



2. At age 24, Steve DiFillippo, Davio's Chef and CEO, purchased a restaurant named Davio's in Boston's Back Bay. Thirty-seven years later, Davio's has grown into a successful restaurant group and a national brand.

3. To protect its property and operations, Davio's purchased insurance policy no. 8120T23406 from Strathmore, effective from October 21, 2019, to October 21, 2020 (the "Policy," attached as Exhibit A).

4. The Policy insures Davio's restaurant locations in Massachusetts, Pennsylvania, and New York and the income that flows from their operation.

5. Davio's paid all premiums due under the Policy.

6. Mr. DiFillippo has long understood the value of insurance protection; he even wrote about it in his book. *See* Steve DiFillippo, IT'S ALL ABOUT THE GUEST (2013). In 1991, the original Davio's location suffered a fire loss. The building's property was insured, but its business losses were not. "That meant I had no money to pay the staff, the rent, or our vendors... Interruption insurance is *so critical* for any business to have." *Id.* at p. 246 (emphasis original).

7. Under the Policy, Davio's paid premiums in exchange for Strathmore's promise of coverage for certain losses, including the business interruption insurance that Mr. DiFillippo understood is critical to his business.

8. Beginning in March 2020, Davio's was forced to suspend its restaurant operations because the presence of SARS-CoV-2 and the COVID-19 pandemic caused physical loss of **and** damage to its property.

9. Numerous symptomatic, pre-symptomatic, and asymptomatic restaurant guests and staff members infected with COVID-19 (a highly contagious and potentially deadly communicable

disease) have been on-site at each of the properties on a frequent, regular, and consistent basis during the pandemic.

10. The Policy unambiguously provides coverage for these losses, and no exclusion applies to exclude coverage.

11. However, even if another reading of the Policy could reasonably result in a finding of no coverage, the existence of two reasonable readings of the Policy – one finding coverage, as at least five other courts have agreed, and the other not – would mean the Policy is, at worst, ambiguous. Any such ambiguity should be interpreted in favor of coverage.

12. Nonetheless, Strathmore failed to hold up its end of the bargain. It denied all coverage for Davio's claim.

13. In this action for breach of contract and declaratory judgment, Davio's seeks to compel Strathmore to provide the insurance coverage it owes.

14. Davio's also seeks damages for Strathmore's violation of its statutory obligation related to its systematic and summary denial of Davio's claim.

15. Mr. DiFillippo learned his lesson in 1991 and has dutifully maintained insurance coverage ever since. In exchange, he reasonably expected that Strathmore would cover his restaurants' losses if and when they arose. What he did not expect, and could not have prepared for, was Strathmore's refusal to honor its contractual promises under the Policy.

#### **THE PARTIES**

16. 75 Arlington Street, Inc. is a corporation organized under and registered to do business in the Commonwealth of Massachusetts, with its principal place of business at 110 Larch Row, Wenham, Massachusetts.

17. 202 Washington Street, Inc. is a corporation organized under and registered to do business in the Commonwealth of Massachusetts, with its principal place of business at 75 Arlington Street, Boston, Massachusetts.

18. 111 South 17<sup>th</sup> Street, Inc. is a corporation organized under and registered to do business in the Commonwealth of Pennsylvania, with its principal place of business at 1628 Chestnut Street, Philadelphia, Pennsylvania.

19. One Patriot Place, LLC is a limited liability company organized under and registered to do business in the Commonwealth of Massachusetts, with its principal place of business at 75 Arlington Street, Boston, Massachusetts.

20. 443 Lexington Ave., Inc. is a corporation organized under and registered to do business in the State of New York, with its principal place of business at 447 Lexington Avenue, New York, New York.

21. 427 Walnut Street, LLC is a limited liability company organized under and registered to do business in the Commonwealth of Massachusetts, with its principal place of business at 118 Larch Row, Wenham, Massachusetts.

22. 201 Main Street, LLC is a limited liability company organized under and registered to do business in the Commonwealth of Pennsylvania, with its principal place of business at 201 Main Street, King of Prussia, Pennsylvania.

23. 151 Granite Street, LLC is a limited liability company organized under and registered to do business in the Commonwealth of Massachusetts, with its principal place of business at 118 Larch Row, Wenham, Massachusetts.

24. 51 Liberty Drive, LLC is a limited liability company organized under and registered to do business in the Commonwealth of Massachusetts, with its principal place of business at 118 Larch Row, Wenham, Massachusetts.

25. Strathmore is incorporated under the laws of New York with a principal place of business at 200 Madison Avenue, New York, New York.

26. Strathmore is authorized to do business and issue insurance policies in the Commonwealth of Massachusetts.

27. Upon information and belief, the Policy at issue here was underwritten in Strathmore's Quincy, Massachusetts branch.

#### **JURISDICTION AND VENUE**

28. Davio's seeks a declaratory judgment pursuant to M.G.L. c. 231A, § 1, because an actual controversy exists between Davio's and Strathmore as to their respective rights and obligations under the Policy. More particularly, Davio's is insured under the Policy issued and subscribed to by Strathmore and seeks a declaratory judgment that the Policy's coverage extends to losses sustained by Davio's.

29. Davio's also seeks a judgment against Strathmore for breach of contract and violation of their respective and collective obligations to investigate and cover Davio's claims in good faith pursuant to common law and M.G.L. c. 93A, § 11, and c. 176D, § 3.

30. Jurisdiction over the subject matter of this action lies with this Court pursuant to M.G.L. c. 212, § 3, and M.G.L. c. 231A, § 1, as the amount-in-controversy is greater than \$50,000.

31. Jurisdiction over Strathmore in this action is proper under M.G.L. c. 223A, § 3, because Strathmore agreed to insure Davio's within this commonwealth at the time of contracting. Furthermore, Strathmore has purposefully availed itself to the privileges of conducting business in

the Commonwealth of Massachusetts, thereby invoking the benefits and protections of Massachusetts law and making its presence before Massachusetts courts reasonably foreseeable.

32. Venue for this action is proper in this Court under M.G.L. c. 223, §§ 1, 8, because Davio's includes Massachusetts companies that have a usual place of business in this County.

## **FACTUAL BACKGROUND**

### **A. Davio's Restaurants**

33. Davio's owns and operates restaurants in Massachusetts, Pennsylvania, and New York.<sup>1</sup>

34. The Davio's business began in 1985 when Mr. DiFillippo took over an existing (but failing) restaurant operating under the same name. Within two years, Mr. DiFillippo's guest-centric dining approach turned the down-and-out location into a profitable business.

35. This success led to further expansion, and now, over three-and-a-half decades later, Mr. DiFillippo's passion has led to a string of restaurants along the Eastern Seaboard.

36. Critical to this success has been Davio's uncompromising focus on guests' in-restaurant dining experience. *See* S. DiFillippo, IT'S ALL ABOUT THE GUEST at p. xv ("It takes more to create a great restaurant than just a great chef and stellar food.... Restaurants thrive because they're important places in peoples' lives. They offer guests a sense of community and comfort by giving them a nurturing experience they might not get anywhere else.").

37. Before the pandemic, Davio's restaurants were "permanently busy" – bustling with guests and employees. *Id.* at p. 112. After all, "a busy restaurant is a happy restaurant." *Id.*

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<sup>1</sup> Davio's also has a location in Atlanta, Georgia, but that restaurant was not insured under this Policy.

**B. The Strathmore Policy**

38. To protect its family-built and operated business in the event of property loss and business interruption, Davio's purchased the Policy from Strathmore. Strathmore issued the Policy effective October 21, 2019, to October 21, 2020. *See* Policy No. 8120T23406, attached as Exhibit A.

39. The Policy covers the following locations:

- a. 75 Arlington St., Boston, Massachusetts (Davio's Boston);
- b. 111 S. 17<sup>th</sup> St., Philadelphia, Pennsylvania (Davio's Philadelphia);
- c. One Patriot Pl., Foxborough, Massachusetts (Davio's Foxborough);
- d. 443 Lexington Ave., New York City, New York (Davio's New York);
- e. 427 Walnut St., Lynnfield, Massachusetts (Davio's Lynnfield);
- f. 201 Main St., King of Prussia, Pennsylvania (Davio's King of Prussia);
- g. 250 Granite St., Braintree, Massachusetts (Davio's Braintree);
- h. 51 Liberty Dr., Boston, Massachusetts (Davio's Seaport); and
- i. 110 Larch Row, Wenham, Massachusetts (Davio's headquarters).

40. Strathmore describes its "Protecto-Guard" policy form as an "enhanced property coverage endorsement for restaurants," and targets its marketing to restaurants. In combination with the extensive underwriting investigation Strathmore performed (or had the opportunity to perform) into the risks associated with Davio's operations, Strathmore has (or should have) unique insight into the risks faced by restaurants generally and Davio's specifically.

41. The Policy insures against all risks of loss of or damage to property and ensuing business interruption and extra expense unless specifically excluded or limited in the Policy.

42. The Policy covers “direct physical loss of or damage to Covered Property...caused by or resulting from any Covered Cause of Loss.” *See id.* at p. 159.

43. The word “or” separates the terms “loss of” and “damage” to signify that the terms should be interpreted in the disjunctive.

44. Coverage may be triggered by “direct physical loss of” property.

45. Coverage may be triggered by “damage” to property.

46. The Policy defines a “Covered Cause of Loss” as “Risks Of Direct Physical Loss unless the loss is: [excluded] or [limited].” *See id.* at p. 196.

47. The Policy covers “the actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration’.” *See id.* at p.130.

48. The Policy also covers “Extra Expense (other than the expense to repair or replace property) to: (1) [a]void or minimize the ‘suspension’ of business... [and] (2)[m]inimize the ‘suspension’ of business if you cannot continue ‘operations’.” *See id.*

49. The Policy defines “suspension,” in part, as “[t]he slowdown or cessation of your business activities.” *See id.* at p. 138.

50. The Policy defines “operations,” in part, as “[y]our business activities occurring at the described premises.” *See id.*

51. The Policy also contains additional coverage for Extended Business Income losses after operations are resumed. *See id.* at p. 132.

52. The Policy does not exclude or limit losses caused by viruses or by pandemics.

53. In fact, based on Strathmore’s regulatory filings, the Policy explicitly covers virus-related losses.



54. In 2006, the Insurance Services Office (“ISO”), an insurance industry organization that develops standardized insurance policy programs and forms for use by insurers, including Strathmore, drafted a form exclusion for losses “due to disease-causing agents such as viruses and bacteria.”

55. In presenting the exclusion to state insurance regulators around the country, ISO explained:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. **Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria**, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

(Emphasis added.)

56. Strathmore, via its parent company Greater New York Mutual Insurance Company (“GNY”), did seek – and was granted – regulatory permission from the New York Department of Financial Services to use a New York version of the ISO virus exclusion endorsement in policies Strathmore issued to certain insureds.

57. In this filing, GNY explained how it expected the exclusion to apply to Strathmore’s insureds:

The ISO initial filing of this endorsement indicated that the exclusion was appropriate due to “pandemic” exposure to loss which was not anticipated in the standard coverage forms or in development of the loss costs for Commercial Property. **Therefore, we assume that this Exclusion is deleting coverage** across the entire NY Commercial Fire and Allied book written by the ISO member companies that utilize the ISO product, unless modified by such a Company exception. **Because the application of this**

**Exclusion is to Commercial Property, we anticipate losses to fall largely in Business Personal Property (“stock”) and Business Interruption/Time Element coverage segments.**

*See* GNY Filing, Explanatory Memorandum—Response to Objection 1 Dated 4-30-2010, attached as Exhibit B (emphasis added).

58. GNY contemplated the possibility “that some type of disease (airborne Legionnaires Disease, for example) could spread through an HVAC system” in insured properties, presenting a “contagious disease hazard” for restaurants. *See id.*

59. Despite this understanding, GNY chose to apply the exclusion “on a restaurant account only if the risk presented with claim history indicative of recent incident and loss control with little remediation.” *See id.*

60. GNY explained the risk characteristics underwriting it would consider in deciding whether or not to include the ISO virus exclusion endorsement on an insured’s policy. In the description, GNY acknowledged that losses involving disease or infection can result in an “action or order of a civil authority to close the insured’s operation in order to limit public exposure to such contagion, sickness and death” or an “action of the insured to close the insured’s operation in order to limit public exposure to such contagion, sickness and death due to the insured’s prudent expectation that such an event is likely to occur.” *See* GNY Filing, Exhibit RT-1 – Side by Side, attached as Exhibit C.

61. Strathmore provided a credit to insureds whose policies did not have the exclusion. *See id.*

62. GNY stated that it did not anticipate restaurant insureds would request the exclusion be added to their policies “**because they feel that such an event is well within the realm of**

**possible fortuitous occurrences and should be covered should such an event arise.”** *See* Explanatory Memorandum, Exhibit B.

63. In other words, GNY and Strathmore predicted, anticipated, and understood that, in the absence of a virus exclusion, its restaurant insureds would reasonably expect virus losses to be covered under their Strathmore policies for business interruption losses.

64. Strathmore did not include this exclusion in the Policy it issued to Davio’s.

65. Davio’s reasonably expected that virus losses were covered under its Policy.

**C. COVID-19/SARS-CoV-2 caused covered physical loss and damage**

66. During the Policy’s term, SARS-CoV-2 swept the globe.

67. Numerous Davio’s guests and staff members have been diagnosed with COVID-19, many of whom were on-site at Davio’s properties before and during their COVID-19 infection period.

68. As a result, COVID-19 (the communicable disease) and SARS-CoV-2 (its causative agent) have been continually present (and regularly reintroduced) at each of the Davio’s properties from March 2020 through the present.

69. While on-site, the infected individuals shed SARS-CoV-2 through normal breathing, talking, and other ways, into the indoor air and onto surfaces throughout the restaurants. Both COVID-19 and SARS-CoV-2 are physical substances. The physical alteration of the content of the air by the introduction of these highly infectious physical substances is damage.

70. Once shed, the infectious particles remain in and travel through the air. They then settle on surfaces, adhering through gravitation and electrostatic forces. The indoor air and surfaces are real and personal property in which Davio’s has an insured interest under the Policy and neither are excluded.

71. This results in direct physical loss and damage to the insured restaurants in several ways, including the following:

- a. Individuals infected with COVID-19 shed SARS-CoV-2, and directly, physically and tangibly change, alter and transform the content of the indoor air and the composition of the surfaces throughout the buildings and structures at the restaurants—such that now these contain a concentration of SARS-CoV-2 infectious particles (whereas before they did not). This physical alteration of the content of the air and of the surfaces is direct physical damage to the insured’s interests in real and personal property at the Davio’s properties as covered under the Policy.
- b. The presence and intrusion of COVID-19 and SARS-CoV-2 onto the restaurant properties has rendered the properties unfit for their insured use—in-restaurant guest dining—and has deprived Davio’s of the full insured use of its properties. This loss of fitness and utility, caused by the intrusion of a dangerous and potentially lethal physical substance, is direct physical loss of the insured’s interests in real and personal property at the Davio’s properties as covered under the Policy.

72. This presence and intrusion of COVID-19 and SARS-CoV-2 at the Davio’s properties happened by chance, rather than by design; it was, thus, an unfortunate event and “fortuitous” for insurance-coverage purposes.

73. From the outset of the pandemic, COVID-19 has had a substantial effect on the restaurant industry. Although the restaurants mitigated their insured losses by operating at reduced levels during the COVID-19 pandemic through the use of stringent multi-layered repair and

restoration protocols, they were and remain at high risk for COVID-19 and SARS-CoV-2 spreading among the facilities, the guests, and the staff.

74. Since March 2020, the restaurants have taken extraordinary measures to address COVID-19 and SARS-CoV-2 on-site and their associated physical impact, change, alteration, damage and loss from COVID-19 and SARS-CoV-2, among other things, closing certain operations and services, substantially modifying others, restricting access to many of the properties, enforcing physical distancing, and undertaking extensive efforts to repair and restore the facilities to their pre-COVID-19 and SARS-CoV-2 physical operating condition (a process which is ongoing).

75. However, due to the volume of guests at the restaurants and the prevalence of infection among the guests and staff members at the restaurants, COVID-19 and SARS-CoV-2 have been consistently present at, and are constantly being reintroduced to, the restaurants. Even applying a modest community prevalence rate, there have been hundreds (if not thousands) of infected guests on-site since the pandemic's outset.

76. As a result, the physical changes to the content of the indoor air and the composition of surfaces throughout the Davio's restaurants have been pervasive and omnipresent over time in light of the number of infected individuals shedding SARS-CoV-2 particles on-site and the constant reintroduction of those particles.

77. Cleaning of surfaces is a means of repairing the damage caused by COVID-19 and SARS-CoV-2 to surfaces; it is not possible to effectively clean air. However, even cleaning of surfaces does not altogether eliminate the damage or end the physical loss. Some surfaces and objects retain residual infectious virus even after cleaning, and aerosolized infectious particles will attach to surfaces after cleaning. And cleaning does nothing to guard against property continually

being reinfected as soon as COVID-19 again enters the space. In short, cleaning is a temporary repair at best – a surface and object remain infectious if an aerosol is present, if an HVAC system is operational, or if another infected person visits the space after cleaning. Reintroduction consequent to mitigation through continued operation provides a constant modality for infection to people and, thus, a continued danger that prevents the use of the properties for their fully insured use.

78. The Davio’s properties have been unable to eradicate COVID-19 and SARS-CoV-2 from the real and personal property at Davio’s despite their efforts to eliminate both and to repair and restore the property to its pre-pandemic physical operating condition.

79. The actual presence of COVID-19 and SARS-CoV-2 on-site at each of the restaurants, and the associated physical loss **and** damage, has caused Davio’s to experience significant Business Interruption losses and to incur Extra Expenses (among other damages), which continue as the properties have not been restored to pre-pandemic physical operating conditions despite best efforts.

**D. Davio’s Claim, Strathmore’s “Investigation,” and its Denial**

80. On March 17, 2020, Davio’s notified Strathmore that it had experienced, and was continuing to experience, a covered loss as a consequence of the physical loss and damage caused by COVID-19 and SARS-CoV-2.

81. Strathmore had an obligation to conduct a prompt and reasonable investigation of Davio’s claim.

82. Yet Strathmore’s “investigation” consisted only of phone calls to Mr. DiFillippo.

83. Strathmore did not request a calculation of Davio’s losses.

84. Strathmore did not request copies of the orders affecting Davio's operations or any of its locations.

85. Strathmore did not visit, or ask to visit, any of Davio's locations for an inspection.

86. Strathmore did not investigate the property damage that Davio's reported.

87. Strathmore did not test any of Davio's property for the presence of SARS-CoV-2.

88. Strathmore did not request that Davio's test its own property for the presence of SARS-CoV-2.

89. Strathmore did not provide Davio's with any other direction regarding testing its property for the presence of SARS-CoV-2.

90. Strathmore denied coverage for Davio's claim on April 27, 2020, citing at length the Policy's spoilage coverage – coverage which Davio's had not sought. *See* Letter from J. Martinez to S. DiFillippo, attached as Exhibit D.

91. Strathmore's investigation fell well short of its legal and contractual obligations.

92. Strathmore's denial letter shows that it did not understand (or tried to ignore) the nature of Davio's claim, which Strathmore characterized as food spoilage.

93. Not only was Strathmore's investigation careless and superficial, but its conclusion was also wrong.

94. Strathmore's own filings with state regulators indicated that it contemplated coverage for viruses and that it knew that restaurant insureds like Davio's would "feel that such an event is well within the realm of possible fortuitous occurrences and should be covered should such an event arise." *See* Explanatory Memorandum, Exhibit B.

95. At a minimum, Davio's claim merited further investigation, as courts have found similar claims may be covered under similar policy wording.

96. On September 2, 2020, Davio's demanded Strathmore withdraw its baseless denial, adjust Davio's claim, and advance payment for those amounts supported by the proper claims adjustment. *See* Letter from M. Levine to J. Martinez, attached as Exhibit E.

97. Strathmore refused. *See* Letter from G. Varga to M. Levine, attached as Exhibit F.

98. Strathmore improperly relies on certain Policy exclusions that do not apply to Davio's claim.

99. For example, Strathmore cites to the "ordinance or law" exclusion as a justification for its denial.

100. The "ordinance or law" exclusion does not apply to Davio's claim, since it is predicated on the physical loss of or damage to property, not an ordinance or law.

101. Similarly, Strathmore cites the Policy's exclusion for "[a]cts or decisions, including the failure to act or decide, of any person, group, organization or governmental body."

102. The "acts or decisions" exclusion does not apply to Davio's claim, and courts have found that this exclusion is ambiguous and should be resolved against the insurer.

103. In denying Davio's claim, Strathmore failed to faithfully apply its own Policy language, failed to conduct a meaningful investigation, and failed to consider the facts relevant to Davio's claim against the Policy language.

104. As of the date of this filing, Strathmore has refused to acknowledge its duty to indemnify Davio's under the Policy for the losses resulting from COVID-19.

105. Upon information and belief, Strathmore has failed to adopt and implement reasonable investigation standards for COVID-19 claims and, instead, has instituted a practice of systematically denying its insureds' COVID-19 claims.



106. As a result of Strathmore's wrongful denial and inadequate investigation, Davio's has suffered and continues to suffer damages.

**E. The "All Risks" Policy is Triggered**

107. Despite Strathmore's conclusion to the contrary, the Policy *does* provide coverage for Davio's losses.

108. SARS-CoV-2 causes direct physical loss or damage that is not excluded under the Policy.

109. SARS-CoV-2 causes direct physical loss because the presence and intrusion of COVID-19 and SARS-CoV-2 onto the restaurant properties has rendered the properties unfit for their insured use—in-restaurant guest dining—and has deprived Davio's of the full insured use of its properties.

110. SARS-CoV-2 causes direct physical damage by physically and tangibly changing, altering and transforming the content of the indoor air and the composition of the surfaces throughout the buildings and structures at the restaurants—such that now these contain a concentration of SARS-CoV-2 infectious particles (whereas before they did not).

111. These Covered Causes of Loss led to the necessary suspension of Davio's operations during the period of restoration. Davio's experienced a loss of business income during that period.

112. These Covered Causes of Loss also led Davio's to incur extra expenses to minimize the suspension of its business.

113. In those locations where Davio's has restored its property and resumed operations, it is entitled to extended business income until its operations reach pre-loss levels or for 90 days,

whichever is earlier. Any such slowdown is the result of the above-mentioned Covered Causes of Loss.

114. The above-referenced Covered Causes of Loss caused direct physical loss or damage to property owned by Davio's suppliers and guests and to nearby properties that attract customers to Davio's business. Davio's lost business income due to the suspension of its operations due to the loss of dependent properties.

115. No exclusion applies to any of these losses.

116. Davio's has fulfilled all conditions precedent to coverage.

**COUNT I**  
**BREACH OF CONTRACT**

117. Davio's repeats and realleges the allegations in the preceding paragraphs.

118. The Policy is a valid and enforceable contract between Davio's and Strathmore.

119. In the Policy, Strathmore promised to pay for losses incurred as a result of causes of loss not excluded.

120. Davio's suffered direct physical loss of or damage to its property caused by or resulting from Covered Causes of Loss and incurred business income losses and extra expenses as a result.

121. Davio's has complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

122. Nonetheless, Strathmore unjustifiably refused to pay for these losses and expenses and breached the Policy.

123. Davio's has suffered and continues to suffer damages as a result of Strathmore's breach of the Policy.

124. Davio's is entitled to damages as a result of Strathmore's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems proper.

**COUNT II**  
**VIOLATION OF M.G.L. c. 93A**

125. Davio's repeats and realleges the allegations in the preceding paragraphs.

126. Massachusetts General Laws c. 93A, § 2 prohibits the use or employment of unfair or deceptive acts or practices in the conduct of trade or commerce.

127. Strathmore is engaged in the business of insurance in the Commonwealth of Massachusetts.

128. Strathmore had a duty to act in good faith when handling Davio's claim.

129. Strathmore had a statutory duty to engage in fair settlement practices under M.G.L. c. 93A.

130. Strathmore's systematic and summary denial of Davio's claim violated its duty of good faith and its statutory duty to engage in fair settlement practices.

131. In particular, Strathmore violated its statutory obligations by engaging in, *inter alia*, the following acts or practices related to Davio's claim:

- a. Misrepresenting pertinent facts or insurance Policy provisions relating to coverages at issue;
- b. Failing to act reasonably upon communications with respect to Davio's claims;
- c. Failing to adopt and implement reasonable standards for the prompt investigation of claims;
- d. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- e. Failing to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

- f. Compelling Davio's to institute this litigation to recover amounts due under the Policy; and
- g. Failing to provide a reasonable explanation with facts or applicable law for the basis in denying Davio's claim under the policy.

132. Strathmore's acts and conduct occurred in such a manner as to appear to constitute its general business practice in the handling of such claims.

133. Strathmore's acts and conduct constitute unfair or deceptive acts and practices in violation of Massachusetts's statute.

134. As a direct, foreseeable, and proximate result of Strathmore's unfair and deceptive acts and practices, Davio's has sustained actual damages including, but not limited to, the following:

- a. The amount of its claim, which is continuing;
- b. Expenses incurred after Strathmore's breach of the Policy while pursuing the claim, including attorney's fees; and
- c. Interest on the aforesaid damages.

135. Strathmore's violations of M.G.L. c. 93A have caused and will continue to cause harm to Davio's, entitling Davio's to an award of actual damages, plus attorneys' fees.

136. Strathmore's violations of M.G.L. c. 93A were knowing and willful, entitling Davio's to an award of multiple damages.

### **COUNT III** **DECLARATORY JUDGMENT**

137. Davio's repeats and realleges the allegations in the preceding paragraphs.

138. Davio's seeks the Court's declaration of the parties' rights and duties under the Policy pursuant to 28 U.S.C. § 2201.

139. A justiciable controversy exists between Davio's and Strathmore about whether the Policy provides coverage for Davio's claim.

140. Accordingly, Davio's seeks a declaration from the Court that:
- a. The Policy covers Davio's claim; and
  - b. No Policy exclusion applies to bar or limit coverage for Davio's claim.

**REQUEST FOR RELIEF**

Davio's respectfully requests that the Court enter judgment in its favor and against Strathmore, as follows:

- a. As to Count I, that Strathmore breached the Policy by failing to pay Davio's claim for Covered Causes of Loss; and
- b. As to Count II, that Strathmore violated its statutory obligations; and
- c. As to Count III, a declaration that (1) the Policy covers Davio's claim; and (2) that no exclusion in the Policy applies to bar or limit coverage for Davio's claim.

**JURY TRIAL DEMANDED**

Davio's demands trial by jury.

Date: March 11, 2022

Respectfully submitted,

PLAINTIFFS 75 ARLINGTON ST., INC.; 202 WASHINGTON ST., INC.; 111 SOUTH 17TH STREET, INC.; ONE PATRIOT PLACE LLC; 443 LEXINGTON AVENUE, INC.; 427 WALNUT ST., LLC; 201 MAIN STREET LLC; 151 GRANITE STREET LLC; and 51 LIBERTY DRIVE, LLC,

By and through their attorneys,

HUNTON ANDREWS KURTH LLP

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# **EXHIBIT A**



*This policy is issued by the following GNY Company:*

**STRATHMORE INSURANCE  
COMPANY**



This policy jacket with the policy forms, declarations page and endorsements, if any, issued to form a part thereof, completes the policy.

## **MASSACHUSETTS – FIRE LOSSES FOLLOWING TERRORISM ADVISORY NOTICE TO POLICYHOLDERS**

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverage you are provided.

Your property insurance policy includes an endorsement which imposes an exclusion or sub-limit of insurance for loss caused by acts of terrorism as defined in the endorsement. Such exclusion or sub-limit applies to all losses attributable to such acts of terrorism, including fire losses, which are subject to the federal Terrorism Risk Insurance Program (TRIP) for its duration, or its successor. Direct property loss by fire resulting from acts of terrorism after the termination of TRIP will no longer be subject to the exclusion or sub-limit stated in the aforementioned endorsement. TRIP is scheduled to terminate at the end of 2014, but action by Congress could extend that date.

## **PENNSYLVANIA FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

**COMMON POLICY DECLARATIONS**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**  
HOME OFFICE  
200 MADISON AVENUE NEW YORK, NY 10016  
A STOCK COMPANY

POLICY NUMBER **8120T23406**

POLICY TERM **1** **Year**

ACCOUNT NUMBER **20T2340619**

ENDORSEMENT NUMBER

**NAMED INSURED AND MAILING ADDRESS**  
**75 ARLINGTON ST, INC. DBA DAVIO'S**  
**(SEE NAMED INSURED ENDORSEMENT)**  
**PO BOX 786**  
**SAGAMORE BEACH MA 02562-0786**

**PRODUCER 0030459**  
**RICHARDS ROBINSON SHEPPARD INSURANCE LLC**  
**152 CONANT STREET**  
**BEVERLY MA 01915**

POLICY PERIOD: FROM **10-21-2019** TO: **10-21-2020** AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN.

