

# Exhibit 1

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

**INTERSTATE INVESTMENTS, LLC,**

**Plaintiff,**

**– against –**

**MT. HAWLEY INSURANCE COMPANY,**

**Defendant.**

**Index No.:** \_\_\_\_\_

**SUMMONS**

**Plaintiff designates New York  
County as the place if trial.**

**Venue is proper under New  
York Procedural law.**

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on Plaintiff’s attorney within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in this complaint.

Dated: August 8, 2025

/s/ Vincent P. Circelli  
Vincent P. Circelli  
New York Bar No. 6074942  
vcircelli@dcclawfirm.com

**DUGAS & CIRCELLI, PLLC**  
4800 Bryant Irvin Court  
Fort Worth, Texas 76107  
(817) 817-7000 telephone  
(682) 219-0761 facsimile

**COUNSEL FOR PLAINTIFF**

TO:

Mt. Hawley Insurance Company  
Craig W. Kliethermes, President  
9025 N. Lindbergh Drive  
Peoria, Illinois 61615

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

**INTERSTATE INVESTMENTS, LLC,**

**Plaintiff,**

**– against –**

**MT. HAWLEY INSURANCE COMPANY,**

**Defendant.**

**Index No.:** \_\_\_\_\_

**ORIGINAL COMPLAINT  
FOR BREACH OF  
CONTRACT AND  
STATUTORY VIOLATIONS**

**JURY TRIAL DEMAND**

Plaintiff, Interstate Investments, LLC, (“Plaintiff”) files this Original Complaint against Defendant, Mt. Hawley Insurance Company (“Defendant”), and alleges as follows:

**NATURE OF THE ACTION**

1. Plaintiff purchased an insurance policy from Defendant bearing policy number MCP0174111 (the “Policy”), which covers Plaintiff’s properties located at 415 SE Interstate Drive, Lawton, Oklahoma 73501; 2610 Cache Road, Lawton, Oklahoma 73505; and 1408 NW 40th Street, Lawton, Oklahoma 73505 (the “Properties”). Plaintiff dutifully paid the Policy premium. The Policy purchased from Defendant specifically covered damages caused by a wind, hail, and rainstorm and ensuing losses therefrom. During the Policy Period, a wind, hail, and rainstorm occurred at the Properties and the Properties was damaged as a result. Plaintiff promptly reported the damages to Defendant but has not received all compensation owed to Plaintiff from Defendant in accordance with the terms of the Policy and documented damages and now seeks damages for breach of contract, breach of the covenant of good faith and fair dealing, statutory violations of Insurance Law §2601 and GBL §349, and attorney’s fees.

2. This Complaint also seeks declaratory relief, pursuant to CPLR § 3001, and damages for breach of contract, as well as consequential damages, arising out of the contracts of

insurance between the Parties, wherein Defendant agreed to abide by the terms of its policies and pay for any covered losses that may occur in return for the payment of a premium by Plaintiff.

3. Plaintiff expressly seeks application of Oklahoma law for these claims because the New York choice of law provision in the contract is invalid, but in the alternative has plead causes of action under New York law.

### PARTIES

4. Plaintiff, Interstate Investments, LLC, owns the properties made the basis of this suit located at 415 SE Interstate Drive, Lawton, Oklahoma 73501; 2610 Cache Road, Lawton, Oklahoma 73505; and 1408 NW 40th Street, Lawton, Oklahoma 73505. Plaintiff is an Oklahoma Domestic Limited Liability Company incorporated under the laws of Oklahoma. Further, Plaintiff's principal place of business is in Oklahoma. Therefore, for purposes of diversity jurisdiction, Plaintiff is a citizen of Oklahoma.

5. Defendant herein is Mt. Hawley Insurance Company ("Defendant"), based upon information and belief, is a foreign corporation incorporated under the laws of the State of Illinois and its headquarters in New York who is authorized to transact business in the State of Oklahoma through its designated agents and representatives located in districts throughout the United States. Defendant can be served with citation by serving the Oklahoma Insurance Commissioner, Glen Mulready via Certified Mail at Oklahoma Insurance Department, Attention: Legal Division, 400 NE 50th Street, Oklahoma City, Oklahoma 73105; who shall then serve a true copy of the Complaint, pursuant to the policy at issue, Craig W. Kliethermes, President, Mt. Hawley Insurance Company, located at 9025 N. Lindbergh Drive, Peoria, Illinois 61615. Service is requested by a private process server at this time.

**JURISDICTION AND VENUE**

6. The Court has subject matter jurisdiction over this action and personal jurisdiction over Defendant, who is domiciled in the State of New York and regularly does business throughout the State of New York, including New York County.

7. Venue is proper in this Court as Defendant regularly does business in New York County and under the venue selection clause contained in the Policy, Defendant agrees to submit to the jurisdiction of any New York Court that may properly exercise jurisdiction.

**FACTUAL BACKGROUND**

8. Plaintiff entered into an agreement with Defendant to pay Defendant premiums in exchange for insurance coverage protecting Plaintiff's Properties from certain storm-related damages, should they occur.

9. The agreement was drafted by Defendant and assigned Policy Number MCP0174111. The Policy's effective date was from January 21, 2023 at 12:01 A.M., through January 21, 2024 (referred to as the "Policy Period").

10. Plaintiff entered into the contract of insurance with the reasonable expectation that in return for the payment of the premium, Defendant would abide by the terms of the Policy and pay for any covered losses that may occur, including providing coverage for any storm-related damages to its structures and buildings at the insured locations.

11. Coverage under the Policy covers direct physical loss or damage to Covered Properties as a result of a covered loss.

12. Hail, wind, and rainstorms are covered losses under the Policy.

13. Defendant believed the Properties was suitable to insure and promised to cover the damage stated above and as laid out in the Policy. On information and belief, Defendant conducted

an underwriting inspection on the Properties, confirmed there was no pre-existing damage, and confirmed it was insurable.

14. During the Policy Period a wind, hail, and rainstorm swept through Lawton, Oklahoma and hit the Properties.

15. The wind, hail, and rainstorm hit the Properties severely damaging the buildings at the Properties.

16. Plaintiff subsequently filed a timely claim under the Policy.

17. Defendant assigned the claim Claim Number 00526883 (the “Claim”).

**A. Investigation, Reports and Denial**

18. Defendant retained independent adjusting and claims management firm Engle Martin & Associates (“Engle Martin”) and investigate the claim.

19. Defendant also retained Cornerstone Thermal Solutions (“Cornerstone”) a thermography firm who was tasked with locating and isolating moisture intrusion.

20. Defendant’s retained agents, Engle Martin and Cornerstone purportedly inspected the Properties. Engle Martin is a biased firm known to favor insurance carriers over the insured. Engle Martin and Cornerstone failed to perform proper inspections of the Properties, ignored clear and obvious hail damage throughout the Properties and engaged in pretextual investigations.

21. Based on its initial visit to the Properties, Defendant issued a partial denial letter dated August 10, 2023, admitting the Properties had been hit and damaged by hail but severely undervalued the cost of repairs.

22. Engle Martin and Cornerstone covered damage to the roof, exterior, and outdoor signs from the hail storm.

23. Despite acknowledging covered hail damage, Defendant improperly limited the full covered loss by not including all of the hail damaged exterior and interior and as a result failed to pay the full amount due for covered hail damage.

24. Defendant's estimate included repairs to the roof, exterior and outdoor signs but did not include damage to the interior of the Properties. This severely undervalued the obvious wind and hail damage at the Properties. Defendant also improperly undervalued the amount owed under the Policy for costs to return the Property to its pre-loss condition by not accounting for proper repair methods and failing to include the covered damage to the Property caused by wind and hail.

25. Defendant wrongfully denied portions of Plaintiff's Claim by incorrectly applying the applicable policy language, failing to fully investigate the damage, and accepting the conclusions of an incomplete report to justify the denial.

26. As a result of the improper inspection, biased opinions from its regularly retained vendors, Defendant substantially underpaid Plaintiff on its Claim.

27. After being unable to reach a fair resolution with Defendant regarding its undervalued estimate, on March 26, 2025, Plaintiff retained a public adjusting firm, Balance Companies ("Balance"), to assist with the insurance claim.

28. Balance promptly contacted Defendant to request a re-inspection of the Properties, which Defendant declined.

29. In response, Balance sent a formal letter invoking the appraisal process under the Policy. Defendant rejected this demand.

30. On May 14, 2025, Balance notified Defendant that the parties were at an impasse due to Defendant's refusal to engage in fair settlement negotiations regarding the value of

Plaintiff's claim. This letter also invoked the appraisal process under the Policy.

31. On May 22, 2025, Defendant informed Plaintiff that it refused to respond to Plaintiff's appraisal demand.

32. However, the Policy does not permit either party to unilaterally reject a valid appraisal demand. A disagreement over the amount of loss such as the one clearly communicated by Plaintiff is all that is required to invoke appraisal.

33. Defendant's letter even acknowledged Plaintiff's disagreement with the amount of loss, yet improperly refused to proceed with appraisal.

34. This lawsuit is timely filed within two years of Defendant's August 10, 2023 breach and the misrepresentations made therein.

35. Based on information and belief, Defendant retained known biased entities and relied on their arbitrary findings and conclusions without question to try and avoid or substantially limit liability on Plaintiff's Claim.

36. As a result, Defendant asserted baseless claims to limit its liability on the claim, unreasonably relied on biased reports without question despite contradictory findings based, and issued an estimate that grossly undervalues the costs of the covered damages to the Properties.

37. Defendant did not conduct an adequate investigation into the full extent of damages claimed by Plaintiff when determining the Claim was not covered under the Policy.

38. As a result, Defendant failed to properly evaluate all of the evidence and material information provided by Plaintiff to Defendant supporting its Claim for additional monies owed to it under the Policy.

39. Therefore, Defendant wrongfully denied portions of Plaintiff's Claim by incorrectly applying inapplicable Policy language, failing to fully investigate the damage, failing

to consider material evidence, and accepting the conclusions of incomplete and contradictory reports.

40. To date, Defendant has not paid Plaintiff the full value of its Claim under the Policy with Defendant pursuant to the Policy.

41. Defendant and its agents assigned to the Claim failed to perform a proper inspection and as a result prepared a report that failed to include all of the covered damage sustained at the Properties and undervalued all damage observed during the inspection.

42. Based on all facts listed above, Defendant and its agents performed an outcome-oriented investigation of Plaintiff's Claim, which resulted in a biased, unfair, and inequitable evaluation of Plaintiff's Claim for the covered Properties.

43. Plaintiff fully complied with all requirements under the Policy to properly notify the Defendant of the loss to its covered Properties and cooperate with Defendant in its investigation of the Claim.

44. Defendant breached the terms of the parties' agreement and acted with bad faith under the Insurance Code, DTPA, and common law. Plaintiff has suffered damages, including actual damages, expectancy damages, consequential damages above policy limits (including increased costs of construction, lost time, lost revenue, etc.).

45. As a result, Plaintiff has incurred additional damages and the increased costs of repair that were, and still are to this day, a natural, probable, and foreseeable consequence of Defendant's failure to pay the amount owed on the Claim. For example, the costs of repair have increased substantially since Defendant's denial of the majority of the Claim.

**B. Policy Compliance**

46. Plaintiff fully complied with all requirements under the Policy and properly notified the Defendant of the loss to its covered Properties.

**THE CONTROVERSY**

47. Based on the above circumstances, a justiciable case and controversy exists about the meaning of a variety of terms and provisions in the Policy, and Plaintiff’s right to recover under the Policy for hail and wind damage.

48. Plaintiff seeks a declaratory judgment from this Court finding that the choice of law and notice of loss provisions contained in the Policy drafted and issued by Defendant is void, unenforceable under New York law, and against public policy, and that Oklahoma law governs the parties’ dispute concerning insurance coverage, claims handling, and available remedies.

**COUNT I  
(DECLARATORY JUDGMENT)**

49. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

50. The Policies contain a purported (a) apply New York law to any dispute between the parties, and (b) limit the time in which an action may be brought to two years from the date of loss. See Exhibit A at p. 78 (“Legal Action Against Us”).

51. The choice of law and statute of limitations provisions are void and against public policy. New York has no meaningful connection to the parties, the property, or the events giving rise to the dispute.

52. The Parties to the contract are citizens of Oklahoma and Illinois, the contract was negotiated and signed exclusively in Oklahoma, the storms at issue occurred in Oklahoma, the Properties and damage are in Oklahoma, and every witness is in Oklahoma.

53. This dispute is entirely centered in Oklahoma. There is a clear conflict in law between Oklahoma and New York concerning first party insurance litigation rights, especially as to hail damage coverage, insurance practices, cosmetic damage exclusions, insurance penalties, and the rights and remedies of insureds like Plaintiff.

54. Further, the Policy’s two-year contractual limitations period is also unreasonable and unenforceable. The statute of limitations should begin to run from the date the claim was denied rather than the date of loss. The Policy provision attempts to shorten the time for insureds to bring claims and unfairly benefits the insurer at the expense of the policyholder.

55. Plaintiff therefore seeks a declaration that the choice of law provision is void and that Oklahoma law applies to this dispute including that the statute of limitations runs based on the date of denial.

