment valued more than the "hardware" itself.
29. "Hazardous substance" means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.
30. "In transit" means in the course of shipment from or to the premises shown in the Declarations. It includes such shipments while temporarily stopped or delayed, incidental to the delivery.
31. "Manager" or "managers" means a person or persons serving in a directorial capacity for a limited liability company (LLC).
32. "Media" means an instrument that is used with "hardware" and on which "electronic data", "programs and applications", and "proprietary programs" can be recorded or stored. "Media" includes, but is not limited to, films, tapes, cards, discs, drums, cartridges, cells, DVDs, CD-ROMs and other portable data devices.
33. "Member" or "Members" means an owner of a limited liability company represented by its membership interest, who also may serve as a "manager".
34. "Messenger" means you, or a relative of yours, or any of your partners or "members", or any "employee" while having care and custody of property away from the described premises.
35. "Money" means:
- a. Currency, coins and bank notes in current use and having a face value;
  - b. Traveler's checks and money orders held for sale to the public; and
  - c. In addition, includes:

- (1) For the purposes of **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, p. Employee Theft including ERISA Compliance and k. Forgery or Alteration**, deposits in your account at any "financial institution"; and
- (2) For the purposes of **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverage hh. Computer and Funds Transfer Fraud**, deposits in your account at a "financial institution" as defined in **SECTION I - PROPERTY, G. Property Definitions**, paragraph 19.b..
36. "One equipment breakdown" means: If an initial "accident" or "electronic circuitry impairment" causes other "accidents" or "electronic circuitry impairments," all will be considered "one equipment breakdown." All "accidents" or "electronic circuitry impairments" that are the result of the same "accident" or "electronic circuitry impairment" will be considered "one equipment breakdown."
37. "Operations" means your business activities occurring at the described premises.
38. "Other property" means tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include computer programs, "electronic data" or any property specifically excluded under this Coverage Form.
39. "Payment processing device" means any electronic device used to process credit, debit or charge card transactions, including but not limited to, digital pen pad devices, PIN pad devices, Automatic Teller Machines (ATMs), credit card processing machines.
40. "Payroll expense":
- a. Means payroll expenses for all your "employees" except:
- (1) Officers;
  - (2) Executive;
  - (3) Department Managers;
  - (4) "Employees" under contract; and
  - (5) Additional Exemptions shown in the Declarations as:
    - (a) Job classifications; or
    - (b) "Employees".
- b. Includes:
- (1) Payroll;
  - (2) Employee Benefits, if directly related to payroll;
  - (3) FICA payments you pay;
  - (4) Union dues you pay; and
  - (5) Workers' Compensation premiums.
41. "Period of Restoration"
- a. Means the period of time that:
- (1) Begins:
    - (a) After the number of hours shown as the Business Income Waiting Period in the Declarations after the time of direct physical loss or damage for Business Income Coverage; or
    - (b) 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
  - (2) Ends on the earlier of:
    - (a) The date when the property at the described premises should be repaired, rebuilt or replaced (to a condition permitting occupancy) with reasonable speed and similar quality; or
    - (b) The date when business is resumed at a new permanent location; or
    - (c) Exhaustion of the number of consecutive months as shown on the Policy Declarations Page.
- b. 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".
42. "Perishable goods" means personal property:
- a. Maintained under controlled temperature or humidity conditions for preservation; and
  - b. Susceptible to loss or damage if the controlled temperature or humidity conditions change.

43. "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.
44. "Programs and applications" means operating programs and applications that you purchase and that are:
- Stored on "media"; or
  - Pre-installed and stored in "hardware".
- Applications include, but are not limited to, programs for word processing, spreadsheet calculations, and graphic design.
45. "Proprietary programs" means proprietary operating programs and applications that you developed or that you had developed specifically for use in your "operations" and that are:
- Stored on "media"; or
  - Installed and stored in "hardware".
46. "Protection and control equipment" means:
- Air conditioning or other cooling equipment used exclusively in the operation of the "hardware";
  - Fire protection equipment used for the protection of the "hardware", including automatic and manual fire suppression equipment and smoke and heat detectors; and
  - Uninterruptible power supply system, line conditioner, and voltage regulator.
47. "Rental Value" means Business Income that consists of:
- New 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
  - Continuing normal operating expenses incurred in connection with that premises, including:
    - Payroll; and
    - The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
48. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or "other property" and includes:
- Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you; but does not include "money".
49. "Software" means:
- "Media";
  - "Electronic Data";
  - "Programs and applications"; and
  - "Proprietary programs".
50. "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.
- 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:
    - The cost of filling sinkholes; or
    - Sinking or collapse of land into man-made underground cavities.
  - Falling objects does not include loss of or damage to:
    - Personal property in the open; or
    - 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.
  - Water damage means
    - 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 (other than a sump system including its related equipment and parts) containing water or steam; and
    - Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the described premises and is part of a municipal potable water supply system or municipal