ENDORSEMENT DATE:

BUSINESS DESCRIPTION: **CORPORATION**

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

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS:

		<u>PREMIUM</u>
<b>COMMERCIAL PROPERTY COVERAGE PART</b>	<b>\$</b>	<b>44,628.00</b>
<b>COMMERCIAL GENERAL LIABILITY COVERAGE PART</b>	<b>\$</b>	<b>176,058.00</b>

<b>TAX OR SURCHARGE</b>	<b>\$</b>	<b>19.96</b>
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<b>TOTAL</b>	<b>\$</b>	<b>220,705.96</b>
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**FORMS APPLICABLE TO ALL COVERAGE PARTS:**

SEE SCHEDULE OF FORMS AND ENDORSEMENTS

TOTAL PREMIUM \$ **220,705.96**

THE POLICY MAY BE SUBJECT TO ADJUSTMENT.

COUNTERSIGNED \_\_\_\_\_  
DATE

BY *Elizabeth Heck*  
AUTHORIZED REPRESENTATIVE

**DESIGNATION OF PREMISES SCHEDULE  
COMMERCIAL LINES POLICY  
THIS POLICY IS ISSUED BY THE  
STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
LOC. NO.	BLDG. NO.	DESIGNATED PREMISES (ADDRESS, CITY, STATE)	OCCUPANCY
001	001	75 ARLINGTON ST, BOSTON, MA 02116-3936 APPLIES TO: GENERAL LIABILITY, PROPERTY NUMBER OF STORIES: 001	
002	001	110 LARCH ROW, WENHAM, MA 01984-1635 APPLIES TO: GENERAL LIABILITY, PROPERTY NUMBER OF STORIES: 001	
003	001	111 S 17TH ST, PHILADELPHIA, PA 19103-5114 APPLIES TO: GENERAL LIABILITY, PROPERTY NUMBER OF STORIES: 001	
004	001	1 PATRIOT PL, FOXBOROUGH, MA 02035-1374 APPLIES TO: GENERAL LIABILITY, PROPERTY NUMBER OF STORIES: 001	
005	001	443 LEXINGTON AVE, NEW YORK, NY 10017-3908 APPLIES TO: GENERAL LIABILITY, PROPERTY NUMBER OF STORIES: 001	
006	001	427 WALNUT ST, LYNNFIELD, MA 01940-2672 APPLIES TO: GENERAL LIABILITY, PROPERTY NUMBER OF STORIES: 001	
007	001	201 MAIN ST, KING OF PRUSSIA, PA 19406-1658 APPLIES TO: GENERAL LIABILITY, PROPERTY NUMBER OF STORIES: 001	
008	001	250 GRANITE ST, BRAINTREE, MA 02184-2804 APPLIES TO: GENERAL LIABILITY, PROPERTY NUMBER OF STORIES: 001	
009	001	51 LIBERTY DR, BOSTON, MA 02210-1299 APPLIES TO: GENERAL LIABILITY, PROPERTY NUMBER OF STORIES: 001	

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## SCHEDULE OF FORMS AND ENDORSEMENTS

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

<b>NAMED INSURED</b> 75 ARLINGTON ST, INC. DBA DAVIO'S		<b>POLICY NUMBER 8120T23406</b>
		<b>ENDORSEMENT NUMBER</b>
		<b>COUNTERSIGNED BY:</b> _____
		<b>AUTHORIZED REPRESENTATIVE</b>
<b>SCHEDULE OF FORMS &amp; ENDORSEMENTS</b> EFFECTIVE DATE: 10-21-19	<b>POLICY PERIOD: FROM: 10-21-2019</b> <b>TO: 10-21-2020</b>	
<b>COMMON POLICY FORMS AND ENDORSEMENTS</b>		
SIC PJ	01-17	POLICY JACKET
IL N 088	09-03	PENNSYLVANIA FRAUD STATEMENT
GNY 001	09-91	COMMON POLICY DECLARATIONS
GNY 002	06-91	DESIGNATION OF PREMISES SCHEDULE
GNY 003A	07-09	SCHEDULE OF FORMS AND ENDORSEMENTS
GNY 003	07-09	CHANGE ENDORSEMENT
IDR COVDEC	02-09	IDENTITY RECOVERY COVERAGE PART DEC
IDRAS	03-10	IDENTITY RECOVERY COVERAGE FORM
PACAAD	01-06	ADDITIONAL CANCELLATION REASON ENDT
IL 00 03	09-08	CALCULATION OF PREMIUM
IL 00 17	11-98	COMMON POLICY CONDITIONS
IL 00 21	09-08	NUCLEAR ENERGY LIABILITY EXCLUSION ENDT
IL 00 23	07-02	NUCLEAR ENERGY LIABILITY EXCLUSION ENDT
IL 01 20	10-13	PENNSYLVANIA CHANGES - DEFENSE COST
IL 01 72	09-07	PENNSYLVANIA CHANGES
IL 01 83	08-08	NEW YORK CHANGES - FRAUD
IL 01 85	08-08	NEW YORK CHANGES-CALCULATION OF PREMIUM
IL 02 46	09-07	PENNSYLVANIA CHANGES-CANC & NONRENL
IL 02 68	01-14	NEW YORK CHANGES-CANC & NONRENL
IL 04 15	04-98	PROTECTIVE SAFEGUARDS
IL 09 10	07-02	PENNSYLVANIA NOTICE
IL 09 35	07-02	EXCL OF CERTAIN COMPUTER- RELATED LOSSES
IL 09 52	01-15	CAP/LOSSES FROM CERTIFIED ACTS OF TERROR
IL 09 85	01-15	DISCLOSURE PURSUANT/TERROR RISK INS ACT
<b>PROPERTY FORMS AND ENDORSEMENTS</b>		
GNY 004	09-91	COMMERCIAL PROPERTY COVERAGE PART
GNY 005	06-91	COMMERCIAL PROPERTY COVERAGE PART
GNYCP 03	01-18	EQUIPMENT BREAKDOWN ENHANCEMENT ENDT
CYBER DEC	04-16	CYBERONE COVERAGE SUPPLEMENTAL DECL
DATA C	11-14	DATA COMPROMISE COVERAGE FORM
DATA C DEC	11-14	DATA COMPROMISE SUPPLEMENTAL DECLARATION
GASX-101	04-01	GAS SYSTEMS ENDORSEMENT
GNY CYBER	04-16	CYBERONE COVERAGE FORM
LIMDED	03-16	AMENDMENT OF LIMITS AND DEDUCTIBLES
PROGRD R	02-11	PROTECTO GUARD ENHANCED PF COV ENDT REST

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## SCHEDULE OF FORMS AND ENDORSEMENTS

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

<b>NAMED INSURED</b> 75 ARLINGTON ST, INC. DBA DAVIO'S		<b>POLICY NUMBER 8120T23406</b>  <b>ENDORSEMENT NUMBER</b>
		<b>COUNTERSIGNED BY:</b> _____ AUTHORIZED REPRESENTATIVE
<b>SCHEDULE OF FORMS &amp; ENDORSEMENTS</b> EFFECTIVE DATE: 10-21-19		<b>POLICY PERIOD: FROM: 10-21-2019</b> <b>TO: 10-21-2020</b>
CP 00 30	06-07	BUSINESS INCOME COVERAGE (&/EX EXP)
CP 10 32	08-08	WATER EXCLUSION ENDORSEMENT
CP 10 64	09-06	MA-FUNGUS,WET/DRY ROT BACTERIA EXCL/LIMIT
FLODEC	02-05	FLOOD COVERAGE SCHEDULE AND CHANGES
CP 10 65	06-07	FLOOD COVERAGE ENDORSEMENT
EQDEC	12-17	EQ-VOLC ERUPTION COV SCHEDULE & CHANGES
CP 10 45	08-99	EARTHQUAKE AND VOLCANIC ERUPTION END'T
CP 00 10	06-07	BUILDING & PERSONAL PROPERTY COVERAGE
CP 00 90	07-88	COMMERCIAL PROPERTY CONDITIONS
CP 01 09	10-00	MASSACHUSETTS CHANGES
CP 01 33	05-18	NEW YORK CHANGES
CP 04 11	09-17	PROTECTIVE SAFEGUARDS
CP 04 40	06-07	SPOILAGE COVERAGE
CP 10 30	06-07	CAUSES OF LOSS - SPECIAL FORM
CP 99 93	10-90	TENTATIVE RATE
CP 01 64	10-12	NY CHANGES-FUNGUS, WET ROT AND DRY ROT
<b>GENERAL LIABILITY FORMS AND ENDORSEMENTS</b>		
GNY 020	11-04	GENERAL LIABILITY DECLARATIONS
GNY 021	06-91	GENERAL LIABILITY SCHEDULE
CG 00 01	04-13	COMMERCIAL GENERAL LIABILITY COV FORM
CG 00 43	05-92	CHANGES IN COMML GEN LIAB COV FORM
CG 00 61	09-99	AMEND INSURING AGREEMENT-KNOWN INJ/DAM
CG 00 67	03-05	EXCL-VIOL OF STATS THAT GOVERN EMAIL FAX
CG 01 63	07-11	NY CHANGES-COMM GEN LIAB COV FORM
CG 02 03	03-08	MA CHANGES-CANCELLATION AND NONRENEWAL
CG 21 16	04-13	EXCL-DESIGNATED PROFESSIONAL SERVICES
CG 21 65	12-04	TOTAL POLLUTION EXCL-WITH EXCEPTIONS
CG 26 21	10-91	NY CHANGES - TRANSFER OF DUTIES
CG 81 02	02-05	BASIC CONSTRUCTION EXCLUSION
CGU 00 05	02-06	AMENDMENT OF OTHER INSURANCE CONDITIONS
CGU 2100	10-94	UNDERLYING GNY LIAB AND UMBRELLA ENDT
DOPADEF	05-11	PA AMENDATORY - DEFENSE COSTS
PROGRDR GL	02-10	PROTECTO-GUARD ENH GL COV FOR RESTAURANT
XPUNDAM	06-13	EXCLUSION FOR PUNITIVE DAMAGES AND SIMIL
CG 21 47	12-07	EMPLOYMENT-RELATED PRACTICES EXCLUSION
U 331	05-04	EMPLOYEE BENEFITS LIABILITY COVERAGE PRT
CG 21 67	12-04	FUNGI OR BACTERIA EXCLUSION
GLU-113	02-05	ASBESTOS HAZARD EXCLUSION ENDT

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## SCHEDULE OF FORMS AND ENDORSEMENTS

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

<b>NAMED INSURED</b> 75 ARLINGTON ST, INC. DBA DAVIO'S		<b>POLICY NUMBER 8120T23406</b>
		<b>ENDORSEMENT NUMBER</b>
		<b>COUNTERSIGNED BY:</b> _____
		<b>AUTHORIZED REPRESENTATIVE</b>
<b>SCHEDULE OF FORMS &amp; ENDORSEMENTS</b> EFFECTIVE DATE: 10-21-19		<b>POLICY PERIOD: FROM: 10-21-2019</b> <b>TO: 10-21-2020</b>
GNV 022	06-91	LIQUOR LIABILITY DECLARATIONS
CG 00 33	04-13	LIQUOR LIABILITY COV FORM (OCCURRENCE)
CG 21 70	01-15	CAP LOSSES FROM CERTIF ACTS OF TERRORISM
CG 21 07	05-14	EXCL-ACC/DISCL OF CONFI OR PERSONAL INFO
CG 21 09	06-15	EXCLUSION - UNMANNED AIRCRAFT
CG 24 07	01-96	PROD/COMPLETED OPERATIONS HAZARD REDEFIN
CG 25 04	05-09	DESIGNATED LOCATIONS GENERAL AGGREGATE
CG 26 03	04-09	NY CHANGES - LIQUOR LIABILITY COVERAGE
CG 26 35	12-93	NY CHANGES - TRANSFER OF DUTIES
<b>POLICYHOLDER JACKETS</b>		
SIC PJ	01-17	POLICY JACKET



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## COMMON POLICY DECLARATIONS (Continued)

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

<b>NAMED INSURED</b> 75 ARLINGTON ST, INC. DBA DAVIO'S	<b>POLICY NUMBER 8120T23406</b>  <b>ENDORSEMENT NUMBER</b>
	<b>COUNTERSIGNED BY:</b> _____ <b>AUTHORIZED REPRESENTATIVE</b>
<b>COMMON POLICY DECLARATIONS (Continued)</b> <b>EFFECTIVE DATE: 10-21-19</b>	<b>POLICY PERIOD: FROM: 10-21-2019</b> <b>TO: 10-21-2020</b>
<b>THIS ENDORSEMENT IS USED AS AN OVERFLOW FOR FIELDS ON THE DECLARATIONS PAGE NOT LARGE ENOUGH FOR THE NECESSARY INFORMATION AND TO LIST OPTIONAL COVERAGES.</b>	
GNY 001 (cont.)  THE NAMED INSURED ON FORM GNY 001 IS AMENDED TO READ:  75 ARLINGTON ST, INC. DBA DAVIO'S 202 WASHINGTON ST, INC 111 SOUTH 17TH STREET, INC. DBA DAVIO'S ONE PATRIOT PLACE LLC DBA DAVIO'S 443 LEXINGTON AVENUE, INC. DBA DAVIO'S NORTHERN ITALIAN STEAKHOUSE 427 WALNUT ST, LLC DBA DAVIO'S NORTHERN ITALIAN STEAKHOUSE 201 MAIN STREET LLC DBA DAVIO'S NORTHERN ITALIAN STEAKHOUSE 151 GRANITE STREET LLC DBA DAVIO'S NORTHERN ITALIAN STEAKHOUSE 51 LIBERTY DRIVE, LLC	

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COMMON POLICY DECLARATIONS (Continued)

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

<b>NAMED INSURED</b> 75 ARLINGTON ST, INC. DBA DAVIO'S	<b>POLICY NUMBER 8120T23406</b>  <b>ENDORSEMENT NUMBER</b>
	<b>COUNTERSIGNED BY:</b> _____ <b>AUTHORIZED REPRESENTATIVE</b>
<b>COMMON POLICY DECLARATIONS (Continued)</b> <b>EFFECTIVE DATE: 10/21/2019</b>	<b>POLICY PERIOD: FROM: 10-21-2019</b> <b>TO: 10-21-2020</b>

THIS ENDORSEMENT IS USED AS AN OVERFLOW FOR FIELDS ON THE DECLARATIONS PAGE NOT LARGE ENOUGH FOR THE NECESSARY INFORMATION AND TO LIST OPTIONAL COVERAGES.

IT IS HEREBY AGREED AND UNDERSTOOD THAT THIS POLICY IS PAYABLE ON INSTALLMENTS AS FOLLOWS:

DUE	PREVIOUS TOTAL	PREMIUM	SURCHARGE	GRAND TOTAL
DEPOSIT 10/21/2019		55,174.00	19.96	55,193.96
INSTALL 11/21/2019		20,689.00		20,689.00
INSTALL 12/21/2019		20,689.00		20,689.00
INSTALL 01/21/2020		20,689.00		20,689.00
INSTALL 02/21/2020		20,689.00		20,689.00
INSTALL 03/21/2020		20,689.00		20,689.00
INSTALL 04/21/2020		20,689.00		20,689.00
INSTALL 05/21/2020		20,689.00		20,689.00
INSTALL 06/21/2020		20,689.00		20,689.00

THERE IS A \$6 SERVICE FEE FOR EACH PREMIUM INSTALLMENT.  
THIS FEE IS NOT INCLUDED IN THE PREMIUMS SHOWN ABOVE.

## Identity Recovery Coverage Part Declarations

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Named Insured: 75 ARLINGTON ST, INC. DBA

Policy Number 8120T23406

Effective Date 10-21-19

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### Expense Reimbursement Coverage Limit

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\$25,000 Annual Aggregate Limit per Insured

### Special Terms or Conditions

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# Identity Recovery 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 G - DEFINITIONS.

## A. COVERAGE

We will provide the Case Management Service and Expense Reimbursement Coverage indicated below if all of the following requirements are met:

1. There has been an "identity theft" involving the personal identity of an "identity recovery insured" under this policy;
2. Such "identity theft" is first discovered by the "identity recovery insured" during the policy period for which this Identity Recovery coverage is applicable;
3. Such "identity theft" is reported in writing to the police; and
4. Such "identity theft" is reported to us within 60 days after it is first discovered by the "identity recovery insured."

If all four of the requirements listed above have been met, then we will provide the following to the "identity recovery insured":

### 1. Case Management Service

Services of an "identity recovery case manager" as needed to respond to the "identity theft"; and

### 2. Expense Reimbursement

Reimbursement of necessary and reasonable "identity recovery expenses" incurred as a direct result of the "identity theft."

You may make a claim under this coverage prior to reporting the "identity theft" to the police, and we may refer the "identity recovery insured" to an "identity recovery case manager" if the other three coverage requirements are met. However, we will not reimburse any "identity recovery expenses" until the "identity theft" has been reported in writing to the police, and we reserve our right to terminate the services of the "identity recovery case manager" if the "identity recovery insured" does not make such a written report to the police within a reasonable period of time.

## B. EXCLUSIONS

We do not cover:

1. "Identity recovery expenses" incurred to restore a professional or business identity.
2. "Identity recovery expenses" incurred due to any fraudulent, dishonest or criminal act by an "identity recovery insured" or any person aiding or abetting an "identity recovery insured", or by any authorized representative of an "identity recovery insured", whether acting alone or in collusion with others. However, this exclusion shall not apply to the interests of an "identity recovery insured" who has no knowledge of or involvement in such fraud, dishonesty or criminal act.
3. Loss arising from an "identity theft" that is not reported in writing to the police.
4. Loss arising from war, including any the following and any consequence of the following:
  - a. Undeclared war, civil war, insurrection rebellion or revolution;
  - b. Warlike act by a military force or military personnel; or
  - c. Destruction, seizure or use for a military purpose.
5. Loss arising from Nuclear Hazard. Nuclear Hazard means any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.

## C. LIMITS OF INSURANCE

1. Case Management Service is available as needed for any one "identity theft" for up to 12 consecutive months from the inception of the service. Expenses we incur to provide Case Management Service do not reduce the amount of limit available for Expense Reimbursement coverage.
2. Expense Reimbursement coverage is subject to a limit as indicated in the Declarations. This is an annual aggregate limit per "identity recovery insured." Regardless of the number of claims, this limit is the most we will pay for the total of all loss or expense arising out of all "identity thefts" to any one "identity recovery insured" which are first discovered by the "identity recovery insured" during a 12-month period

starting with the beginning of the present annual policy period. If an "identity theft" is first discovered in one policy period and continues into other policy periods, all loss and expense arising from such "identity theft" will be subject to the aggregate limit applicable to the policy period when the "identity theft" was first discovered.

3. Legal costs as provided under item d. of the definition of "identity recovery expenses" are part of, and not in addition to, the Expense Reimbursement coverage limit.
4. Item e. (Lost Wages) and item f. (Child and Elder Care Expenses) of the definition of "identity recovery expenses" are jointly subject to a sublimit of \$5,000. This sublimit is part of, and not in addition to, the Expense Reimbursement coverage limit. Coverage is limited to wages lost and expenses incurred within 12 months after the first discovery of the "identity theft" by the "identity recovery insured."
5. Item g. (Mental Health Counseling) of the definition of "identity recovery expenses" is subject to a sublimit of \$1,000. This sublimit is part of, and not in addition to, the Expense Reimbursement coverage limit. Coverage is limited to counseling that takes place within 12 months after the first discovery of the "identity theft" by the "identity recovery insured."
6. Item h. (Miscellaneous Unnamed Costs) of the definition of "identity recovery expenses" is subject to a sublimit of \$1,000. This sublimit is part of, and not in addition to, the Expenses Reimbursement coverage limit. Coverage is limited to costs incurred within 12 months after the first discovery of the "identity theft" by the "identity recovery insured."

#### **D. DEDUCTIBLES**

1. Case Management Service is not subject to a deductible
2. Expense Reimbursement coverage is subject to a \$500 deductible. Any one "identity recovery insured" shall be responsible for only one deductible under this Identity Recovery Coverage during any one policy period.

#### **E. LOSS CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:

##### **1. Duties in the Event of Loss or Damage**

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

- a. Report the "identity theft" to the police in writing.
- b. Give us a prompt notice of the loss.
- c. Send us a signed, sworn proof of loss containing the information we request. You

must do this within 60 days after our request.

- d. Cooperate with us in the investigation and settlement of the claim.

#### **2. Assistance and Claims**

For assistance, the "identity recovery insured" should call the **Identity Recovery Help Line at 1-800-414-9905**. The Help Line can provide:

- a. Information and advice for how to respond to a possible "identity theft"; and
- b. Instructions for how to submit a service request for Case Management Service and/or a claim form for Expense Reimbursement Coverage.

In some cases, we may provide Case Management services at our expense to an "identity recovery insured" prior to a determination that a covered "identity theft" has occurred. Our provision of such services is not an admission of liability under the policy. We reserve the right to deny further coverage or service if, after investigation, we determine that a covered "identity theft" has not occurred.

As respects Expense Reimbursement Coverage, the "identity recovery insured" must send to us, within 60 days after our request, receipts, bills or other records that support his or her claim for "identity recovery expenses."

#### **F. ADDITIONAL CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:

##### **1. Bankruptcy**

The bankruptcy or insolvency of you or your estate will not relieve you or us of any obligation under this Identity Recovery Coverage.

##### **2. Concealment, Misrepresentation or Fraud**

We will not pay for any loss and coverage will be void if you or any additional insured at any time:

- a. Intentionally cause or allow loss or expense in order to collect on insurance; or
- b. Intentionally conceal or misrepresent a material fact concerning:
  - (1) This Identity Recovery Coverage; or
  - (2) A claim under this Identity Recovery Coverage.

##### **3. Coverage Territory**

Subject to its terms, conditions and exclusions, this policy applies to an "identity theft" occurring anywhere in the world, but we shall only pay for loss incurred by an "identity recovery insured" in the United States, Puerto Rico or Canada.

## 5. Legal Action Against Us

No one may bring a legal action against us under this Identity Recovery Coverage unless:

- a. There has been full compliance with all the terms of this Identity Recovery Coverage; and
- b. The action is brought within two years after the date that the "identity theft" is first discovered by the "identity recovery insured."

## 6. Liberalization

If we adopt any standard form revision for general use that would broaden the coverage under this Identity Recovery Coverage without additional premium, the broadened coverage will apply to this Identity Recovery Coverage commencing on the date that such revision becomes effective in the jurisdiction of the mailing address for the First Named Insured.

## 7. Other Insurance

If there is other insurance that applies to the same loss, damage or expense, this Identity Recovery Coverage shall apply on a primary basis.

## 8. Services

The following conditions apply as respects any services provided by us or our designees to any "identity recovery insured" under this endorsement:

- a. Our ability to provide helpful services in the event of an "identity theft" depends on the cooperation, permission and assistance of the "identity recovery insured."
- b. All services may not be available or applicable to all individuals. For example, "identity recovery insureds" who are minors or foreign nationals may not have credit records that can be provided or monitored. Service in Canada will be different from service in the United States and Puerto Rico in accordance with local conditions.
- c. We do not warrant or guarantee that our services will end or eliminate all problems associated with an "identity theft" or prevent future "identity thefts."

## G. DEFINITIONS

1. **"Identity Recovery Case Manager"** means one or more individuals assigned by us to assist an "identity recovery insured" with communications we deem necessary for re-establishing the integrity of the personal identity of the "identity recovery insured." This includes, with the permission and cooperation of the "identity recovery insured," written and

telephone communications with law enforcement authorities, governmental agencies, credit agencies and individual creditors and businesses.

2. **"Identity Recovery Expenses"** means the following when they are reasonable and necessary expenses that are incurred as a direct result of an "identity theft":
  - a. Costs for re-filing applications for loans, grants or other credit instruments that are rejected solely as a result of an "identity theft."
  - b. Costs for notarizing affidavits or other similar documents, long distance telephone calls and postage solely as a result of your efforts to report an "identity theft" or amend or rectify records as to your true name or identity as a result of an "identity theft."
  - c. Costs for credit reports from established credit bureaus.
  - d. Fees and expenses for an attorney approved by us for the following:
    - (1) The defense of any civil suit brought against an "identity recovery insured."
    - (2) The removal of any civil judgment wrongfully entered against an "identity recovery insured."
    - (3) Legal assistance for an "identity recovery insured" at an audit or hearing by a governmental agency.
    - (4) Legal assistance in challenging the accuracy of the "identity recovery insured's" consumer credit report.
    - (5) The defense of any criminal charges brought against an "identity recovery insured" arising from the actions of a third party using the personal identity of the "identity recovery insured."
  - e. Actual lost wages of the "identity recovery insured" for time reasonably and necessarily taken away from work and away from the work premises. Time away from work includes partial or whole work days. Actual lost wages may include payment for vacation days, discretionary days, floating holidays and paid personal days. Actual lost wages does not include sick days or any loss arising from time taken away from self employment. Necessary time off does not include time off to do tasks that could reasonably have been done during non-working hours.
  - f. Actual costs for supervision of children or elderly or infirm relatives or dependants of

the "identity recovery insured" during time reasonably and necessarily taken away from such supervision. Such care must be provided by a professional care provider who is not a relative of the "identity recovery insured."

- g. Actual costs for counseling from a licensed mental health professional. Such care must be provided by a professional care provider who is not a relative of the "identity recovery insured."
- h. Any other reasonable costs necessarily incurred by an "identity recovery insured" as a direct result of the "identity theft." Such costs include:
  - (1) Costs by the "identity recovery insured" to recover control over his or her personal identity.
  - (2) Deductibles or service fees from financial institutions.  
Such costs do not include:
    - (3) Costs to avoid, prevent or detect "identity theft" or other loss.
    - (4) Monies lost or stolen.
    - (5) Costs that are restricted or excluded elsewhere in this endorsement or policy.

3. **'Identity Recovery Insured'** means the following:
- a. A full time employee of the entity insured under this policy; or
  - b. An owner of the entity insured under this policy who meets any of the following criteria:
    - (1) A sole proprietor of the insured entity;
    - (2) A partner in the insured entity; or
    - (3) An individual having an ownership position of 20% or more of the insured entity.
  - d. When the entity insured under this policy is a co-operative or condominium association, the current directors and officers of the insured association.

An "identity recovery insured" must always be an individual person. Any entity insured under this policy, other than an individual person, is not an "identity recovery insured."

4. **'Identity Theft'** means the fraudulent use of the social security number or other method of identifying an "identity recovery insured." This includes fraudulently using the personal identity of an "identity recovery insured" to establish credit accounts, secure loans, enter

into contracts or commit crimes.

"Identity theft" does not include the fraudulent use of a business name, d/b/a or any other method of identifying a business activity.

# **GNY INSURANCE COMPANIES**

## **Additional Cancellation Reason Endorsement**

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL UMBRELLA LIABILITY POLICY  
COMMERCIAL PROPERTY COVERAGE PART  
COMMERCIAL CRIME AND FIDELITY COVERAGE  
LIQUOR LIABILITY COVERAGE PART  
DIRECTORS' AND OFFICERS' LIABILITY COVERAGE PART

The following is added as a reason for which we may cancel your policy:

We may cancel this policy for the Insured's failure to comply with safety standards and/or loss control recommendations if:

1. We performed an inspection no later than 60 days after the inception date of the policy or
2. During the policy period, the condition causing the recommendations or the violation of safety standards began or substantially increased.

This provision applies only if: we provided:

- a. The Insured with written notice of the failure to comply with the safety standards and loss control recommendations; and
- b. The Named Insured with a reasonable opportunity to cure deficiencies, but the deficiencies were not corrected.