**OKLAHOMA CAUSES OF ACTION**

56. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

57. Plaintiff asserts Oklahoma law applies to Plaintiff’s claims and pleads as follows:

**COUNT II  
(BREACH OF CONTRACT)**

58. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

59. Plaintiff entered a contract for insurance with Defendant to provide physical damage coverage for the Properties and personal property.

60. At all times material hereto, the Policy was in full force and effect.

61. Plaintiff’s Properties sustained damage as a result of direct physical loss during the Policy Period caused by a wind, hail, and rainstorm, all covered causes of loss.

62. Plaintiff made a timely claim under the Policy for wind and hail damage.

63. Defendant has breached the terms of the Policy by wrongfully denying portions of the Claim while underpaying covered damages instead of paying the full benefits owed to Plaintiff under the Policy for a covered loss to the Properties.

64. As a result of Defendant's breach of the Policy, Plaintiff sustained: (1) actual damages in an amount more than Seventy-Five Thousand Dollars (\$75,000.00), (2) consequential damages (related to increased costs of construction and other related consequential damages), (3) incurred reasonable and necessary attorney's fees to date, and (4) all interest allowed by law.

**COUNT III  
(TORTIOUS BAD FAITH)**

65. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

66. Plaintiff and Defendant entered into a valid and enforceable insurance policy.

67. Defendant owed Plaintiff the common law duty of good faith and fair dealing.

68. Defendant breached the common law duty of good faith and fair dealing by wrongfully denying portions of the Claim, underpaying covered damages, and delaying payment on the Claim when Defendant knew or should have known liability was reasonably clear.

69. Specifically, Defendant has breached the common law duty of good faith and fair dealing owed to Plaintiff by:

- a. Failing to properly investigate all damage to the Properties;
- b. Failing to record the obvious evidence of covered damage to the interior of the Properties;
- c. failing to perform a fair and objective investigation of Plaintiffs' damages and engaging in an outcome oriented investigation on Plaintiffs' claims designed to reduce the amount of money paid to Plaintiffs on their claims;

- d. Forcing Plaintiff to obtain legal counsel to recover insurance benefits it is entitled to under the terms and conditions of the Policy;
  - e. Intentionally engaging in an outcome oriented investigation;
  - f. Intentionally engaging in a systematic scheme designed to save money otherwise due and owing to the Plaintiff and other similarly situated insureds as a cost-saving mechanism;
  - g. wrongfully delaying and underpaying the Claim;
  - h. Denying Plaintiff's right to timely invoke the appraisal process to set the amount of loss as agreed to under the Policy despite admitting to coverage of the Claim;
  - i. Substantially undervaluing the admitted recorded damage by failing to include all necessary material to complete the proper repairs to the Properties;
  - j. Failing to write an estimate that includes all storm related damage found to be sustained at the Properties within the Policy Period; and
  - k. engaging in these improper claims practices knowing that its insureds would suffer financial harm.
70. Defendant additionally breached its duty to deal fairly and act in good faith by making the following misrepresentations:
- a. That there was no storm created openings to the roof; and
  - b. refusing to participate in the appraisal process, despite the Policy language allowing for either party to make a written demand based on a disagreement on the amount of loss.
71. Defendant's obligations arise from both the express written terms of the policy and the Oklahoma Insurance Code. Defendant's failure to implement and/or follow Oklahoma's statutory Insurance Code constitutes bad faith.
72. As a direct and proximate result of Defendant's unfair claims handling conduct, Plaintiff's Claim was unnecessarily delayed, inadequately investigated, and wrongfully denied.

73. Said actions resulted in additional profits and a financial windfall to Defendant as a result of Defendant’s actions resulting in additional profits and a financial premium to Defendant and damage to Plaintiff.

74. Defendant benefited from increased financial benefits and ill-gotten gains as a direct result of the intentional and wrongful conduct described above, which resulted in further damage to the Plaintiff.

75. Upon information and belief, Defendant’s actions were performed without due regard or care for the Claim process and were done intentionally or with gross negligence.

76. Defendant was aware at all times that its actions would result in the denial or underpayment of Plaintiff’s Claim, and cause extraordinary harm associated with Plaintiff’s Claim.

77. As a result of Defendant’s acts and omissions, Plaintiff sustained actual damages.

**NEW YORK CAUSES OF ACTION**

78. Each of the foregoing paragraphs is incorporated by reference in the following:

79. In the alternative that the Court finds New York law applies to Plaintiff’s claims, and without waiver to Plaintiff’s position that Oklahoma law applies, Plaintiff pleads the following:

80. Defendant is liable to Plaintiff for breach of contract, breach of the covenant of good faith and fair dealing, and for statutory violation of GBL §349 under New York law.

**COUNT I  
(BREACH OF CONTRACT)**

81. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

82. The Policy, at all times relevant and material to the case, each constituted a contract between Plaintiff and Defendant.

83. As set forth above, Defendant breached the Policy by refusing to honor the express terms of the Policy and refusing to pay all amounts due to Plaintiff under the terms of the Policy.

84. As a result of Defendant's breach of its obligations under the Policy, Plaintiff has suffered direct damages and consequential damages in an amount to be established at trial.

85. Further, as a result of Defendant's breaches of its obligations to pay undisputed amounts owed under the Policy, Plaintiff has suffered direct damages and consequential damages in an amount to be proved at trial, plus interest at 9% per annum under CPLR §§ 5001, 5004, running from the date of breach.

**COUNT II**  
**(VIOLATION OF NEW YORK GBL §349 - DECEPTIVE BUSINESS PRACTICES)**

86. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

87. GBL §349 (a)(h) Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful. Any person who has been injured by reason of any violation of this section may bring an action.

88. Upon information and belief, Plaintiff alleges that Defendant engaged in deceptive acts or practices by withholding relevant information and its approval and adoption of its consultant's unreliable practices which led to an extreme undervaluation of this claim.

89. Defendant had no arguable basis for challenging Plaintiff's claim for the additional benefits owed under the Policy.

90. Defendant's violations of the New York Insurance Code Unfair Claim Settlement Practices § 2601 displays a pattern of deceptive acts or practices by Defendant. More specifically, by engaging in unfair settlement practices by:

- a. knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
- b. failing to acknowledge with reasonable promptness pertinent communications as to claims arising under its policies;
- c. failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies;
- d. not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear, except where there is a reasonable basis supported by specific information available for review by the department that the claimant has caused the loss to occur by arson;
- e. compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

91. Defendant used the Policy to delay the process and minimize its liability on this Claim and force Plaintiff to file suit in New York in order to dispute a claims decision in breach of Plaintiff's Policy with Defendant.

92. Most insureds do not and would not purchase insurance for their Properties which required them to file any dispute with their insurance company in a Court more than 1,800 miles away from the town where its insured Properties are located.

93. Plaintiff is entitled to bring a cause of action under this statute because Defendant's conduct is consumer oriented as the insurer's acts or practices have a broad impact on consumers of insurance at large. Upon information and belief, Defendant's policies are marketed and sold to consumers all across the nation. The total number of consumers who have purchased policies from Defendant or who are currently insured by Defendant is unknown at the time of filing of this Complaint.

94. Defendant's acts exemplify its practice to force its insured to contest nearly all of Defendant's decisions despite evidence to the contrary and Defendant having no basis in fact or law to limit Plaintiff's Claim as Defendant did throughout its insurance Claim.

95. As a result of Defendant's deceptive acts and practices, Plaintiff has suffered damages.

**COUNT III  
(BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING)**

96. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

97. Defendant violated the duty of good faith and fair dealing by undervaluing and underpaying the claim in question even though it knew or should have known it was reasonably clear the damage to the Properties was exponentially higher than the carrier's investigation revealed.

98. Defendant did so by misrepresenting to Plaintiff pertinent facts or policy provisions relating to coverage at issue.

99. Specifically, Defendant has breached the common law duty of good faith and fair dealing owed to Plaintiff by:

- a. making the misrepresentations at paragraph 68;
- b. Failing to properly investigate all damage to the Properties;
- c. Failing to record the obvious evidence of covered damage to the interior of the Properties;
- d. Forcing Plaintiff to obtain legal counsel to recover insurance benefits it is entitled to under the terms and conditions of the Policy.
- e. Intentionally engaging in an outcome oriented investigation;
- f. Substantially undervaluing the admitted recorded damage by failing to include all necessary material to complete the proper repairs to the Properties; and
- g. Failing to write an estimate that includes all storm related damage found to be sustained at the Properties within the Policy Period; and
- h. Denying Plaintiff's right to timely invoke the appraisal process to set the amount of loss as agreed to under the Policy despite admitting to coverage of the Claim.

100. Upon information and belief, Defendant's actions were performed without due regard or care for the Claim process and were done intentionally or with gross negligence.

101. Defendant was aware at all times that its actions would result in the denial or underpayment of Plaintiff's Claim, and cause extraordinary harm associated with Plaintiff's Claim.

102. Defendant further failed to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies.

103. Defendant did not utilize sound methods and processes for its investigation and testing procedures, and as a result, Defendant relied on unreliable opinions for its claims decision to the detriment of Plaintiff and for the benefit of Defendant.

104. Defendant had no arguable basis for challenging Plaintiff's claim for the additional benefits owed under the Policy.

105. Therefore, Defendant has refused to attempt to effectuate a good faith settlement based on this new information and evidence of covered damages. Defendant's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to insured in insurance contracts.

106. Defendant also failed to adequately and reasonably investigate and evaluate Plaintiff's claim, although, at the time, Defendant knew or should have known by the exercise of reasonable diligence that its liability was reasonably clear. This constitutes a breach of the duty of good faith and fair dealing.

107. Further, Defendant forced Plaintiff to sue Defendant for the remaining amount owed on the Claim constituting a breach of the duty of good faith and fair dealing. Defendant could reasonably foresee Plaintiff would incur reasonable and necessary attorney's fees by being forced to file a lawsuit against Defendant for money obviously owed on its Claim under the Policy.

108. As a result of Defendant's actions, Defendant breached of the duty of good faith and fair dealing, and as a result, Plaintiff has suffered actual damages.

### DAMAGES

109. Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the producing causes of the damages sustained by Plaintiff.

110. As previously mentioned, the damages caused by the wind, hail, and rainstorm at issue were not immediately addressed or repaired in the months following the loss due to Defendant's failure to properly investigate the loss and determine the reasonable and necessary costs to return the Properties back to its pre-loss condition causing undue hardship and burden to Plaintiff.

111. As a result of Defendant's failure to timely adjust the Claim and pay Plaintiff the benefits owed to it under the Policy.

112. These damages are a direct result of Defendant's mishandling of Plaintiff's claim in violation of the laws set forth above.

113. For breach of contract, Plaintiff is entitled to regain the benefit of its bargain, which is the amount of its claim.

114. For noncompliance with New York General Obligations Law (GBL §349) - Deceptive Business Practices, Plaintiff is entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy, court costs, and attorney's fees.

115. For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from the insurer's breach of duty, such as additional costs, economic hardship, losses due to nonpayment of the amount the insurer owed, consequential damages such as attorney's fees, and exemplary damages.

116. Under New York law, Plaintiff is seeking and is also entitled to consequential damages because they were reasonably foreseeable at the time the parties entered into the insurance contract. *Bi-Econ. Mkt., Inc. v. Harleysville Ins. Co. of N.Y.*, 10 N.Y.3d 187, 886 N.E.2d 127 (N.Y. 2008); *Panasia Estates, Inc. v. Hudson Ins. Co.*, 10 N.Y.3d 200, 886 N.E.2d 135 (N.Y. 2008).

117. The costs to repair and replace the covered damage to Plaintiff's Properties increased following Defendant's improper adjustment of the Claim. These damages were foreseeable in the event Defendant denied, delayed, or underpaid Plaintiff's claim which is what occurred leading up to this lawsuit.

118. Additionally, for the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the attorneys whose names are subscribed to this pleading. Therefore, Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorney in the preparation and trial of this action, including any appeals to the Court of Appeals.

**JURY DEMAND**

119. Plaintiff hereby demands a trial by jury on all causes of action.

**PRAYER**

WHEREFORE, Plaintiff is entitled to (i) with respect to Count I, a declaration by this Court that Defendant's choice of New York law provision is invalid and unenforceable and that Oklahoma law applies. Plaintiff is further entitled to the benefits owed to Plaintiff under the Policy; (ii) compensatory, direct and consequential damages in the amount established by the evidence; (iii) costs of suit, reasonable attorneys' fees, pre-judgment and post-judgment interest; and (iv) such additional relief as the Court deems just and appropriate.

Dated: August 8, 2025

*/s/ Vincent P. Circelli*

Vincent P. Circelli  
New York Bar No. 6074942  
vcircelli@dcclawfirm.com

**DUGAS & CIRCELLI, PLLC**

4800 Bryant Irvin Court  
Fort Worth, Texas 76107  
(817) 817-7000 telephone  
(682) 219-0761 facsimile

**COUNSEL FOR PLAINTIFF**

## CERTIFICATION

I, Scott R. Ostericher, do hereby certify that I am the AVP, Claim Operations of Mt. Hawley Insurance Company, a corporation organized and existing under the laws of the State of Illinois, and that to the best of my knowledge the attached is a true and correct copy of Policy No. MCP0174111 (01/21/2023 – 01/21/2024) issued to Named Insured Interstate Investments, LLC.