sanitary sewer system, if the breakage or cracking is caused by wear or tear.

But water damage does not include loss or damage otherwise excluded in **SECTION I - PROPERTY, B. Exclusions**, paragraph 1, g. Water. Therefore, for example, there is no coverage in the situation in which discharge or leakage of water results from breaking apart of cracking of a pipe which was caused by or related to weather-induced "flood" water, even if wear and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the Water Exclusion, there is no coverage for loss or damage caused by or related to weather-induced "flood" water which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear.

To the extent that accidental discharge or leakage of water falls within the criteria set forth in paragraphs (1) or (2) above of this definition of "specified causes of loss", such water is not subject to the provisions of **SECTION I - PROPERTY, B. Exclusions**, paragraph 1, g. Water, which preclude coverage for surface water or water under the ground surface.

51. "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.
52. "Suspension" means:
  - a. The partial slowdown or complete cessation of your business activities; or
  - b. Part or all of the described premises is rendered untenable, if coverage for Business Income applies.
53. "Telephonic services" means use of your:
  - a. Telephone services;
  - b. Telephone credit cards; or
  - c. Telephone access cards.
54. "Theft" means the unlawful taking of property to the deprivation of the insured.
55. "Transfer account" means an account maintained by you at a financial institution from which you can initiate the transfer, payment or delivery of "money" and "securities" by means of:
  - a. Electronic, telegraphic, cable, teletype, telefacsimile or telephone instructions communicated directly through an electronic funds transfer system; or

- b. Written Instructions (other than those described in **SECTION I - PROPERTY, A. Coverage, 5. Additional Coverages, k. Forgery or Alteration**) establishing the conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.

56. "Valuable papers and records" means:

- a. Inscribed, printed or written:

- (1) Documents;
- (2) Manuscripts; and
- (3) Records;

Including abstracts, books, deeds, drawings, films, maps or mortgages;

- b. If you are a Printer, Publisher or Graphic Artist by trade, "valuable papers and records" means negatives, positives, artwork, separations, plates, dies, molds, forms, stock manuscripts and other similar property usual to the graphic arts, printing or publishing industry, including those which exist on electronic or magnetic "media", other than prepackaged software programs.

But "valuable papers and records" does not mean "money" or "securities".

## SECTION II - LIABILITY

### A. Coverages

#### 1. Business Liability

- a. We will pay those sums the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "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 "bodily injury", "property damage" or "personal and advertising injury", to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" or 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 II - LIABILITY, D - Liability and Medical Expenses 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, settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **f. Coverage Extension - Supplementary Payments.**

b. This insurance applies:

(1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under **C. Who Is An Insured**, paragraph 1. 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.

(2) 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.

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 **C. Who Is An Insured**, paragraph 1. or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of "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 **C. Who Is An Insured**, Paragraph 1. 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".

**f. Coverage Extension - Supplementary Payments**

(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 \$2500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

(c) The cost of bonds to release attachments, but only for bond amounts within our 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 \$500 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 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 our Limit of Insurance.