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

## **CALCULATION OF PREMIUM**

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 PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

## COMMON POLICY CONDITIONS

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

### A. Cancellation

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

### B. Changes

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

### C. Examination Of Your Books And Records

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

### D. Inspections And Surveys

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

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

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

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

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

### E. Premiums

The first Named Insured shown in the Declarations:

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

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

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

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

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

## **NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT**

(Broad Form)

This endorsement modifies insurance provided under the following:

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

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

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

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

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

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

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

"Nuclear facility" means:

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

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

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

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

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

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

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

## **NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT**

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 FARM COVERAGE PART  
 LIQUOR LIABILITY COVERAGE PART  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
 POLLUTION LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
 RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
 SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY NEW YORK DEPARTMENT OF  
 TRANSPORTATION

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

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

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

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

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

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

"Nuclear facility" means:

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

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

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

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

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

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

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

## **PENNSYLVANIA CHANGES – DEFENSE COSTS**

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 COMMERCIAL LIABILITY UMBRELLA COVERAGE PART  
 COMMERCIAL PROPERTY COVERAGE PART – LEGAL LIABILITY COVERAGE FORM  
 COMMERCIAL PROPERTY COVERAGE PART – MORTGAGEHOLDER'S ERRORS AND OMISSIONS  
 COVERAGE FORM  
 ELECTRONIC DATA LIABILITY COVERAGE PART  
 EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
 FARM COVERAGE PART  
 FARM UMBRELLA LIABILITY POLICY  
 LIQUOR LIABILITY COVERAGE PART  
 MEDICAL PROFESSIONAL LIABILITY COVERAGE PART  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
 POLLUTION LIABILITY COVERAGE PART  
 PRODUCT WITHDRAWAL COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
 RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
 UNDERGROUND STORAGE TANK COVERAGE PART

- A.** The provisions of Paragraph **B.** are added to all Insuring Agreements that set forth a duty to defend under:
1. Section **I** of the Commercial General Liability, Commercial Liability Umbrella, Electronic Data Liability, Employment-related Practices Liability, Farm, Liquor Liability, Medical Professional Liability, Owners And Contractors Protective Liability, Pollution Liability, Product Withdrawal, Products/Completed Operations Liability, Railroad Protective Liability and Underground Storage Tank Coverage Parts, Auto Dealers Coverage Form and the Farm Umbrella Liability Policy;
  2. Section **II** under the Auto Dealers, Business Auto and Motor Carrier Coverage Forms;
  3. Section **III** under the Auto Dealers and Motor Carrier Coverage Forms;
  4. Section **A.** Coverage under the Legal Liability Coverage Form; and
  5. Coverage **C** – Mortgageholder's Liability under the Mortgageholder's Errors And Omissions Coverage Form.
- Paragraph **B.** also applies to any other provision in the policy that sets forth a duty to defend.
- B.** If we initially defend an insured ("insured") or pay for an insured's ("insured's") defense but later determine that none of the claims ("claims"), for which we provided a defense or defense costs, are covered under this insurance, we have the right to reimbursement for the defense costs we have incurred.
- The right to reimbursement under this provision will only apply to the costs we have incurred after we notify you in writing that there may not be coverage and that we are reserving our rights to terminate the defense or the payment of defense costs and to seek reimbursement for defense costs.

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

## **PENNSYLVANIA CHANGES**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
 COMMERCIAL INLAND MARINE COVERAGE PART  
 COMMERCIAL PROPERTY COVERAGE PART  
 CRIME AND FIDELITY COVERAGE PART  
 EQUIPMENT BREAKDOWN COVERAGE PART  
 FARM COVERAGE PART

**A.** For insurance provided under the:

Capital Assets Program (Output Policy) Coverage Part  
 Commercial Inland Marine Coverage Part  
 Commercial Property Coverage Part  
 Crime And Fidelity Coverage Part  
 Equipment Breakdown Coverage Part

The **TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY** Common Policy Condition is replaced by the following:

**F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

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

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

If you die, this Coverage Part will remain in effect as provided in **1.** or **2.** below, whichever is later:

- 1.** For 180 days after your death regardless of the policy period shown in the Declarations, unless the insured property is sold prior to that date; or
- 2.** Until the end of the policy period shown in the Declarations, unless the insured property is sold prior to that date.

Coverage during the period of time after your death is subject to all provisions of this policy including payment of any premium due for the policy period shown in the Declarations and any extension of that period.

**B.** For insurance provided under the:

Capital Assets Program (Output Policy) Coverage Part

Commercial Inland Marine Coverage Part  
 Commercial Property Coverage Part  
 Farm Coverage Part

The following is added to the **LOSS PAYMENT** Loss Condition and supersedes any provision to the contrary:

**NOTICE OF ACCEPTANCE OR DENIAL OF CLAIM**

- 1.** Except as provided in **3.** below, we will give you notice, within 15 working days after we receive a properly executed proof of loss, that we:

- a.** Accept your claim;
- b.** Deny your claim; or
- c.** Need more time to determine whether your claim should be accepted or denied.

If we deny your claim, such notice will be in writing, and will state any policy provision, condition or exclusion used as a basis for the denial.

If we need more time to determine whether your claim should be accepted or denied, the written notice will state the reason why more time is required.



2. If we have not completed our investigation, we will notify you again in writing, within 30 days after the date of the initial notice as provided in **1.c.** above, and thereafter every 45 days. The written notice will state why more time is needed to investigate your claim and when you may expect us to reach a decision on your claim.
3. The notice procedures in **1.** and **2.** above do not apply if we have a reasonable basis, supported by specific information, to suspect that an insured has fraudulently caused or contributed to the loss by arson or other illegal activity. Under such circumstances, we will notify you of the disposition of your claim within a period of time reasonable to allow full investigation of the claim, after we receive a properly executed proof of loss.

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

## **NEW YORK CHANGES – FRAUD**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART – FARM PROPERTY – OTHER FARM PROVISIONS FORM – ADDITIONAL COVERAGES, CONDITIONS, DEFINITIONS  
FARM COVERAGE PART – LIVESTOCK COVERAGE FORM  
FARM COVERAGE PART – MOBILE AGRICULTURAL MACHINERY AND EQUIPMENT COVERAGE FORM

The **CONCEALMENT, MISREPRESENTATION OR FRAUD** Condition is replaced by the following:

### **FRAUD**

We do not provide coverage for any insured ("insured") who has made fraudulent statements or engaged in fraudulent conduct in connection with any loss ("loss") or damage for which coverage is sought under this policy.

However, with respect to insurance provided under the COMMERCIAL AUTOMOBILE COVERAGE PART, we will provide coverage to such "insured" for damages sustained by any person who has not made fraudulent statements or engaged in fraudulent conduct if such damages are otherwise covered under the policy.

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

## **NEW YORK CHANGES – CALCULATION OF PREMIUM**

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 PROPERTY COVERAGE PART  
 CRIME AND FIDELITY COVERAGE PART  
 EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
 EQUIPMENT BREAKDOWN COVERAGE PART  
 FARM COVERAGE PART  
 LIQUOR LIABILITY COVERAGE PART  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
 RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
 SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY - NEW YORK

- A.** For policies with fixed terms in excess of one year, or policies with no stated expiration date, except as provided in Paragraph **B.**, the following applies:
- The premium shown in the Declarations was computed based on rates and rules in effect at the time the policy was issued. On each renewal or continuation of this policy, we will compute the premium in accordance with our rates and rules then in effect.
- B.** For policies with fixed terms in excess of one year, where premium is computed and paid annually, the following applies:
- 1.** The premium shown in the Declarations was computed based on rates and rules in effect at the time the policy was issued. Such rates and rules will be used to calculate the premium at each anniversary, for the entire term of the policy, unless the specific reasons described in Paragraph **2.** or **3.** apply.
  - 2.** The premium will be computed based on the rates and rules in effect on the anniversary date of the policy only when, subsequent to the inception of the current policy period, one or more of the following occurs:
    - a.** After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and that occurred subsequent to inception of the current policy period;
    - b.** A material physical change in the property insured, occurring after issuance or last anniversary renewal date of the policy, causes the property to become uninsurable in accordance with underwriting standards in effect at the time the policy was issued or last renewed; or
    - c.** A material change in the nature or extent of the risk, occurring after issuance or last anniversary renewal date of the policy, which causes the risk of "loss" to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed.
  - 3.** If, subsequent to the inception of the current policy period, the Limit of Insurance is increased, or Additional Coverages or Causes of Loss are insured, the rate and rules in effect at the time of the change will be applied to calculate the premium and will continue to apply to the change at subsequent anniversary dates.

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

## **PENNSYLVANIA 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 POLICY  
 LIQUOR LIABILITY COVERAGE PART  
 POLLUTION LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**A.** The **Cancellation** Common Policy Condition is replaced by the following:

### **CANCELLATION**

**1.** The first Named Insured shown in the Declarations may cancel this policy by writing or giving notice of cancellation.

**2. Cancellation Of Policies In Effect For Less Than 60 Days**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least 30 days before the effective date of cancellation.

**3. Cancellation Of Policies In Effect For 60 Days Or More**

If this policy has been in effect for 60 days or more or if this policy is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:

**a.** You have made a material misrepresentation which affects the insurability of the risk. Notice of cancellation will be mailed or delivered at least 15 days before the effective date of cancellation.

**b.** You have failed to pay a premium when due, whether the premium is payable directly to us or our agents or indirectly under a premium finance plan or extension of credit. Notice of cancellation will be mailed at least 15 days before the effective date of cancellation.

**c.** A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become known during the policy period. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

**d.** Loss of reinsurance or a substantial decrease in reinsurance has occurred, which loss or decrease, at the time of cancellation, shall be certified to the Insurance Commissioner as directly affecting in-force policies. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

- e. Material failure to comply with policy terms, conditions or contractual duties. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- f. Other reasons that the Insurance Commissioner may approve. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

This policy may also be cancelled from inception upon discovery that the policy was obtained through fraudulent statements, omissions or concealment of facts material to the acceptance of the risk or to the hazard assumed by us.

- 4. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. Notice of cancellation will state the specific reasons for cancellation.
- 5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- 6. 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 and will be returned within 10 business days after the effective date of cancellation. If the first Named Insured cancels, the refund may be less than pro rata and will be returned within 30 days after the effective date of cancellation. The cancellation will be effective even if we have not made or offered a refund.

- 7. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.
- B. The following are added and supersede any provisions to the contrary:

**1. Nonrenewal**

If we decide not to renew this policy, we will mail or deliver written notice of nonrenewal, stating the specific reasons for nonrenewal, to the first Named Insured at least 60 days before the expiration date of the policy.

**2. Increase Of Premium**

If we increase your renewal premium, we will mail or deliver to the first Named Insured written notice of our intent to increase the premium at least 30 days before the effective date of the premium increase.

Any notice of nonrenewal or renewal premium increase will be mailed or delivered to the first Named Insured's last known address. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.

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

## **NEW YORK CHANGES – CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 COMMERCIAL INLAND MARINE COVERAGE PART  
 COMMERCIAL PROPERTY COVERAGE PART  
 CRIME AND FIDELITY COVERAGE PART  
 EQUIPMENT BREAKDOWN COVERAGE PART  
 FARM COVERAGE PART  
 LIQUOR LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**A. Paragraphs 1., 2., 3. and 5. of the Cancellation Common Policy Condition are replaced by the following:**

**1.** The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.

**2. Cancellation Of Policies In Effect**

**a. 60 Days Or Less**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1)** 30 days before the effective date of cancellation if we cancel for any reason not included in Paragraph **A.2.b.** below.
- (2)** 15 days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph **A.2.b.** below.

**b. For More Than 60 Days**

If this policy has been in effect for more than 60 days, or if this policy is a renewal or continuation of a policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least 15 days before the effective date of cancellation:

- (1)** Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;

**(2)** Conviction of a crime arising out of acts increasing the hazard insured against;

**(3)** Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;

**(4)** After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;

**(5)** Material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;

**(6)** Required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;

(7) A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code; or

(8) Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.

3. We will mail or deliver our notice, including the reason for cancellation, to the first Named Insured at the address shown in the policy and to the authorized agent or broker.

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.

However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.

**B.** The following is added to the **Cancellation** Common Policy Condition:

7. If one of the reasons for cancellation in Paragraph **A.2.b.** or **D.2.b.(2)** exists, we may cancel this entire policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this policy.

**C.** The following conditions are added:

**1. Nonrenewal**

If we decide not to renew this policy we will send notice as provided in Paragraph **C.3.** below.

**2. Conditional Renewal**

If we conditionally renew this policy subject to:

a. A change of limits;

b. A change in type of coverage;

c. A reduction of coverage;

d. An increased deductible;

e. An addition of exclusion; or

f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph **C.3.** below.

**3. Notices Of Nonrenewal And Conditional Renewal**

a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs **C.1.** and **C.2.** above, we will mail or deliver written notice to the first Named Insured shown in the Declarations at least 60 but not more than 120 days before:

(1) The expiration date; or

(2) The anniversary date if this is a continuous policy.

b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.

d. If we violate any of the provisions of Paragraph **C.3.a., b.** or **c.** above by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:

(1) And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel;

- (2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.
  - e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:
    - (1) Upon expiration of the 60-day period, unless Subparagraph (2) below applies; or
    - (2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.
  - f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.
- D.** The following provisions apply when the Commercial Property Coverage Part, the Farm Coverage Part or the Capital Assets Program (Output Policy) Coverage Part is made a part of this policy:
1. Items **D.2.** and **D.3.** apply if this policy meets the following conditions:
    - a. The policy is issued or issued for delivery in New York State covering property located in this state; and
    - b. The policy insures:
      - (1) For loss of or damage to structures, other than hotels or motels, used predominantly for residential purposes and consisting of no more than four dwelling units; or
      - (2) For loss of or damage to personal property other than farm personal property or business property; or
      - (3) Against damages arising from liability for loss of, damage to or injury to persons or property, except liability arising from business or farming; and
  - c. The portion of the annual premium attributable to the property and contingencies described in **1.b.** exceeds the portion applicable to other property and contingencies.
- 2.** Paragraph **2.** of the **Cancellation** Common Policy Condition is replaced by the following:
- 2. Procedure And Reasons For Cancellation**
- a. We may cancel this entire policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
    - (1) 15 days before the effective date of cancellation if we cancel for nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due; or
    - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
  - b. But if this policy:
    - (1) Has been in effect for more than 60 days; or
    - (2) Is a renewal of a policy we issued; we may cancel this policy only for one or more of the following reasons:
      - (1) Nonpayment of premium, provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
      - (2) Conviction of a crime arising out of acts increasing the risk of loss;
      - (3) Discovery of fraud or material misrepresentation in obtaining the policy or in making a claim;
      - (4) Discovery of willful or reckless acts or omissions increasing the risk of loss;
      - (5) Physical changes in the covered property that make that property uninsurable in accordance with our objective and uniformly applied underwriting standards in effect when we:
        - (a) Issued the policy; or
        - (b) Last voluntarily renewed the policy;



- (6) The Superintendent of Financial Services' determination that continuing the policy would violate Chapter 28 of the Insurance Law; or
- (7) Required pursuant to a determination by the Superintendent of Financial Services that the continuation of our present premium volume would be hazardous to the interests of our policyholders, our creditors or the public.

3. The following are added:

**a. Conditional Continuation**

Instead of cancelling this policy, we may continue it on the condition that:

- (1) The policy limits be changed; or
- (2) Any coverage not required by law be eliminated.

If this policy is conditionally continued, we will mail or deliver to the first Named Insured written notice at least 20 days before the effective date of the change or elimination. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**b. Nonrenewal**

If, as allowed by the laws of New York State, we:

- (1) Do not renew this policy; or
- (2) Condition policy renewal upon:
  - (a) Change of limits; or
  - (b) Elimination of coverage;

we will mail or deliver written notice of nonrenewal or conditional renewal:

- (a) At least 45 days; but
- (b) Not more than 60 days;

before the expiration date of the policy. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**E.** The following is added to the Farm Property – Other Farm Provisions Form – Additional Coverages, Conditions, Definitions, the Commercial Property Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

When the property is subject to the Anti-arson Application in accordance with New York Department of Financial Services' Insurance Regulation No. 96, the following provisions are added:

If you fail to return the completed, signed and affirmed anti-arson application to us:

- 1. Or our broker or agent within 45 days of the effective date of a new policy, we will cancel the entire policy by giving 20 days' written notice to you and to the mortgageholder shown in the Declarations.
- 2. Before the expiration date of any policy, we will cancel the policy by giving written notice to you and to the mortgageholder shown in the Declarations at least 15 days before the effective date of cancellation.

The cancellation provisions set forth in **E.1.** and **E.2.** above supersede any contrary provisions in this policy including this endorsement.

If the notice in **E.1.** or **E.2.** above is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

**F.** The following applies to the Commercial Property Coverage Part, the Farm Coverage Part and the Capital Assets Program (Output Policy) Coverage Part:

Paragraphs **f.** and **g.** of the **Mortgageholders** Condition are replaced by the following:

**f. Cancellation**

- (1) If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (a) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (b) 30 days before the effective date of cancellation if we cancel for any other reason.

(2) If you cancel this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, cancellation will become effective on the later of:

- (a) The effective date of cancellation of the insured's coverage; or
- (b) 10 days after we give notice to the mortgageholder.

**g. Nonrenewal**

(1) 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) If you elect not to renew this policy, we will give written notice to the mortgageholder. With respect to the mortgageholder's interest only, nonrenewal will become effective on the later of:

- (a) The expiration date of the policy; or
- (b) 10 days after we give notice to the mortgageholder.

**G.** The following provisions apply when the following are made a part of this policy:

- Commercial General Liability Coverage Part
- Employment-Related Practices Liability Coverage Part
- Farm Liability Coverage Form
- Liquor Liability Coverage Part
- Products/Completed Operations Liability Coverage Part

- 1. The aggregate limits of this policy as shown in the Declarations will be increased in proportion to any policy extension provided in accordance with Paragraph **C.3.d.** above.
- 2. The last sentence of Limits Of Insurance does not apply when the policy period is extended because we sent the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice.

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

## PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART

### SCHEDULE\*

	Prem. No.	Bldg. No.	Protective Safeguards Symbols Applicable
<b>Describe any "P-9":</b>			P-1
* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.			

**A.** The following is added to the:

- Commercial Property Conditions
- General Conditions in the Farm Property – Other Farm Provisions Form – Additional Coverages, Conditions, Definitions
- General Conditions in the Mobile Agricultural Machinery and Equipment Coverage Form
- General Conditions in the Livestock Coverage Form

**PROTECTIVE SAFEGUARDS**

1. As a condition of this insurance, you are required to maintain the protective devices or services listed in the Schedule above.
2. The protective safeguards to which this endorsement applies are identified by the following symbols:

**"P-1" Automatic Sprinkler System,** including related supervisory services.

Automatic Sprinkler System means:

- a. Any automatic fire protective or extinguishing system, including connected:
  - (1) Sprinklers and discharge nozzles;
  - (2) Ducts, pipes, valves and fittings;

(3) Tanks, their component parts and supports; and

(4) Pumps and private fire protection mains.

b. When supplied from an automatic fire protective system:

(1) Non-automatic fire protective systems; and

(2) Hydrants, standpipes and outlets.

**"P-2" Automatic Fire Alarm,** protecting the entire building, that is:

- a. Connected to a central station; or
- b. Reporting to a public or private fire alarm station.

**"P-3" Security Service,** with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

**"P-4" Service Contract** with a privately owned fire department providing fire protection service to the described premises.

**"P-9"** The protective system described in the Schedule.

**B.** The following is added to the EXCLUSIONS section of:

CAUSES OF LOSS – BASIC FORM  
CAUSES OF LOSS – BROAD FORM  
CAUSES OF LOSS – SPECIAL FORM  
MORTGAGE HOLDERS ERRORS AND  
OMISSIONS COVERAGE FORM  
STANDARD PROPERTY POLICY  
CAUSES OF LOSS FORM – FARM  
PROPERTY  
MOBILE AGRICULTURAL MACHINERY  
AND EQUIPMENT COVERAGE FORM  
LIVESTOCK COVERAGE FORM

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you:

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

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

## PENNSYLVANIA NOTICE

An Insurance Company, its agents, employees, or service contractors acting on its behalf, may provide services to reduce the likelihood of injury, death or loss. These services may include any of the following or related services incident to the application for, issuance, renewal or continuation of, a policy of insurance:

1. Surveys;
2. Consultation or advice; or
3. Inspections.

The "Insurance Consultation Services Exemption Act" of Pennsylvania provides that the Insurance Company, its agents, employees or service contractors acting on its behalf, is not liable for damages from injury, death or loss occurring as a result of any act or omission by any person in the furnishing of or the failure to furnish these services.

The Act does not apply:

1. If the injury, death or loss occurred during the actual performance of the services and was caused by the negligence of the Insurance Company, its agents, employees or service contractors;
2. To consultation services required to be performed under a written service contract not related to a policy of insurance; or
3. If any acts or omissions of the Insurance Company, its agents, employees or service contractors are judicially determined to constitute a crime, actual malice, or gross negligence.

### Instruction to Policy Writers

Attach the Pennsylvania Notice to all new and renewal certificates insuring risks located in Pennsylvania.

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

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

This endorsement modifies insurance provided under the following:

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

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

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

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

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

## **CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
STANDARD PROPERTY POLICY

### **A. Cap On Certified Terrorism Losses**

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

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

### **B. Application Of Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

## **DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT**

### **SCHEDULE**

<p><b>SCHEDULE – PART I</b></p> <p><b>Terrorism Premium (Certified Acts) \$6,069</b>  <b>This premium is the total Certified Acts premium attributable to the following Coverage Part(s), Coverage Form(s) and/or Policy(ies):</b>          ANY OF THE FOLLOWING LINES OF BUSINESS THAT ARE A PART OF THIS POLICY:          COMMERCIAL PROPERTY          COMMERCIAL GENERAL LIABILITY          COMMERCIAL INLAND MARINE          DIRECTOR'S AND OFFICERS LIABILITY          IDENTITY RECOVERY COVERAGE PART</p> <p><b>Additional information, if any, concerning the terrorism premium:</b></p>
<p><b>SCHEDULE – PART II</b></p> <p><b>Federal share of terrorism losses</b> <u>81%</u> <b>Year: 20</b> <u>19</u>          (Refer to Paragraph B. in this endorsement.)</p> <p><b>Federal share of terrorism losses</b> <u>80%</u> <b>Year: 20</b> <u>20</u>          (Refer to Paragraph B. in this endorsement.)</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>



**A. Disclosure Of Premium**

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown in the Schedule of this endorsement or in the policy Declarations.

**B. Disclosure Of Federal Participation In Payment Of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals a percentage (as shown in Part II of the Schedule of this endorsement or in the policy Declarations) of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

**C. Cap On Insurer Participation In Payment Of Terrorism Losses**

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

## FRAUD STATEMENT

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

# NEW YORK FRAUD STATEMENT

The following statement is to be attached to and form a part of the policy application:

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

_____
<b>Insured/Applicant/Claimant</b>
_____
<b>By (Authorized Representative)</b>
_____
<b>Title</b>
_____
<b>Date</b>

**COMMERCIAL PROPERTY DECLARATIONS  
COMMERCIAL PROPERTY COVERAGE PART**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>	<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
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DESCRIPTION OF PREMISES: SEE DESIGNATION OF PREMISES SCHEDULE  
COVERAGES PROVIDED: INSURANCE AT THE DESCRIBED LOCATION APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN.

OPTIONAL COVERAGES: APPLICABLE ONLY WHEN SHOWN BY "X" IN SCHEDULE BELOW.

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
001	001	TENANTS IMPR & BETT FIRE-RESISTIVE	\$ 18,431,544	SPECIAL	100

**OTHER PROVISIONS**

TERRITORY: **002** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:  
**BLKT GRP # 1.**

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
001	001	BUSINESS PERS PROP FIRE-RESISTIVE	BLKT GRP 1	SPECIAL	100

**OTHER PROVISIONS**

TERRITORY: **002** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
001	001	BUS INC (II) INCL EXTRA EXP FIRE-RESISTIVE	\$ 2,034,771	SPECIAL	100

**OTHER PROVISIONS**

TERRITORY: **002** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
001	001	SPOILAGE	\$ 50,000		

**OTHER PROVISIONS**

TERRITORY: **002** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **500** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:  
**TYPE: BRKDNW CONT/PWR OUTAGE / INCL REFRIG MAINT**

**COMMERCIAL PROPERTY DECLARATIONS  
COMMERCIAL PROPERTY COVERAGE PART**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>	<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
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DESCRIPTION OF PREMISES: SEE DESIGNATION OF PREMISES SCHEDULE  
COVERAGES PROVIDED: INSURANCE AT THE DESCRIBED LOCATION APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN.

OPTIONAL COVERAGES: APPLICABLE ONLY WHEN SHOWN BY "X" IN SCHEDULE BELOW.

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
002	001	<b>BUS INC (II) INCL EXTRA EXP FRAME</b>	\$ 214,652	<b>SPECIAL</b>	100

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **04** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
004	001	<b>TENANTS IMPR &amp; BETT NON-COMBUSTIBLE</b>	BLKT GRP 1	<b>SPECIAL</b>	100

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **04** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
004	001	<b>BUSINESS PERS PROP NON-COMBUSTIBLE</b>	BLKT GRP 1	<b>SPECIAL</b>	100

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **04** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
004	001	<b>BUS INC (II) INCL EXTRA EXP NON-COMBUSTIBLE</b>	\$ 1,560,316	<b>SPECIAL</b>	100

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **04** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

**COMMERCIAL PROPERTY DECLARATIONS  
COMMERCIAL PROPERTY COVERAGE PART**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>	<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
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DESCRIPTION OF PREMISES: SEE DESIGNATION OF PREMISES SCHEDULE  
COVERAGES PROVIDED: INSURANCE AT THE DESCRIBED LOCATION APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN.  
OPTIONAL COVERAGES: APPLICABLE ONLY WHEN SHOWN BY "X" IN SCHEDULE BELOW.

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
004	001	<b>SPOILAGE</b>	\$ 50,000		

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **04** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **500** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:  
**TYPE: BRKDNW CONT/PWR OUTAGE / INCL REFRIG MAINT**

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
006	001	<b>TENANTS IMPR &amp; BETT MASONRY NON-COMBUSTIBLE</b>	BLKT GRP 1	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **03** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
006	001	<b>BUSINESS PERS PROP MASONRY NON-COMBUSTIBLE</b>	BLKT GRP 1	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **03** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
006	001	<b>BUS INC (II) INCL EXTRA EXP MASONRY NON-COMBUSTIBLE</b>	\$ 1,488,800	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **03** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

**COMMERCIAL PROPERTY DECLARATIONS  
COMMERCIAL PROPERTY COVERAGE PART**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>	<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
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DESCRIPTION OF PREMISES: SEE DESIGNATION OF PREMISES SCHEDULE  
COVERAGES PROVIDED: INSURANCE AT THE DESCRIBED LOCATION APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN.

OPTIONAL COVERAGES: APPLICABLE ONLY WHEN SHOWN BY "X" IN SCHEDULE BELOW.

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
006	001	<b>SPOILAGE</b>	\$ 50,000		

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **03** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **500** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

**TYPE: BRKDNW CONT/PWR OUTAGE / INCL REFRIG MAINT**

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
008	001	<b>TENANTS IMPR &amp; BETT NON-COMBUSTIBLE</b>	BLKT GRP 1	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **02** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
008	001	<b>BUSINESS PERS PROP NON-COMBUSTIBLE</b>	BLKT GRP 1	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **02** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
008	001	<b>BUS INC (II) INCL EXTRA EXP NON-COMBUSTIBLE</b>	\$ 1,180,000	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **02** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

**COMMERCIAL PROPERTY DECLARATIONS  
COMMERCIAL PROPERTY COVERAGE PART**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>	<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
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DESCRIPTION OF PREMISES: SEE DESIGNATION OF PREMISES SCHEDULE  
COVERAGES PROVIDED: INSURANCE AT THE DESCRIBED LOCATION APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN.

OPTIONAL COVERAGES: APPLICABLE ONLY WHEN SHOWN BY "X" IN SCHEDULE BELOW.

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
008	001	<b>SPOILAGE</b>	\$ 50,000		

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **02** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **500** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:  
**TYPE: BRKDNW CONT/PWR OUTAGE / INCL REFRIG MAINT**

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
009	001	<b>TENANTS IMPR &amp; BETT MASONRY NON-COMBUSTIBLE</b>	BLKT GRP 1	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **002** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
009	001	<b>BUSINESS PERS PROP MASONRY NON-COMBUSTIBLE</b>	BLKT GRP 1	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **002** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
009	001	<b>BUS INC (II) INCL EXTRA EXP MASONRY NON-COMBUSTIBLE</b>	\$ 2,150,000	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **002** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:



**COMMERCIAL PROPERTY DECLARATIONS  
COMMERCIAL PROPERTY COVERAGE PART**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>	<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
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DESCRIPTION OF PREMISES: SEE DESIGNATION OF PREMISES SCHEDULE  
COVERAGES PROVIDED: INSURANCE AT THE DESCRIBED LOCATION APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN.  
OPTIONAL COVERAGES: APPLICABLE ONLY WHEN SHOWN BY "X" IN SCHEDULE BELOW.

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
009	001	<b>SPOILAGE</b>	\$ 50,000		

**OTHER PROVISIONS**

TERRITORY: **002** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **500** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:  
**TYPE: BRKDNW CONT/PWR OUTAGE / INCL REFRIG MAINT**

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
005	001	<b>TENANTS IMPR &amp; BETT FIRE-RESISTIVE</b>	\$ 3,012,355	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:  
**BLKT GRP # 3.**

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
005	001	<b>BUSINESS PERS PROP FIRE-RESISTIVE</b>	<b>BLKT GRP 3</b>	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
005	001	<b>BUS INC (II) INCL EXTRA EXP FIRE-RESISTIVE</b>	\$ 1,592,222	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

**COMMERCIAL PROPERTY DECLARATIONS  
COMMERCIAL PROPERTY COVERAGE PART**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>	<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
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DESCRIPTION OF PREMISES: SEE DESIGNATION OF PREMISES SCHEDULE  
COVERAGES PROVIDED: INSURANCE AT THE DESCRIBED LOCATION APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN.

OPTIONAL COVERAGES: APPLICABLE ONLY WHEN SHOWN BY "X" IN SCHEDULE BELOW.