Digitally signed by Scott R. Ostericher  
Reason: To the best of my knowledge, this is a true and correct copy of this policy.  
Date: 2025.08.05 11:09:10 -05'00'

Scott R. Ostericher, AVP, Claim Operations, Claims



**Mt. Hawley Insurance Company**

9025 N. Lindbergh Drive  
Peoria, Illinois 61615  
309-692-1000

**Commercial Property Policy Declarations Page**

**Policy No.** MCP0174111

**Named Insured and Mailing Address:**

Interstate Investments, LLC  
Homewood Suites By Hilton  
P.O. Box 7198  
Lawton, OK 73505

**Agent/Broker and Mailing Address:**

Keating, Inc.  
2525 E Camelback Dr  
Suite 800  
Phoenix, AZ 85016

**Policy Period:** From 01/21/2023 to 01/21/2024 at 12:01 A.M. Standard Time at your mailing address shown above.

**DESCRIPTION OF PREMISES**

Refer to CPR 2194, Scheduled Locations Endorsement

**CAUSES OF LOSS:** Special including Equipment Breakdown excluding Earthquake and Flood

**LIMITS OF INSURANCE**

**Total coverage (limit) applicable** Limit \$20,000,000 , part of \$20,000,000

The above limit applies to the following and is subject to any sublimits stated elsewhere in the policy:

- Building \*
- Business Personal Property \*
- Business Income (and Extra Expense) Monthly Limit of Indemnity 1/12

\* Replacement Cost Applies

**Per Occurrence Loss Limit**

At no time will we pay more than \$20,000,000 for a loss due to a single occurrence or event.

**DEDUCTIBLE(S):** Refer to CPR 2218, Declarations - Deductible Addendum

**FORMS MADE A PART OF THIS POLICY AT TIME OF ISSUE:** See CPR 2150, Applicable Forms & Endorsements

|                                    |    |  |
|------------------------------------|----|--|
| <b>PCA Fees</b>                    | \$ |  |
| <b>Total Premium</b>               | \$ |  |
| <b>Amount Payable At Inception</b> | \$ |  |

Authorized Signature



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## SCHEDULED LOCATIONS ENDORSEMENT

| Location Number | Coverage Type                             | Declared* Values | Valuation** | Description and Location of Property Covered   |
|-----------------|---|------------------|-------------|--|
| 00001 - 001     | Building                                  | \$7,700,000      | RCV         | Built: 2011, Wood - Frame<br>415 SE Interstate Drive<br>Lawton, OK 73505<br>Homewood Suites - Lawton |
| 00001 - 001     | Business Income<br>(and Extra<br>Expense) | \$1,000,000      | ALS         | Built: 2011, Wood - Frame<br>415 SE Interstate Drive<br>Lawton, OK 73505<br>Homewood Suites - Lawton |
| 00001 - 001     | Business<br>Personal<br>Property          | \$500,000        | RCV         | Built: 2011, Wood - Frame<br>415 SE Interstate Drive<br>Lawton, OK 73505<br>Homewood Suites - Lawton |
| 00002 - 001     | Building                                  | \$6,500,000      | RCV         | Built: 2000, Wood - Frame<br>511 Demla Court<br>Enid, OK 73703<br>Hampton Inn & Suites - Enid        |
| 00002 - 001     | Business Income<br>(and Extra<br>Expense) | \$750,000        | ALS         | Built: 2000, Wood - Frame<br>511 Demla Court<br>Enid, OK 73703<br>Hampton Inn & Suites - Enid        |
| 00002 - 001     | Business<br>Personal<br>Property          | \$500,000        | RCV         | Built: 2000, Wood - Frame<br>511 Demla Court<br>Enid, OK 73703<br>Hampton Inn & Suites - Enid        |
| 00003 - 001     | Business Income<br>(and Extra<br>Expense) | \$700,000        | ALS         | Built: 2006, Wood - Frame<br>2610 Cache Road<br>Lawton, OK 73505<br>Hampton Inn & Suites - Lawton    |
| 00003 - 001     | Business<br>Personal<br>Property          | \$400,000        | RCV         | Built: 2006, Wood - Frame<br>2610 Cache Road<br>Lawton, OK 73505<br>Hampton Inn & Suites - Lawton    |

\* For Limit of Insurance please see Declarations page of this policy.

\*\* Indicate: ACV (Actual Cash Value), ALS (Actual Loss Sustained), FRC (Functional Replacement Cost), RCV (Replacement Cost Value), SP (Selling Price) or SV (Stated Value).

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

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

## SCHEDULED LOCATIONS ENDORSEMENT

| Location Number | Coverage Type                       | Declared* Values | Valuation** | Description and Location of Property Covered   |
|-----------------|-------------------------------------|------------------|-------------|--|
| 00003 - 001     | Building                            | \$5,400,000      | RCV         | Built: 2006, Wood - Frame<br>2610 Cache Road<br>Lawton, OK 73505<br>Hampton Inn & Suites - Lawton                  |
| 00004 - 001     | Business Income (and Extra Expense) | \$550,000        | ALS         | Built: 2009, Non-Combustible - Steel<br>1408 NW 40th Street<br>Lawton, OK 73505<br>La Quinta Inn & Suites - Lawton |
| 00004 - 001     | Business Personal Property          | \$500,000        | RCV         | Built: 2009, Non-Combustible - Steel<br>1408 NW 40th Street<br>Lawton, OK 73505<br>La Quinta Inn & Suites - Lawton |
| 00004 - 001     | Building                            | \$6,500,000      | RCV         | Built: 2009, Non-Combustible - Steel<br>1408 NW 40th Street<br>Lawton, OK 73505<br>La Quinta Inn & Suites - Lawton |

\* For Limit of Insurance please see Declarations page of this policy.

\*\* Indicate: ACV (Actual Cash Value), ALS (Actual Loss Sustained), FRC (Functional Replacement Cost), RCV (Replacement Cost Value), SP (Selling Price) or SV (Stated Value).

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## APPLICABLE FORMS & ENDORSEMENTS

FORMS AND ENDORSEMENTS LISTED BELOW APPLY TO AND ARE MADE PART OF THIS POLICY AT TIME OF ISSUE.

- CPR-2218(11/04) Declarations - Deductible Addendum
- CPR-2194(10/01) Scheduled Locations Endorsement
- CP-0010(06/07) Building and Personal Property Coverage Form
- CP-0030(06/07) Business Income (and Extra Expense) Coverage Form
- CP-1030(06/07) Causes Of Loss - Special Form
- CPR-2270(05/10) Equipment Breakdown Coverage Endorsement
- CPR-2200(10/01) Loss Payee/Additional Insured Endorsement
- CPR-2207(03/02) Mortgagee Endorsement
- CPR-2212(03/02) Additional Named Insureds
- CPR-2274(03/21) Minimum Earned Premium Endorsement
- CPR-2276(04/12) Non-Payment Of Premium
- CPR-2281(12/14) Nuclear, Biological, Chemical, or Radioactive Exclusion
- CPR-2282(02/15) Exclusion Of Cosmetic Damage To Roof Surfacing
- CPR-2283(05/19) Actual Cash Value For Roof Surfacing
- CP-1032(08/08) Water Exclusion Endorsement
- CPR-2117(08/15) Definition of Occurrence
- CPR-2126(10/01) Limitation of Liability Endorsement
- CPR-2230(03/08) Terrorism Exclusion
- CPR-2269(06/09) Asbestos Exclusion
- CPR-2295(04/20) Windstorm Or Hail Loss Reporting Limitation Addendum
- CPR-2308(12/18) Pre-Existing Damage Exclusion
- CPR-2310(04/20) Appraisal
- CPR-2311(10/22) Legal Action Conditions Endorsement
- CPR-2313(04/22) Cyber And Computer Related Loss Exclusion
- CPR-2314(07/20) Communicable Disease Exclusion
- CPR-2316(08/20) Total Pollution Exclusion
- CPR-2318(08/21) Actual Cash Value (ACV) Definition
- CPR-2320(04/21) Amended Limitations
- CPR-2321(01/22) Common Policy Conditions
- CPR-2324(04/22) Commercial Property Conditions
- CPR-2326(07/22) Fully Earned Premium For Actual Total Loss Or Constructive Total Loss
- IL-0174(07/05) Oklahoma Changes - Appraisal

**APPLICABLE FORMS & ENDORSEMENTS**

(cont'd)

- IL-0236(09/07) Oklahoma Changes - Cancellation And Nonrenewal
- RIL-2156(06/22) Policyholder's Responsibility To Properly Assess And Report Property Valuation
- RIL-099(04/20) Service Of Suit
- ILF-0001COK(07/16) Oklahoma Signature Page

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

## BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

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

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

### A. Coverage

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

#### 1. Covered Property

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

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

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery and
  - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
  - (a) Fire-extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(5) If not covered by other insurance:

(a) Additions under construction, alterations and repairs to the building or structure;

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

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

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

(7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

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

(1) In your care, custody or control; and

(2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

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

**2. Property Not Covered**

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns;
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;

k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;

l. Retaining walls that are not part of a building;

m. Underground pipes, flues or drains;

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

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

p. Vehicles or self-propelled machines (including aircraft or watercraft) that:

(1) Are licensed for use on public roads; or

(2) Are operated principally away from the described premises.

This paragraph does not apply to:

(a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;

(b) Vehicles or self-propelled machines, other than autos, you hold for sale;

- (c) Rowboats or canoes out of water at the described premises; or
- (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers;

deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

q. The following property while outside of buildings:

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

(4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

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

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

**3. Covered Causes Of Loss**

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

**4. Additional Coverages**

**a. Debris Removal**

(1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.

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

(2) Debris Removal does not apply to costs to:

- (a) Extract "pollutants" from land or water; or
- (b) Remove, restore or replace polluted land or water.

**(5) Examples**

The following examples assume that there is no Coinsurance penalty.

(3) Subject to the exceptions in Paragraph (4), the following provisions apply:

(a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.

**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.) |

(b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the

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

**EXAMPLE #2**

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

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

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

**b. Preservation Of Property**

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

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Required by local ordinance. No Deductible applies to this Additional Coverage.

**c. Fire Department Service Charge**

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

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

No Deductible applies to this Additional Coverage.

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

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

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

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

**e. Increased Cost Of Construction**

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e. (3) through e. (9) of this Additional Coverage.

- (3) The ordinance or law referred to in e. (2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
  - (a) You were required to comply with before the loss, even when the building was undamaged; and
  - (b) You failed to comply with.
- (5) Under this Additional Coverage, we will not pay for:
  - (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
  - (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
- (6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

- (7) With respect to this Additional Coverage:
  - (a) We will not pay for the Increased Cost of Construction:
    - (i) Until the property is actually repaired or replaced, at the same or another premises; and
    - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
  - (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e. (6) of this Additional Coverage, is the increased cost of construction at the same premises.
  - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e. (6) of this Additional Coverage, is the increased cost of construction at the new premises.
- (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- (9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e. (6) of this Additional Coverage, is not subject to such limitation.

**f. Electronic Data**

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

- (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
  - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or

computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

**5. Coverage Extensions**

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

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

**a. Newly Acquired Or Constructed Property**

**(1) Buildings**

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

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

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

**(2) Your Business Personal Property**

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
  - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;

(ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or

(iii) Business personal property that you newly acquire, located at the described premises.

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

(b) This Extension does not apply to:

(i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or

(ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

### (3) Period Of Coverage

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

(a) This policy expires;

(b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or

(c) You report values to us.

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

### b. Personal Effects And Property Of Others

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

(1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.

(2) Personal property of others in your care, custody or control.

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

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

(1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.

(2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.

(3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.

(4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

### d. Property Off-premises

(1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:

- (a) Temporarily at a location you do not own, lease or operate;
  - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
  - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
- (a) In or on a vehicle; or
  - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

#### e. Outdoor Property

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

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

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

#### f. Non-owned Detached Trailers

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:

- (a) The trailer is used in your business;
  - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
  - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
- (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
  - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.

- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

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

#### B. Exclusions And Limitations

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

#### C. Limits Of Insurance

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

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is \$2,500 per sign in any one occurrence.

The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) of Insurance shown in the Declarations for any other coverage:

- 1. Fire Department Service Charge;

2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

**D. Deductible**

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

**EXAMPLE #1**

(This example assumes there is no Coinsurance penalty.)

|                                   |           |
|-----------------------------------|-----------|
| Deductible:                       | \$ 250    |
| Limit of Insurance – Building #1: | \$ 60,000 |
| Limit of Insurance – Building #2: | \$ 80,000 |
| Loss to Building #1:              | \$ 60,100 |
| Loss to Building #2:              | \$ 90,000 |

The amount of loss to Building #1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Building #1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building #1:

|              |                            |
|--------------|----------------------------|
| \$60,100     |                            |
| <u>– 250</u> |                            |
| \$59,850     | Loss Payable – Building #1 |

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building #2. Loss payable for Building #2 is the Limit of Insurance of \$80,000.

Total amount of loss payable:

$\$59,850 + \$80,000 = \$139,850$

**EXAMPLE #2**

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example #1.

|  |           |
|--|-----------|
| Loss to Building #1:                         | \$ 70,000 |
| (Exceeds Limit of Insurance plus Deductible) |           |
| Loss to Building #2:                         | \$ 90,000 |
| (Exceeds Limit of Insurance plus Deductible) |           |
| Loss Payable – Building #1:                  | \$ 60,000 |
| (Limit of Insurance)                         |           |
| Loss Payable – Building #2:                  | \$ 80,000 |
| (Limit of Insurance)                         |           |
| Total amount of loss payable:                | \$140,000 |

**E. Loss Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- 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 the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claim.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

- (8) Cooperate with us in the investigation or settlement of the claim.

- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

### 4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:

- (1) Pay the value of lost or damaged property;
- (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
- (3) Take all or any part of the property at an agreed or appraised value; or
- (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
  - (1) We have reached agreement with you on the amount of loss; or
  - (2) An appraisal award has been made.
- h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

- (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:
  - (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
  - (ii) Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant.

**b. Vacancy Provisions**

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
  - (a) Vandalism;
  - (b) Sprinkler leakage, unless you have protected the system against freezing;
  - (c) Building glass breakage;
  - (d) Water damage;
  - (e) Theft; or
  - (f) Attempted theft.

(2) With respect to Covered Causes of Loss other than those listed in **b. (1) (a)** through **b. (1) (f)** above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

**5. Recovered Property**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

**6. Vacancy**

**a. Description Of Terms**

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in **(1) (a)** and **(1) (b)** below:
  - (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building

**7. Valuation**

We will determine the value of Covered Property in the event of loss or damage as follows:

- a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.
- b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value even when attached to the building:

- (1) Awnings or floor coverings;
- (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
- (3) Outdoor equipment or furniture.

- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:

- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
- (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
  - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
  - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

- (3) Nothing if others pay for repairs or replacement.

**F. Additional Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

**1. Coinsurance**

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and
- (4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

**EXAMPLE #1 (UNDERINSURANCE)**

|           |  |           |
|-----------|--|-----------|
| When:     | The value of the property is:  | \$250,000 |
|           | The Coinsurance percentage for it is:  | 80%       |
|           | The Limit of Insurance for it is:  | \$100,000 |
|           | The Deductible is:   | \$ 250    |
|           | The amount of loss is:   | \$ 40,000 |
| Step (1): | \$250,000 x 80% = \$200,000<br>(the minimum amount of insurance to meet your Coinsurance requirements) |           |
| Step (2): | \$100,000 ÷ \$200,000 = .50  |           |

Step (3): \$40,000 x .50 = \$20,000

Step (4): \$20,000 - \$250 = \$19,750

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

EXAMPLE #2 (ADEQUATE INSURANCE)

|       |                                       |           |
|-------|---------------------------------------|-----------|
| When: | The value of the property is:         | \$250,000 |
|       | The Coinsurance percentage for it is: | 80%       |
|       | The Limit of Insurance for it is:     | \$200,000 |
|       | The Deductible is:                    | \$ 250    |
|       | The amount of loss is:                | \$ 40,000 |

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 (\$250,000 x 80%). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$39,750 (\$40,000 amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

EXAMPLE #3

|       |   |           |
|-------|---|-----------|
| When: | The value of the property is:   |           |
|       | Building at Location #1:  | \$ 75,000 |
|       | Building at Location #2:  | \$100,000 |
|       | Personal Property at Location #2:   | \$ 75,000 |
|       |   | \$250,000 |
|       | The Coinsurance percentage for it is:   | 90%       |
|       | The Limit of Insurance for Buildings and Personal Property at Locations #1 and #2 is: | \$180,000 |
|       | The Deductible is:  | \$ 1,000  |
|       | The amount of loss is:  |           |
|       | Building at Location #2:  | \$ 30,000 |
|       | Personal Property at Location #2:   | \$ 20,000 |
|       |   | \$ 50,000 |

Step (1): \$250,000 x 90% = \$225,000 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2): \$180,000 ÷ \$225,000 = .80

Step (3): \$50,000 x .80 = \$40,000

Step (4): \$40,000 - \$1,000 = \$39,000

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
  - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
  - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and

- (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

- (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

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.

**2. Inflation Guard**

f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.

- (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or

b. The amount of increase will be:

- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times

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.

- (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times

- (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

**G. Optional Coverages**

**EXAMPLE**

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

|   |           |
|---|-----------|
| If: The applicable Limit of Insurance is:   | \$100,000 |
| The annual percentage increase is:  | 8%        |
| The number of days since the beginning of the policy year (or last policy change) is: | 146       |
| The amount of increase is:<br>\$100,000 x .08 x 146 ÷ 365 =                           | \$ 3,200  |

**1. Agreed Value**

**3. Replacement Cost**

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.
- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
  - (1) On or after the effective date of this Optional Coverage; and

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
  - (1) Personal property of others;
  - (2) Contents of a residence;
  - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

(4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.

d. We will not pay on a replacement cost basis for any loss or damage:

- (1) Until the lost or damaged property is actually repaired or replaced; and
- (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

(3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and

(4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.

e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:

- (1) The Limit of Insurance applicable to the lost or damaged property;
- (2) The cost to replace the lost or damaged property with other property:
  - (a) Of comparable material and quality; and
  - (b) Used for the same purpose; or

(3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

**4. Extension Of Replacement Cost To Personal Property Of Others**

a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph 3.b.(1) of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

**H. Definitions**

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

## BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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

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

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

### A. Coverage

#### 1. Business Income

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses incurred, including payroll.

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

Coverage is provided as described and limited below for one or more of the following options for which a Limit of Insurance is shown in the Declarations:

- (1) Business Income Including "Rental Value".
- (2) Business Income Other Than "Rental Value".
- (3) "Rental Value".

If option (1) above is selected, the term Business Income will include "Rental Value". If option (3) above is selected, the term Business Income will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and

for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- (a) The portion of the building which you rent, lease or occupy; and
- (b) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

#### 2. Extra Expense

- a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
- b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expense to repair or replace property) to:

- (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement

premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.

- (2) Minimize the "suspension" of business if you cannot continue "operations".

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

### 3. Covered Causes Of Loss, Exclusions And Limitations

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

### 4. Additional Limitation – Interruption Of Computer Operations

- a. Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage – Interruption Of Computer Operations.
- b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage – Interruption Of Computer Operations.
- c. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

## 5. Additional Coverages

### a. Civil Authority

In this Additional Coverage – Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

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

whichever is later.

**b. Alterations And New Buildings**

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur due to direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss to:

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and
- (3) Machinery, equipment, supplies or building materials located on or within 100 feet of the described premises and:
  - (a) Used in the construction, alterations or additions; or
  - (b) Incidental to the occupancy of new buildings.

If such direct physical loss or damage delays the start of "operations", the "period of restoration" for Business Income Coverage will begin on the date "operations" would have begun if the direct physical loss or damage had not occurred.

**c. Extended Business Income****(1) Business Income Other Than "Rental Value"**

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

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
  - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or

- (ii) 30 consecutive days after the date determined in **(1)(a)** above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**(2) "Rental Value"**

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

- (a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- (b) Ends on the earlier of:
  - (i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 30 consecutive days after the date determined in **(2)(a)** above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**d. Interruption Of Computer Operations**

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.
- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss.
- (3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
  - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage – Interruption Of Computer Operations is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage – Interruption Of Computer Operations includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage – Interruption Of Computer Operations.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage – Interruption of Computer Operations is \$2,500 for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (5) This Additional Coverage – Interruption in Computer Operations does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

**6. Coverage Extension**

If a Coinsurance percentage of 50% or more is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

**NEWLY ACQUIRED LOCATIONS**

- a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$100,000 at each location.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:
  - (1) This policy expires;
  - (2) 30 days expire after you acquire or begin to construct the property; or
  - (3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

If there is an appraisal, we will still retain our right to deny the claim.

The Additional Condition, Coinsurance, does not apply to this Extension.

**2. Duties In The Event Of Loss**

**B. Limits Of Insurance**

a. You must see that the following are done in the event of loss:

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

(1) Notify the police if a law may have been broken.

Payments under the following coverages will not increase the applicable Limit of Insurance:

(2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.

- 1. Alterations And New Buildings;
- 2. Civil Authority;
- 3. Extra Expense; or
- 4. Extended Business Income.

(3) As soon as possible, give us a description of how, when, and where the direct physical loss or damage occurred.

The amounts of insurance stated in the Interruption Of Computer Operations Additional Coverage and the Newly Acquired Locations Coverage Extension apply in accordance with the terms of those coverages and are separate from the Limit(s) of Insurance shown in the Declarations for any other coverage.

(4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

**C. Loss Conditions**

(5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

**1. Appraisal**

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.

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

(6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

(7) Cooperate with us in the investigation or settlement of the claim.

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

(8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.

- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

### 3. Loss Determination

- a. The amount of Business Income loss will be determined based on:

- (1) The Net Income of the business before the direct physical loss or damage occurred;
- (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
- (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
- (4) Other relevant sources of information, including:
  - (a) Your financial records and accounting procedures;
  - (b) Bills, invoices and other vouchers; and
  - (c) Deeds, liens or contracts.

- b. The amount of Extra Expense will be determined based on:

- (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
  - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and

- (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and

- (2) Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

### c. Resumption Of Operations

We will reduce the amount of your:

- (1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
- (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.

- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

### 4. Loss Payment

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:

- a. We have reached agreement with you on the amount of loss; or
- b. An appraisal award has been made.

### D. Additional Condition

#### COINSURANCE

If a Coinsurance percentage is shown in the Declarations, the following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

We will not pay the full amount of any Business Income loss if the Limit of Insurance for Business Income is less than:

1. The Coinsurance percentage shown for Business Income in the Declarations; times
2. The sum of:
  - a. The Net Income (Net Profit or Loss before income taxes), and
  - b. Operating expenses, including payroll expenses,

that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

Instead, we will determine the most we will pay using the following steps:

- Step (1): Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this policy by the Coinsurance percentage;
- Step (2): Divide the Limit of Insurance for the described premises by the figure determined in Step (1); and
- Step (3): Multiply the total amount of loss by the figure determined in Step (2).

We will pay the amount determined in Step (3) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In determining operating expenses for the purpose of applying the Coinsurance condition, the following expenses, if applicable, shall be deducted from the total of all operating expenses:

- (1) Prepaid freight – outgoing;
- (2) Returns and allowances;
- (3) Discounts;
- (4) Bad debts;
- (5) Collection expenses;
- (6) Cost of raw stock and factory supplies consumed (including transportation charges);

- (7) Cost of merchandise sold (including transportation charges);
- (8) Cost of other supplies consumed (including transportation charges);
- (9) Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
- (10) Power, heat and refrigeration expenses that do not continue under contract (if Form CP 15 11 is attached);
- (11) All ordinary payroll expenses or the amount of payroll expense excluded (if Form CP 15 10 is attached); and
- (12) Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion – not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

**EXAMPLE #1 (UNDERINSURANCE)**

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$400,000

The Coinsurance percentage is: 50%

The Limit of Insurance is: \$150,000

The amount of loss is: \$ 80,000

- Step (1):  $\$400,000 \times 50\% = \$200,000$   
(the minimum amount of insurance to meet your Coinsurance requirements)
- Step (2):  $\$150,000 \div \$200,000 = .75$
- Step (3):  $\$80,000 \times .75 = \$60,000$

We will pay no more than \$60,000. The remaining \$20,000 is not covered.

**EXAMPLE #2 (ADEQUATE INSURANCE)**

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$400,000

The Coinsurance percentage is: 50%

The Limit of Insurance is: \$200,000

The amount of loss is: \$ 80,000

**EXAMPLE**

When: The Limit of Insurance is: \$120,000

The fraction shown in the Declarations for this Optional Coverage is: 1/4

The most we will pay for loss in each period of 30 consecutive days is: \$ 30,000  
 (\$120,000 x 1/4 = \$30,000)

If, in this example, the actual amount of loss is:

Days 1–30: \$ 40,000  
 Days 31–60: \$ 20,000  
 Days 61–90: \$ 30,000  
 \$ 90,000

We will pay:  
 Days 1–30: \$ 30,000  
 Days 31–60: \$ 20,000  
 Days 61–90: \$ 30,000  
 \$ 80,000

The remaining \$10,000 is not covered.

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 (\$400,000 x 50%). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$80,000 (amount of loss).

This condition does not apply to Extra Expense Coverage.

**E. Optional Coverages**

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

**1. Maximum Period Of Indemnity**

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:
  - (1) The amount of loss sustained and expenses incurred during the 120 days immediately following the beginning of the "period of restoration"; or
  - (2) The Limit of Insurance shown in the Declarations.

**2. Monthly Limit Of Indemnity**

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:
  - (1) The Limit of Insurance, multiplied by
  - (2) The fraction shown in the Declarations for this Optional Coverage.

**3. Business Income Agreed Value**

- a. To activate this Optional Coverage:
  - (1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":
    - (a) During the 12 months prior to the date of the Work Sheet; and
    - (b) Estimated for the 12 months immediately following the inception of this Optional Coverage.
  - (2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:
    - (a) The Coinsurance percentage shown in the Declarations; multiplied by
    - (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.

- b. The Additional Condition, Coinsurance, is suspended until:
  - (1) 12 months after the effective date of this Optional Coverage; or
  - (2) The expiration date of this policy; whichever occurs first.
- c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:
  - (1) Within 12 months of the effective date of this Optional Coverage; or
  - (2) When you request a change in your Business Income Limit of Insurance.
- d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:
  - (1) The Business Income Limit of Insurance; divided by
  - (2) The Agreed Value.