These payments will not reduce the Limit of Insurance described in **SECTION II - LIABILITY, D. Liability and Medical Expenses 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:

- (i) Agrees in writing to:

- 1) Cooperate with us in the investigation, settlement or defense of the "suit";
- 2) Immediately send us copies of any demands, notices, summonses or

legal papers received in connection with the "suit";

- 3) Notify any other insurer whose coverage is available to the Indemnitee; and

- 4) Cooperate with us with respect to coordinating other applicable insurance available to the Indemnitee; and

- (ii) Provides us with written authorization to:

- 1) Obtain records and other information related to the "suit"; and

- 2) 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 **SECTION II - LIABILITY, B. Exclusions, 1. Applicable to Business Liability Coverage, b. Contractual Liability, paragraph (2)**, 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:

- (g) We have used up the applicable Limit of Insurance in the payment of judgments or settlements; or

- (h) The conditions set forth above, or the terms of the agreement described in Paragraph (2)(f) above are no longer met.

## 2. Medical Expenses

- 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 Limits of Insurance as described in **D. Liability and Medical Expenses Limits of Insurance.**

c. 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.

## B. Exclusions

### 1. Applicable To Business Liability Coverage

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 even if the claims against any insured allege negligence or other wrongdoing in:

(4) The supervision, hiring, employment, training or monitoring of others by that insured; or

(5) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

If the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in paragraphs (1), (2) or (3) above.

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

For the purpose of this exclusion, permitting a person to bring alcoholic beverages on your premises for consumption on your premises, whether or

not a fee is charged or a license is required for such activity, is not by itself considered the business of 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 local, state, federal or foreign law or regulation.

**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:

- (3) Whether the Insured may be liable as an employer or in any other capacity; and
- (4) 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

##### (1) Unmanned Aircraft

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading and unloading".

This paragraph g. (1) applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

This paragraph g. (1) does not apply to:

(a) The use of another's advertising idea in your "advertisement"; or

(b) Infringing upon another's copyright, trade dress or slogan in your "advertisement".

##### (2) Aircraft (Other Than Unmanned Aircraft), Auto or Watercraft

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



This paragraph g. (2) applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This paragraph g. (2) does not apply to:

- (a) A watercraft while ashore on premises you own or rent;
- (b) A watercraft you do not own that is:
  - (i) Less than 51 feet long; and
  - (ii) Not being used to carry persons or property for a charge;
- (c) 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;
- (d) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft (other than "unmanned-aircraft") or watercraft; or
- (e) "Bodily injury" or "property damage" arising out of:
  - (i) 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 or motor vehicle registration law where it is licensed or principally garaged; or
  - (ii) The operation of any of the following machinery or equipment:
    - 1) Cherry pickers and similar devices mounted on automobile or truck

chassis and used to raise or lower workers; and

- 2) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or

- (f) An aircraft (other than "unmanned aircraft") that is:
  - (i) Chartered by, loaned to, or hired by you with a paid crew; and
  - (ii) Not owned by any insured.

**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", "property damage" or "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 government authority in hindering or defending against any of these.

**j. Professional Services**

"Bodily injury", "property damage", "personal and advertising injury" caused by the rendering of or failure to render any professional service, advice or instruction:

- (1) By you; or
- (2) On your behalf; or
- (3) From whom any of you assumed liability by reason of a contract or agreement,

regardless of whether any such service, advice or instruction is ordinary to any insured's profession.

Professional services include but are not limited to:

- (4) Legal, accounting or advertising services, notary, title abstract, tax preparation, real estate, stockbroker, publishing, architects or insurance services;
- (5) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- (6) Supervisory, inspection or engineering services;
- (7) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (8) Any health or therapeutic service treatment, advice or instruction;
- (9) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming, including use or exposure to any sun lamp, tanning booth or other similar appliance;
- (10) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (11) Body piercing services;
- (12) Services in the practice of pharmacy;
- (13) Management, Human Resource, Testing, Media or Public Relations consulting services.

This exclusion applies even if a claim alleges negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional service.

**k. 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 contractor or subcontractor working directly or indirectly on your behalf is 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 II - LIABILITY, D. Liability and Medical Expenses Limit 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".

**i. Damage to Your Product**

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

**m. 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.

**n. 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.

**o. 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.

**p. Aircraft Products, Grounding and Testing**

- (1) "Aircraft products" or reliance upon any representation or warranty made with such product;
- (2) The "grounding" of any aircraft; or
- (3) The "testing" of any aircraft.