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
005	001	SPOILAGE	\$ 50,000		

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **500** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

**TYPE: BRKDNW CONT/PWR OUTAGE / INCL REFRIG MAINT**

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
003	001	TENANTS IMPR & BETT FIRE-RESISTIVE	\$ 3,473,272	SPECIAL	100

**OTHER PROVISIONS**

TERRITORY: **004** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

**BLKT GRP # 2.**

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
003	001	BUSINESS PERS PROP FIRE-RESISTIVE	BLKT GRP 2	SPECIAL	100

**OTHER PROVISIONS**

TERRITORY: **004** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
003	001	BUS INC (II) INCL EXTRA EXP FIRE-RESISTIVE	\$ 1,458,121	SPECIAL	100

**OTHER PROVISIONS**

TERRITORY: **004** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

**COMMERCIAL PROPERTY DECLARATIONS  
COMMERCIAL PROPERTY COVERAGE PART**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>	<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
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DESCRIPTION OF PREMISES: SEE DESIGNATION OF PREMISES SCHEDULE  
COVERAGES PROVIDED: INSURANCE AT THE DESCRIBED LOCATION APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT OF INSURANCE IS SHOWN.  
OPTIONAL COVERAGES: APPLICABLE ONLY WHEN SHOWN BY "X" IN SCHEDULE BELOW.

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
003	001	<b>SPOILAGE</b>	\$ 50,000		

**OTHER PROVISIONS**

TERRITORY: **004** PROTECTION CLASS: **01** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **500** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:  
**TYPE: BRKDNW CONT/PWR OUTAGE / INCL REFRIG MAINT**

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
007	001	<b>TENANTS IMPR &amp; BETT FRAME</b>	BLKT GRP 2	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **03** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
007	001	<b>BUSINESS PERS PROP FRAME</b>	BLKT GRP 2	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **03** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **5,000** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
007	001	<b>BUS INC (II) INCL EXTRA EXP FRAME</b>	\$ 1,999,930	<b>SPECIAL</b>	<b>100</b>

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **03** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

**COMMERCIAL PROPERTY DECLARATIONS  
COMMERCIAL PROPERTY COVERAGE PART**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>	<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
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DESCRIPTION OF PREMISES: SEE DESIGNATION OF PREMISES SCHEDULE  
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OPTIONAL COVERAGES: APPLICABLE ONLY WHEN SHOWN BY "X" IN SCHEDULE BELOW.

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.
007	001	SPOILAGE	\$ 50,000		

**OTHER PROVISIONS**

TERRITORY: **001** PROTECTION CLASS: **03** OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: **500** EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:  
**TYPE: BRKDOWN CONT/PWR OUTAGE / INCL REFRIG MAINT**

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.

**OTHER PROVISIONS**

TERRITORY: PROTECTION CLASS: OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.

**OTHER PROVISIONS**

TERRITORY: PROTECTION CLASS: OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

LOC. NO.	BLDG NO.	COVERAGE/CONSTRUCTION	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINS.

**OTHER PROVISIONS**

TERRITORY: PROTECTION CLASS: OCCUPANCY:  
 AGREED VALUE:  REPLACEMENT COST  INFLATION GUARD: %  
 BUSINESS INCOME INDEMNITY: MONTHLY LIMIT PERIOD: MAX. EXT. DAYS BI MEDIA  
 DEDUCTIBLE: EARTHQUAKE DEDUCTIBLE: % EXCEPTIONS:

**COMMERCIAL PROPERTY DECLARATIONS  
COMMERCIAL PROPERTY COVERAGE PART (CONTINUED)**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>	EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
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**FORMS APPLICABLE:**  
  
See Schedule of Forms and Endorsements

**MORTGAGE HOLDERS:**  
  
See Schedule of Mortgage Holder(s)

**LOSS PAYEES:**  
  
See Schedule of Loss Payee(s)

TAX OR SURCHARGE:	\$	<b>19.96</b>
<b>TOTAL</b> ANNUAL PREMIUM - THIS COVERAGE PART:	\$	<b>44,647.96</b>

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

## **EQUIPMENT BREAKDOWN ENHANCEMENT ENDORSEMENT**

As respects the coverage provided by this **Equipment Breakdown Enhancement Endorsement**, the coverage provided in the following Coverage Forms is modified.

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CAUSES OF LOSS – BASIC FORM  
CAUSES OF LOSS – BROAD FORM  
CAUSES OF LOSS - SPECIAL FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
COMMERCIAL PROPERTY CONDITIONS FORM  
WATER EXCLUSION FORM**

### **AMENDMENTS TO THE COMMERCIAL PROPERTY CONDITIONS FORM**

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following replaces **C. INSURANCE UNDER TWO OR MORE COVERAGES**:

If the Equipment Breakdown Enhancement Endorsement and one of the following:

- Movie Theater Specialty Coverage Endorsement;
- Habitational Specialty Coverage Endorsement;
- Manufactures' Specialty Endorsement;
- Package Enhanced Coverage Endorsement

applies to the same loss or damage, the limits provided by the Endorsements will not be added together. The most we will pay is the higher of the two limits. In all other cases, 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.

### **AMENDMENTS TO THE BUILDING AND PERSONAL PROPERTY AND CONDOMINIUM ASSOCIATION COVERAGE FORMS**

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following is added to **2. Property Not Covered** under **A. Coverage**:

- r. Insulating or refractory material;
- s. Structure, foundation, cabinet or compartment containing the object;
- t. Power shovel, dragline, excavator, vehicle, aircraft, floating vessel or structure, penstock, draft tube or well-casing;
- u. Conveyor, crane, elevator, escalator or hoist, but not excluding any electrical machine or electrical apparatus mounted on or used with this equipment; felt, wire, screen, die, extrusion, plate, swing hammer, grinding disc, cutting blade, cable, chain, belt, rope, clutch plate, brake pad, non-metallic part or any part or tool subject to frequent, periodic replacement.

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following is added to **d. Pollutant Clean Up and Removal** under **A.4. Additional Coverage**:

#### **d. Pollutant Clean Up and Removal**

We will pay for the Pollutant Clean Up and Removal for loss resulting from an "Equipment Breakdown". The most we will pay for the Pollutant Clean Up and Removal is **\$250,000**. Any amount we pay under this Pollutant Clean Up and Removal Additional Coverage is subject to, is a part of, and is not in

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addition to the applicable Limit of Insurance for Covered Property.

Furthermore, this Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more in any one covered loss than a total of **\$250,000** as part of and not in addition to the applicable Limit of Insurance for Covered Property.

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 at your covered location(s).

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following are added to **A.4. Additional Coverage**:

#### **g. Expediting Expenses**

We will pay for the expediting expense loss resulting from an “Equipment Breakdown” with respect to your damaged Covered Property. We will pay the reasonable extra cost to:

- (1) Make temporary repairs;
- (2) Expedite permanent repairs; and
- (3) Expedite permanent replacement

“Reasonable extra cost” shall mean the extra cost of temporary repair and of expediting the repair of such damaged equipment of the insured, including overtime and the extra cost of express or other rapid means of transportation. This will be a part of and not an addition to the limit per loss.

“Expediting Expenses” shall mean – only to the extent it reduces the amount of loss that otherwise would have been payable under this “Equipment Breakdown” coverage.

Any amount we pay under this Expediting Expenses Additional Coverage is subject to, is a part of, and is not in addition to the applicable Limit of Insurance for Covered Property. Furthermore, this Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more than the applicable Limit of Insurance for Covered Property.

#### **h. Refrigerant Contamination**

We will pay for direct physical loss or damage to Covered Property due to contamination by refrigerant (including ammonia) used in refrigerating, cooling or humidity controlled equipment at the described premises as a result of an “Equipment Breakdown”.

The most we will pay for the sum of all direct loss or damage and business income and extra expense under this coverage is **\$250,000**. Any amount we pay under this Refrigerant Contamination Additional Coverage is subject to, is a part of, and is not in addition to the applicable Limit of Insurance for Covered Property. Furthermore, this Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more in any one covered loss than a total of **\$250,000** as part of and not in addition to the applicable Limit of Insurance for Covered Property.

#### **i. Spoilage**

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

- (1) Located on or within 1,000 feet of your described premises; and
- (2) Owned or used by you, owned by the building owner at your described premises, or owned by a public utility.

However, we will not pay for any loss, damage, cost or expense directly caused by, contributed to by, resulting from or arising out of the following causes of loss:

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Fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, freeze, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water, water damage, earth movement or flood.

The most we will pay for loss or damage under this coverage is **\$250,000**. Any amount we pay under this Spoilage Additional Coverage is subject to, is a part of, and is not in addition to the applicable Limit of Insurance for Covered Property. Furthermore, this Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more in any one covered loss than a total of **\$250,000** as part of and not in addition to the applicable Limit of Insurance for Covered Property.

#### **j. Temperature Fluctuation**

We will pay for loss of “perishable goods” only caused by or resulting from any condition or event to Covered Property that can be resolved by calibrating, resetting, tightening, adjusting or cleaning. However, we will not pay for loss of “perishable goods” as a result of resetting the power supply to the Covered Property containing the “perishable goods”.

The most we will pay for the sum of all direct loss or damage and business income and extra expense under this coverage is **\$5,000**. Any amount we pay under this Temperature Fluctuation Additional Coverage is subject to, is a part of, and is not in addition to the applicable Limit of Insurance for Covered Property. Furthermore, this Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more in any one covered loss than a total of **\$5,000** as part of and not in addition to the applicable Limit of Insurance for Covered Property.

#### **k.CFC Refrigerants**

We will pay for the additional cost to repair or replace Covered Property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances resulting from an “Equipment Breakdown”. Additional costs mean those in excess of what would have been required to repair or replace covered property, had no CFC refrigerant been involved. We also pay for additional loss as described under the Spoilage or Loss of Income Coverages provided by this endorsement, caused by the presence of a refrigerant containing CFC substances.

We will pay no more than the least of the following but not to exceed policy limit:

- (1) The cost to repair the damaged property and replace any lost CFC refrigerant;
- (2) The cost to repair the damaged property, retrofit the system to accept a non-CFC refrigerant, and charge the system with a non-CFC refrigerant; or
- (3) The cost to replace the system with one using a non-CFC refrigerant.

Any amount we pay under this CFC Refrigerants Additional Coverage is subject to, is a part of, and is not in addition to the applicable Limit of Insurance for Covered Property. Furthermore, this Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more than the applicable Limit of Insurance for Covered Property.

#### **l. Computer Equipment**

We will pay for loss or damage to your “computer equipment” caused by an “Equipment Breakdown”.

“Computer equipment” means Covered Property that is electronic computer or other data processing equipment, including peripherals used in conjunction with such equipment, and electronic media and records.

Any amount we pay under this “Computer Equipment” Additional Coverage is subject to, is a part of, and is not in addition to the applicable Limit of Insurance for Covered Property. Furthermore, this Additional

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Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more than the applicable Limit of Insurance for Covered Property.

**m. Off Premises Services Interruption**

- a. For coverage provided by this endorsement, with respect to your damaged Covered Property, we will pay for loss or damage caused by the Interruption of Services to the premises described in the Declarations. The interruption must result from direct physical loss or damage by an "Equipment Breakdown" to property not on the described premises that provided the following services:
- (1) "Water Supply Services", meaning the following types of property supplying water to the premises described in the Declarations:
    - (a) Pumping stations
    - (b) Water mains.
  - (2) "Communications Supply Service", means property supplying communication services including telephone, radio, microwave or television services to the premises described in the Declarations such as:
    - (a) Communication transmission lines
    - (b) Coaxial cables; or
    - (c) Microwave radio relays except satellitesIt does not include overhead transmissions lines.
  - (3) "Power Supply Service" means the following types of property supplying electricity, steam or gas to the premises described in the Declarations:
    - (a) Utility generating plants;
    - (b) Switching stations;
    - (c) Substations;
    - (d) Transformers;
    - (e) Distribution lines;
    - (f) Underground transmission lines."Power Supply Service" does not include overhead transmission lines.

- b. However, we will not pay for any loss, damage, cost or expense directly caused by, contributed to by, resulting from or arising out of the following causes of loss:

Fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, freeze, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water, water damage, earth movement or flood.

c. Deductibles:

- (1) For Business Income and Extra Expense, we will only pay for the loss you sustain after the first **12** hours following the direct physical loss or damage to the off premises property to which this Additional Coverage applies.
- (2) For Direct damage losses, a **\$1,000** per occurrence deductible applies.

The most we will pay for the sum of all loss, damage, business income and extra expense under this Additional Coverage is **\$250,000**. Any amount we pay under this Off-Premises Services Interruption Additional Coverage is subject to, is a part of, and is not in addition to the applicable Limit of Insurance for Covered Property. Furthermore, this Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more in any one covered loss than a total of **\$250,000** as part of and not in addition to the applicable Limit of Insurance for Covered Property. The Coinsurance Condition does not apply to this Additional Coverage.

Exclusion **B.1.e.** of the Causes of Loss Coverage Form attached to your policy does not apply to this Additional Coverage.

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**n. Data Restoration**

We will pay for your reasonable and necessary cost to research, replace and restore “data”, including programs and operating systems that are lost as a result of an “Equipment Breakdown”. The most we will pay for loss or damage under this coverage is **\$250,000**. This Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more in any one covered loss than a total of **\$250,000** as part of and not in addition to the applicable Limit of Insurance for Covered Property.

Only for the purposes of the coverage provided under this Data Restoration Additional Coverage, direct physical loss or damage to "data" resulting from an “Equipment Breakdown” includes erasure, derangement (scrambling), or failure of such programs and operating systems to function in the fashion for which it was designed.

Only for the purposes of the coverage provided by this Data Restoration Additional Coverage, “data” means any information that is electronically magnetically or optically stored, recorded or installed for use in your information systems or data processing operations.

**o. Unauthorized Instruction**

We will pay for loss or damage to your “computer equipment” caused by an “unauthorized instruction” which results in an “equipment breakdown”.

Any amount we pay under this Unauthorized Instruction Additional Coverage is subject to, is a part of, and is not in addition to the applicable Limit of Insurance for Covered Property. Furthermore, this Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more than the applicable Limit of Insurance for Covered Property.

“Unauthorized instruction” means a virus, harmful code or similar instruction introduced into or enacted on a computer system or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation.

**p. Service Interruption**

Any insurance provided for Business Income, Extra Expense or Data Restoration is extended to apply to your loss, damage or expense caused by an “equipment breakdown” to equipment that is owned by a utility, landlord or other supplier with whom you have a contract to supply 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, data transmission or “cloud computing”. The equipment must meet the definition of “equipment breakdown” except that it is not Covered Property.

**q. Risk Improvement**

If Covered Property suffers direct physical loss or damage due to an “equipment breakdown”, we will pay for the insured to improve the “power quality” of the electrical system or equipment at the loss location where the “equipment breakdown” occurred. “Power quality” means the conditions that allow electrical systems or equipment to operate as intended by limiting voltage fluctuations and other power influences that would adversely affect the operational performance and/or reduce the reliability, or the life-span of the electrical system.

We will pay the reasonable extra cost to improve “power quality” for the following electrical systems and/or equipment improvements:

- a. Installation of surge protection devices (SPD’s) which are installed at the loss location’s line disconnect, load disconnect, or on specific pieces of equipment and that are certified by Underwriter Laboratories (UL) or has an equivalent certification.

However SPD’s do not include any SPD’s which are cord-connected surge strips, direct plug-in SPD’s or receptacle SPD’s;

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- b. An upgrade and/or replacement of; electrical panels, switchgear and/or circuit breakers; or
- c. Electrical wire and wiring improvements which include installation of; flexible conduit, junction boxes and/or ground wiring.

We will not pay more than **10%**, to a maximum limit of **\$10,000**, of the loss amount paid. An invoice for implementation of this Additional Coverage must be sent to us within **180** days after the payment of the loss is received. Any amount we pay under this Risk Improvement Additional Coverage is subject to, is a part of, and is not in addition to the applicable Limit of Insurance for Covered Property. Furthermore, this Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more in any one covered loss than **10%**, to a maximum limit of **\$10,000**, of the loss amount paid as part of and not in addition to the applicable Limit of Insurance for Covered Property.

**r. Off-Premises Coverage**

We will pay for loss or damage to Covered Property resulting from a covered "Equipment Breakdown" while temporarily at a premises or location that is not a described premises.

The most we will pay for loss or damage under this coverage is **\$25,000**. This will be a part of and not an addition to the limit per loss. Furthermore, this Additional Coverage applies on a per policy basis regardless of the number of buildings, premises, or locations we insure on the Policy. Therefore, in no event, will we pay more in any one covered loss than a total of **\$25,000** as part of and not in addition to the applicable Limit of Insurance for Covered Property.

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following are added to **F. Additional Conditions**:

**3. Suspension**

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

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

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

**4. Jurisdictional Inspections**

If any Covered Property 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.

**5. Environmental, Safety and Energy Efficiency Improvements**

If Covered Property requires repair or replacement due to an "Equipment Breakdown", we will pay your additional cost to replace with equipment that is better for the environment, safer, or more energy efficient than the equipment being replaced.

However, we will not pay more than **150%** of what the cost would have been to repair or replace with like kind and quality. This Condition does not apply to any property to which Actual Cash Value applies.

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**6. Green Environmental and Efficiency Improvements** If Covered Property requires repair or replacement due to an "Equipment Breakdown", we will pay;

- a. The lesser of the reasonable and necessary additional cost incurred by the Insured to repair or replace physically damaged Covered Property with equipment of like kind and quality which qualifies as "Green". "Like kind and quality" includes similar size and capacity.
- b. The additional reasonable and necessary fees incurred by the Insured for an accredited professional certified by a "Green Authority" to participate in the repair or replacement of physically damaged Covered Property as "Green".
- c. The additional reasonable and necessary cost incurred by the Insured for certification or recertification of the repaired or replaced Covered Property as "Green".
- d. The additional reasonable and necessary cost incurred by the Insured for "Green" in the removal, disposal or recycling of damaged Covered Property.
- e. The business interruption (if covered within the Policy to which the Equipment Breakdown Enhancement Endorsement – Green Environmental and Efficiency Improvements is attached) loss during the additional time required for repair or replacement of Covered Property, consistent with "Green", in the coverage above.

We will not pay more than **150%**, to a maximum limit of **\$250,000**, of what the cost would have been to repair or replace with equipment of like kind and quality inclusive of fees, costs and any business interruption loss incurred as stated above.

**Green Environmental and Efficiency Improvements** does not cover any of the following:

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

These **Additional Conditions** will be part of, and not an addition to, the limits of liability per loss or any other sub-limits of the Policy.

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following is added to **H. Definitions**:

**4. "Equipment Breakdown".**

"Equipment Breakdown" as used herein means:

**a. Direct Physical loss or damage both originating within:**

**(1) Boilers, fired or unfired pressure vessels, vacuum vessels, and pressure piping, all normally subject to vacuum or internal pressure other than static pressure of contents, excluding:**

- a. Waste disposal piping;
- b. Any piping forming part of a fire protective system;

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- c. Furnaces; and
- d. Any water piping other than:
  - (1) Boiler feed water piping between the feed pump and the boiler; piping carrying steam from one building to another;
  - (2) Boiler condensate return piping; or
  - (3) Water piping forming part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes.

(2) All mechanical, electrical, electronic, fiber optic equipment or “electronic equipment”; and

b. Caused by, resulting from, or consisting of:

- (1) Mechanical breakdown;
- (2) Electrical or electronic breakdown and “electronic equipment deficiency”; or
- (3) Rupture, bursting, bulging, implosion, or steam explosion.
- (4) If covered electrical equipment requires drying out as a result of a flood, we will pay for the direct expenses of such drying out.

However, “Equipment Breakdown” will not mean:

Physical loss or damage caused by or resulting from any of the following; however if loss or damage not otherwise excluded results, then we will pay for such resulting damage:

- (1) Wear and Tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect, mold or any other 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) Any accident, loss, damage, cost, claim, or expense, whether preventative, remedial, or otherwise, directly or indirectly arising out of or relating to the recognition, interpretation, calculation, comparison, differentiation, sequencing, or processing of data by any computer system including any hardware, programs or software;
- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Marring or scratching.
- (8) Loss, damage, cost or expense directly caused by, contributed to by, resulting from or arising out of the following causes of loss:

Fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, freeze, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water, water damage, earth movement or flood.

- 5. “Perishable goods” as used herein means personal property maintained under controlled conditions for its preservation and susceptible to loss or damage if the controlled conditions change.
- 6. “Green” as used herein means products, materials, methods and processes certified by a “Green Authority” that conserve natural resources, reduce energy or water consumption, avoid toxic or other polluting emissions or otherwise minimize environmental impact.
- 7. “Green Authority” as used herein means an authority on “Green” buildings, products, materials, methods or processes certified and accepted by Leadership in Energy and Environmental Design (LEED®), “Green” Building Initiative Green Globes®, Energy Star Rating System or any other recognized “Green” rating system.

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8. "Production machinery" as used herein means any machine which processes, forms, shapes, or transports raw materials, materials in process, waste material or finished products.
9. "Electronic equipment" means devices which operate using many small electrical parts such as, but not limited to, microchips, transistors or circuits.
10. "Electronic equipment deficiency" means the quality or condition inside of "electronic equipment" which renders this equipment unexpectedly inoperable and which is operable again once a piece of "electronic equipment" has been replaced.

However, "electronic equipment deficiency" will not include replacement of "electronic equipment" for any condition that could have been resolved without replacement of the "electronic equipment" including but not limited to "computer equipment" maintenance or the reinstallation or incompatibility of software.

11. "Cloud computing" means on-demand network access to a shared pool of computing resources via networks, servers, storage, applications and services provided by an organization with whom you have a contract with using the following service models: Software as a Service (SaaS), Platform as a Service (PaaS) and Infrastructure as a Service (IaaS) on the following deployment models: public cloud, community cloud, hybrid cloud and private cloud.

## AMENDMENTS TO THE CAUSES OF LOSS – BASIC FORM

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following is added to **A. Covered Causes of Loss**:

12. "Equipment Breakdown"

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following replaces **g. Water** under **B. Exclusions**:

### **g. Water**

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal waves, overflow of any body of water, or spray from any of these, all whether 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 or sump, sump pump or related equipment;
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings.
- (5) Waterborne material carried or otherwise moved by any of the water referred to in 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. But if any of the above, in paragraphs (1) through (5) above results in fire, explosion, sprinkler leakage or "Equipment Breakdown", we will pay for the loss or damage caused by that fire, explosion, sprinkler leakage or "Equipment Breakdown."

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following **Exclusions** are deleted:

- B.2.a., B.2.d., B.2.e.**

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## AMENDMENTS TO THE CAUSES OF LOSS – BROAD FORM

The following is added to **A. Covered Causes of Loss**:

### 15. "Equipment Breakdown"

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following replaces **g. Water** under **B. Exclusions**:

#### **g. Water**

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal waves, overflow of any body of water, or spray from any of these, all whether 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 or sump, sump pump or related equipment;
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings.
- (5) Waterborne material carried or otherwise moved by any of the water referred to in 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. But if any of the above, in paragraphs (1) through (5) above results in fire, explosion, sprinkler leakage or "Equipment Breakdown", we will pay for the loss or damage caused by that fire, explosion, sprinkler leakage or "Equipment Breakdown."

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following **Exclusions** are deleted:

**B. 2. a., B. 2. b., B. 2. c.**

## AMENDMENTS TO THE CAUSES OF LOSS - SPECIAL FORM

The following is included under **A. Covered Causes of Loss**:

"Equipment Breakdown" is included.

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following replaces **g. Water** under **B. Exclusions**:

#### **g. Water**

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal waves, overflow of any body of water, or spray from any of these, all whether 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 or sump, sump pump or related equipment;
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings.
- (5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph (1), (3) or (4), or material carried or otherwise moved by mudslide or mudflow.

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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. But if any of the above, in paragraphs (1) through (5) above results in fire, explosion, sprinkler leakage or "Equipment Breakdown", we will pay for the loss or damage caused by that fire, explosion, sprinkler leakage or "Equipment Breakdown."

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following **Exclusions** are deleted:

**B.2.a., B.2.d.(6), B.2.e.**

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, **C. Limitations** is amended as follows:

All **Limitations** apply to the coverage provided by the Equipment Breakdown Enhancement Endorsement except **C.1.a.** and **C.1.b.**

For purposes of the coverage provided by this Equipment Breakdown Enhancement Endorsement, the following amends **G. Definitions**:

The following is added to the "Specified Causes of Loss" definition:

**2.** "Specified Causes of Loss" includes "Equipment Breakdown".

All other terms and conditions remain unchanged.



THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

**CYBERONE COVERAGE SUPPLEMENTAL DECLARATIONS**

Named Insured: 75 ARLINGTON ST, INC.

Effective Date: 10/21/2019  
Policy Number: 8120T23406

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**SECTION 1 – COMPUTER ATTACK**

**Computer Attack Limit**                                 \$100,000  
Annual Aggregate

**Sublimits**  
**Data Re-creation**                                 \$ 5,000  
**Loss of Business**                                 \$ 10,000  
**Public Relations**                                 \$ 5,000  
Per Occurrence

**Computer Attack Deductible**                     \$ 10,000  
Per Occurrence

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**SECTION 2 – NETWORK SECURITY LIABILITY**

**Network Security Liability Limit**               \$100,000  
Annual Aggregate

**Network Security Liability Deductible**       \$ 10,000  
Per Occurrence

**Network Security Liability Optional Coverage**  
**3<sup>rd</sup> Party Business Information**             **Included**

# Data Compromise 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 the Definitions section.

The terms and conditions of the Cancellation Clause of the Common Policy Conditions and any amendment to such terms incorporated by endorsement are hereby incorporated herein and shall apply to coverage as is afforded by this Data Compromise Coverage, unless specifically stated otherwise in an endorsement attached hereto.

The following is added as an Additional Coverage:

## SECTION 1 – RESPONSE EXPENSES

### A. DATA COMPROMISE COVERED CAUSE OF LOSS

Coverage under this Data Compromise Coverage Form applies only if all of the following conditions are met:

1. There has been a “personal data compromise”; and
2. Such “personal data compromise” is first discovered by you during the policy period for which this Data Compromise Coverage Form is applicable; and
3. Such “personal data compromise” is reported to us within 60 days after the date it is first discovered by you.

### B. COVERAGE – SECTION 1

If all three of the conditions listed above in DATA COMPROMISE – COVERED CAUSE OF LOSS have been met, then we will provide coverage for the following expenses when they arise directly from the covered cause of loss and are necessary and reasonable. Coverages 4 and 5 apply only if there has been a notification of the “personal data compromise” to “affected individuals” as covered under coverage 3.

#### 1. Forensic IT Review

Professional information technologies review if needed to determine, within the constraints of what is possible and reasonable, the nature and extent of the “personal data compromise” and the number and identities of the “affected individuals”.

This does not include costs to analyze, research or determine any of the following:

- a. Vulnerabilities in systems, procedures or physical security;
- b. Compliance with Payment Card Industry or other industry security standards; or
- c. The nature or extent of loss or damage to data that is not “personally identifying information” or “personally sensitive information”.

If there is reasonable cause to suspect that a covered “personal data compromise” may have occurred, we will pay for costs covered under Forensic IT Review, even if it is eventually determined that there was no covered “personal data compromise”. However, once it is determined that there was no covered “personal data compromise”, we will not pay for any further costs.

#### 2. Legal Review

Professional legal counsel review of the “personal data compromise” and how you should best respond to it.

If there is reasonable cause to suspect that a covered “personal data compromise” may have occurred, we will pay for costs covered under Legal Review, even if it is eventually determined that there was no covered “personal data compromise”. However, once it is determined that there was no covered “personal data compromise”, we will not pay for any further costs.

### **3. Notification to Affected Individuals**

We will pay your necessary and reasonable costs to provide notification of the “personal data compromise” to “affected individuals”.

### **4. Services to Affected Individuals**

We will pay your necessary and reasonable costs to provide the following services to “affected individuals”.

- a. The following services apply to any “personal data compromise”.

**(1) Informational Materials**

A packet of loss prevention and customer support information.

**(2) Help Line**

A toll-free telephone line for “affected individuals” with questions about the “personal data compromise”. Where applicable, the line can also be used to request additional services as listed in b. 1) and 2).

- b. The following additional services apply to “personal data compromise” events involving “personally identifying information”.

**(1) Credit Report and Monitoring**

A credit report and an electronic service automatically monitoring for activities affecting an individual’s credit records. This service is subject to the “affected individual” enrolling for this service with the designated service provider.

**(2) Identity Restoration Case Management**

As respects any “affected individual” who is or appears to be a victim of “identity theft” that may reasonably have arisen from the “personal data compromise”, the services of an identity restoration professional who will assist that “affected individual” through the process of correcting credit and other records and, within the constraints of what is possible and reasonable, restoring control over his or her personal identity.

### **5. PR Services**

Professional public relations firm review of and response to the potential impact of the “personal data compromise” on your business relationships.

This includes costs to implement public relations recommendations of such firm. This may include advertising and special promotions designed to retain your relationship with “affected individuals”. However, we will not pay for promotions:

- a. Provided to any of your directors or employees; or;  
b. Costing more than \$25 per “affected individual”.