**EXAMPLE**

When: The Limit of Insurance is: \$100,000  
 The Agreed Value is: \$200,000  
 The amount of loss is: \$ 80,000

Step (1):  $\$100,000 \div \$200,000 = .50$

Step (2):  $.50 \times \$80,000 = \$40,000$

We will pay \$40,000. The remaining \$40,000 is not covered.

**4. Extended Period Of Indemnity**

Under Paragraph **A.5.c.**, **Extended Business Income**, the number 30 in Subparagraphs **(1)(b)** and **(2)(b)** is replaced by the number shown in the Declarations for this Optional Coverage.

**F. Definitions**

- 1. "Finished stock" means stock you have manufactured.

"Finished stock" also includes whiskey and alcoholic products being aged, unless there is a Coinsurance percentage shown for Business Income in the Declarations.

"Finished stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this Coverage Part.

- 2. "Operations" means:
  - a. Your business activities occurring at the described premises; and
  - b. The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.
- 3. "Period of restoration" means the period of time that:
  - a. Begins:
    - (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
    - (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;
 caused by or resulting from any Covered Cause of Loss at the described premises; and
  - b. Ends on the earlier of:
    - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
    - (2) The date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down, of any property; or
- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

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

5. "Rental Value" means Business Income that consists of:

a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and

b. Continuing normal operating expenses incurred in connection with that premises, including:

(1) Payroll; and

(2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.

6. "Suspension" means:

a. The slowdown or cessation of your business activities; or

b. That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

## CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section **G.**, Definitions.

### A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section **B.**, Exclusions; or
2. Limited in Section **C.**, Limitations;

that follow.

### B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; or
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

#### b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;

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

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

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

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

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

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

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

**c. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

**d. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

**e. Utility Services**

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

**f. War And Military Action**

- (1) War, including undeclared or civil war;

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

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

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;

- (2) Mudslide or mudflow;

- (3) Water that backs up or overflows from a sewer, drain or sump; or

- (4) Water under the ground surface pressing on, or flowing or seeping through:

- (a) Foundations, walls, floors or paved surfaces;
- (b) Basements, whether paved or not; or
- (c) Doors, windows or other openings.

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

**h. "Fungus", Wet Rot, Dry Rot And Bacteria**

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

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungus", wet or dry rot or bacteria results from fire or lightning; or

- (2) To the extent that coverage is provided in the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions **B.1.a.** through **B.1.h.** apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:

- (1) Electrical or electronic wire, device, appliance, system or network; or
- (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or micro-waves.

But if fire results, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;

- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
- (7) The following causes of loss to personal property:
- (a) Dampness or dryness of atmosphere;
- (b) Changes in or extremes of temperature; or
- (c) Marring or scratching.

But if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
- (1) You do your best to maintain heat in the building or structure; or

- (2) You drain the equipment and shut off the supply if the heat is not maintained.
- h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) Acting alone or in collusion with others; or
- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.
- k. Collapse, including any of the following conditions of property or any part of the property:
- (1) An abrupt falling down or caving in;
- (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
- (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, k., does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage – Collapse; or
- (b) To collapse caused by one or more of the following:
- (i) The "specified causes of loss";

- (ii) Breakage of building glass;
- (iii) Weight of rain that collects on a roof; or
- (iv) Weight of people or personal property.

- l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.

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

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

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

- c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

**4. Special Exclusions**

The following provisions apply only to the specified Coverage Forms.

**a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form**

We will not pay for:

- (1) Any loss caused by or resulting from:
  - (a) Damage or destruction of "finished stock"; or
  - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

- (5) Any other consequential loss.

**b. Leasehold Interest Coverage Form**

- (1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
  - (a) Your cancelling the lease;
  - (b) The suspension, lapse or cancellation of any license; or
  - (c) Any other consequential loss.

**c. Legal Liability Coverage Form**

- (1) The following exclusions do not apply to insurance under this Coverage Form:
  - (a) Paragraph **B.1.a.**, Ordinance Or Law;
  - (b) Paragraph **B.1.c.**, Governmental Action;
  - (c) Paragraph **B.1.d.**, Nuclear Hazard;
  - (d) Paragraph **B.1.e.**, Utility Services; and
  - (e) Paragraph **B.1.f.**, War And Military Action.

- (2) The following additional exclusions apply to insurance under this Coverage Form:

**(a) Contractual Liability**

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

**(b) Nuclear Hazard**

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

**5. Additional Exclusion**

The following provisions apply only to the specified property.

**LOSS OR DAMAGE TO PRODUCTS**

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

**C. Limitations**

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
  - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

(1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or

(2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

(1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or

(2) Business Income Coverage or Extra Expense Coverage.

e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

a. Animals, and then only if they are killed or their destruction is made necessary.

b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:

(1) Glass; or

(2) Containers of property held for sale.

c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

(1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or

(2) To Business Income Coverage or to Extra Expense Coverage.

3. The special limit shown for each category, a. through d., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:

- a. \$2,500 for furs, fur garments and garments trimmed with fur.
- b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
- c. \$2,500 for patterns, dies, molds and forms.
- d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, C.3., does not apply to Business Income Coverage or to Extra Expense Coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:

- a. Results in discharge of any substance from an automatic fire protection system; or
- b. Is directly caused by freezing.

However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

**D. Additional Coverage – Collapse**

The coverage provided under this Additional Coverage – Collapse applies only to an abrupt collapse as described and limited in D.1. through D.7..

1. For the purpose of this Additional Coverage – Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:

- (1) A cause of loss listed in 2.a. or 2.b.;
- (2) One or more of the "specified causes of loss";
- (3) Breakage of building glass;
- (4) Weight of people or personal property; or
- (5) Weight of rain that collects on a roof.

3. This **Additional Coverage – Collapse** does not apply to:

- a. A building or any part of a building that is in danger of falling down or caving in;
- b. A part of a building that is standing, even if it has separated from another part of the building; or
- c. A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

4. With respect to the following property:

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- b. Awnings, gutters and downspouts;
- c. Yard fixtures;
- d. Outdoor swimming pools;
- e. Fences;
- f. Piers, wharves and docks;
- g. Beach or diving platforms or appurtenances;
- h. Retaining walls; and
- i. Walks, roadways and other paved surfaces;

if an abrupt collapse is caused by a cause of loss listed in **2.a.** through **2.d.**, we will pay for loss or damage to that property only if:

- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
- (2) The property is Covered Property under this Coverage Form.

5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;

b. The personal property which collapses is inside a building; and

c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph **5.** does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

6. This Additional Coverage – Collapse does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

7. This Additional Coverage – Collapse will not increase the Limits of Insurance provided in this Coverage Part.

8. The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in **D.1.** through **D.7.**.

**E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria**

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

- a. A "specified cause of loss" other than fire or lightning; or
- b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:

- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
- b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and

c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage – Collapse.

6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form.

a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet

or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.

b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

**F. Additional Coverage Extensions**

**1. Property In Transit**

This Extension applies only to your personal property to which this form applies.

a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.

b. Loss or damage must be caused by or result from one of the following causes of loss:

(1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.

(2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.

(3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.

c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

**2. Water Damage, Other Liquids, Powder Or Molten Material Damage**

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

**3. Glass**

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, **F.3.**, does not increase the Limit of Insurance.

**G. Definitions**

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

- 2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

- a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
  - (1) The cost of filling sinkholes; or
  - (2) Sinking or collapse of land into man-made underground cavities.

- b. Falling objects does not include loss or damage to:
  - (1) Personal property in the open; or
  - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EQUIPMENT BREAKDOWN COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

- BUILDING AND PERSONAL PROPERTY COVERAGE FORM
- CAUSES OF LOSS - BASIC FORM
- CAUSES OF LOSS - BROAD FORM
- CAUSES OF LOSS - SPECIAL FORM

A. The following is added as an Additional Coverage to the Causes of Loss - Basic Form, Broad Form or Special Form.

### Additional Coverage - Equipment Breakdown

The term Covered Cause of Loss includes the Additional Coverage Equipment Breakdown as described and limited below.

1. We will pay for direct physical damage to Covered Property that is the direct result of an "accident." As used in this Additional Coverage, "accident" means a fortuitous event that causes direct physical damage to "covered equipment." The event must be one of the following:
  - a. mechanical breakdown, including rupture or bursting caused by centrifugal force;
  - b. artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires;
  - c. explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
  - d. 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
  - e. 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.
2. Unless otherwise shown in an Equipment Breakdown Supplemental Declarations, the following coverages also apply to the direct result of an "accident." These coverages do not provide additional amounts of insurance.

#### a. Expediting Expenses

With respect to your damaged Covered Property, we will pay the reasonable extra cost to:

- (1) make temporary repairs; and
- (2) expedite permanent repairs or permanent replacement.

The most we will pay for loss or expense under this coverage is \$100,000 unless otherwise shown in an Equipment Breakdown Supplemental Declarations.

#### b. Hazardous Substances

We will pay for the additional cost to repair or replace Covered Property because of contamination by a "hazardous substance." This includes the additional expenses 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 **2.c.(1)(b)** below. As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage 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, if shown as covered, is \$100,000 unless otherwise shown in an Equipment Breakdown Supplemental Declarations.

**c. Spoilage**

(1) We will pay:

- (a) for physical damage to "perishable goods" due to spoilage;
- (b) for physical damage to "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia;
- (c) any necessary expenses you incur to reduce the amount of loss under this coverage to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

(2) If you are unable to replace the "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," less discounts and expenses you otherwise would have had. Otherwise our payment will be determined in accordance with the Valuation condition.

The most we will pay for loss, damage or expense under this coverage is \$100,000 unless otherwise shown in an Equipment Breakdown Supplemental Declarations.

**d. 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, if shown as covered, is \$100,000 unless otherwise shown in an Equipment Breakdown Supplemental Declarations.

**e. Service Interruption**

(1) Any insurance provided for Business Income, Extra Expense or Spoilage is extended to apply to your loss, damage or expense caused by the interruption of utility services. The interruption must result from 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, wide area networks or data transmission. The equipment must meet the definition of "covered equipment" except that it is not Covered Property.

(2) We will not pay for any loss of Business Income you sustain that results from the interruption of utility services during the first 24 hours following the "accident." However, if a deductible is shown in an Equipment Breakdown Supplemental Declarations as provided for in paragraph **B.1.** below, or if the "period of restoration" begins more than 24 hours after the time of the direct physical damage for Business Income, then that deductible or time period will apply instead of the 24 hours provided for in this paragraph.

(3) The most we will pay in any "one accident" for loss, damage or expense under this coverage is the applicable limit for Business Income, Extra Expense or Spoilage, except that if a limit is shown in an Equipment Breakdown Supplemental Declarations for Service Interruption, that limit will apply to Business Income and Extra Expense loss under this coverage.

#### f. Business Income and Extra Expense

Any insurance provided under this coverage part for Business Income or Extra Expense is extended to the coverage provided by this endorsement. However, if a deductible is shown in an Equipment Breakdown Supplemental Declarations, then as respects Equipment Breakdown coverage, the "period of restoration" will begin immediately after the "accident," and the deductible shown in the Equipment Breakdown Supplemental Declarations will apply. The most we will pay for loss or expense under this coverage is the applicable limit for Business Income and Extra Expense, unless otherwise shown in an Equipment Breakdown Supplemental Declarations.

### 3. EXCLUSIONS

All exclusions in the Causes of Loss form apply except as modified below and to the extent that coverage is specifically provided by this Additional Coverage Equipment Breakdown.

#### a. The following exclusions are modified:

- (1) If the Causes of Loss - Basic Form or Causes of Loss - Broad Form applies, the following is added to Exclusion **B.2.**:

Depletion, deterioration, corrosion, erosion, wear and tear, or other gradually developing conditions. However, if an "accident" results, we will pay for the resulting loss, damage or expense caused by that "accident."

- (2) If the Causes of Loss - Special Form applies, as respects this endorsement only, the last paragraph of Exclusion **B.2.d.** is deleted and replaced with the following:

But if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in an "accident," we will pay for the loss, damage or expense caused by that "accident."

#### b. The following exclusions are added:

- (1) We will not pay for loss, damage or expense caused by or resulting from:

(a) 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; or

(b) any of the following:

(i) 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

(ii) 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) With respect to Service Interruption coverage, we will also not pay for an "accident" caused by or resulting from: fire; lightning; windstorm or hail; explosion (except as specifically provided in **A.1.c.** above); smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; falling objects; weight of snow, ice or sleet; freezing; collapse; flood or earth movement.

- (3) With respect to Business Income, Extra Expense and Service Interruption coverages, we will also not pay for any increase in loss resulting from an agreement between you and your customer or supplier.

- (4) 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": Any mold, fungus, mildew or yeast, including any spores or toxins produced by or emanating from such mold, fungus, mildew or yeast. This includes, but is not limited to, costs arising from clean up, removal, or abatement of such mold, fungus, mildew or yeast, spores or toxins. However, this exclusion does not apply to spoilage of personal property that is "perishable goods," to the extent that spoilage is covered under Spoilage coverage.
- (5) We will not pay for any loss or damage to animals.

**4. DEFINITIONS**

The following definitions are added:

a. "Boilers and vessels" means:

- (1) Any boiler, including attached steam, condensate and feedwater piping; and
- (2) Any fired or unfired pressure vessel subject to vacuum or internal pressure other than the static pressure of its contents.