For purposes of this Exclusion, the following definitions apply:

- (4) "Aircraft Products" means:
  - (a) Aircraft, including but not limited to missiles, spacecraft, or any other aircraft goods or products you manufacture, sell, handle or distribute;
  - (b) Aircraft and any ground support or control equipment used in connection therewith;

- (c) Any product provided by the insured and installed or used in connection with any aircraft;
- (d) Any tooling used in respect to any aircraft;
- (e) Training and navigational aids, instructions, manuals, blueprints, engineering or other data in connection with any aircraft;
- (f) Any advice, service or labor supplied with any aircraft; or
- (g) Services you or others trading under your name provide or recommend for use in the manufacture, repair, operation, maintenance or use of any aircraft.

(5) "Grounding" means the withdrawal of one or more aircraft from flight operations or the imposition of speed, passenger or load restrictions on such aircraft, due to the existence of or alleged or suspected existence of any defect, fault or condition:

- (a) In such aircraft or any part sold, handled or distributed by you or that is manufactured, assembled or processed by any other person or organization according to your specifications, plans, suggestions, orders or drawings; or
- (b) With tools, machinery or other equipment furnished to such persons or organizations by you;

whether such withdrawn aircraft are owned or operated by the same or different persons or organizations.

"Grounding" shall be deemed to commence on the date of an "occurrence" which discloses the necessity of "grounding" or on the date an aircraft is first withdrawn from service because of such condition, whichever comes first.

(6) "Testing" means examination, observation, evaluation or measuring of the performance of "aircraft products", while either in the air or on the ground.

**q. Distribution of Material in Violation of Statutes**

"Bodily Injury", "property damage" or "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) 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 other laws, statutes, ordinances or regulations, that address, prohibit, or limit the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**r. 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 paragraphs (1) or (2) above.

However, unless paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, 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.

Exclusions c., d., e., g., h., and k., l., m., n. and o. above do not apply to damage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Damage to Premises Rented to You Limit of Insurance applies to this coverage as described in SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance.

**2. Additional Exclusions Applicable Only to "Personal and Advertising Injury"**

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, in any manner, 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, in any manner, 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. 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 web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to **F. Liability and Medical Expenses Definitions, 15. "Personal and Advertising Injury"**, paragraphs a., b. and c.

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.

**j. 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.

**k. 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 "sue" 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".

**l. 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.

**m. 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.

**n. Unauthorized Use of Another's Name of 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 metatags, or any other similar tactics to mislead another's potential customers.

**3. Additional Exclusions Applicable to Medical Expenses Coverage Only**

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. Athletic 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. Otherwise Excluded**

Otherwise Excluded under SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage.

**4. Additional Exclusions Applicable To Both Business Liability Coverage and Medical Expenses Coverage:**

**Nuclear Energy Liability Exclusion**

This insurance does not apply:

**(1) Under Business Liability Coverage, to "bodily injury" or "property damage":**

(a) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:

(i) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or

(ii) 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.

**(2) Under Medical Expenses 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.

**(3) Under Business Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of the "nuclear material"; if:**

**(a) The "nuclear material":**

(i) Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or

(ii) Has been discharged or dispersed therefrom;

**(b) 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**

**(c) 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.**

**(4) As used in this exclusion:**

**(a) "By-product material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;**

**(b) "Hazardous properties" include radioactive, toxic or explosive properties;**

**(c) "Nuclear facility" means:**

**(i) Any "nuclear reactor";**

**(ii) 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";**

**(iii) 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;

(iv) 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;

(d) "Nuclear material" means "source material", "special nuclear material" or "by-product material";

(e) "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;

(f) "Property damage" includes all forms of radioactive contamination of property;

(g) "Source material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

(h) "Special nuclear material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

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

(j) "Waste" means any waste material:

(i) 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

(ii) Resulting from the operation by any person or organization of any "nuclear facility" included under paragraphs (i) and (ii) of the definition of "nuclear facility".

### C. 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), or 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" 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 (1)(b); or
  - (d) Arising out of his or her providing or failing to provide professional services.
- (2) "Property damage" to property:
- (a) Owned, occupied or used by; or
  - (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 policy.
3. Any organization you newly acquire or form, 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 90<sup>th</sup> day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - b. Business Liability Coverage does not apply to:
    - (1) "Bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- (2) "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.