### **C. LIMITS – SECTION 1**

The most we will pay under Response Expenses coverage is the Data Compromise Response Expenses Limit indicated in the Data Compromise Supplemental Declarations.

The Data Compromise Response Expenses Limit is an annual aggregate limit. This amount is the most we will pay for the total of all loss covered under Section 1 arising out of all “personal data compromise” events which are first discovered by you during the present annual policy period. This limit applies regardless of the number of “personal data compromise” events discovered by you during that period.

A “personal data compromise” may be first discovered by you in one policy period but cause covered costs in one or more subsequent policy periods. If so, all covered costs arising from such “personal data compromise” will be subject to the Data Compromise Response Expenses Limit applicable to the policy period when the “personal data compromise” was first discovered by you.

The most we will pay under Response Expenses coverage for loss arising from any “malware-related compromise” is the Named Malware (Sec. 1) sublimit indicated in the Data Compromise Supplemental

Declarations. For the purpose of the Named Malware (Sec. 1) sublimit, all “malware-related compromises” that are caused, enabled or abetted by the same virus or other malicious code are considered to be a single “personal data compromise”. This sublimit is part of, and not in addition to the Response Expenses Limit.

The most we will pay under Forensic IT Review, Legal Review and PR Services coverages for loss arising from any one “personal data compromise” is the applicable sublimit for each of those coverages indicated in the Data Compromise Supplemental Declarations. These sublimits are part of, and not in addition to, the Data Compromise Response Expenses Limit. PR Services coverage is also subject to a limit per “affected individual” as described in 5. PR Services.

Coverage for Services to “affected individuals” is limited to costs to provide such services for a period of up to one year from the date of the notification to the “affected individuals”. Notwithstanding, coverage for Identity Restoration Case Management services initiated within such one year period may continue for a period of up to one year from the date such Identity Restoration Case Management services are initiated.

#### **D. DEDUCTIBLE – SECTION 1**

Response Expenses coverage is subject to the Response Expenses Deductible indicated in the Data Compromise Supplemental Declarations. You shall be responsible for such deductible amount as respects each “personal data compromise” covered under this Coverage Form.

The following is added as an Additional Coverage:

### **SECTION 2 – DEFENSE AND LIABILITY**

#### **A. DEFENSE AND LIABILITY COVERED CAUSE OF LOSS**

Coverage under this Data Compromise Coverage Form applies only if all three of the conditions in DATA COMPROMISE – COVERED CAUSE OF LOSS are met.

Only with regard to Section 2 – Defense and Liability coverage, the following conditions must also be met:

1. You have provided notifications and services to “affected individuals” in consultation with us pursuant to Response Expenses coverage; and
2. You receive notice of a “data compromise suit” brought by one or more “affected individuals” or by a governmental entity on behalf of one or more “affected individuals”; and
3. Notice of such “data compromise suit” is received by you within two years of the date that the “affected individuals” are notified of the “personal data compromise”; and
4. Such “data compromise suit” is reported to us as soon as practicable, but in no event more than 60 days after the date it is first received by you.

#### **B. COVERAGE – SECTION 2**

If all of the conditions listed above in DEFENSE AND LIABILITY – COVERED CAUSE OF LOSS have been met, then we will provide coverage for “data compromise defense costs” and “data compromise liability” directly arising from the covered cause of loss.

#### **C. LIMITS – SECTION 2**

The most we will pay under Defense and Liability coverage (other than post-judgment interest) is the Data Compromise Defense and Liability Limit indicated in the Supplemental Declarations.

The Data Compromise Defense and Liability Limit is an annual aggregate limit. This amount is the most we will pay for all loss covered under Section 2 (other than post-judgment interest) arising out of all “personal data compromise” events which are first discovered by you during the present annual policy period. This limit applies regardless of the number of “personal data compromise” events occurring during that period.

A “personal data compromise” may be first discovered by you in one policy period but cause covered costs in one or more subsequent policy periods. If so, all covered costs arising from such “personal data compromise” (other than post-judgment interest) will be subject to the Data Compromise Defense and Liability Limit applicable to the policy period when the “personal data compromise” was first discovered by you.

#### **D. DEDUCTIBLE – SECTION 2**

Defense and Liability coverage is subject to the Defense and Liability Deductible indicated in the

Supplemental Declarations. You shall be responsible for such deductible amount as respects each “data compromise suit” covered under this Coverage Form.

## **SECTION 3 -- EXCLUSIONS, ADDITIONAL CONDITIONS AND DEFINITIONS APPLICABLE TO BOTH SECTION 1 AND SECTION 2**

### **A. EXCLUSIONS**

The following additional exclusions apply to this coverage:

We will not pay for costs arising from the following:

1. Your intentional or willful complicity in a “personal data compromise.”
2. Any criminal, fraudulent or dishonest act, error or omission, or any intentional or knowing violation of the law by you.
3. Any “personal data compromise” occurring prior to the first inception of this Data Compromise Coverage Form or any coverage substantially similar to that described in this Form.
4. Costs to research or correct any deficiency. This includes, but is not limited to, any deficiency in your systems, procedures or physical security that may have contributed to a “personal data compromise”.
5. Any fines or penalties. This includes, but is not limited to, fees or surcharges from affected financial institutions.
6. Any criminal investigations or proceedings.
7. Any extortion or blackmail. This includes, but is not limited to, ransom payments and private security assistance.
8. Any “personal data compromise” involving data that is being transmitted electronically, unless such data is encrypted to protect the security of the transmission.
9. Your reckless disregard for the security of “personally identifying information” or “personally sensitive information” in your care, custody or control.
10. That part of any “data compromise suit” seeking any non-monetary relief.
11. Seizure or destruction of property by order of governmental authority.
12. Nuclear reaction or radiation or radioactive contamination, however caused.
13. War and military action including any of the following and any consequence of any of the following:
  - a. War, including undeclared or civil war;
  - b. 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
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

### **B. ADDITIONAL CONDITIONS**

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

#### **1. Abandonment**

There can be no abandonment of any property to us.

#### **2. Concealment or Fraud**

This policy is void if you have intentionally concealed or misrepresented any material fact or circumstance relating to this insurance.

#### **3. Coverage Territory**

The “personal data compromise” must involve “personally identifying information” that was within your care, custody or control within the United States of America and Puerto Rico.

#### **4. Data Compromise Liability Defense**

- a. We shall have the right and the duty to assume the defense of any applicable “data compromise suit”

against you. You shall give us such information and cooperation as we may reasonably require.

- b. You shall not admit liability for or settle any “data compromise suit” or incur any defense costs without our prior written consent.
- c. If you refuse to consent to any settlement recommended by us and acceptable to the claimant, we may then withdraw from your defense by tendering control of the defense to you. From that point forward, you shall, at your own expense, negotiate or defend such “data compromise suit” independently of us. Our liability shall not exceed the amount for which the claim or suit could have been settled if such recommendation was consented to, plus defense costs incurred by us, and defense costs incurred by you with our written consent, prior to the date of such refusal.
- d. We shall not be obligated to pay any damages or defense costs, or to defend or continue to defend any “data compromise suit”, after the Data Compromise Defense and Liability Limit has been exhausted.
- e. We shall pay all interest on that amount of any judgment within the Data Compromise Defense and Liability Limit which accrues:
  - (1) after entry of judgment; and
  - (2) before we pay, offer to pay or deposit in court that part of the judgment within the Data Compromise Defense and Liability Limit or, in any case, before we pay or offer to pay the entire Data Compromise Defense and Liability Limit.

These interest payments shall be in addition to and not part of the Data Compromise Defense and Liability Limit.

## **5. Due Diligence**

You agree to use due diligence to prevent and mitigate costs covered under this Data Compromise Coverage Form. This includes, but is not limited to, complying with, and requiring your vendors to comply with, reasonable and industry-accepted protocols for:

- a. Providing and maintaining appropriate physical security for your premises, computer systems and hard copy files;
- b. Providing and maintaining appropriate computer and Internet security;
- c. Maintaining and updating at appropriate intervals backups of computer data;
- d. Protecting transactions, such as processing credit card, debit card and check payments; and
- e. Appropriate disposal of files containing “personally identifying information,” or “personally sensitive information”, including shredding hard copy files and destroying physical media used to store electronic data.

## **6. Duties in the Event of a “Data Compromise Suit”**

- a. If a “data compromise suit” is brought against you, you must:
  - (1) Immediately record the specifics of the “data compromise suit” and the date received; and
  - (2) Provide us with written notice, as soon as practicable, but in no event more than 60 days after the date the “data compromise suit” is first received by you.
  - (3) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the “data compromise suit”;
  - (4) Authorize us to obtain records and other information;
  - (5) Cooperate with us in the investigation, settlement or defense of the “data compromise suit”;
  - (6) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of loss to which this insurance may also apply; and
  - (7) Not take any action, or fail to take any required action, that prejudices your rights or our rights with respect to such “data compromise suit”.
- b. You may not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense without our prior written consent.
- c. If you become aware of a claim or complaint that may become a “data compromise suit,” you shall promptly inform us of such claim or complaint.

## **7. Duties in the Event of a “Personal Data Compromise”**

You must see that the following are done in the event of a “personal data compromise”:

- a. Notify the police if a law may have been broken.
- b. Give us prompt notice of the “personal data compromise”. You must report the “personal data compromise” to us within 60 days of the date you first discover it.
- c. As soon as possible, give us a description of how, when and where the “personal data compromise” occurred.
- d. Take all reasonable steps to protect “personally identifying information” or “personally sensitive information” remaining in your care, custody or control. If feasible, preserve evidence of the “personal data compromise”.
- e. Permit us to inspect the property and records proving the “personal data compromise”.
- f. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. In such event, your answers must be signed.
- g. Send us a signed, sworn statement 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.
- h. Cooperate with us in the investigation or settlement of the claim.

#### **8. Legal Action Against Us**

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

- a. There has been full compliance with all of the terms of this insurance; and
- b. The action is brought within 2 years after the date the “personal data compromise” is first discovered by you.

#### **9. Legal Advice**

We are not your legal advisor. Our determination of what is or is not covered under this Data Compromise Coverage Form does not represent advice or counsel from us about what you should or should not do.

#### **10. Other Insurance**

If there is other insurance that applies to the same loss, damage or expense, this Data Compromise Coverage shall apply only as excess insurance after all other applicable insurance has been exhausted.

#### **11. Policy Period**

This policy applies only to “personal data compromises” that are first discovered by you during the policy period shown in the General Declarations. The policy period begins and ends at 12:01 a.m., Standard Time, at your address shown in the General Declarations.

#### **12. Pre-Notification Consultation**

You agree to consult with us prior to the issuance of notification to “affected individuals.” We assume no responsibility under this Data Compromise Coverage for any services promised to “affected individuals” without our prior agreement. If possible, this pre-notification consultation will also include the designated service provider(s) as agreed to under Condition 13. Service Providers. You must provide the following at our pre-notification consultation with you:

- a. The exact list of “affected individuals” to be notified, including contact information.
- b. Information about the “personal data compromise” that may appropriately be communicated with “affected individuals.”
- c. The scope of services that you desire for the “affected individuals.” For example, coverage may be structured to provide fewer services in order to make those services available to more “affected individuals” without exceeding the available Response Expenses Limit.

#### **13. Service Providers**

- a. We will only pay under this Data Compromise Coverage for services that are provided by service providers approved by us. You must obtain our prior approval for any service provider whose expenses you want covered under this Data Compromise Coverage. We will not unreasonably withhold such approval.
- b. Prior to the Pre-Notification Consultation described in Additional Condition 12. above, you must come to agreement with us regarding the service provider(s) to be used for the Notification to Affected

Individuals and Services to Affected Individuals. We will suggest a service provider. If you prefer to use an alternate service provider, our coverage is subject to the following limitations:

- (1) Such alternate service provider must be approved by us;
- (2) Such alternate service provider must provide services that are reasonably equivalent or superior in both kind and quality to the services that would have been provided by the service provider we had suggested; and
- (3) Our payment for services provided by any alternate service provider will not exceed the amount that we would have paid using the service provider we had suggested.

#### **14. Services**

The following conditions apply as respects any services provided to you or any "affected individual" by us, our designees or any service firm paid for in whole or in part under this Data Compromise coverage:

- a. The effectiveness of such services depends on your cooperation and assistance.
- b. All services may not be available or applicable to all individuals. For example, "affected individuals" who are minors or foreign nationals may not have credit records that can be provided or monitored. Service in Canada will be different from service in the United States and Puerto Rico in accordance with local conditions.
- c. We do not warrant or guarantee that the services will end or eliminate all problems associated with the covered events.
- d. You will have a direct relationship with the professional service firms paid for in whole or in part under this coverage. Those firms work for you.

#### **C. DEFINITIONS**

With respect to the provisions of this Data Compromise Coverage Form only, the following definitions are added:

1. "Affected Individual" means any person who is your current, former or prospective customer, client, member (including but not limited to condo association member, co-op member, townhouse member, tenant), owner, director or employee and whose "personally identifying information" or "personally sensitive information" is lost, stolen, accidentally released or accidentally published by a "personal data compromise" covered under this Coverage Form. This definition is subject to the following provisions:
  - a. "Affected individual" does not include any business or organization. Only an individual person may be an "affected individual."
  - b. An "affected individual" must have a direct relationship with your interests as insured under this policy. The following are examples of individuals who would not meet this requirement:
    - (1) If you aggregate or sell information about individuals as part of your business, the individuals about whom you keep such information do not qualify as "affected individuals." However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of yours.
    - (2) If you store, process, transmit or transport records, the individuals whose "personally identifying information" or "personally sensitive information" you are storing, processing, transmitting or transporting for another entity do not qualify as "affected individuals." However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of yours.
    - (3) You may have operations, interests or properties that are not insured under this policy. Individuals who have a relationship with you through such other operations, interests or properties do not qualify as "affected individuals." However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of the operation insured under this policy.
  - c. An "affected individual" may reside anywhere in the world.
2. "Data Compromise Defense Costs" means expenses resulting solely from the investigation, defense and appeal of any "data compromise suit" against you. Such expenses must be reasonable and necessary. They will be incurred by us. They do not include your salaries or your loss of earnings. They do include premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond.



3. "Data Compromise Liability"
  - a. "Data compromise liability" means the following, when they arise from a "data compromise suit":
    - (1) Damages, judgments or settlements to "affected individuals";
    - (2) Defense costs added to that part of any judgment paid by us, when such defense costs are awarded by law or court order; and
    - (3) Pre-judgment interest on that part of any judgment paid by us.
  - b. "Data compromise liability" does not mean:
    - (1) Damages, judgments or settlements to anyone who is not an "affected individual";
    - (2) Civil or criminal fines or penalties imposed by law;
    - (3) Punitive or exemplary damages;
    - (4) The multiplied portion of multiplied damages;
    - (5) Taxes; or
    - (6) Matters which may be deemed uninsurable under the applicable law.
4. "Data Compromise Suit"
  - a. "Data Compromise Suit" means a civil proceeding in which damages to one or more "affected individuals" arising from a "personal data compromise" or the violation of a governmental statute or regulation are alleged. Such proceeding must be brought in the United States of America, Puerto Rico or Canada. "Data compromise suit" includes:
    - (1) An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent;
    - (2) Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent; or
    - (3) A written demand for money, when such demand could reasonably result in a civil proceeding as described in this definition.
  - b. "Data compromise suit" does not mean any demand or action brought by or on behalf of someone who is:
    - (1) Your director or officer;
    - (2) Your owner or part-owner; or
    - (3) A holder of your securities;

in their capacity as such, whether directly, derivatively, or by class action. "Data compromise suit" will include proceedings brought by such individuals in their capacity as "affected individuals," but only to the extent that the damages claimed are the same as would apply to any other "affected individual."
  - c. "Data compromise suit" does not mean any demand or action brought by or on behalf of an organization, business, institution or any other party that is not an "affected individual" or governmental entity.
5. "Identity Theft" means the fraudulent use of "personally identifying information." This includes fraudulently using such information to establish credit accounts, secure loans, enter into contracts or commit crimes. "Identity theft" does not include the fraudulent use of a business name, d/b/a or any other method of identifying a business activity.
6. "Malware-Related Compromise" means a "personal data compromise" that is caused, enabled or abetted by a virus or other malicious code that, at the time of the "personal data compromise", is named and recognized by the CERT® Coordination Center, McAfee®, Secunia, Symantec or other comparable third party monitors of malicious code activity.
7. "Personal Data Compromise" means the loss, theft, accidental release or accidental publication of "personally identifying information" or "personally sensitive information" as respects one or more "affected individuals". If the loss, theft, accidental release or accidental publication involves "personally identifying information", such loss, theft, accidental release or accidental publication must result in or have the reasonable possibility of resulting in the fraudulent use of such information. This definition is subject to the following provisions:
  - a. At the time of the loss, theft, accidental release or accidental publication, the "personally identifying information" or "personally sensitive information" need not be at the insured premises but must be in the direct care, custody or control of:

- (1) You; or
  - (2) A professional entity with which you have a direct relationship and to which you (or an “affected individual” at your direction) have turned over (directly or via a professional transmission or transportation provider) such information for storage, processing, transmission or transportation of such information.
- b. “Personal data compromise” includes disposal or abandonment of “personally identifying information” or “personally sensitive information” without appropriate safeguards such as shredding or destruction, subject to the following provisions:
- (1) The failure to use appropriate safeguards must be accidental and not reckless or deliberate; and
  - (2) Such disposal or abandonment must take place during the time period for which this Data Compromise Coverage endorsement is effective.
- c. “Personal data compromise” includes situations where there is a reasonable cause to suspect that such “personally identifying information” or “personally sensitive information” has been lost, stolen, accidentally released or accidentally published, even if there is no firm proof.
- d. All incidents of “personal data compromise” that are discovered at the same time or arise from the same cause will be considered one “personal data compromise”.
8. “Personally Identifying Information” means information, including health information, that could be used to commit fraud or other illegal activity involving the credit, access to health care or identity of an “affected individual”. This includes, but is not limited to, Social Security numbers or account numbers.  
“Personally identifying information” does not mean or include information that is otherwise available to the public, such as names and addresses.
9. “Personally Sensitive Information” means private information specific to an individual the release of which requires notification of “affected individuals” under any applicable law.  
“Personally sensitive information” does not mean or include “personally identifying information”.

All other provisions of this policy apply.

# Data Compromise Supplemental Declarations

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Named Insured: 75 ARLINGTON ST, INC.

Policy Number ..... 8120T23406  
 Identification Number.....  
 Effective Date ..... 10/21/19  
 Issue Date..... 10/22/19

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## Coverages

## Limits

### SECTION 1 – RESPONSE EXPENSES

<b>Data Compromise Response Expenses Limit:</b>	\$50,000 Annual Aggregate
<b>Sublimits</b>	
Named Malware (Sec. 1)	\$50,000
Forensic IT Review:	\$5,000
Legal Review:	\$5,000
PR Services:	\$5,000 Any one "Personal Data Compromise"

### SECTION 2 – DEFENSE AND LIABILITY

<b>Data Compromise Defense &amp; Liability Limit:</b>	\$50,000 Annual Aggregate
<b>Sublimits</b>	
Named Malware (Sec. 2)	\$50,000 Any one "Personal Data Compromise"

## Deductibles

<b>Response Expenses Deductible:</b>	\$2,500 Any one "Personal Data Compromise"
<b>Defense and Liability Deductible:</b>	\$2,500 Each "Data Compromise Suit"

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

## **Gas Systems Endorsement**

This Endorsement applies to the:

Commercial Property Coverage Part  
Businessowners Standard Property Coverage Form  
Businessowners Special Property Coverage Form

1. This policy will not cover the following:

- (a) costs associated directly or indirectly with the enforcement of any law or ordinance that requires the testing of a gas system for integrity or condition; or
- (b) any loss to a gas system caused by testing for integrity or condition

This exclusion does not apply if the testing is required due to a direct loss causing physical damage to a covered gas system from Fire; Lightning; Explosion; Aircraft or Vehicles; Riot or Civil Commotion; Sinkhole Collapse; Volcanic Action; Falling Objects; Weight of Snow, Ice or Sleet that is covered by the policy.

2. This exclusionary endorsement supersedes all other forms and endorsements, including endorsements that extend coverage to losses caused by the enforcement of any law or ordinance.

# CyberOne 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.

Some words and phrases that appear in bold face or quotation marks have special meaning. Refer to Definitions.

## SECTION 1 – COMPUTER ATTACK

### A. COVERED CAUSE OF LOSS – SECTION 1

This Computer Attack coverage applies only if all of the following conditions are met:

1. There has been a “computer attack”; and
2. Such “computer attack” is first discovered by you during the policy period for which this Coverage Form is applicable; and
3. Such “computer attack” is reported to us as soon as practicable, but in no event more than 60 days after the date it is first discovered by you.

### B. COVERAGE – SECTION 1

If all three of the conditions listed above in COVERED CAUSE OF LOSS – SECTION 1 have been met, then we will provide you the following coverages for loss directly arising from such “computer attack”.

#### 1. Data Restoration

We will pay your necessary and reasonable “data restoration costs”.

#### 2. Data Re-creation

We will pay your necessary and reasonable “data re-creation costs”.

#### 3. System Restoration

We will pay your necessary and reasonable “system restoration costs”.

#### 4. Loss of Business

We will pay your actual “business income loss” and your necessary and reasonable “extra expenses”.

#### 5. Public Relations

If you suffer covered “business income loss”, we will pay for the services of a professional public relations firm to assist you in communicating your response to the “computer attack” to the media, the public and your customers, clients or members.

### C. LIMITS – SECTION 1

The most we will pay under Computer Attack coverage is the Computer Attack Limit indicated in the Declarations. If no limit is shown or is shown as Excluded in the Declarations, then the Computer Attack coverage will be considered to have a limit of \$0.

The most we will pay under Data Re-creation coverage for loss (including “business income loss” and “extra expense” related to data re-creation activities) arising from any one “computer attack” is the Data Re-creation Sublimit indicated in the Declarations. This sublimit is part of, and not in addition to, the Computer Attack Limit. If no sublimit is shown or is shown as Excluded in the Declarations, then the Data Re-creation coverage will be considered to have a sublimit of \$0.

The most we will pay under Loss of Business coverage for loss arising from any one “computer attack” is the Loss of Business Sublimit indicated in the Declarations. This sublimit is part of, and not in addition to, the Computer Attack Limit. If no sublimit is shown or is shown as Excluded in the Declarations, then the Loss of Business coverage will be considered to have a sublimit of \$0.

The most we will pay under Public Relations coverage for loss arising from any one “computer attack” is the

Public Relations Sublimit indicated in the Declarations. This sublimit is part of, and not in addition to, the Computer Attack Limit. If no sublimit is shown or is shown as Excluded in the Declarations, then the Public Relations coverage will be considered to have a sublimit of \$0.

The Computer Attack Limit is an annual aggregate limit. This amount is the most we will pay for the total of all loss covered under Section 1 arising out of all “computer attack” events which are first discovered by you during the present annual policy period. This limit applies regardless of the number of “computer attack” events occurring during that period.

A “computer attack” may be first discovered by you in one policy period but it may cause covered costs in one or more subsequent policy periods. If so, all covered costs arising from such “computer attack” will be subject to the Computer Attack Limit applicable to the policy period when the “computer attack” was first discovered by you.

#### **D. DEDUCTIBLE – SECTION 1**

The Computer Attack coverage is subject to the Computer Attack Deductible indicated in the Declarations. You shall be responsible for the applicable deductible amount as respects loss arising from each “computer attack” covered under this Coverage Form.

### **SECTION 2 – NETWORK SECURITY LIABILITY**

#### **A. COVERED CAUSE OF LOSS – SECTION 2**

This Network Security Liability coverage applies only if all of the following conditions are met:

1. You first receive notice of a “network security liability suit” during the policy period for which this Coverage Form is applicable or any Extended Reporting Periods; and
2. Such “network security liability suit” is reported to us as soon as practicable, but in no event more than 60 days after the date it is first received by you.

#### **B. COVERAGE – SECTION 2**

If both of the conditions listed above in SECTION 2 – COVERED CAUSE OF LOSS have been met, then we will provide you the following coverages for loss directly arising from such “network security liability suit”.

##### **1. Defense**

We will pay your necessary and reasonable “network security liability defense costs”.

##### **2. Settlement Costs**

We will pay your necessary and reasonable “network security liability settlement costs”.

#### **C. LIMITS – SECTION 2**

Except for post-judgment interest, the most we will pay under Network Security Liability coverage is the Network Security Liability Limit indicated in the Declarations. If no limit is shown or is shown as Excluded in the Declarations, then the Network Security Liability coverage will be considered to have a limit of \$0.

The Network Security Liability Limit is an annual aggregate limit. This amount is the most we will pay for the total of all loss covered under Section 2 (other than post-judgment interest) arising out of all “network security liability suits” of which you first receive notice during the present annual policy period or any Extended Reporting Periods. This limit applies regardless of the number of “network security liability suits” of which you first receive notice during that period.

You may first receive notice of a “network security liability suit” in one policy period but it may cause covered costs in one or more subsequent policy periods. If so, all covered costs arising from such “network security liability suit” (other than post-judgment interest) will be subject to the Network Security Liability Limit applicable to the policy period when notice of the “network security liability suit” was first received by you.

The Network Security Liability Limit for the Extended Reporting Periods (if applicable) shall be part of, and not in addition to, the Network Security Liability Limit for the immediately preceding policy period.

#### **D. DEDUCTIBLE – SECTION 2**

The Network Security Liability coverage is subject to the Network Security Liability Deductible indicated in the Declarations. You shall be responsible for the applicable deductible amount as respects loss arising from each “network security liability suit” covered under this Coverage Form.

## **EXCLUSIONS, ADDITIONAL CONDITIONS AND DEFINITIONS APPLICABLE TO ALL SECTIONS**

### **A. EXCLUSIONS**

We will not pay for costs or loss arising from the following:

1. Loss to the internet, an internet service provider, or any computer or computer system that is not owned or leased by you and operated under your control.
2. Costs to research or correct any deficiency.
3. Any fines or penalties.
4. Any criminal investigations or proceedings.
5. Any threat, extortion or blackmail. This includes, but is not limited to, ransom payments and private security assistance.
6. Your intentional or willful complicity in a covered loss event or your reckless disregard for the security of your computer system or data.
7. Any criminal, fraudulent or dishonest act, error or omission, or any intentional or knowing violation of the law by you.
8. Any "computer attack" occurring prior to the first inception of this CyberOne Coverage Form or any coverage substantially similar to that described in this Coverage Form.
9. That part of any "network security liability suit" seeking any non-monetary relief.
10. Any "network security liability suit" arising from a propagation of malware, denial of service attack, or if applicable, loss, release or disclosure of business data that occurred prior to the first inception of this Coverage Form or any coverage substantially similar to that described in this Coverage Form.
11. The propagation or forwarding of malware, including viruses, worms, Trojans, spyware and keyloggers in connection with hardware or software created, produced or modified by you for sale, lease or license to third parties.
12. Seizure or destruction of property by order of governmental authority.
13. Nuclear reaction or radiation or radioactive contamination, however caused.
14. War and military action including any of the following and any consequence of any of the following:
  - a. War, including undeclared or civil war;
  - b. 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
  - c. Insurrection, rebellion, revolution, usurped power, political violence, or action taken by governmental authority in hindering or defending against any of these.

### **B. CONDITIONS**

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

#### **1. Abandonment**

There can be no abandonment of any property to us.

#### **2. Concealment or Fraud**

This policy is void if you have intentionally concealed or misrepresented any material fact or circumstance relating to this insurance.

#### **3. Coverage Territory**

The "computer attack" must involve a computer or other electronic hardware that is owned or leased by you and operated under your control within the United States of America, its territories and possessions, and Puerto Rico.

The "network security liability suit" must be brought in the United States of America, its territories and possessions, Puerto Rico or Canada.

#### **4. Due Diligence**

You agree to use due diligence to prevent and mitigate costs covered under this Coverage Form. This includes, but is not limited to, complying with reasonable and industry-accepted protocols for:

- a. Providing and maintaining appropriate computer and internet security; and
- b. Maintaining and updating at appropriate intervals backups of computer data.

#### **5. Duties in the Event of a "Computer Attack"**

You must see that the following are done in the event of a "computer attack":

- a. Notify the police if a law may have been broken.
- b. Give us prompt notice of the "computer attack". As noted in Section 1 A.3., you must report the "computer attack" to us within 60 days of the date you first discover it.
- c. As soon as possible, give us a description of how, when and where the "computer attack" occurred.
- d. Take all reasonable steps to protect computers or other electronic hardware. If feasible, preserve evidence of the "computer attack".
- e. Permit us to inspect the property and records proving the "computer attack".
- f. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. In such event, your answers must be signed.
- g. Send us a signed, sworn statement 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.
- h. Cooperate with us in the investigation or settlement of the claim.