This term does not appear elsewhere in this endorsement, but may appear in an Equipment Breakdown Supplemental Declarations.

b. "Covered equipment"

(1) "Covered equipment" means, unless otherwise specified in an Equipment Breakdown Supplemental Declarations, Covered Property:

- (a) that generates, transmits or utilizes energy, including electronic communications and data processing equipment; or
- (b) which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.

(2) None of the following is "covered equipment":

- (a) structure, foundation, cabinet, compartment or air supported structure or building;
- (b) insulating or refractory material;
- (c) sewer piping, buried vessels or piping, or piping forming a part of a sprinkler or fire suppression system;
- (d) 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) "vehicle" or any equipment mounted on a "vehicle";
- (f) satellite, spacecraft or any equipment mounted on a satellite or spacecraft;
- (g) dragline, excavation or construction equipment; or
- (h) equipment manufactured by you for sale.

- c. "Data" means information or instructions stored in digital code capable of being processed by machinery.
- d. "Hazardous substance" means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.
- e. "Media" means material on which "data" is recorded, such as magnetic tapes, hard disks, optical disks or floppy disks.

- f. "One accident" means: If an initial "accident" causes other "accidents," all will be considered "one accident." All "accidents" that are the result of the same event will be considered "one accident."
- g. "Perishable goods" means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.
- h. "Production machinery" means any machine or apparatus that processes or produces a product intended for eventual sale. However, "production machinery" does not mean any fired or unfired pressure vessel other than a cylinder containing a movable plunger or piston.

This term does not appear elsewhere in this endorsement, but may appear in an Equipment Breakdown Supplemental Declarations.

- i. "Vehicle" means, as respects this endorsement only, any machine or apparatus that is used for transportation or moves under its own power. "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 source will not be considered a "vehicle."

**B.** The Building and Personal Property Coverage Form is modified as follows. The definitions stated above also apply to section **B.** of this endorsement.

**1. DEDUCTIBLE**

The deductible in the Declarations applies unless a separate Equipment Breakdown deductible is shown in an Equipment Breakdown Supplemental Declarations. If a separate Equipment Breakdown deductible is shown, the following applies.

Only as regards Equipment Breakdown Coverage, provision **D. DEDUCTIBLE** is deleted and replaced with the following:

**a.** Deductibles for Each Coverage

- (1) Unless the Equipment Breakdown Supplemental Declarations indicates that your deductible is combined for all coverages, multiple deductibles may apply to any "one accident."
- (2) We will not pay for loss, damage or expense under any coverage until the amount of the covered loss, damage or expense exceeds the deductible amount indicated for that coverage in the Equipment Breakdown Supplemental Declarations. We will then pay the amount of loss, damage or expense in excess of the applicable deductible amount, subject to the applicable limit.
- (3) If deductibles vary by type of "covered equipment" and more than one type of "covered equipment" is involved in any "one accident," only the highest deductible for each coverage will apply.

**b.** Direct and Indirect Coverages

- (1) Direct Coverages Deductibles and Indirect Coverages Deductibles may be indicated in the Equipment Breakdown Supplemental Declarations.
- (2) Unless more specifically indicated in the Equipment Breakdown Supplemental Declarations:
  - (a) Indirect Coverages Deductibles apply to Business Income and Extra Expense loss; and
  - (b) Direct Coverages Deductibles apply to all remaining loss, damage or expense covered by this endorsement.

c. Application of Deductibles

(1) Dollar Deductibles

We will not pay for loss, damage or expense resulting from any "one accident" until the amount of loss, damage or expense exceeds the applicable Deductible shown in the Equipment Breakdown Supplemental Declarations. We will then pay the amount of loss, damage or expense in excess of the applicable Deductible or Deductibles, up to the applicable Limit of Insurance.

(2) Time Deductible

If a time deductible is shown in the Equipment Breakdown Supplemental Declarations, we will not be liable for any loss occurring during the specified number of hours or days immediately following the "accident." If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.

(3) Multiple of Average Daily Value (ADV)

If a deductible is expressed as a number times ADV, that amount will be calculated as follows:

The ADV (Average Daily Value) will be the Business Income (as defined in any Business Income coverage that is part of this policy) that would have been earned during the period of interruption of business had no "accident" occurred, divided by the number of working days in that period. No reduction shall be made for the Business Income not being earned, or in the number of working days, because of the "accident" or any other scheduled or unscheduled shutdowns during the period of interruption. The ADV applies to the Business Income value of the entire location, whether or not the loss affects the entire location. If more than one location is included in the valuation of the loss, the ADV will be the combined value of all affected locations. For purposes of this calculation, the period of interruption may not extend beyond the "period of restoration."

The number indicated in the Equipment Breakdown Supplemental Declarations will be multiplied by the ADV as determined above. The result shall be used as the applicable deductible.

(4) Percentage of Loss Deductibles

If a deductible is expressed as a percentage of loss, we will not be liable for the indicated percentage of the gross amount of loss, damage or expense (prior to any applicable deductible or coinsurance) insured under the applicable coverage. If the dollar amount of such percentage is less than the indicated minimum deductible, the minimum deductible will be the applicable deductible.

2. CONDITIONS

The following conditions are in addition to the Conditions in the Building and Personal Property Coverage Form, the Commercial Property Conditions and the Common Policy Conditions.

a. Suspension

Whenever "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" to that "covered equipment." This can be done by mailing or delivering a written notice of suspension to:

- (1) your last known address; or
- (2) 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" for the period of suspension. 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 endorsement 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," we will pay your additional cost to replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced. However, we will not pay more than 125% of what the cost would have been to replace with like kind and quality. This condition does not increase any of the applicable limits. This condition does not apply to any property to which Actual Cash Value applies.

**d. Coinsurance**

If a coinsurance percentage is shown in an Equipment Breakdown Supplemental Declarations for specified coverages, the following condition applies.

We will not pay for the full amount of your loss if the applicable limit is less than the product of the specified coinsurance percentage times the value of the property subject to the coverage at the time of the loss. Instead, we will determine what percentage this calculated product is compared to the applicable limit and apply that percentage to the gross amount of loss. We will then subtract the applicable deductible. The resulting amount, or the applicable limit, is the most we will pay. We will not pay for the remainder of the loss. Coinsurance applies separately to each insured location.

The most we will pay for loss, damage or expense under this endorsement arising from any "one accident" or any one occurrence is the applicable Limit of Insurance in the Declarations unless otherwise shown in an Equipment Breakdown Supplemental Declarations. Coverage provided under this endorsement does not provide an additional amount of insurance.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

## COMMON POLICY CONDITIONS

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

### A. Cancellation

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

### B. Changes

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

### C. Examination Of Your Books And Records

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

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public and we do not warrant that:
  - a. Conditions are safe or healthful;
  - b. The insured property complies with laws, regulations, codes or standards; or
  - c. The insured property is free from pre-existing conditions that may impact coverage in the event of a loss.

Any property inspection undertaken by us or on our behalf related to the underwriting process in connection with issuance of any policy is for our information only and does not in any way negate or impair our ability to apply and enforce any and all applicable exclusions, limitations, conditions, or other terms of this policy. It is agreed that neither such property inspection nor any such property inspection report can be used by any insured for any reason after a loss.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

**E. Premiums**

The first Named Insured shown in the Declarations:

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

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

You may not transfer your rights and duties under this policy, before or after a loss, without our written consent except in the case of death of an individual named insured.

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# LOSS PAYEE/ADDITIONAL INSURED ENDORSEMENT

Loss payee(s) and/or additional insured(s) are added as follows:

### LOSS PAYEE

La Quinta Franchising, LLC, LQ Management, LLC, La Quinta Holdings, Inc, Wyndham Hotels & Resorts Inc, Wyndham Hotel Group, LLC  
P.O. Box 1405828  
Kansas City, MO 64114-0000

#With respects to 1408 NW 40th Street, Lawton, OK 73505

Arvest Bank  
PO Box 940  
Rogers, AR 72757-0000

#With respects to 415 SE Interstate Drive, Lawton, OK 73505

Arvest Bank  
PO Box 940  
Rogers, AR 72757-0000

#With respects to 511 Demla Court, Enid, OK 73703

Arvest Bank  
PO Box 940  
Rogers, AR 72757-0000

#With respects to 2610 Cache Road, Lawton, OK 73505

Arvest Bank  
PO Box 940  
Rogers, AR 72757-0000

#With respects to 1408 NW 40th Street, Lawton, OK 73505

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

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

## **LOSS PAYEE/ADDITIONAL INSURED ENDORSEMENT**

Loss payee(s) and/or additional insured(s) are added as follows:

Arvest Bank  
PO Box 6100  
Lawton, OK 73505-0000  
#With respects to 415 SE Interstate Drive, Lawton, OK 73505

Arvest Bank  
PO Box 6100  
Lawton, OK 73505-0000  
#With respects to 511 Demla Court, Enid, OK 73703

Arvest Bank  
PO Box 6100  
Lawton, OK 73505-0000  
#With respects to 2610 Cache Road, Lawton, OK 73505

Arvest Bank  
PO Box 6100  
Lawton, OK 73505-0000  
#With respects to 1408 NW 40th Street, Lawton, OK 73505

### **ADDITIONAL INSURED**

Pillar Hotels & Resorts, LLC  
5851 Legacy Circle, Suite 400  
Plano, TX 75024-0000  
#With respects to 415 SE Interstate Drive, Lawton, OK 73505

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **LOSS PAYEE/ADDITIONAL INSURED ENDORSEMENT**

Loss payee(s) and/or additional insured(s) are added as follows:

Wyndham Hotels & Resorts, Inc. Wyndham Hotel Group, LLC  
PO Box 1405828  
Kansas City, MO 64114-0000  
#With respects to 1408 NW 40th Street, Lawton, OK 73505; SITE# 6172

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **MORTGAGEE ENDORSEMENT**

The following Mortgage Holder(s) is added:

Arvest Bank  
PO Box 940  
Rogers, AR 72757-0000  
#With respects to 415 SE Interstate Drive, Lawton, OK 73505

Arvest Bank  
PO Box 940  
Rogers, AR 72757-0000  
#With respects to 511 Demla Court, Enid, OK 73703

Arvest Bank  
PO Box 940  
Rogers, AR 72757-0000  
#With respects to 2610 Cache Road, Lawton, OK 73505

Arvest Bank  
PO Box 940  
Rogers, AR 72757-0000  
#With respects to 1408 NW 40th Street, Lawton, OK 73505

Arvest Bank  
PO Box 6100  
Lawton, OK 73505-0000  
#With respects to 415 SE Interstate Drive, Lawton, OK 73505

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **MORTGAGEE ENDORSEMENT**

The following Mortgage Holder(s) is added:

Arvest Bank  
PO Box 6100  
Lawton, OK 73505-0000  
#With respects to 511 Demla Court, Enid, OK 73703

Arvest Bank  
PO Box 6100  
Lawton, OK 73505-0000  
#With respects to 2610 Cache Road, Lawton, OK 73505

Arvest Bank  
PO Box 6100  
Lawton, OK 73505-0000  
#With respects to 1408 NW 40th Street, Lawton, OK 73505

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **ADDITIONAL NAMED INSUREDS**

The following are added to this policy as Named Insureds:

Southside Hotel, LLC, DBA: Hampton Inn & Suites  
(With respects to Location 511 Demla Court, Enid, OK 73703)

Sonali Hotel Group, LLC, DBA: Hampton Inn & Suites  
(With respects to 2610 NW Cache Road, Lawton, OK 73705)

Ajay Hotel Group, LLC, DBA: La Quinta Inn & Suites by Wyndham  
(With respects to Location 1408 NW 40th Street, Lawton, OK 73705)

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **ASBESTOS EXCLUSION**

It is agreed that this policy does not insure against loss or damage arising from asbestos material, including but not limited to costs or expenses incurred by the Insured as a result of any of the following:

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

Nor does any coverage provided by this policy apply to payment for the investigation or defense of any loss, damage or any cost, loss of use expense, fine or penalty or for any expense or claim or suit related to any of the above.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# WATER EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

**A.** The exclusion in Paragraph **B.** replaces the **Water Exclusion** in this Coverage Part or Policy.

**B. Water**

1. Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
2. Mudslide or mudflow;
3. Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;
4. Water under the ground surface pressing on, or flowing or seeping through:
  - a. Foundations, walls, floors or paved surfaces;
  - b. Basements, whether paved or not; or
  - c. Doors, windows or other openings; or

**5.** Waterborne material carried or otherwise moved by any of the water referred to in Paragraph **1.**, **3.** or **4.**, or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs **1.** through **5.**, is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs **1.** through **5.**, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

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

## **DEFINITION OF OCCURRENCE**

Occurrence means the total loss or damage caused by a distinct, single incidence of a peril or combination of perils insured against, except:

- A.** For a single atmospheric disturbance including tornado, cyclone, hurricane, windstorm, hail, tropical storm or cyclone, typhoon, hail and winter storm/freeze, an occurrence is limited to the total of all losses, damage, or expenses sustained or commencing during a continuous 144 hour period;
- B.** For riot, riot attending a strike and civil commotion an occurrence is limited to the total of all losses, damage or expenses sustained or commencing during a continuous 96 hour period.