#### D. Liability and Medical Expenses Limits of Insurance

1. The Limits of Insurance under SECTION II - LIABILITY 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. Subject to the Aggregate Limit identified in paragraph 5. below, the most we will pay for the sum of all damages because of all:

- a. "Bodily injury", "property damage" and medical expenses arising out of any one "occurrence"; and
- b. "Personal and advertising injury" sustained by any one person or organization;

is the Liability And Medical Expenses Limit shown in the Declarations.

3. Subject to the Liability And Medical Expenses Limit, the most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. The Damage to Premises Rented to You Limit shown in the Declarations is the most we will pay for damages because of "property damage" to any one premises while rented to you, or temporarily occupied by you with permission of the owner.

#### 5. Aggregate Limits

- a. The most we will pay for:

- (1) All "bodily injury" and "property damage" that is included in the "products-completed operations hazard" is twice the Liability And Medical Expenses Limit.

- (2) All:

- (a) "Bodily injury" and "property damage" except damages because of "bodily injury" and

"property damage" included in the "products-completed operations hazard";

- (b) Plus medical expenses;
- (c) Plus all "personal and advertising injury" caused by offenses committed;

is twice the Liability And Medical Expenses Limit.

- b. The Aggregate Limits of Insurance apply separately to each of your "locations" owned by or rented to you. "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

- 6. The Limits of Insurance of **SECTION II - LIABILITY** 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.

**E. Liability and Medical Expenses General 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 that 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 policy 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 policy 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. Separation of Insureds**

Except with respect to the Limits of Insurance under **SECTION II - LIABILITY**, 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.

## F. Liability and Medical Expenses 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 websites, 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. "Bodily Injury" includes mental anguish or other mental injury resulting from "bodily injury".

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 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, road beds, 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, drawings, opinions, reports, surveys, change orders, designs or 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 paragraph (2) above and supervisory, inspection or engineering services.

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, on which are 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 paragraphs 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 paragraphs 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 they are 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 the job site has been put to its intended use by any other 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.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

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; or

(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

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, 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", "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. "Unmanned aircraft" means an aircraft that is not:

- a. Designed;
- b. Manufactured; or
- c. Modified after manufacture;

to be controlled directly by a person from within or on the aircraft.

21. "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.

22. "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.

23. "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.

**SECTION III - COMMON POLICY CONDITIONS  
(APPLICABLE TO SECTION I - PROPERTY AND  
SECTION II - LIABILITY)**

**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. 5 days before the effective date of cancellation if any one of the following conditions exists at any building that is Covered Property in this policy:
    - (1) The building has been vacant or unoccupied 60 or more consecutive days. This does not apply to:
      - (a) Seasonal unoccupancy; or
      - (b) Buildings in the course of construction, renovation or addition.

Buildings with 65% or more of the rental units or floor area vacant or unoccupied are considered unoccupied under this provision.
    - (2) After damage by a covered cause of loss, permanent repairs to the building:
      - (a) Have not started, and
      - (b) Have not been contracted for, within 30 days of initial payment of loss.

- (3) The building has:
  - (a) An outstanding order to vacate;
  - (b) An outstanding demolition order; or
  - (c) Been declared unsafe by governmental authority.
- (4) Fixed and salvageable items have been or are being removed from the building and are not being replaced. This does not apply to such removal that is necessary or incidental to any renovation or remodeling.
- (5) Failure to:
  - (a) Furnish necessary heat, water, sewer service or electricity for 30 consecutive days or more, except during a period of seasonal unoccupancy; or
  - (b) Pay property taxes that are owed and have been outstanding for more than one year following the date due, except that this provision will not apply where you are in a bona fide dispute with the taxing authority regarding payment of such taxes.

- b. 10 days before the effective date of cancellation, if we cancel for nonpayment of premium.
- c. 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. Concealment, Misrepresentation or Fraud

This policy is void in any case of fraud by you as it relates to this policy at any time. It is also void if you or any other insured, at any time, intentionally conceals or misrepresents a material fact concerning:

- 1. This policy;
- 2. The Covered Property;
- 3. Your interest in the Covered Property; or
- 4. A claim under this policy.