#### **6. Duties in the Event of a "Network Security Liability Suit"**

- a. If a "network security liability suit" is brought against you, you must:
  1. Immediately record the specifics of the "network security liability suit" and the date received; and
  2. Provide us with written notice, as soon as practicable, but in no event more than 60 days after the date the "network security liability suit" is first received by you.
  3. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "network security liability suit";
  4. Authorize us to obtain records and other information;
  5. Cooperate with us in the investigation, settlement or defense of the "network security liability suit";
  6. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of loss to which this insurance may also apply; and
  7. Not take any action, or fail to take any required action, that prejudices your rights or our rights with respect to such "network security liability suit".

#### **7. Extended Reporting Periods**

- a. You shall have the right to the Extended Reporting Periods described in this section, in the event of a "termination of coverage"
- b. If a "termination of coverage" has occurred, you shall have the right to the following:
  1. An Automatic Extended Reporting Period of 30 days after the effective date of "termination of coverage" at no additional premium in which to give to us written notice of a "network security liability suit" of which you first receive notice during said Automatic Extended Reporting Period for any propagation of malware, denial of service attack, or if applicable, loss, release or disclosure of business data occurring before the end of the coverage period for this CyberOne coverage and which is otherwise covered by this CyberOne coverage; and
  2. Upon payment of an additional premium of 100% of the full annual premium applicable to this CyberOne coverage, a Supplemental Extended Reporting Period of 1 year immediately following the effective date of "termination of coverage" in which to give to us written notice of a "network security liability suit" of which you first receive notice during said Supplemental Extended Reporting Period for any propagation of malware, denial of service attack, or if applicable, loss, release or disclosure of business data occurring before the end of the coverage period for this CyberOne coverage and which is otherwise covered by this CyberOne coverage.



To obtain the Supplemental Extended Reporting Period, you must request it in writing and pay the additional premium due, within 30 days of the effective date of “termination of coverage”. The additional premium for the Supplemental Extended Reporting Period shall be fully earned at the inception of the Supplemental Extended Reporting Period. If we do not receive the written request as required, you may not exercise this right at a later date.

This insurance, provided during the Supplemental Extended Reporting Period, is excess over any other valid and collectible insurance that begins or continues in effect after the Supplemental Extended Reporting Period becomes effective, whether the other insurance applies on a primary, excess, contingent, or any other basis.

## **8. Legal Action Against Us**

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

- a. There has been full compliance with all of the terms of this insurance; and
- b. The action is brought within 2 years after the date the “computer attack” is first discovered by you, or the date on which you first receive notice of a “network security liability suit”.

## **9. Network Security Liability Defense**

- a. We shall have the right and the duty to assume the defense of any applicable “network security liability suit” against you. You shall give us such information and cooperation as we may reasonably require.
- b. You shall not admit liability for or settle any “network security liability suit” or incur any defense costs without our prior written consent.
- c. If you refuse to consent to any settlement recommended by us and acceptable to the claimant, we may then withdraw from your defense by tendering control of the defense to you. From that point forward, you shall, at your own expense, negotiate or defend such “network security liability suit” independently of us. Our liability shall not exceed the amount for which the claim or suit could have been settled if such recommendation was consented to, plus defense costs incurred by us, and defense costs incurred by you with our written consent, prior to the date of such refusal.
- d. We shall not be obligated to pay any damages or defense costs, or to defend or continue to defend any “network security liability suit”, after the Network Security Liability Limit has been exhausted.
- e. We shall pay all interest on that amount of any judgment within the Network Security Liability Limit which accrues:
  1. After entry of judgment; and
  2. Before we pay, offer to pay or deposit in court that part of the judgment within the Network Security Liability Limit or, in any case, before we pay or offer to pay the entire Network Security Liability Limit.

These interest payments shall be in addition to and not part of the Network Security Liability Limit.

## **10. Other Data Coverage in This Policy**

Some elements of this CyberOne coverage may also be covered elsewhere under this policy. If so, this CyberOne coverage will apply as excess, additional coverage. If loss payment has been made elsewhere under the policy for the same event, the amount of such payment will count towards the deductible that applies to this CyberOne coverage.

## **11. Policy Period**

This policy applies only to “computer attacks” that are first discovered by you during the policy period shown in the General Declarations, and to “network security liability suits” of which you first receive notice during the policy period shown in the General Declarations. The policy period begins and ends at 12:01 a.m., Standard Time, at your address shown in the General Declarations.

## **12. Services**

The following conditions apply as respects any services provided to you by any service firm provided or paid for in whole or in part under this Coverage Form:

- a. The effectiveness of such services depends on your cooperation and assistance.
- b. We do not warrant or guarantee that the services will end or eliminate all problems associated with the covered events.

## **C. DEFINITIONS**

With respect to the provisions of this Coverage Form only, the following definitions are added:

1. "Business Income Loss" means the sum of the:
  - a. Net income (net profit or loss before income taxes) that would have been earned or incurred; and
  - b. Continuing normal and necessary operating expenses incurred, including employee payroll, actually lost by you during the "period of restoration".
2. "Computer Attack" means one of the following involving a computer or other electronic hardware that is owned or leased by you and operated under your control:
  - a. Unauthorized Access - meaning the gaining of access to your computer system by an unauthorized person or persons; or
  - b. Malware Attack – meaning damage to your computer system or data arising from malicious code, including viruses, worms, Trojans, spyware and keyloggers. This does not mean damage from shortcomings or mistakes in legitimate electronic code or damage from code installed on your computer system during the manufacturing process.
  - c. Denial of Service Attack – meaning a deliberate act to prevent third parties from gaining access to your computer system through the internet in a manner in which they are legally entitled.
3. "Data Re-creation Costs"
  - a. "Data re-creation costs" means the costs of an outside professional firm hired by you to research, re-create and replace data that has been lost or corrupted and for which there is no electronic source available or where the electronic source does not have the same or similar functionality to the data that has been lost or corrupted.
  - b. "Data re-creation costs" also means your actual "business income loss" and your necessary and reasonable "extra expenses" arising from the lack of the lost or corrupted data during the time required to research, re-create and replace such data.
  - c. "Data re-creation costs" does not mean costs to research, re-create or replace:
    - 1) Software programs or operating systems that are not commercially available; or
    - 2) Data that is obsolete, unnecessary or useless to you.
4. "Data Restoration Costs"
  - a. "Data restoration costs" means the costs of an outside professional firm hired by you to replace electronic data that has been lost or corrupted. In order to be considered "data restoration costs," such replacement must be from one or more electronic sources with the same or similar functionality to the data that has been lost or corrupted.
  - b. "Data restoration costs" does not mean costs to research, restore or replace:
    - 1) Software programs or operating systems that are not commercially available; or
    - 2) Data that is obsolete, unnecessary or useless to you.
5. "Extra Expense" means the additional cost you incur to operate your business during the "period of restoration" over and above the cost that you normally would have incurred to operate your business during the same period had no "computer attack" occurred.
6. "Network Security Liability Defense Costs"
  - a. "Network security liability defense costs" means reasonable and necessary expenses resulting solely from the investigation, defense and appeal of any "network security liability suit" against you. Such expenses may be incurred by us. Such expenses may include premiums for any appeal bond, attachment bond or similar bond. However, we have no obligation to apply for or furnish such bond.
  - b. "Network security liability defense costs" does not mean your salaries or your loss of earnings.
7. "Network Security Liability Settlement Costs"
  - a. "Network security liability settlement costs" means the following, when they arise from a "network security liability suit":
    - 1) Damages, judgments or settlements; and
    - 2) Defense costs added to that part of any judgment paid by us, when such defense costs are awarded by law or court order; and

- 3) Pre-judgment interest on that part of any judgment paid by us.
  - b. "Network security liability settlement costs" does not mean:
    - 1) Civil or criminal fines or penalties imposed by law;
    - 2) Punitive or exemplary damages;
    - 3) The multiplied portion of multiplied damages;
    - 4) Taxes; or
    - 5) Matters which may be deemed uninsurable under the applicable law.
8. "Network Security Liability Suit"
- a. "Network security liability suit" means a civil proceeding against you in which damages are alleged. Such proceeding must be brought in the United States of America, its territories and possessions, Puerto Rico or Canada. Such proceeding must be based on an allegation that a negligent security failure or weakness with respect to a computer or other electronic hardware that is owned or leased by you and operated under your control allowed one or more of the following to happen:
    - 1) The unintended propagation or forwarding of malware, including viruses, worms, Trojans, spyware and keyloggers. Malware does not include shortcomings or mistakes in legitimate electronic code.
    - 2) The unintended abetting of a denial of service attack against one or more other systems.
  - b. If the 3<sup>rd</sup> Party Business Information line under Network Security Liability Optional Coverage in the Declarations is marked as Included, then "network security liability suit" also means a civil proceeding against you in which damages are alleged which is brought in the United States of America, its territories and possessions, Puerto Rico or Canada and which is based on an allegation that a negligent security failure or weakness with respect to a computer or other electronic hardware that is owned or leased by you and operated under your control allowed the loss, release or disclosure of business data that is owned by or proprietary to a third party. This does not include personally identifying information or other information that is sensitive or personal to individuals. If the 3<sup>rd</sup> Party Business Information line under Network Security Liability Optional Coverage in the Declarations is marked as Excluded or is blank, then "network security liability suit" does not include such suits.
  - c. "Network security liability suit" includes the following:
    - 1) An arbitration or alternative dispute resolution proceeding that you are required to submit to or which we agree you should submit to; or
    - 2) A written demand for money, when such demand could reasonably result in a civil proceeding as described in this definition.
  - d. "Network security liability suit" does not mean any demand or action alleging or arising from property damage or bodily injury.
  - e. "Network security liability suit" does not mean any demand or action brought by or on behalf of someone who is:
    - 1) Your director or officer;
    - 2) Your owner or part-owner; or
    - 3) A holder of your securities;
 in their capacity as such, whether directly, derivatively, or by class action.
9. "Period of Restoration" means the period of time that begins at the time that the "computer attack" is discovered by you and continues until the earlier of:
- a. The date that all data restoration, data re-creation and system restoration directly related to the "computer attack" has been completed; or
  - b. The date on which such data restoration, data re-creation and system restoration could have been completed with the exercise of due diligence and dispatch.
10. "System Restoration Costs"
- a. "System restoration costs" means the costs of an outside professional firm hired by you to do any of the following in order to restore your computer system to its pre- "computer attack" level of functionality:

- 1) Replace or reinstall computer software programs;
  - 2) Remove any malicious code; and
  - 3) Configure or correct the configuration of your computer system.
- b. "System restoration costs" does not mean:
- 1) Costs to increase the speed, capacity or utility of your computer system;
  - 2) Labor of your employees;
  - 3) Any costs in excess of the actual cash value of your computer system; or
  - 4) Costs to repair or replace hardware.
11. "Termination of Coverage" means:
- a. You or we cancel this CyberOne coverage;
  - b. You or we refuse to renew this CyberOne coverage; or
  - c. We renew this CyberOne coverage on an other than claims-made basis or with a retroactive date later than the date of the first inception of this CyberOne coverage or any coverage substantially similar to that described in this coverage form.

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

**GREATER NEW YORK INSURANCE COMPANIES**

**AMENDMENT OF LIMITS AND DEDUCTIBLES**

**ENHANCED PROPERTY COVERAGE PROGRAM**

This endorsement modifies insurance provided under the following:

- ENHANCED PROPERTY COVERAGE ENDORSEMENT**
- ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR CONDOMINIUMS AND COOPERATIVES**
- ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS**
- PROTECTO-GUARD PROPERTY ENHANCED COVERAGE ENDORSEMENT FOR HABITATIONAL PROPERTIES**
- PROTECTO-GUARD PROPERTY ENHANCED COVERAGE ENDORSEMENT FOR RESTAURANTS**
- ACTUAL LOSS SUSTAINED ENDORSEMENT**
- ENHANCED GENERAL LIABILITY COVERAGE ENDORSEMENT**
- ENHANCED GENERAL LIABILITY COVERAGE ENDORSEMENT FOR CONDOMINIUMS AND COOPERATIVES**
- ENHANCED GENERAL LIABILITY COVERAGE ENDORSEMENT FOR RESTAURANTS**
- BUILDING AND PERSONAL PROPERTY COVERAGE FORM**
- CONDOMINIUM ASSOCIATION COVERAGE FORM**
- BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FORM**
- BUSINESS INCOME WITHOUT EXTRA EXPENSE COVERAGE FORM**
- CAUSES OF LOSS – SPECIAL FORM**
- ENHANCED PROPERTY COVERAGE ENDORSEMENT HOSPITALITY PROGRAM**
- CRIME COVERAGE ENDORSEMENT HOSPITALITY PROGRAM**
- ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR OFFICE BUILDINGS – LESSORS RISK**
- ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR SHOPPING CENTERS – LESSORS RISK**
- ENHANCED PROPERTY COVERAGE ENDORSEMENT PRIVATE CLUB PROGRAM**

Changes are applicable only if the appropriate section is completed by indicating the Additional and Total Limit in one (or more) of the Schedules which follow or if a box indicates a selection has been made by a box below is marked: .

**INCREASE(S) IN LIMITS**

1. In addition to the Limits provided by the Enhanced Property Coverage Endorsement attached to your policy for the specific coverage listed below, we will pay the Additional Limits shown in the Schedule below:

<b>INCREASE IN LIMITS SCHEDULE</b>		
<b>COVERAGE</b>	<b>ADDITIONAL LIMITS</b>	<b>TOTAL LIMIT</b>
Access to Premises		
Accounts Receivable		
Alternative Key Systems		
Arson, Theft and Vandalism Rewards		
B.I. Reservation Systems		
Business Income - Dependent Properties		
Claim Expenses		
Computer Fraud Coverage		
Customer Reimbursement		

INCREASE IN LIMITS SCHEDULE			
COVERAGE		ADDITIONAL LIMITS	TOTAL LIMIT
Debris Removal			
Electronic Data:			
Elevator Collision for Personal Property of Others			
Evacuation Expense			
Fine Arts			
Fire Department Service Charges			
Fire Protection Equipment Recharge			
Forgery or Alteration		\$45,000	\$50,000
Hotel Key Card			
Guest's Property - Inside the Premises	Per Occurrence		
	Per Guest		
Guest's Property – In Safe Deposit Boxes	Per Occurrence		
	Per Guest		
Lost Lease			
Money and Securities	Inside	\$40,000	\$50,000
	Outside	\$40,000	\$50,000
Money Orders & Counterfeit Paper Currency		\$20,000	\$25,000
Newly Acquired or Constructed Property - Building			
Newly Acquired or Constructed Property – Your Business Personal Property			
Off Premises Services			
Ordinance or Law	Demolition		
	Increased Cost of Construction		
Outdoor Antennas & Satellites			
Outdoor Signs/Signs			
Outdoor Trees, Shrubs and Plants			
Personal Effects and Property of Others	Per Person		
	Aggregate		
Pollutant Cleanup			
Property In Transit			
Property Off Premises			
Realty Tax – Increased Assessment			
Sewer Back-up Limited Additional Coverage			
Supplemental Refrigerated Food Coverage			
Tenant Move Back Expense			
Valuable Papers and Records - Cost of Research			
Water			

**EMPLOYEE DISHONESTY INCREASED LIMIT**

2. In addition to the Limits provided by the Enhanced Property Coverage Endorsement attached to your policy, we will pay the Additional Limits shown in the Schedule below for Employee Dishonesty:

EMPLOYEE DISHONESTY SCHEDULE		
COVERAGE	ADDITIONAL LIMITS	TOTAL LIMIT
Employee Dishonesty - Employee's 1-5		
Employee Dishonesty – Each Additional Employee 6-50		
Each Additional Employee 51 or Over		

**CHANGE IN NUMBER OF DAYS OR PROPERTY DISTANCE EXTENSION - ENHANCED PROPERTY COVERAGE ENDORSEMENT**

3. If an entry is made in the Additional Number column in the Schedule below, that number of days or that property distance is added to the number of days or property distances shown for that item in the Enhanced Property Coverage Endorsement.

ADDITIONAL NUMBER SCHEDULE		
COVERAGE	ADDITIONAL NUMBER	TOTAL NUMBER
Extended Business Income		
Preservation of Property		
Property Distance Extension		

**OPTIONAL PERIOD(S) OF COVERAGE - ACTUAL LOSS SUSTAINED**

4. In addition to the 12 month period of coverage provided by the ACTUAL LOSS SUSTAINED ENDORSEMENT, we will extend the period of coverage to the Optional Period of Coverage as shown in the Schedule below:

ADDITIONAL PERIOD SCHEDULE – ALS	
PROPERTY COVERAGE(S)	PERIOD OF COVERAGE OPTIONS <i>(Coverage is provided only if one of the boxes below is marked: <input checked="" type="checkbox"/>)</i>
ACTUAL LOSS SUSTAINED	Optional Periods of Coverage: <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months

A. If an Optional **24** month Period of Coverage is indicated (by a  in the appropriate box) in this AMENDMENT OF LIMITS AND DEDUCTIBLES ENDORSEMENT Schedule above, the following replaces section **C. Limits of Insurance** of the Business Income And Extra Expense Coverage Form or the Business Income Without Extra Expense Coverage Form, but only to the extent that coverage is provided by the Actual Loss Sustained Endorsement:

**C. Limits of Insurance**

The most we will pay for any one occurrence is the actual loss of Business Income and/or the actual Extra Expense that you sustain during the "period of restoration" and that occurs within **24** consecutive months after the date of direct physical loss or damage. This **24**-month limit replaces the Limit of Insurance shown in the Declarations for Business Income or Business Income and Extra Expense.

B. If an Optional **36** month Period of Coverage is indicated (by a  in the appropriate box) in this AMENDMENT OF LIMITS AND DEDUCTIBLES ENDORSEMENT Schedule above, the following replaces Section **C. Limits of Insurance** of the Business Income And Extra Expense Coverage Form or the Business Income Without Extra Expense Coverage Form, but only to the extent that coverage is provided by this Actual Loss Sustained Coverage Extension:

**C. Limits of Insurance**

The most we will pay for any one occurrence is the actual loss of Business Income and/or the actual Extra Expense that you sustain during the "period of restoration" and that occurs within **36** consecutive months after the date of direct physical loss or damage. This **36**-month limit replaces the Limit of Insurance shown in the Declarations for Business Income or Business Income and Extra Expense.

**C. ADDITIONAL COVERAGE - ALTERATIONS AND NEW BUILDINGS - OPTIONAL PERIOD(S) OF COVERAGE**

As respects the Actual Loss Sustained Coverage as it relates to **A.5.b. ADDITIONAL COVERAGE - ALTERATIONS AND NEW BUILDINGS**, the following is added as the last paragraph:

The most we will pay for any one occurrence is the actual loss of Business Income and/or Extra Expense that you sustain during the "period of restoration" that occurs within **12** consecutive months after the date of direct physical loss or damage, unless a AMENDMENT OF LIMITS AND DEDUCTIBLES ENDORSEMENT modifies this period of coverage.

1. OPTIONAL PERIOD OF COVERAGE – ACTUAL LOSS SUSTAINED – **24** Months:

If an Optional **24** month Period of Coverage is indicated (by a  in the appropriate box) in the AMENDMENT OF LIMITS AND DEDUCTIBLES ENDORSEMENT Schedule above, the following replaces the **12**-month provision stated above, but only to the extent that coverage is provided by this Actual Loss Sustained Endorsement:

The most we will pay for any one occurrence is the actual loss of Business Income and/or Extra Expense that you sustain during the "period of restoration" that occurs within **24** consecutive months after the date of direct physical loss or damage.

2. OPTIONAL PERIOD OF COVERAGE – ACTUAL LOSS SUSTAINED – **36** Months:

If an Optional **36** month Period of Coverage is indicated (by a  in the appropriate box) in the AMENDMENT OF LIMITS AND DEDUCTIBLES ENDORSEMENT Schedule above, the following replaces the 12-month provision stated above, but only to the extent that coverage is provided by this Actual Loss Sustained Coverage Extension:

The most we will pay for any one occurrence is the actual loss of Business Income and/or Extra Expense that you sustain during the "period of restoration" that occurs within **36** consecutive months after the date of direct physical loss or damage.

- D. Only as respects the coverage provided by the Actual Loss Sustained Endorsement and modified by the Optional Period(s) of Coverage provision of this AMENDMENT OF LIMITS AND DEDUCTIBLES ENDORSEMENT, the following are deleted from **A.6.:**

**DELETIONS FROM COVERAGE EXTENSION:**

The following wording is deleted from section **A.6. Coverage Extension** of the Business Income (And Extra Expense) Coverage Form and **A.5. Coverage Extension** of the Business Income (without Extra Expense) Coverage Form:

*"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**

The following wording is deleted from section **A.6. Coverage Extension** of the Business Income (and Extra Expense) Coverage Form and **A.5. Coverage Extension** of the Business Income (without Extra Expense) Coverage Form:

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

**ADDITIONAL CONDITION AND OPTIONAL COVERAGES**

**D.** Additional Condition and **E.** Optional Coverages of the Business Income And Extra Expense Coverage Form or the Business Income Without Extra Expense Coverage Form are deleted in their entirety.

- E.** Only as respects the Actual Loss Sustained Endorsement, the following is added:

**DEFINITION**

"**Period of Restoration**" means the period of time that:

1. Begins
  - (a) 72 hours after the time of direct physical loss or damage for Business Income coverage; or
  - (b) Immediately after the time of direct physical loss or damage for Extra Expense coverage; caused by or resulting from any Covered Cause of Loss at the described premises; and
2. Ends on the earlier of:
  - (a) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
  - (b) The date when business is resumed at a new permanent location, or
  - (c) 12 months after the date of direct physical loss or damage, unless this time period is modified by an AMENDMENT OF LIMITS AND DEDUCTIBLES ENDORSEMENT attached to your policy which provides a different period of coverage. If an AMENDMENT OF LIMITS AND DEDUCTIBLES ENDORSEMENT is attached to your policy, then the reference to **12** months is



modified to the option (either 24 or 36 months option) indicated in the AMENDMENT OF LIMITS AND DEDUCTIBLES ENDORSEMENT.

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

- (i) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (ii) 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,” or
- (iii) 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 “fungus,” wet or dry rot, or bacteria. This exclusion of “fungus,” wet or dry rot, or bacteria does not apply when “fungus”, wet rot, dry rot or bacteria results from a Covered Cause of Loss. Exclusion B.2.d.(2) of the Causes of Loss Special Form continues to apply.

The additional limits provided by this endorsement are subject to all the applicable provisions of the Enhanced Property Coverage Endorsement.

### OPTIONAL DEDUCTIBLES - ENHANCED PROPERTY COVERAGE ENDORSEMENT(S)

#### 1. SEWER BACK-UP OPTIONAL DEDUCTIBLES

The Deductible(s) applicable to Sewer and Drain Back-up and Overflow and Sump Overflow in the Enhanced Property Coverage Endorsement attached to your policy is changed to the deductible(s) shown in the table below if the Box in the chart below is indicated with an

COVERAGE WITH A NEW DEDUCTIBLE IS PROVIDED ONLY IF A BOX BELOW IS MARKED WITH <input checked="" type="checkbox"/>	COVERAGE	DEDUCTIBLE OPTION
<input type="checkbox"/>	Sewer and Drain Back-Up and Overflow and Sump Overflow – Limited Additional Coverage	\$2,500
<input type="checkbox"/>	Sewer and Drain Back-Up and Overflow and Sump Overflow – Limited Additional Coverage	\$10,000
<input type="checkbox"/>	Sewer and Drain Back-Up and Overflow and Sump Overflow – Limited Additional Coverage	\$25,000

If no entry appears in the table for a specific coverage, then the deductible in Enhanced Property Coverage Endorsement attached to your policy continues to apply to that coverage.

#### 2. PERCENTAGE DEDUCTIBLE OPTIONS APPLICABLE TO SPECIFIC COVERAGES

If a percentage is indicated in the table below, the indicated percentage Deductible applies against any amount we pay for loss for any single occurrence payable under the applicable Coverage Extension. Then we will pay in excess of this deductible up to the Limit of Insurance provided by the applicable Coverage Extension.

Options are available for each whole percentage, up to 10%.

The percentage deductible is a deductible that is determined by multiplying the percentage indicated in the table below against the Limit of Insurance for the property type insured under the Coverage Extension. (For example, the Limit of Insurance provided for Employee Dishonesty is \$50,000 (but this Limit can be increased on request). If the percentage indicated in the table below is 1%, then the percentage deductible is calculated as follows: .01 X \$50,000 = \$500. The Deductible applied against any loss will be \$500.

COVERAGE	PERCENTAGE DEDUCTIBLE OPTION
ACCOUNTS RECEIVABLE	<b>Not available. Follows Property Deductible.</b>
COMPUTER COVERAGE	
FINE ARTS	
VALUABLE PAPERS	<b>Not available. Follows Property Deductible.</b>
“COMPUTER FRAUD”	
FORGERY AND ALTERATION	
MONEY AND SECURITIES	

**3. FIXED DOLLAR DEDUCTIBLE OPTIONS AVAILABLE**

If a dollar amount is indicated in the table below, the indicated flat Deductible amount applies against any amount we pay for loss for any single occurrence payable under the applicable Coverage Extension. Then we will pay in excess of this deductible up to the Limit of Insurance provided by the applicable Coverage Extension.

Fixed Dollar Deductible Options are available in set increments from **\$250 to \$5,000**.

COVERAGE	FIXED DOLLAR DEDUCTIBLE OPTION
ACCOUNTS RECEIVABLE	
COMPUTER COVERAGE	
FINE ARTS	
VALUABLE PAPERS	
“COMPUTER FRAUD”	
FORGERY AND ALTERATION	\$1,000
MONEY AND SECURITIES	\$5,000

**4. EMPLOYEE DISHONESTY DEDUCTIBLE OPTIONS AVAILABLE**

If a dollar amount is indicated in one of the check boxes below, that Deductible amount applies against any amount we pay for loss for any single occurrence payable under the Employee Dishonesty Coverage. Then we will pay in excess of this deductible up to the Limit of Insurance provided by The Employee Dishonesty Coverage.

\$500	\$1,000	\$2,500	\$5,000	\$10,000	\$25,000	\$50,000	\$100,000
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**5. GUESTS PROPERTY DEDUCTIBLE OPTIONS AVAILABLE**

If a dollar amount is indicated in one of the check boxes below, that Deductible amount applies against any amount we pay for loss for any single occurrence payable under the Guests Property Coverage. Then we will pay in excess of this deductible up to the Limit of Insurance provided by The Guests Property Coverage.

**Inside the Premises (Including Robbery of a Custodian)**

\$0	\$250	\$500	\$1,000	\$2,000	\$5,000	\$10,000
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Inside Safe Deposit Boxes**

\$0	\$250	\$500	\$1,000	\$2,000	\$5,000	\$10,000
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**INCREASE IN LIMITS – ENHANCED GENERAL LIABILITY COVERAGE ENDORSEMENT**

In addition to the Limits provided by the ENHANCED GENERAL LIABILITY COVERAGE ENDORSEMENT, we will pay the Additional Limit as shown in the Table below, up to the Total Limit of Insurance:

<b>GENERAL LIABILITY COVERAGES</b>		
<b>COVERAGE</b>	<b>ADDITIONAL LIMIT</b>	<b>TOTAL LIMIT</b>
Damage To Premises Rented To You		

The limits provided by this endorsement are subject to all the applicable provisions of the Enhanced Property Coverage Endorsement attached to your policy.

All other terms and conditions remain unchanged.