In reference to items **A.** and **B.** above, you may decide when the applicable continuous number of hour period begins.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **LIMITATION OF LIABILITY ENDORSEMENT**

The following special terms and conditions apply to this policy:

- A.** The Limit of Insurance or amount of insurance shown in the Declarations page of this policy is a limit or amount per occurrence, except for "earthquake" and "flood," if covered, where an annual aggregate applies. We will not pay more than this limit or amount in one disaster, casualty, or event, no matter how many locations are involved.
  
- B.** The premium for this policy is based on the schedule or statement of values on file with us or attached to this policy. If there is a loss under this policy, we will not pay more than the least of the following:
  - 1.** The actual adjusted amount of loss, minus the deductible(s) that applies;
  - 2.** The Limit of Insurance or amount of insurance per occurrence shown in the Declarations page of this policy or endorsed onto this policy; or
  - 3.** The stated value for the specific property involved in the loss as shown on the latest statement of values on file with us, minus the deductible(s) that applies.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **TERRORISM EXCLUSION**

1. We will not pay for loss, damage, cost or expense caused directly or indirectly by "terrorism" including "certified acts of terrorism," as defined in the Terrorism Risk Insurance Act, as amended, unless specifically provided by endorsement to this policy or any action taken to control, prevent, or suppress terrorism. Such loss, damage, cost or expense is excluded regardless of any other cause or event that contributes concurrently or in any sequence to this loss.

2. The following definition is added and applies under this endorsement wherever the term "terrorism" is used.

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

**A.** That involve the following or preparation for the following:

- 1. Use or threat of force or violence; or
- 2. Commission or threat of a dangerous act; or
- 3. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

**B.** When one or both of the following applies:

- 1. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
- 2. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

3. Fire Exception

The following provision applies only where relevant state law requires coverage for fire losses resulting from acts of terrorism, and where a premium for such has been paid.

If an act of terrorism results in fire, we will pay for the loss or damage caused by that fire. This exception for fire applies only to direct loss or damage by fire to covered property. This exception does not apply to coverage for business income, extra expense, or fire legal liability.

4. Neither the terms of this endorsement nor the terms of any other terrorism endorsement attached to this policy provide coverage for any loss that would otherwise be excluded by this policy under:

- A.** Exclusions that address war, military action, or nuclear hazard; or
- B.** Any other exclusion.

5. The absence of any other terrorism endorsement does not imply coverage for any loss that would otherwise be excluded by this policy under:

- A.** Exclusions that address war, military action, or nuclear hazard; or
- B.** Any other exclusion.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **MINIMUM EARNED PREMIUM ENDORSEMENT**

This endorsement changes Cancellation conditions elsewhere in the policy as follows:

If you cancel this policy, the earned premium will be calculated as follows:

- (1) If the abbreviated term provides coverage for less than 50 days during the period May 15 through November 30, the premium earned for the policy term will be calculated as per the policy Cancellation terms but subject to a minimum earned premium of 25% of the annual policy premium or \$ [REDACTED] whichever is greater.
- (2) If the abbreviated term provides coverage for 50 or more days during the period May 15 through November 30, the premium earned for the policy term will be calculated as per the policy Cancellation terms but subject to a minimum earned premium of 25% of the annual policy premium or \$ [REDACTED] whichever is greater.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **NON-PAYMENT OF PREMIUM**

Your failure to make a timely payment of any premium due either at inception of this policy or for any subsequent endorsement will be considered a request by you to us to cancel the policy.

If we cancel for non-payment of premium, the minimum earned premium, as determined by the Minimum Earned Premium Endorsement included in this policy, will be immediately due and payable.

At our discretion, we may consider reinstating coverage if you pay us the full amount of premium due prior to the effective date of cancellation.

However, payment of overdue premium by you will not guarantee the reinstatement of coverage. Should we decide not to reinstate coverage, any unearned premium will be refunded accordingly.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **NUCLEAR, BIOLOGICAL, CHEMICAL OR RADIOACTIVE EXCLUSION**

We will not pay for loss, damage, cost, or expense directly or indirectly from:

- 1) The use or threatened use of nuclear, biological, chemical, radioactive substances or the like, however caused.
- 2) The accidental discharge of nuclear, biological, chemical, radioactive substances or the like, however caused.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **EXCLUSION OF COSMETIC DAMAGE TO ROOF SURFACING**

**A.** The following applies with respect to loss or damage by wind and/or hail to any building and/or structure covered under this policy unless otherwise indicated below:

We will not pay for cosmetic damage to roof surfacing caused by wind and/or hail.

For the purpose of this endorsement:

1. Cosmetic damage means that the wind and/or hail caused marring, pitting or other superficial damage that altered the appearance of the roof surfacing, but such damage does not prevent the roof from continuing to function as a barrier to entrance of the elements to the same extent as it did before the cosmetic damage occurred.
2. Roof surfacing refers to the shingles, tiles, cladding, metal or synthetic sheeting or similar materials covering the roof and includes all materials used in securing the roof surface and all materials applied to or under the roof surface for moisture protection, as well as roof flashing.

Exceptions to the above are as follows:

None

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **ACTUAL CASH VALUE FOR ROOF SURFACING**

The following applies with respect to loss or damage by wind and/or hail to a building or structure as indicated below:

- A.** Replacement Cost coverage (if otherwise applicable to such property) does not apply to roof surfacing. Instead, we will determine the value of roof surfacing at actual cash value as of the time of loss or damage.
- B.** For the purpose of this endorsement, roof surfacing refers to the shingles, tiles, cladding, metal or synthetic sheeting or similar materials covering the roof and includes all materials used in securing the roof surface and all materials applied to or under the roof surface for moisture protection, as well as roof flashing.

Buildings or structures to which this endorsement applies:

Any building with roof surfacing 10 years or older at time of loss.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **WINDSTORM OR HAIL LOSS REPORTING LIMITATION ADDENDUM**

Regardless of anything to the contrary in the policy to which this endorsement is attached, the following limitations apply in reference to reporting of claims under this policy:

With respect to loss or damage caused by windstorm or hail, including any named storm, you must give us prompt notice of the loss or damage and include a description of the property involved, and as soon as possible give us a description of how, when and where the loss or damage occurred. In no event may a claim be filed with us later than one year after the date of the loss or damage that is the subject of the claim.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **PRE-EXISTING DAMAGE EXCLUSION**

We do not cover any loss or damage directly or indirectly caused by, resulting from or contributed to by any pre-existing building damage at the time of loss insured under this policy.

The above exclusion shall automatically be removed upon:

- a. The completion of all building repairs; and
- b. Written evidence, signed by a licensed general contractor, stating that such building repairs have been completed.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **APPRAISAL**

This endorsement replaces the Appraisal Condition in the coverage form.

### **Appraisal**

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree on an umpire, either may request that selection be made by a judge of a federal court having jurisdiction. The appraisers will state separately the amount of loss, including an itemized determination of (1) the actual cash value for each damaged item included in the claim, and (2) the replacement cost value, if applicable under the policy, for each damaged item included in the claim. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding, and the decision must be itemized as specified in (1) and (2) above. 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.

Under no circumstance is appraisal allowed under this policy to determine causation or the existence or non-existence of coverage. Appraisal is also not allowed where coverage for the claimed loss has been denied in its entirety. You cannot invoke appraisal after suit has been filed.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **LEGAL ACTION CONDITIONS ENDORSEMENT**

This endorsement adds the following to LEGAL ACTION AGAINST US elsewhere in this Policy:

In the event of any litigation involving any matter arising out of or relating to this Policy, it is agreed that any Named Insured, any additional insured, any purported insured, or any beneficiary or purported beneficiary of this Policy shall submit to the jurisdiction of the New York state and New York federal courts, and shall comply with all the requirements necessary to give such courts jurisdiction. Any litigation arising out of or relating to this Policy shall be brought only in the state or federal courts of New York. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.

All matters arising out of or relating to this Policy shall be determined in accordance with the law and practice of the State of New York (notwithstanding New York's conflict of law rules). All matters include, without limitation, the procurement, formation, issuance, validity, interpretation, and enforcement of this Policy, as well as claim handling and any other performance in connection with this Policy.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED. PLEASE READ IT CAREFULLY.

## CYBER AND COMPUTER RELATED LOSS EXCLUSION

- A.** We will not pay for any loss, damage, expense, or threat, whether direct or indirect, to "computer data and related equipment" arising out of:
1. "Computer virus" or "computer hacking";
  2. Any electrical disturbance including electromagnetic pulse, solar flare, magnetic damage, disturbance of electronic recordings, or erasure of electronic recordings;
  3. Failure, malfunction, or inadequacy of:
    - a. Such "computer data and related equipment" whether belonging to you or to others; or
    - b. Any products, and any services, data, or functions that directly or indirectly use or rely on, in any manner, such "computer data and related equipment" due to the inability to correctly recognize, process, distinguish, interpret, or accept one or more dates or times.
- B.** We will not pay for any loss, damage, expense, or threat, whether direct or indirect, caused by the transfer or delivery of Covered Property to a person or place away from a Covered Location on the basis of unauthorized or fraudulent instructions, including but not limited to instructions transmitted by a computer, whether or not owned by you, or via any telecommunications transmission method.
- C.** We will not pay for any actual or alleged loss of goods, money, or securities resulting from "Social Engineering"; or
- D.** We will not pay for any loss, damage, expense, or threat arising from any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement, or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in this endorsement.

Such loss, damage, expense, or threat described in paragraphs **A** through **D** of this endorsement is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, expense, or threat.

However, if direct physical loss of or damage to Covered Property not otherwise excluded by this Policy results, then subject to all of the Policy terms and conditions, we will only pay for the resulting direct physical loss or damage.

### **E. DEFINITIONS**

1. "Computer virus" means the introduction of an electronic data processing code or other programming that:
  - a. Results in the deletion, destruction, generation, access, or modification of data;
  - b. Alters, contaminates, corrupts, degrades, or destroys the integrity, quality, or performance of data;
  - c. Damages, destroys, or causes malfunction, inadequacy, degradation, or corruption of any hardware or processing, recording, or storage media used with hardware;
  - d. Results in the denial of access to or denial of services from your computers, your computer network, or web site;
  - e. Acts as malware, including but not limited to, ransomware, spyware, worms, Trojan Horses, or any other harmful code or similar instruction designed to damage, destroy, disrupt, or gain access to "computer data and related equipment".

2. "Computer hacking" means any intrusion into "computer data and related equipment" that can or does:
  - a. Result in the deletion, destruction, generation, access, or modification of data;
  - b. Alter, contaminate, corrupt, degrade, or destroy the integrity, quality, or performance of data;
  - c. Result in the scanning or copying of data;
  - d. Cause damage, destruction, inadequacy, malfunction, degradation, or corruption of any hardware or processing, recording, or storage media used with hardware; or
  - e. Result in the denial of access to or denial of services from your computer, your computer network, or web site.
  
3. "Computer data and related equipment" includes the following items:
  - a. Computer hardware, including microprocessors;
  - b. Computer software;
  - c. Computer operating systems, data, applications, code, or related software;
  - d. Computer networks, including but not limited to network facilities, cloud network, internet, intranet, and virtual private networks (VPN);
  - e. Microprocessors (computer chips) not part of any computer system;
  - f. Any other electronic equipment, communications system, or electronic device or components; or
  - g. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in items **a.** through **f.** above. This includes any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement, or supervision provided or done by you or for you to determine, rectify or test for, any potential problems with items listed in **a.** through **f.** above.
  
4. "Social Engineering" means the reliance upon any deceptive, dishonest, fraudulent, or unauthorized representation or instruction which induces you, your employee, your contractor, or anyone else acting on your behalf or with your express or implied permission, to voluntarily part with title to or possession of any property.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **COMMUNICABLE DISEASE EXCLUSION**

- A.** We will not pay for loss, damage, cost or expense of any nature, directly or indirectly caused by, contributed to by, resulting from, arising out of, or in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event that contributes concurrently or in any sequence thereto. This exclusion applies whether or not the loss event results in a pandemic or affects a substantial area.
- B.** As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 1.** The substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not; and
  - 2.** The method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from, to or through any surface or object, solid, liquid or gas or between organisms; and
  - 3.** The disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property.
- C.** This exclusion applies to all property coverage under all forms and endorsements that comprise this policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense, action of civil authority, contingent business income, business income and/or extra expense from dependent properties, ingress and egress, or utility services.
- D.** With respect to any loss or damage subject to this exclusion, the application of such exclusion supersedes the application of any exclusion relating to "pollutants".

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **TOTAL POLLUTION EXCLUSION**

This endorsement supersedes any existing terms, conditions, limitations, exclusions, coverages, additional coverages and definitions regarding "pollutants" within any property coverage forms or related endorsements within this policy.

We will not pay for loss, damage, cost, or expense caused, in whole or in part, directly or indirectly by, resulting from, contributing to, or made worse by, or arising out of or in connection with, the following:

- A.** The actual, alleged, or threatened exposure to, or discharge, dispersal, release, or escape of, "pollutants";
- B.** Testing for, monitoring, cleaning up, treating, removing, extracting, detoxifying, or neutralizing "pollutants" or in any way responding to or assessing the existence, concentration, or effects of "pollutants";
- C.** The enforcement of, or compliance with, any ordinance, law, or governmental direction resulting from or arising out of the actual, alleged or threatened exposure to, or discharge, dispersal, release, or escape of, "pollutants".