#### D. 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. We have the right to make copies of these books and records.

#### E. Inspections and Surveys

- 1. We have the right but not the duty 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. We do not warrant that conditions:
  - a. Are safe and 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.

#### F. Insurance Under Two or More Coverages

If two or more of this policy's coverages apply to the same loss or damage, you may choose only one of these coverages to apply to that loss.



1. **SECTION I - PROPERTY**, If two or more of this coverage part's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.
2. **SECTION II - LIABILITY**, It is our stated intent that the various Coverage Parts, forms, endorsements or policies issued to the named Insured by us, or any company affiliated with us, do not provide any duplication or overlap of coverage for the same claim, "suit", "occurrence", offense, accident, "wrongful act" or loss. We will not pay more than the actual amount of the loss or damage.

If this Coverage Part and any other Coverage Part, form, endorsement or policy issued to the named Insured by us, or any company affiliated with us, apply to the same claim, "suit", occurrence, offense, accident, "wrongful act" or loss, the maximum Limit of Insurance under all such Coverage Parts, forms, endorsements or policies combined shall not exceed the highest applicable Limit of Insurance under any one Coverage Part, form, endorsement or policy.

This condition does not apply to any Excess or Umbrella Policy issued by us specifically to apply as excess insurance over this policy.

#### G. Liberalization

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

#### H. Other Insurance

##### 1. SECTION I - PROPERTY

If there is other Insurance covering the same loss or damage, 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 of **SECTION I - PROPERTY**.

##### 2. SECTION II - LIABILITY

If other valid and collectible insurance is available to the Insured for a loss we cover under **SECTION II - LIABILITY**, 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.

However, if you agree in a written contract, written agreement, or written permit that the insurance provided to any person or organization included as an Additional Insured under this Coverage Part is primary and non-contributory, we will not seek contribution from any other insurance available to that Additional Insured which covers the Additional Insured as a Named Insured except:

- (1) For the sole negligence of the Additional Insured; or
- (2) When the Additional Insured is an Additional Insured under another liability policy.

###### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Property Insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (c) 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
  - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to **SECTION II - LIABILITY, Exclusion g. Aircraft, Auto or Watercraft**; and
- (2) 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.

When this insurance is excess, we will have no duty under **SECTION II - LIABILITY** 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.

- c. When this Insurance is excess over other Insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

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

- d. We will share the remaining loss, if any, with any other Insurance that is not described in this provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations for this Coverage.

**e. 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.

- f. When this Insurance is excess, we will have no duty under Business Liability Coverage to defend any claim or "suit" that any other insurer has a duty to defend. 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.

**I. Premiums**

1. The first Named Insured shown in the Declarations:
  - a. Is responsible for the payment of all premiums; and
  - b. Will be the payee for any return premiums we pay.
2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation or anniversary of the effective date of this policy, we will compute the

premium in accordance with our rates and rules then in effect.

3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:

- a. Paid to us prior to the anniversary date; and
- b. Determined in accordance with paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.

4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that is not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

**J. Premium Audit**

1. This policy is subject to audit if a premium designated as an advance premium is shown in the Declarations. We will compute the final premium due when we determine your actual exposures.
2. Premium shown in this policy 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 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.
3. 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.

**K. Transfer of Rights of Recovery Against Others to Us**

1. Applicable to **SECTION I - PROPERTY Coverage:**

If any person or organization to or for whom we make payment under this policy 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:

- a. Prior to a loss to your Covered Property.
- b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - (1) Someone insured by this insurance;
  - (2) A business firm:
    - (a) Owned or controlled by you; or
    - (b) That owns or controls you; or
  - (3) Your tenant.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

2. Applicable to **SECTION II - LIABILITY** Coverage:

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 such rights. At our request, the Insured will bring "suit" or transfer those rights to us and help us enforce them.

We waive any right of recovery we may have against any person or organization with whom you have a written contract, permit or agreement to waive any rights of recovery against such person or organization 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 condition does not apply to Medical Expenses Coverage.

L. **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 that legal representative is acting within the scope of their duties as your legal representative. Until your legal representative is appointed, anyone with proper temporary custody of your property will have your rights and duties but only with respect to that property.

This page intentionally left blank.