# GREATER NEW YORK INSURANCE GROUP

## ***PROTECTO – GUARD*** **ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS**

This endorsement modifies insurance provided under the following:

- BUILDING AND PERSONAL PROPERTY COVERAGE FORM**
- CONDOMINIUM ASSOCIATION COVERAGE FORM**
- CAUSES OF LOSS - SPECIAL FORM**
- BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM**
- BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM**

<b>TABLE OF COVERAGES</b>			
<b>PROPERTY AND BUSINESS INCOME COVERAGES</b>	<b>LIMIT OF INSURANCE (INCLUDES LIMITS PROVIDED BY COVERAGE FORMS LISTED ABOVE)</b>		<b>PAGE #</b>
1. Accounts Receivable *	\$250,000		13
2. Business Income - Dependent Properties ***	\$50,000		36
3. Business Income - Extended Business Income***	90 days		36
4. Debris Removal Additional Limit	\$250,000		3
5. Earthquake and Volcanic Eruption Limited Additional Coverage	\$250,000 Blanket ANN AGG****		17
6. Electronic Data	\$150,000		4
7. Elevator Collision for Personal Property of Others	\$100,000		15
8. Employee Dishonesty *	\$50,000		9
9. Fine Arts	\$150,000 ANN AGG****		14
10. Fine Arts in Transit *	\$10,000		36
11. Fire Department Service Charge	\$25,000		4
12. Fire Protection Equipment Recharge	\$25,000		4
13. Forgery or Alteration	\$5,000 ANN AGG		12
14. Money and Securities	\$10,000 Out/\$10,000 In		8
15. Money Orders and Counterfeit Paper Currency	\$5,000		8
16. Newly Acquired Or Constructed Property – Buildings **	\$500,000		5
17. Newly Acquired Or Constructed Property – Your Business Personal Property *	25% of Business Personal Property Limit of Insurance up to \$500,000		5
18. Off Premises Services Interruption Limited Additional Coverage	\$250,000 ANN AGG****		25
19. Ordinance or Law Limited Additional Coverage **	Undamaged Portion	Included in Building Limit	22
	Demolition	\$500,000	22
	Increased Cost of Construction	\$500,000	22

TABLE OF COVERAGES			
PROPERTY AND BUSINESS INCOME COVERAGES	LIMIT OF INSURANCE (INCLUDES LIMITS PROVIDED BY COVERAGE FORMS LISTED ABOVE)		PAGE #
20. Outdoor Antennas & Satellite Dishes	\$10,000 ANN AGG****		15
21. Outdoor Signs	Attached to Buildings	Included in Building Limit	15
	Not Attached to Buildings	\$25,000	7
22. Outdoor Fences, Trees, Shrubs and Plants	\$25,000;		6
	\$500 per Tree, Shrub or Plant		
23. Personal Effects and Property of Others*	\$10,000		5
24. Pollutant Cleanup and Removal	\$25,000 ANN AGG		4
25. Preservation of Property*	60 days		4
26. Property Distance Extension	500 feet		5, 16, 36
27. Property In Transit*	\$50,000		36
28. Property Off-Premises*	\$25,000		6
29. Spoilage Limited Additional Coverage *	\$50,000		26
30. Tenant's Building Glass*	Within personal property limit		3
31. Valuable Papers and Records Coverage *	\$250,000 ANN AGG		6
32. Water Peril Limited Additional Coverage (Back-up of Sewers, Drains or Sumps; Flood; Mudslide; Water Under the Ground Surface)	\$250,000****		28

*Applies only if a limit of insurance is shown in the Declarations for Business Personal Property. Any loss is subject to Limit of Insurance for Business Personal Property Coverage.*

*\*\* Applies only if a limit of liability is shown on the Declarations For Building.*

*\*\*\* Coverage applies only if a Business Income Coverage Form is included in your policy.*

*\*\*\*\*The Limit of Insurance shown for the listed Limited Additional Coverages includes the sum of **all** direct physical loss or damage to Covered Property and any loss of Business Income (applies only if a Business Income Coverage Form is included in your policy) occurring during a 12-month period. This Limit of Insurance for the Limited Additional Coverages is subject to the Building or Contents Limit of Insurance shown on the Declarations for any single described premises.*

*We will not pay for loss under any coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS if coverage for the same loss is also provided by other coverages extended by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. In such case, if loss is covered under more than one coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, we will pay only under the terms of the coverage that provides the **highest** Limit of Insurance. We will **not** pay for the combined Limits of Insurance of all the coverage(s).*

*In no event will we ever pay more than the Limit of Insurance shown in the Table of Coverages above applicable to the specific coverage, unless indicated differently in the coverage's provisions.*

## Building and Personal Property Coverage Form

### Condominium Association Coverage Form

The following modifies insurance provided under the Building and Personal Property Coverage Form and The Condominium Association Coverage Form:

#### AMENDMENTS TO A.1.b. YOUR BUSINESS PERSONAL PROPERTY

##### TENANT'S BUILDING GLASS

The following is added to **A. Coverage, 1. Covered Property, b. Your Business Personal Property:**

1. As paragraph **A.1.b.(8)** Of the Building and Personal Property Coverage Form; and
2. As paragraph **A.1.b(4)** of the Condominium Association Coverage Form:

Building Glass that is in the care, custody or control of the Insured at a described premises.

#### AMENDMENTS TO PROPERTY NOT COVERED

##### DELETIONS FROM PROPERTY NOT COVERED

Paragraph **A.2.n.** is deleted and replaced with the following:

- n. Electronic data, except as provided in the Definition of "Software" and "Electronic Data" in the Electronic Data Coverage Extension included in this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. The Electronic Data coverage provided in the Additional Coverages - Electronic Data in the Building and Personal Property Coverage Form is deleted.

"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. "Electronic Data" does not include Data in the Definition of "Software" in the Electronic Data Coverage Extension as provided in this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

The term computer programs, referred to in the foregoing description of "Electronic Data" and "Software" 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.

#### AMENDMENTS TO A.4. ADDITIONAL COVERAGES

##### DEBRIS REMOVAL ADDITIONAL LIMIT

The ADDITIONAL COVERAGE, **Debris Removal** is amended by adding the following paragraphs **A.4.a.(6)**, **A.4.a.(7)**, and **A.4.a.(8)**:

The following is added as **A.4.a.(6)** the last paragraph of **Debris Removal**:

- (6) In addition to the amount of Debris Removal Coverage otherwise provided under **A.4.a.(4)** of the Building and Personal Property Coverage Form or the Condominium Association Coverage Form, under this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, we will pay an additional **\$240,000** at each location for any one occurrence for Debris Removal Additional Coverage.
- (7) We will not pay for expenses you incur to remove debris from your described premises under this Debris Removal Additional Coverage if such debris removal expense is also covered by another Additional Coverage or Coverage Extension (such as the Outdoor Fences, Trees, Shrubs and Plants Coverage Extension) provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS for the same loss. If loss for the expense you incur to remove

fallen trees is covered under this Debris Removal Additional Coverage and the Outdoor Fences, Trees, Shrubs and Plants Coverage Extension, then this Debris Removal Additional Coverage does not apply and only the Outdoor Fences, Trees, Shrubs and Plants Coverage Extension applies to such expenses.

- (8) This Debris Removal Additional Coverage does not apply to any loss covered under any Limited Additional Coverage (such as Earthquake and Volcanic Eruption or the Flood and/or Mudslide Limited Additional Coverage(s)) extended by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

#### **PRESERVATION OF PROPERTY**

Paragraph **A.4.b.(2) Preservation of Property** is replaced with the following:

Only if the loss or damage occurs within **60** days after the property is first moved.

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

#### **FIRE DEPARTMENT SERVICE CHARGE**

Paragraph **A.4.c. Fire Department Service Charge** is replaced with the following:

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to **\$25,000**, unless a higher limit is shown in the Declarations, for your liability for fire department service charges:

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

No deductible applies to this additional coverage.

#### **POLLUTANT CLEANUP AND REMOVAL**

The following replaces the last paragraph of **A.4.d. Pollutant Cleanup and Removal**:

The most we will pay under this Pollutant Cleanup and Removal Additional Coverage for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate **12-month** period of this policy is **\$25,000** Annual Aggregate. This Annual Aggregate limit applies no matter how many losses occur or how many buildings, premises or locations are insured.

#### **INCREASED COST OF CONSTRUCTION**

Section **A.4.e. Increased Cost of Construction** is deleted. Coverage for the Increased Cost of Construction is included under Coverage C of the Ordinance or Law Coverage Extension provided elsewhere in this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

#### **ELECTRONIC DATA**

**A.4.f.** Electronic Data is amended as follows:

The limit shown under paragraph (4) is changed from \$2,500 to **\$150,000**.

#### **ADDITIONS TO A.4. ADDITIONAL COVERAGES**

The following are added to **A.4. Additional Coverages**. Limits of Insurance indicated in the provisions in this section provide additional Limits to those shown in the Declarations to Covered Building or Business Personal Property, as applicable, unless indicated otherwise within the coverage provision.

#### **FIRE PROTECTION EQUIPMENT RECHARGE**

We will pay expenses you incur to recharge automatic fire protection equipment when such equipment is discharged to fight a fire or as the result of a Covered Cause of Loss. The most we will pay under this Additional Coverage is **\$25,000** for each occurrence. Payments under this Fire Protection Equipment Recharge Additional Coverage will not increase the Limit of Insurance applicable to Buildings shown in the Declarations.

## PROPERTY DISTANCE EXTENSION

In each instance where it appears in the form, the property distance limitation of 100 feet is changed to **500** feet.

Payments under this Property Distance Extension Additional Coverage will not increase the Limit of Insurance applicable to Buildings shown in the Declarations.

## AMENDMENTS TO A.5. COVERAGE EXTENSIONS

### NEWLY ACQUIRED OR CONSTRUCTED PROPERTY - Buildings

The following is added as the last paragraph of Newly Acquired or Constructed Property **A.5.a.(1)**:

In addition to the limits otherwise provided under paragraph **A.5.a.(1)** of the Newly Acquired or Constructed Property – Buildings Coverage Extension of the Building and Personal Property Coverage Form, we will pay under this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS Newly Acquired or Constructed Property – Buildings Coverage Extension amendment an additional **\$250,000** for loss or damage at each building.

The following is added as paragraph **A.5.a.(1)(c)** if your policy provides Blanket Limits of Insurance:

(c) If:

- (1) A newly acquired or constructed building is at a scheduled location with a blanket limit; or
- (2) Coverage is afforded on a policy that contains a single blanket limit for all buildings insured under it;

Then the blanket limits apply to that newly acquired or constructed building, whether or not, in the latter instance, it is on a scheduled location.

However, if there is:

- (i) No blanket at all for the policy; or
- (ii) Multiple blankets exist on the policy for specific groups of locations but the newly acquired or constructed building is not at any of them;

Then the insured receives temporary coverage at the limit provided in the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

### NEWLY ACQUIRED OR CONSTRUCTED PROPERTY – Your Business Personal Property

The following is replaces the last paragraph of Newly Acquired Personal Property, **A.5.a.(2)(a)**:

The most we will pay for loss or damage under this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS Newly Acquired or Constructed Property – Your Business Personal Property Coverage Extension is **25%** of the Limit of Insurance shown in the Declarations for Your Business Personal Property, up to a maximum Limit of **\$500,000** at each Building.

The following is added as paragraph **A.5.a.(2)(c)**:

(c) If:

- (1) A newly acquired or constructed building is at a scheduled location with a blanket limit [that includes Business Personal Property]; or
- (2) Coverage is afforded on a policy that contains a single blanket limit for all buildings [and/or Business Personal Property] insured under it;

Then the blanket limits apply to that newly acquired or constructed Business Personal Property, whether or not, in the latter instance, it is on a scheduled location.

However, if there is:

- (i) No blanket at all for the policy; or
- (ii) Multiple blankets exist on the policy for specific groups of locations but the newly acquired or constructed building and Business Personal Property is not at any of them;

Then the insured receives temporary coverage at the limit provided in the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

### PERSONAL EFFECTS AND PROPERTY OF OTHERS

The following replaces the last paragraph of **A.5.b.** Personal Effects and Property Of Others:



The most we will pay for loss or damage under this Coverage Extension is **\$2,500** for the Personal Effects and Property Of Others of one person or entity. The most we will pay for loss or damage arising out of one occurrence is **\$10,000**. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

#### **VALUABLE PAPERS AND RECORDS (OTHER THAN ELECTRONIC DATA)**

The following amends **A.5.c. Valuable Papers And Records (Other Than Electronic Data)**

1. The following is added to paragraph **A.5.c.(1)**:

The costs to replace or restore the lost information must be sustained by you because of loss or damage to Valuable Papers And Records (Other Than Electronic Data) caused by a Covered Cause of Loss at a premises described in the Declarations.

2. Paragraphs **A.5.c.(2)** and **A.5.c.(3)** are deleted.

3. The following replaces paragraph **A.5.c.(4)**:

**(4)** Under this Valuable Papers And Records (Other Than Electronic Data) Coverage Extension, the most we will pay for the total of all costs to replace or restore the lost information in each separate **12-month** policy period is **\$250,000** Annual Aggregate. This annual aggregate limit applies no matter how many losses occur during the policy period, or how many buildings, locations or premises are insured by this policy. However, the Annual Aggregate Limit is subject to the Limit of Insurance shown in the Declarations for Business Personal Property. Therefore, in no event will we ever pay more in any single loss than the Limit of Insurance for Business Personal Property shown in the Declarations.

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.

#### **PROPERTY OFF-PREMISES**

The following replaces Property Off -Premises paragraph **A.5.d.(3)**:

The most we will pay for loss or damage under this Extension is **\$25,000**.

#### **OUTDOOR PROPERTY**

The following replaces Extension **A.5.e. Outdoor Property**:

##### **e. OUTDOOR PROPERTY**

You may extend the insurance provided by this Coverage Form to apply to your Outdoor Property (as described in the specific sections which follow):

##### **(1) OUTDOOR FENCES, TREES, SHRUBS AND PLANTS**

(a) You may extend the insurance provided by this Coverage Form to apply to direct physical loss or damage to your outdoor: fences; 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 Covered Causes of Loss:

- i. Fire;
- ii. Lightning;
- iii. Explosion;
- iv. Vehicles;
- v. Riot or civil commotion;
- vi. Aircraft;
- vii. Vandalism;
- viii. Theft.

The most we will pay for loss or damage under this OUTDOOR FENCES, TREES, SHRUBS AND PLANTS Coverage Extension for the outdoor property described above is **\$25,000**; but not more than **\$500** for any single tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of fences, trees, shrubs and plants lost or damaged in that occurrence.

**(b) Removal of Fallen Trees Coverage**

Solely with respect to the debris removal coverage provided under paragraph **e.(1)(a)** above, we will pay for expenses you incur to remove debris of a tree which has fallen onto your described premises from a neighboring property, but only if:

- (i) Direct physical damage to Covered Property is sustained; and
- (ii) The fallen tree is not covered under paragraph **(1)(a)** of this OUTDOOR FENCES, TREES, SHRUBS AND PLANTS Coverage Extension.

The most we will pay under this Removal of Fallen Trees coverage for expenses for the removal of one tree is **\$500**. The most we will pay for the removal of all fallen trees at all described premises shown in the Declarations arising from one occurrence is **\$10,000**.

Payments we make under this Removal of Fallen Trees coverage is included in and does not increase the Limit of Insurance applicable to this OUTDOOR FENCES, TREES, SHRUBS AND PLANTS Coverage Extension shown in paragraph **(1)(a)** above.

A Minimum Deductible of **\$3,000** applies to Each Occurrence for loss payable under this OUTDOOR FENCES, TREES, SHRUBS AND PLANTS Coverage Extension. This Minimum Deductible applies unless a higher deductible is shown in the Declarations applicable to Covered Building(s). We will not pay for loss or damage until the amount of loss or damage exceeds the applicable Deductible. We will then pay the amount of loss or damage in excess of that Deductible, up to the applicable Limit of Insurance.

Any payments we make under this OUTDOOR FENCES, TREES, SHRUBS AND PLANTS Coverage Extension are included in and will not increase the Limit of Insurance applicable to Buildings shown in the Declarations.

**(2) OUTDOOR SIGNS NOT ATTACHED TO BUILDINGS**

**(a)** You may extend the insurance provided by this Coverage Form to apply to direct physical loss or damage to your outdoor signs at a premises described in the Declarations. We will pay for direct physical loss of or damage from a Covered Cause of Loss to such outdoor signs if the signs are not attached to a Covered Building and are:

- (i) Owned by you; or
- (ii) Owned by others but in your care, custody or control.

**(b) B.** Exclusions of the Causes Of Loss – Special Form do not apply to signs covered under this OUTDOOR SIGNS NOT ATTACHED TO BUILDINGS Coverage Extension, except the following

**B.1.** Exclusions:

- (i) Paragraph **B.1.c.** Governmental Action;
- (ii) Paragraph **B.1.d.** Nuclear Hazard; and
- (iii) Paragraph **B.1.f.** War And Military Action.

**(c)** Under this Outdoor Signs Not Attached To Buildings Coverage Extension, we will not pay for loss or damage caused by or resulting from:

- (i) Wear and tear;
- (ii) Hidden or latent defect;
- (iii) Rust;
- (iv) Corrosion; or
- (v) Mechanical breakdown.

**(d)** The most we will pay for loss or damage in any one occurrence for Outdoor Signs Not Attached To Buildings is **\$10,000**.

**(3) OUTDOOR ANTENNAS & SATELLITE DISHES**

You may extend the insurance provided by this Coverage Form to apply to direct physical loss or damage to your outdoor radio and television antennas (including satellite dishes) and their lead-in wiring, masts or towers. We will pay for direct physical loss or damage to such outdoor radio and television antennas caused by or resulting from a Covered Cause of Loss.

The most we will pay for the sum of all direct physical loss or damage under this Outdoor Antennas & Satellite Dishes Coverage Extension in each separate **12-month** policy period is **\$10,000** Annual Aggregate. This annual aggregate limit applies no matter how many buildings, premises or locations are covered by this policy.

#### **ADDITIONS TO A.5. COVERAGE EXTENSIONS**

Payment under the following added Coverage Extensions is limited to the Limit of Insurance shown on in the Table of Coverages shown on the first page of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. The Limit shown in the Table of Coverages applicable to any of the added Coverage Extensions provided in the section is **not** additional insurance and will not increase the Limit of Insurance shown in the Declarations for Covered Property.

Any Limit of Insurance shown in this **ADDITIONS TO A.5. COVERAGE EXTENSIONS** section is **excess** over any specific insurance provided by another coverage form of this or any other policy applicable to the same property for the same loss.

The Additional Condition, Coinsurance, does not apply to these added Coverage Extensions.

The following are added to **A.5. COVERAGE EXTENSIONS**

#### **MONEY AND SECURITIES**

You may extend the insurance provided by this Coverage Form to apply to direct physical loss of or damage to your "money" and "securities", subject to the following provisions:

1. We will pay for direct physical loss of "money" and "securities" used in your business while:
  - a. At a bank or savings institution; within your living quarters or the living quarters of your partners or any employee having use and custody of the property;
  - b. At the described premises; or
  - c. In transit between any of these places, resulting directly from:
    - (1) Theft, meaning any act of stealing;
    - (2) Disappearance; or
    - (3) Destruction.
2. In addition to the Limitations and Exclusions applicable to property coverage, we will not pay for loss:
  - a. Resulting from accounting or arithmetical errors or omissions;
  - b. Due to the giving or surrendering of property in any exchange or purchase; or
  - c. Of property contained in any "money"-operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.
3. The most we will pay for loss in any one occurrence is:
  - a. **\$10,000** for "money" and "securities" while:
    - (1) In or on the premises described in the Declarations; or
    - (2) Within a bank or savings institution; and
  - b. **\$10,000** for "money" and "securities" while at any other location covered under this extension.
4. **Money Orders and Counterfeit Paper Currency**

We will also pay up to **\$5,000** for direct loss resulting from your having accepted in good faith, in exchange for merchandise, money or services:

  - a. Money orders issued by any post office, express company or bank that are not paid upon presentation; or
  - b. Counterfeit paper currency that is acquired in the regular course of business.

Paragraph **a.** of Property Not Covered of the Building and Personal Property Coverage Form does not apply to losses otherwise covered under this Money Orders and Counterfeit Paper Currency coverage. Exclusion **B.2.i.**, of the Causes of Loss Special Form does not apply to losses otherwise covered under this Money Orders and Counterfeit Paper Currency coverage.
5. All loss:

- a. Caused by one or more persons; or
  - b. Involving a single act or series of related acts;
- is considered one occurrence.
6. You must keep records of all "money" and "securities" so we can verify the amount of any loss or damage.
  7. Only as respects this Money and Securities Coverage Extension, the following replaces **A.2.a.** Property Not Covered of the Building and Personal Property Coverage Form/Condominium Association Coverage Form:

**2. Property Not Covered**

Covered Property does not include:

- a. Accounts, bills, currency, deeds, food stamps or other evidences of debt or notes. Lottery tickets held for sale are not securities. "Money" or "Securities" are also Property Not Covered, except as provided under the following added Coverage Extensions of the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS:
  - (1) "Money" and "Securities";
  - (2) Employee Dishonesty;
  - (3) Forgery and Alteration; and
  - (4) "Computer Fraud".
8. The property distance limitation does not apply to "money" and "securities" while at the places listed in paragraph 1. of this Money And Securities Coverage Extension.
9. If a loss is covered both under this Money And Securities Coverage Extension and by a Commercial Crime Coverage Part attached to this policy, this coverage will be excess of that coverage, and only the deductible applicable to the Commercial Crime Coverage Part will apply. This provision supersedes any conflicting other insurance provisions.
10. We will not pay for loss under this Money and Securities Coverage Extension that is also covered under any of the following added Coverage Extension(s) providing coverage for the same loss:
  - a. "Computer Fraud";
  - b. Employee Dishonesty; or
  - c. Forgery and Alteration;
 of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. When such loss is payable under more than one coverage, the highest limit provided by any single coverage listed above will apply to the loss; however, we will not pay more than this limit. We will not pay a combination of the limits. This exclusion applies to loss that is not covered under the above listed Coverage Extension(s) solely due to exhaustion of limits.
11. For coverage provided under this Money and Securities Coverage Extension, the following definitions are added to the Definitions section:
 

"Money" means:

  - a. Currency, coins and bank notes in current use and having a face value; and
  - b. Travelers checks, register checks and money orders held for sale to the public.

"Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:

  - (1) Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - (2) Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;

but does not include "money."

**EMPLOYEE DISHONESTY**

You may extend the insurance provided by this Coverage Form to apply to loss of or damage to your Covered Business Personal Property, "money" and "securities" resulting from dishonest acts committed by

your employees (as defined in paragraph 10. below), subject to the following provisions:

1. We will pay for direct physical loss of or damage to your Covered Business Personal Property and "money" and "securities" resulting from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you or your partner) with the manifest intent to:
  - a. Cause you to sustain loss or damage; and also
  - b. Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:
    - (1) Any employee; or
    - (2) Any other person or organization.
2. We will not pay for loss or damage:
  - a. Resulting from any dishonest or criminal act that you or any of your partners commit whether acting alone or in collusion with other persons; or
  - b. Resulting from any dishonest act committed by any of your employees (except as provided in Paragraph 1.), "managers" or directors:
    - (1) Whether acting alone or in collusion with other persons; or
    - (2) While performing services for you or otherwise.
    - (3) The only proof of which as to its existence or amount is:
      - (a) An inventory computation; or
      - (b) A profit and loss computation.
3. The most we will pay for loss or damage in any one occurrence is **\$50,000**.
4. All loss or damage:
  - a. Caused by one or more persons; or
  - b. Involving a single act or series of related acts;is considered one occurrence.
5. We will pay only for loss or damage you sustain through acts committed or events occurring during the policy period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.
6. This Employee Dishonesty Coverage Extension does not apply to any employee immediately upon discovery by:
  - a. You; or
  - b. Any of your partners, officers or directors not in collusion with the employee; of any dishonest act committed by that employee before or after being hired by you.
7. We will pay only for covered loss or damage discovered no later than one year from the end of the policy period.
8. If you (or any predecessor in interest) sustained loss or damage during the period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Employee Dishonesty Coverage Extension, provided:
  - a. This Employee Dishonesty Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS became effective at the time of cancellation or termination of the prior insurance; and
  - b. The loss or damage would have been covered by this Employee Dishonesty Coverage Extension had it been in effect when the acts or events causing the loss or damage were committed or occurred.
9. The insurance under Paragraph 8. above is part of, not in addition to, the Limit of Insurance applying to this Employee Dishonesty Coverage Extension and is limited to the lesser of the amount recoverable under:
  - a. The Employee Dishonesty Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS as of its effective date; or
  - b. The prior insurance had it remained in effect.
10. With respect to the Employee Dishonesty coverage provided by this PROTECTO-GUARD -

ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, employee means:

- a. Any natural person:
  - (1) While in your service or for **30** days after termination of service;
  - (2) Who you compensate directly by salary, wages or commissions; and
  - (3) Who you have the right to direct and control while performing services for you;
- b. Any natural person who is furnished temporarily to you:
  - (1) To substitute for a permanent employee as defined in Paragraph **a.** above, who is on leave; or
  - (2) To meet seasonal or short-term work load conditions;
- c. Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in Paragraph **b.** above;
- d. Any natural person who is a former employee, director, partner, member, "manager", representative or trustee retained as a consultant while performing services for you; or
- e. Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside any building you occupy in conducting your business.

But employee does not mean:

- (1) Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character;
- (2) Any "manager", director or trustee except while performing acts coming within the usual duties of an employee; or
- (3) Your partners or officers.

11. Only as respects this Employee Dishonesty Coverage Extension, the following replaces **A.2.a.** Property Not Covered of the Building and Personal Property Coverage Form/Condominium Association Coverage Form:

## **2. Property Not Covered**

Covered Property does not include:

- a. Accounts, bills, currency, deeds, food stamps or other evidences of debt or notes. Lottery tickets held for sale are not securities. "Money" or securities are also Property Not Covered, except as provided under the following Coverage Extensions of the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS:

- (1) "Money" and "Securities";
- (2) Employee Dishonesty;
- (3) Forgery and Alteration; and
- (4) "Computer Fraud".

12. Exclusion **B.2.h.** of the Causes of Loss-Special Form does not apply to this Employee Dishonesty Coverage Extension.
13. If a loss is covered both under this Employee Dishonesty Coverage Extension and by a Commercial Crime Coverage Part attached this policy, the limits of this Employee Dishonesty Coverage Extension will be excess of that Commercial Crime Coverage Part, and only the deductible applicable to that Commercial Crime Coverage Part will apply. This provision supersedes any conflicting other insurance provisions.
14. We will not pay for loss under this Employee Dishonesty Coverage Extension that is also covered under any of the following added Coverage Extension(s) providing coverage for the same loss:
  - a. Money and Securities;
  - b. Forgery and Alteration; or
  - c. "Computer Fraud";of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. When such loss is payable under more than one coverage, the highest limit provided by any single coverage listed above will apply to the loss; however, we will not pay more than this limit.

We will not pay a combination of the limits. This exclusion applies to loss that is not covered under the above listed Coverage Extension(s) solely due to exhaustion of limits.

15. For coverage provided under this Employee Dishonesty Coverage Extension, the following definitions are added to the Definitions section:

"Manager" means a person serving in a directorial capacity for a limited liability company.

"Money" means:

- a. Currency, coins and bank notes in current use and having a face value; and
- b. Travelers checks, register checks and money orders held for sale to the public.

"Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:

(1) Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and

(2) Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;

but does not include "money."

## **FORGERY OR ALTERATION**

You may extend the insurance provided by this Coverage Form to apply to direct monetary loss you sustain resulting from Forgery or Alteration, subject to the following provisions:

1. We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in "money" that you or your agent has issued, or that was issued by someone who impersonates you or your agent.
2. If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in "money," on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.
3. For the purpose of this coverage, check includes a substitute check as defined in the Check Clearing for the 21st Century Act, and will be treated the same as the original it replaced.
4. The most we will pay for any loss, including legal expenses, under this Coverage Extension is **\$5,000** in any one policy period. This Annual Aggregate limit applies no matter how many losses occur or how many buildings, locations or premises are covered by this policy.
5. Only as respects this Forgery and Alteration Coverage Extension, the following replaces **A.2.a.** Property Not Covered of the Building and Personal Property Coverage Form/Condominium Association Coverage Form:

### **2. Property Not Covered**

Covered Property does not include:

- a. Accounts, bills, currency, deeds, food stamps or other evidences of debt or notes. Lottery tickets held for sale are not securities. "Money" or securities are also Property Not Covered, except as provided under the following Coverage Extensions of the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS:

(1) "Money" and "Securities";

(2) Employee Dishonesty;

(3) Forgery and Alteration; and

(4) "Computer Fraud".

6. If a loss is covered both under this Forgery and Alteration Coverage Extension and by a Commercial Crime Coverage Part attached this policy, the limits of this Forgery and Alteration Coverage Extension will be excess of that Forgery and Alteration Coverage provided by the Commercial Crime Coverage Part and only the deductible applicable to the Forgery and Alteration Coverage provided by the Commercial Crime Coverage Part will apply. This provision supersedes any conflicting other insurance provisions.

7. We will not pay for loss under this Forgery and Alteration Coverage Extension that is also covered under any of the following added Coverage Extension(s) providing coverage for the same loss:
  - a. Money and Securities;
  - b. Employee Dishonesty; or
  - c. "Computer Fraud";
 of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. When such loss is payable under more than one coverage, the highest limit provided by any single coverage listed above will apply to the loss; however, we will not pay more than this limit. We will not pay a combination of the limits. This exclusion applies to loss that is not covered under the above listed Coverage Extension(s) solely due to exhaustion of limits.