Such loss, damage, cost, or expense is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. This exclusion applies regardless of the size or scope of the exposure to, or discharge, dispersal, release, or escape of, "pollutants".

"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. "Pollutants" includes any naturally occurring or manmade substances which can cause or threaten damage to human health or human welfare, or causes or threatens damage to, or deterioration, loss of value, marketability or loss of use of, any property. Such substances include, but are not limited to bacteria, virus, nanoparticles, electromagnetic radiation, or other hazardous substances. Hazardous substances include, but are not limited to, those listed in the Federal Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, Toxic Substances Control Act or as designated by the U.S. Environmental Protection Agency.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

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

## **ACTUAL CASH VALUE (ACV) DEFINITION**

It is agreed that the definition of "Actual Cash Value" wherever used in this policy is as follows:

"Actual Cash Value" (sometimes referred to in this policy as ACV) means the value of the lost or damaged property or part of the property at the time of loss, calculated as the estimated cost to repair or replace such property, less a deduction to account for pre-loss depreciation. For this calculation, all components of this estimated cost are subject to depreciation, including but not limited to:

1. Materials, including any tax;
2. Labor, including any tax;
3. Overhead and profit, if applicable;
4. Fees and permits; and
5. Debris removal.

The deduction for depreciation may include, but is not limited to, such considerations as:

1. Age;
2. Condition;
3. Reduction in useful life;
4. Obsolescence; and
5. Any pre-loss damage including wear, tear, or deterioration.

The amount of any depreciation is not limited to a maximum percentage deduction.

The "Actual Cash Value" of any lost or damaged property may be significantly less than its Replacement Cost.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### AMENDED LIMITATIONS

This endorsement modifies insurance provided under the following:

CAUSES OF LOSS – SPECIAL FORM

The following replaces **C. Limitations 1.c.** in this Coverage Part or Policy.

- c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
  - (1) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure; or
  - (2) 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. However, we will not pay for any loss or damage, caused in whole or in part, directly or indirectly by, resulting from, contributed to or made worse by, or in connection with, any of the following causes of loss, regardless of any other cause or event that contributes concurrently or in any sequence to the loss: wet or dry rot; wear and tear; rust; corrosion; decay; deterioration; hidden or latent defect; settling; cracking; shrinking or expansion; or faulty, inadequate or defective planning, design, specifications, workmanship, repair, construction, materials, or maintenance.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

## COMMERCIAL PROPERTY CONDITIONS

This Policy is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

### A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Policy is void and there is no coverage for any claim in any case of fraud by you as it relates to this Coverage at any time. It is also void if you or any other insured, at any time, conceals or misrepresents a material fact concerning this Policy, the Covered Property, or your interest in the Covered Property.

There is no coverage for any claim under this Policy if, at any time and regardless of intent, you or any other insured or any representative acting on your or any insured's behalf provide incorrect, false, inaccurate, or incomplete information in connection with any claim under this Policy.

There is no coverage for any claim under this Policy if, at any time and regardless of intent, you do not promptly, and prior to a loss, provide us notice in writing of a material change in any risk insured under this Policy which is relevant to the loss.

### B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Policy at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

### C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this Policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

### D. LEGAL ACTION AGAINST US

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

1. There has been full compliance with all of the terms of this Policy; and

2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

### E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Policy without additional premium within 45 days prior to or during the Policy Period, the broadened coverage will immediately apply to this Policy.

### F. NO BENEFIT TO BAILEE

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

### G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Policy. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Policy bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Policy:

1. We cover loss or damage commencing:
  - a. During the Policy Period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:

- a. The United States of America (including its territories and possessions);
- b. Puerto Rico; and
- c. Canada.

- 1. Prior to a loss to your Covered Property or Covered Income.
- 2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:

**I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

- a. Someone insured by this insurance;
- b. A business firm:
  - (1) Owned or controlled by you; or
  - (2) That owns or controls you; or
- c. Your tenant.

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:

This will not restrict your insurance.

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

## **FULLY EARNED PREMIUM FOR ACTUAL TOTAL LOSS OR CONSTRUCTIVE TOTAL LOSS**

**A.** It is hereby understood and agreed that in the event of a covered "Actual Total Loss" or "Constructive Total Loss" of any item of property insured during the policy period, the premium attributed to all values at that building or structure shall be considered fully earned at the time of the loss. No return premium will be owed in the event the policy is cancelled or the values at that building or structure are removed from the policy by endorsement.

**B.** For the purpose of this endorsement only, the following definitions apply:

"Constructive Total Loss" means Covered Property that is damaged and is treated as a total loss because the cost of repairing the damaged Covered Property equals or exceeds the value of the Covered Property, the Actual Cash Value of the Covered Property, or the applicable Limit of Insurance, whichever is the lesser amount.

"Actual Total Loss" means a loss that occurs when the Covered Property is totally destroyed or damaged in such a way that it can be neither recovered nor repaired for further use.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## OKLAHOMA CHANGES – APPRAISAL

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART

**A.** Except as provided in **B.** below, the **Appraisal** Condition is replaced by the following:

### APPRAISAL

If we and you disagree on the value of the property or the amount of loss ("loss"), either party may make written demand for an appraisal of the loss. In this event, only the party which demanded the appraisal will be bound by the results of that appraisal.

Each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days after the written demand for an appraisal has been made. The two appraisers will select an umpire. If they cannot agree upon an umpire within 15 days, then, at the request of either you or us, and after notice of hearing to the nonrequesting party by certified mail, selection of the umpire will be made by a judge of a district court in the county where the loss ("loss") occurred. The appraisers will state separately the value of the property and amount of loss ("loss"). If the appraisers submit a written report of agreement to us, the amounts agreed upon will be the value of the property and the amount of loss ("loss") and will be binding on the party which demanded the appraisal. If the appraisers fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding on the party which demanded the appraisal. 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.

**B.** The **Appraisal** Condition in the:

- 1.** Business Income Coverage Form (And Extra Expense) **CP 00 30**;

- 2.** Business Income Coverage Form (Without Extra Expense) **CP 00 32**; and

- 3.** Capital Assets Program Coverage Form (Output Policy), **OP 00 01**, Paragraph **A.7.** Business Income And Extra Expense

is replaced by the following:

### APPRAISAL

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either party may make written demand for an appraisal of the loss. In this event, only the party which demanded the appraisal will be bound by the results of that appraisal.

Each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days after the written demand for an appraisal has been made. The two appraisers will select an umpire. If they cannot agree upon an umpire within 15 days, then, at the request of either you or us, and after notice of hearing to the nonrequesting party by certified mail, selection of the umpire will be made by a judge of a district court in the county where the loss occurred. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If the appraisers submit a written report of agreement to us, the amounts agreed upon will be the value of the property and the amount of loss and will be binding on the party which demanded the appraisal. If the appraisers fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding on the party which demanded the appraisal. Each party will:

- (1)** Pay its chosen appraiser; and
- (2)** 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## OKLAHOMA CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
 COMMERCIAL AUTOMOBILE COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 COMMERCIAL INLAND MARINE COVERAGE PART  
 COMMERCIAL LIABILITY UMBRELLA COVERAGE PART  
 COMMERCIAL PROPERTY COVERAGE PART  
 CRIME AND FIDELITY COVERAGE PART  
 EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
 EQUIPMENT BREAKDOWN COVERAGE PART  
 FARM COVERAGE PART  
 FARM UMBRELLA LIABILITY COVERAGE PART  
 LIQUOR LIABILITY COVERAGE PART  
 POLLUTION LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**A. Paragraph 2. of the Cancellation Common Policy Condition is replaced by the following:**

**2.** We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- a.** 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b.** 30 days before the effective date of cancellation if we cancel for any other reason.

After coverage has been in effect for more than 45 business days or after the effective date of a renewal of this policy, no notice of cancellation will be issued by us unless it is based on at least one of the following reasons:

- (1)** Nonpayment of premium;
- (2)** Discovery of fraud or material misrepresentation in the procurement of the insurance or with respect to any claims submitted under it;
- (3)** Discovery of willful or reckless acts or omissions by you that increase any hazard insured against;

**(4)** The occurrence of a change in the risk that substantially increases any hazard insured against after insurance coverage has been issued or renewed;

**(5)** A violation of any local fire, health, safety, building, or construction regulation or ordinance with respect to any covered property or its occupancy that substantially increases any hazard insured against;

**(6)** A determination by the Insurance Commissioner that the continuation of the policy would place us in violation of the insurance laws of this state;

**(7)** Your conviction of a crime having as one of its necessary elements an act increasing any hazard insured against; or

**(8)** Loss of or substantial changes in applicable reinsurance.

**B.** The following are added to the Common Policy Conditions and supersede any provisions to the contrary:

### **1. Nonrenewal**

- a.** If we elect not to renew this policy, we will mail or deliver written notice of nonrenewal to the first Named Insured at least 45 days before:

- (1) The expiration date of this policy; or
- (2) An anniversary date of this policy, if it is written for a term longer than one year or with no fixed expiration date.
- b. Any notice of nonrenewal will be mailed or delivered to the first Named Insured at the last mailing address known to us.
- c. If notice is mailed:
- (1) It will be considered to have been given to the first Named Insured on the day it is mailed.
- (2) Proof of mailing will be sufficient proof of notice.
- d. If notice of nonrenewal is **not** mailed or delivered at least 45 days before the expiration date or an anniversary date of this policy, coverage will remain in effect until 45 days after notice is given. Earned premium for such extended period of coverage will be calculated pro rata based on the rates applicable to the expiring policy.
- e. We will **not** provide notice of nonrenewal if:
- (1) We, or another company within the same insurance group, have offered to issue a renewal policy; or
- (2) You have obtained replacement coverage or have agreed in writing to obtain replacement coverage.
- f. If we have provided the required notice of nonrenewal as described in **B.1.a.** above, and thereafter extend the policy for a period of 90 days or less, we will **not** provide an additional nonrenewal notice with respect to the period of extension.
- 2. Premium Or Coverage Changes At Renewal**
- a. If we elect to renew this policy, we will give written notice of any premium increase, change in deductible, or reduction in limits or coverage, to the first Named Insured, at the last mailing address known to us.
- b. Any such notice will be mailed or delivered to the first Named Insured at least 45 days before:
- (1) The expiration date of this policy; or
- (2) An anniversary date of this policy, if it is written for a term longer than one year or with no fixed expiration date.
- c. If notice is mailed:
- (1) It will be considered to have been given to the first Named Insured on the day it is mailed.
- (2) Proof of mailing will be sufficient proof of notice.
- d. If the first Named Insured accepts the renewal, the premium increase or coverage changes will be effective the day following the prior policy's expiration or anniversary date.
- e. If notice is **not** mailed or delivered at least 45 days before the expiration date or anniversary date of this policy, the premium, deductible, limits and coverage in effect prior to the changes will remain in effect until:
- (1) 45 days after notice is given; or
- (2) The effective date of replacement coverage obtained by the insured;
- whichever occurs first.
- If the first Named Insured then elects **not** to renew, any earned premium for the resulting extended period of coverage will be calculated pro rata at the lower of the new rates or rates applicable to the expiring policy.
- f. We will **not** provide notice of the following:
- (1) Changes in a rate or plan filed pursuant to the Property and Casualty Competitive Loss Cost Rating Act applicable to an entire class of business;
- (2) Changes which are based upon the altered nature or extent of the risk insured; or
- (3) Changes in policy forms filed with or approved by the Insurance Commissioner and applicable to an entire class of business.

## IMPORTANT NOTICE TO POLICYHOLDER

### POLICYHOLDER'S RESPONSIBILITY TO PROPERLY ASSESS AND REPORT PROPERTY VALUATION

This Policyholder Notice does not provide coverage nor can it be construed to replace any provisions of your policy. Please read your policy carefully to determine your rights, duties, and what is and what is not covered by your policy. This Notice only provides information concerning your responsibility to properly assess and report property valuation amount(s).

PLEASE READ THIS NOTICE CAREFULLY.

The coverage provided under this policy is based on the valuation amount(s) you report to us for the scheduled property(ies) under the policy. While valuation of the property(ies) may be discussed with us, the ultimate responsibility to provide proper valuation(s) lies with the insured. Valuation could have a material impact on the outcome of a claim(s) involving a loss(es) to the scheduled property(ies) under your policy.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

**Mt. Hawley Insurance Company**  
Peoria, Illinois 61615

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

**SERVICE OF SUIT ENDORSEMENT**

It is agreed that service of process in any suit against the Company may be made upon the Superintendent, Commissioner, or Director of Insurance or other person specified for that purpose in the statute or his successor or successors in office as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of any Named Insured or any additional insured or any beneficiary hereunder arising out of this contract of insurance.

The Company hereby designates Craig W. Kliethermes, President,

**Mt. Hawley Insurance Company**

9025 N. Lindbergh Drive, Peoria, Illinois 61615 as the person to whom the said Superintendent, Commissioner, or Director of Insurance is authorized to mail such process or a true copy thereof, in compliance with the applicable statutes governing said service of process in the state or jurisdiction.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

### SIGNATURE PAGE

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

The use of this endorsement supersedes any signatures on any other policy forms, endorsements or declarations where those forms contain an earlier edition date.



Corporate Secretary



President & COO