#### **ACCOUNTS RECEIVABLE**

1. You may extend the insurance that applies to Your Business Personal Property to apply to accounts receivable as described in the provisions which directly follow. We will pay:
  - (a) All amounts due from your customers that you are unable to collect;
  - (b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
  - (c) Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and
  - (d) Other reasonable expenses that you incur to reestablish your records of accounts receivable; that result from direct physical loss or damage to your records of accounts receivable at a designated premises caused by or resulting from any Covered Cause of Loss.
2. The most we will pay under this Coverage Extension for the sum of all loss occurring during one twelve month policy period is **\$250,000**. This is an annual aggregate limit and applies no matter how many losses occur or how many buildings, premises or locations are insured. However, the Annual Aggregate Limit is subject to the Limit of Insurance shown in the Declarations for Business Personal Property. Therefore, in no event will we ever pay more in any single loss than the Limit of Insurance for Business Personal Property shown in the Declarations.
3. **B.** Exclusions of the Causes of Loss – Special Form do not apply to this Accounts Receivable Coverage Extension except for the following:
  - B.1.c.** Governmental Action
  - B.1.d.** Nuclear Hazard
  - B.1.f.** War and Military Action
  - B.2.h.** Dishonesty
  - B.2.i.** False Pretense
 All Paragraph **B.3.** exclusions.
4. In addition, the following the exclusions apply:
  - (a) We will not pay for loss or damage caused by or resulting from electrical or magnetic injury, disturbance or erasure of electronic recordings that is caused by or results from:
    - (i) Programming errors or faulty machine instructions;
    - (ii) Faulty installation or maintenance of data processing equipment or component parts;
 But we will pay for direct loss or damage caused by lightning.
  - (b) We will not pay for:
    - (i) Loss or damage caused by or resulting from alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or other property.  
This exclusion applies only to the extent of the wrongful giving, taking or withholding.
    - (ii) Loss or damage caused by or resulting from bookkeeping, accounting or billing errors or omissions.
    - (iii) Any loss or damage that requires any audit of records or any inventory computation to prove



its factual existence.

5. Only as respects this Accounts Receivable Coverage Extension, paragraph **A.2.a.** Property Not Covered of the Building and Personal Property Coverage Form/Condominium Association Coverage Form is replaced with the following:

## **2. Property Not Covered**

Covered Property does not include:

- a. Accounts, bills, currency, deeds, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities. Accounts Receivable (as defined in this Coverage Extension) is also Property Not Covered, except as provided under the Accounts Receivable Coverage Extension contained in the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS;
6. If a loss is covered both under this Accounts Receivable Coverage Extension and by an Accounts Receivable Coverage Form attached this policy, the limits of this Accounts Receivable Coverage Extension will be excess of that Accounts Receivable Coverage Form, and only the deductible applicable to that Accounts Receivable Coverage Form will apply. This provision supersedes any conflicting other insurance provisions.

## **FINE ARTS**

1. You may extend the insurance that applies to Your Business Personal Property to apply to "Fine Arts" as described in the provisions which directly follow. We will pay for direct physical loss or damage to your "Fine Arts" arising from a Covered Cause of Loss. This "Fine Arts" Coverage is subject to all the terms, Limitations, Exclusions and Conditions of the Building and Personal Property Form, the Condominium Association Coverage Form and the Causes of Loss – Special Form except as follows:
  - (a) **B. Exclusions** of the Causes of Loss – Special Form do not apply to this coverage, except:
    - o **B.1.b., B.1.c., B.1.d., B.1.f. and B.1.g.;**
    - o **B.2.b.; B.2.d.; B.2.h.; B.2.i.; B.2.j.; B.2.l.; and B.2.m.**
  - (b) Only as respects the coverage provided under this "Fine Arts" Coverage Extension, **C. Limitations**, Paragraph **3.b.** of the Causes of Loss – Special Form does not apply to "antique" jewelry.
  - (c) Only as respects the coverage provided under this "Fine Arts" Coverage Extension, **F.1.b.**, paragraph **(3)** of the Causes of Loss – Special Form is replaced with the following:
    - (3)** Theft by forced entry into a securely locked body or compartment of a vehicle. There must be visible marks of the forced entry.
2. We will not pay for loss or damage under this "Fine Arts" Coverage Extension resulting from any of the following:
  - (a) We do not pay for loss or damage caused by breakage, marring, or scratching of art glass windows, glassware, statuary, marble objects, bric-a-brac, porcelains, or similar fragile articles unless loss is a result of a "specified peril."
  - (b) We do not pay for loss or damage caused by processing of or work upon the covered property including repairs or restoration.
  - (c) We do not pay for any loss or damage caused by diminution of value due to gradual deterioration, fading or other loss caused by exposure to light, heat or other atmospheric or environmental conditions.
3. Only as respects the coverage provided under this "Fine Arts" Coverage Extension, the following definitions are added:
  - (a) "Antique," means an object having value because its:
    - (i) Craftsmanship is in the style or fashion of former times; and
    - (ii) Age is 100 years old or older.
  - (b) "Fine Arts" means paintings; etchings; pictures, tapestries; rare or art glass; art glass windows; valuable rugs; statuary; sculptures; "antique" furniture; "antique" jewelry; bric-a-brac; porcelains; and similar property of rarity, historical value, or artistic merit. The following are not "Fine Arts:" coins

and stamps; jewelry (except "antique" jewelry); precious or semi-precious stones; gold, silver, platinum or other precious metals or alloys; automobiles, or any other self-propelled vehicles designed for highway use; furs; or money.

4. The most we will pay for all direct physical loss of or damage to "Fine Arts" under this "Fine Arts" Coverage Extension in one twelve month policy period is **\$150,000**. This Annual Aggregate limit applies no matter how many losses occur or how many building, premises or locations we insure. However, the Annual Aggregate Limit is subject to the Limit of Insurance shown in the Declarations for Business Personal Property. Therefore, in no event will we ever pay more in any single loss than the Limit of Insurance for Business Personal Property shown in the Declarations.
5. If a loss is covered both under this "Fine Arts" Coverage Extension and by a Fine Arts Coverage Form attached to this policy, this "Fine Arts" Coverage Extension will be excess of the Limits of Insurance provided by the Fine Arts Coverage Form, and the deductible applicable to that Fine Arts Coverage Form will apply. This provision supersedes any conflicting other insurance provisions.

#### **ELEVATOR COLLISION FOR PERSONAL PROPERTY OF OTHERS**

You may extend the insurance that applies to the Personal Property of Others to apply direct physical loss of or damage to the Personal Property of Others caused by elevator collision, subject to the following provisions:

We will pay for direct physical loss of or damage to the Personal Property of Others in your care custody or control if:

1. The loss or damage is caused by collision of your elevator, or any property inside the elevator, with the elevator or any other objects; and
2. You are legally liable for that loss or damage.

Under this coverage, the most we will pay for any one occurrence is **\$100,000**.

#### **AMENDMENTS TO C. LIMITS OF INSURANCE**

##### **SIGNS ATTACHED TO BUILDINGS**

The following paragraph is deleted from section **C. Limits of Insurance**:

"The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is **\$1,000** per sign in any one occurrence."

#### **AMENDMENTS TO D. DEDUCTIBLE**

The following is added as the last paragraph of **D. Deductible**:

Coverages provided under the **PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS** are subject to the deductibles shown in the Commercial Property Declarations, unless a different deductible is specified as applicable to a particular coverage within the **PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS** or a **PROTECTO-GUARD CHANGE ENDORSEMENT** attached to your policy.

#### **AMENDMENTS TO CAUSES OF LOSS - SPECIAL FORM**

The following modifies insurance provided under the Causes of Loss - Special Form:

##### **AMENDMENTS TO EXCLUSIONS - CAUSES OF LOSS - SPECIAL FORM**

The following amends the coverage provided under the Causes of Loss – Special Form:

##### **"FUNGUS," WET OR DRY ROT, OR BACTERIA**

The following replaces paragraph 1.h. under **B. Exclusions**:

- h. **"Fungus," Wet or Dry Rot, or Bacteria**

As respects coverage provided by this **PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS**, the exclusion titled "Fungus", Wet Rot, Dry Rot in the **Causes of Loss – Special Form** is deleted and replaced with the following:

**"Fungus," Wet or Dry Rot, or Bacteria**

As respects the coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, we will not pay for loss or damage caused directly or indirectly by "fungus", wet rot, dry rot and bacteria. Such loss or damage because of the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

This exclusion does not apply to the extent that coverage is provided for "fungus", wet rot, dry rot and bacteria in specific Limited Additional Coverages and only to the extent such coverage is described in the **ADDITIONS TO ADDITIONAL COVERAGES – CAUSES OF LOSS – SPECIAL FORM** section which follows in this **PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS**.

This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.

As respects the coverage provided by this **PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS** the Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot and Bacteria in the Causes of Loss – Special Form remains otherwise unmodified, unless indicated in the specific Limited Additional Coverages **ADDITIONS TO ADDITIONAL COVERAGES – CAUSES OF LOSS – SPECIAL FORM** section which follows.

**MAINTENANCE OF HEAT OR WINTERIZATION REQUIREMENT**

The following replaces paragraph 2.g. under **B. Exclusions**:

2. We will not pay for loss or damage caused by or resulting from any of the following:
  - 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 all reasonable and prudent means have been taken to ensure that:
    - (1) Heat in the building, structure or unit has been maintained; or
    - (2) The plumbing, heating, air conditioning or other equipment has been drained and the supply shut off, if the heat is not maintained.

**AMENDMENTS TO THE PROPERTY DISTANCE EXTENSION**

The following amends the coverage provided under the Causes of Loss – Special Form:

**PROPERTY DISTANCE EXTENSION**

In each instance where it appears in the form, the property distance limitation of 100 feet is changed to **500** feet. Loss payment under this Additional Coverage will not increase the applicable Limit of Insurance.

**ADDITIONS TO ADDITIONAL COVERAGES – CAUSES OF LOSS – SPECIAL FORM**

The following amendments apply to **ADDITIONAL COVERAGES** of the **CAUSES OF LOSS – SPECIAL FORM**

As used in this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, Limited Additional Coverages means:

1. The Limits of Insurance provided by the coverages in the following section are limited to the amount shown in the Table of Coverages and only to the extent as specified in each Limited Additional Coverage provision; and
2. No other coverage provided in this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS contributes Limits in addition to the Limited Additional Coverages described in this section.

The following are added as ADDITIONAL COVERAGES:

**ADDITIONAL COVERAGE – EARTHQUAKE AND VOLCANIC ERUPTION LIMITED ADDITIONAL COVERAGE**

A. This EARTHQUAKE AND VOLCANIC ERUPTION LIMITED ADDITIONAL COVERAGE applies to the Covered Property for which a Limit of Insurance is shown in the Declarations.

**B. Limited Additional Coverage**

1. Subject to the terms contained in this Earthquake and Volcanic Eruption provision, Earthquake and Volcanic Eruption Limited Additional Coverage as described immediately below are provided. As used in this coverage provision, Earthquake and Volcanic Eruption means:
  - a. Earthquake, and
  - b. Volcanic Eruption, meaning the eruption, explosion or effusion of a volcano.
2. We will pay for loss or damage caused by or resulting from Earthquake and Volcanic Eruption as defined in paragraph 1. above. As used in this Limited Additional Coverage, the term loss or damage means direct physical loss or damage to Covered Property caused by the causes described in paragraph 1. above, including the cost of removal of the debris resulting from the loss or damage to the Covered Property.

If a Business Income and Extra Expense or Business Income Without Extra Expense Coverage Form is attached to your policy, we will also pay for your actual loss of income (and extra expense if applicable) arising out of the direct physical loss of or damage to Covered Property caused by or resulting from Earthquake and Volcanic Eruption.
3. All Earthquake shocks or Volcanic Eruptions that occur within any **168**-hour period will constitute a single Earthquake or Volcanic Eruption. The expiration of this policy will not reduce the 168-hour period.

**C. Exclusions, Limitations And Related Provisions**

1. To the extent that the Earth Movement Exclusion in the Causes of Loss – Special Form might conflict with coverage provided under this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, the Earth Movement Exclusion does not apply.
2. The Exclusions and Limitation(s) sections of the Causes of Loss - Special Form apply to Earthquake and Volcanic Eruption Limited Additional Coverage provided by the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, except as provided in **a.** and **b.** immediately below:
  - a.** The Earth Movement Exclusion in the Causes of Loss - Special Form does not apply to Earthquakes and Volcanic Eruptions otherwise covered by this Earthquake and Volcanic Eruption Limited Additional Coverage provided by the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.
  - b.** The exclusion of collapse, in the Causes of Loss-Special Form does not apply to collapse caused by Earthquakes or Volcanic Eruptions otherwise covered by this Earthquake and Volcanic Eruption Limited Additional Coverage provided by the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.
3. The Additional Coverage – Collapse, in the Causes of Loss – Special Form does not apply to collapse caused by Earthquake and/or Volcanic Eruption.
4. We will not pay for loss or damage caused directly or indirectly by tidal wave or tsunami, even if attributable to an Earthquake or Volcanic Eruption.
5. We will not pay for loss or damage caused by or resulting from any Earthquake or Volcanic Eruption that begins before the inception of this insurance.
6. The Ordinance Or Law Exclusion in the Causes of Loss – Special Form continues to apply with respect to any loss under this Coverage Part including any loss under this Earthquake and Volcanic Eruption Limited Additional Coverage provided by the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, unless Ordinance Or Law Coverage is added by a separate endorsement.

7. We will not pay for loss of or damage to exterior masonry veneer (except stucco) on wood frame walls caused by or resulting from Earthquake or Volcanic Eruption. The value of such veneer will not be included in the value of Covered Property or the amount of loss when applying the Property Damage Deductible applicable to this Earthquake and Volcanic Eruption Limited Additional Coverage provided by the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

This limitation does not apply if less than 10% of the total outside wall area is faced with masonry veneer (excluding stucco).

This limitation (**C.7.**) does not apply if:

- a. The Declarations indicate that the "Including Masonry Veneer" option applies; or
  - b. Less than **10%** of the total outside wall area is faced with masonry veneer (excluding stucco).
8. Any loss or damage to land, and/or any cost arising out of the need to restore or remediate land is excluded. Land is not covered property, nor is the cost of excavations, grading, backfilling or filling.
  9. The Additional Coverage - Earthquake and Volcanic Eruption Limited Additional Coverage provided by the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS is not a "specified cause of loss."

**D. No Coinsurance**

The Coinsurance Condition in this policy, if any, does not apply to Earthquake and Volcanic Eruption Limited Additional Coverage.

Various Coverage Extensions in the Commercial Property Coverage Part require coinsurance. The coinsurance requirement for such Coverage Extensions is eliminated with respect to coverage provided under Earthquake and Volcanic Eruption Limited Additional Coverage.

**E. Limits**

As respects Earthquake and Volcanic Eruption Limited Additional Coverage provided by the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, the following replaces the Limits of Insurance sections in the applicable coverage forms:

The term Limit of Insurance means the Limit of Insurance applicable to Earthquake – Volcanic Eruption Limited Additional Coverage shown on the first page of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS or on an Earthquake – Volcanic Eruption Coverage Schedule attached to your policy.

**1. Blanket Annual Aggregate Limit**

Subject to **E.3.** below, the Blanket Annual Aggregate Limit of Insurance applicable to Earthquake and Volcanic Eruption Limited Additional Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS is **\$250,000** Blanket Annual Aggregate.

This is a Blanket Annual Aggregate limit and applies no matter how many:

- a. Locations, premises, or buildings covered, or
- b. Types of coverage (such as Building, Business Personal Property, Business Income, Ordinance or Law, etc.) included in your policy are involved in a single Earthquake or Volcanic Eruption.

As used in this provision, Blanket Annual Aggregate Limit means that the **\$250,000** Limit indicated above is the most we will pay for the total of **all** loss or damage to Buildings and Business Personal Property (including any loss of income payable under the Business Interruption with or without Extra Expense Coverage Form(s) if attached to your policy) caused by Earthquake and/or Volcanic Eruption in a **12-month** period (starting with the beginning of the present annual policy period), even if there is more than one Earthquake and/or Volcanic Eruption during that period of time. Therefore, if the first Earthquake or Volcanic Eruption does not exhaust the Limit of Insurance, then only the balance of that Limit is available for a subsequent Earthquake(s) and/or Volcanic Eruption(s), should they also occur within the 12-month policy period.

If a single Earthquake or Volcanic Eruption (as defined in Section **A.** of this coverage) begins during one annual policy period and ends during the following annual policy period, any Limit of Insurance applicable to the following annual policy period will not apply to such Earthquake or Volcanic Eruption.

**2. Additional Coverages, Coverage Extensions and Endorsements**

Amounts payable under Additional Coverages, Coverage Extensions or endorsements (except endorsements specifically providing additional Earthquake and Volcanic Eruption Coverage limits) attached to your policy do not increase the Blanket Annual Aggregate Limit of Insurance for Earthquake And Volcanic Eruption Limited Additional Coverage described in paragraph **E.1.** above and provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. However, this Blanket Annual Aggregate Limit of Insurance is subject to paragraph **E.3.** below.

**3. Limitation For Covered Property**

We will not pay more for direct physical loss of or damage to Covered Property in any single occurrence than we would pay in the absence of the Earthquake and Volcanic Eruption Blanket Annual Aggregate Limit. Therefore, the maximum amount payable for Covered Property is the Limit of Insurance or stated value (as shown in a Statement of Values on file with us) specific to that Building or Business Personal Property for fire losses shown in the Declarations.

**4. Ensuing Loss**

If a Cause of Loss (such as fire) is covered by means of an exception to the Earth Movement Exclusion in the Causes of Loss Form, we will also pay for the loss or damage caused by that other Covered Cause of Loss. But the most we will pay for the total of all loss or damage caused by the Earthquake, Volcanic Eruption and that other Covered Cause of Loss is the Limit of Insurance applicable to such other Covered Cause of Loss. We will not pay the sum of the two Limits. We will not pay more for the Earthquake and Volcanic Eruption portion of the loss than the Earthquake and Volcanic Eruption Limited Additional Coverage Limit of Insurance shown on the first page of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

**Examples – Ensuing Loss**

Two examples follow, using these facts: The Commercial Property Coverage Part, in these examples, includes the Causes of Loss – Basic Form (which covers fire) and this Earthquake and Volcanic Eruption Limited Additional Coverage.

- o A building is damaged by Earthquake, and by Fire which is caused by the Earthquake.
- o The value of the damaged building is \$1,000,000.
- o The Limit of Insurance applicable to the building, for the Basic Causes of Loss, is \$800,000.
- o The Limit of Insurance for Earthquake – Volcanic Eruption is \$250,000.
- o The Earthquake Deductible amount is \$10,000.

**Example #1**

The damage due to Earthquake is \$500,000.  
The damage due to Fire is \$500,000.  
Payment for Earthquake damage is \$250,000 (\$500,000 damage minus \$10,000 Earthquake deductible = \$490,000; Limit is \$250,000)  
Payment for Fire damage is \$500,000 (\$500,000 damage capped at the difference between the Basic Limit and the Earthquake Limit)  
Total Loss Payment is \$750,000.

**Example #2**

The damage due to Earthquake is \$800,000.  
The damage due to Fire is \$100,000.  
Payment for Earthquake damage is \$250,000 (\$800,000 damage minus \$10,000 Earthquake deductible = \$790,000; Limit is \$250,000)

Payment for Fire damage is \$100,000 (amount of damage)  
Total Loss Payment is \$350,000.

5. **Business Income, Extra Expense and Actual Loss Sustained**

The Actual Loss Sustained Coverage provided by a separate endorsement attached to your policy does not apply to the Earthquake and Volcanic Eruption Limited Additional Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

F. **Property Damage Deductible**

Only as respects the coverage provided in this EARTHQUAKE AND VOLCANIC ERUPTION LIMITED ADDITIONAL COVERAGE, the Deductible section in the Building and Personal Property Coverage Form is replaced with the following:

1. The Deductible provisions apply to each Earthquake or Volcanic Eruption as defined in **B.3.** of this Earthquake or Volcanic Eruption Limited Additional Coverage and ensuing loss;
2. The Deductible for Earthquake and Volcanic Eruption Limited Additional Coverage is **\$10,000.**
3. Separate Deductibles apply to: each building, personal property at each building and personal property in the open. Deductibles are applied separately even if:
  - a. Two or more buildings sustain loss or damage;
  - b. Personal property at two or more buildings sustains loss or damage; and/or
  - c. A building and the personal property in that building sustain loss or damage.
4. We will not pay for loss or damage until the amount of loss or damage exceeds the applicable Deductible. We will then pay the amount of loss or damage in excess of that Deductible, up to the applicable Limit of Insurance.
5. If there is loss or damage caused by Earthquake or Volcanic Eruption, and loss or damage caused by a Cause of Loss (e.g. fire) that is covered by means of an exception to the Earth Movement Exclusion in the Causes of Loss – Special Form, then only the Earthquake and Volcanic Eruption Deductible provisions provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS apply.
6. Earthquake and Volcanic Eruption Limited Additional Coverage Deductibles provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS are applicable to all Coverage Forms attached to this Coverage Part except:
  - a. Business Income (And Extra Expense) Coverage Form;
  - b. Business Income (Without Extra Expense) Coverage Form; and
  - c. Extra Expense Coverage Form.

G. **Limitation to Designated Buildings, Locations and Premises**

Earthquake and Volcanic Eruption Limited Additional Coverage applies only at buildings, locations and premises scheduled for property coverage in the Declarations.

Earthquake and Volcanic Eruption Limited Additional Coverage does not apply to the **Newly Acquired or Constructed Property Coverage Extension** or to the **Business Personal Property At Unspecified Locations Coverage Extension.**

H. **Other Insurance Condition**

The following is added to the Other Insurance section of the Commercial Property Conditions:

You may purchase Earthquake and Volcanic Eruption Insurance in excess of the amount(s) provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. Excess Earthquake and Volcanic Eruption insurance will not be considered other insurance, nor shall it be considered in the application of any pro-rata liability.

**ORDINANCE OR LAW LIMITED ADDITIONAL COVERAGE**

I. **APPLICATION OF COVERAGE(S)**

This Ordinance or Law Limited Additional Coverage applies only if both **I.(1)** and **I.(2)** are satisfied, and is then subject to the qualifications set forth in **I.(3).**

- (1) The ordinance or law;
  - (a) Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
  - (b) Is in force at the described premises at the time of loss.

But this Ordinance or Law Limited Additional Coverage applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered under this Ordinance or Law Limited Additional Coverage.
- (2) (a) A building that is described in the Declarations sustains direct physical damage that is covered under this policy and such damage results in the enforcement of the ordinance or law; or
  - (b) A building that is described in the Declarations sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and the building damage in its entirety results in enforcement of the ordinance or law.
  - (c) But if a building that is described in the Declarations sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no coverage under this Ordinance or Law Limited Additional Coverage even if the building has also sustained covered direct physical damage.
- (3) In the situation described in **(2)(b)** above, we will not pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B**, and/or **C** of this Ordinance or Law Limited Additional Coverage. Instead, we will pay a proportion of such loss; meaning the proportion that the covered direct physical damage bears to the total direct physical damage. (See **Example of Proportionate Loss Payment for Ordinance Or Law Coverage Losses** below.)

However, if the covered direct physical damage, alone, would have resulted in enforcement of the ordinance or law, then we will pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B** and/or **C** of this Ordinance or Law Limited Additional Coverage.

**Example of Proportionate Loss Payment for Ordinance Or Law Limited Additional Coverage Losses**  
(procedure as set forth in Section **I.(3)** of this endorsement.)

**Assume:**

- Wind is a Covered Cause of Loss; Flood is an excluded Cause of Loss
- The building has a value of \$200,000
- Total direct physical damage to building: \$100,000
- The ordinance or law in this jurisdiction is enforced when building damage equals or exceeds 50% of the building's value
- Portion of direct physical damage that is covered (caused by wind): \$30,000
- Portion of direct physical damage that is not covered (caused by flood): \$70,000
- Loss under Ordinance Or Law Limited Additional Coverage, Coverage **C** of this endorsement: \$60,000

**Step 1:**

Determine the proportion that the covered direct physical damage bears to the total direct physical damage.

$$\$30,000 \div \$100,000 = .30$$

**Step 2:**

Apply that proportion to the Ordinance or Law loss.

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

In this example, the most we will pay under this endorsement for the Coverage **C** loss is \$18,000, subject to the applicable Limit of Insurance and any other applicable provisions.

**Note:** The same procedure applies to losses under Coverages **A** and **B** of this endorsement.

**II. COVERAGE**

**Coverage A – Coverage for Loss to the Undamaged Portion of the Building**



With respect to the building that has sustained covered direct physical damage, we will pay under **Coverage A** for the loss in value of the undamaged portion of the building as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building. **Coverage A** is included within the Limit of Insurance shown in the Declarations as applicable to the Covered Building. **Coverage A** does not increase the Limit of Insurance.

#### **Coverage B – Demolition Cost Coverage**

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

The Coinsurance Additional Condition does not apply to Demolition Cost Coverage.

#### **Coverage C – Increased Cost Of Construction Coverage**

(1) With respect to the building described in the Declarations that has sustained covered direct physical damage, we will pay the increased cost to:

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

when the increased cost is a consequence of enforcement of the minimum requirements of the ordinance or law.

However:

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

The Coinsurance Additional Condition does not apply to Increased Cost Of Construction Coverage.

(2) When a building is damaged or destroyed and **Coverage C** applies to that building in accordance with paragraph (1) of **Coverage C – Increased Cost of Construction**, coverage for the increased cost of construction also applies to repair or reconstruction of the following, subject to the same conditions stated in (1):

- (a) The cost of excavations, grading, backfilling and filling;
- (b) Foundation of the building;
- (c) Pilings; and
- (d) Underground pipes, flues and drains.

The items listed in (2)(a) through (2)(d) above are deleted from Property Not Covered, but only with respect to the coverage described in **Coverage C – Increased Cost Of Construction**, paragraph (2).

### **III. LOSS PAYMENT**

(1) The following **Loss Payment** provisions **III.(2)** and **III.(3)** are subject to the apportionment procedures set forth in section **I.(3)** of **Application of Coverage(s)**.

#### **(2) Coverage A**

When there is a loss in value of an undamaged portion of a building to which **Coverage A** applies, the loss payment for that building, including damaged and undamaged portions, will be determined as follows:

- (a) If the Replacement Cost Coverage Option applies and the property is being repaired or replaced, on the same or another premises, we will not pay more than the lesser of:
  - (i) The amount you would actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same premises and to the same height, floor area, style and comparable quality of the original property insured; or
  - (ii) The Limit of Insurance shown in the Declarations as applicable to the covered building.

- (b) If the Replacement Cost Coverage Option applies and the property is not repaired or replaced, or if the Replacement Cost Coverage Option does not apply, we will not pay more than the lesser of:
  - (i) The actual cash value of the building at the time of loss; or
  - (ii) The Limit of Insurance shown in the Declarations as applicable to the covered building.

**(1) Coverages B and C**

- (a) Loss payment under **Coverage B** – Demolition Cost Coverage will be determined as follows:  
We will not pay more than the lesser of the following:
  - (i) The amount you actually spend to demolish and clear the site of the described premises; or
  - (ii) **\$500,000.**
- (b) Loss payment under **Coverage C** – Increased Cost of Construction Coverage will be determined as follows:
  - (i) We will not pay under **Coverage C**:
    - (A) Until the property is actually repaired or replaced, at the same or another premises; and
    - (B) 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.
  - (ii) 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 under **Coverage C** is the lesser of:
    - (A) The increased cost of construction at the same premises; or
    - (B) **\$500,000.**
  - (iii) If the ordinance or law requires relocation to another premises, the most we will pay under **Coverage C** is the lesser of:
    - (A) The increased cost of construction at the new premises; or
    - (B) **\$500,000.**
- (c) Blanket limits: **Coverages B and C**  
The limits provided under this Additional Coverage for **Coverage B** and **Coverage C** apply on a blanket basis. Regardless of the number of buildings or locations involved in an occurrence, the most we will pay for all damages arising from one occurrence is **\$500,000** for each of these coverages.

**IV. ADDITIONAL COVERAGES AND COVERAGE EXTENSIONS**

The following applies to all Additional Coverages and Coverage Extensions provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS or by the Causes of Loss – Special Form or by the Building and Personal Property Coverage Form or the Condominium Association Coverage Form:

Amounts payable under Additional Coverages, Coverage Extensions (except provided by separate endorsements specifically providing additional Ordinance or Law Coverage limits) do not increase the Limit of Insurance shown on the first page of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS for Ordinance or Law Limited Additional Coverage. However:

1. If the loss or damage to Covered Buildings is covered under this Ordinance or Law Limited Additional Coverage and also covered under the Ordinance or Law Coverage Endorsement Form CP 04 05, the latter coverage is excess over the applicable Limit of Insurance provided by the Ordinance or Law Limited Additional Coverage.
2. If the loss or damage to Covered Buildings is covered under this Ordinance or Law Limited Additional Coverage and is also covered under the Blanket Ordinance Or Law Coverage Endorsement Form ORD01, the most we will pay for the total of all loss or damage is the Limit of Insurance applicable to Ordinance or Law Coverage Limited Additional Coverage.
3. **Business Income, Extra Expense and Actual Loss Sustained**

The Actual Loss Sustained Coverage provided by a separate endorsement attached to your policy does not apply to the Ordinance or Law Limited Additional Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

With respect to Business Income and Extra Expense Coverage:

- (a) If your policy includes either the Business Income (and Extra Expense) Coverage Form or the Business Income (Without Extra Expense) Coverage Form, your coverage is extended to include business income loss resulting from loss or damage otherwise payable under this Ordinance or Law Limited Additional Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS (except as regards Actual Loss Sustained coverage); and
- (b) Any amount payable for business income (including any amounts payable for Extra Expense) is included in and is not in addition to the Limit of Insurance described in paragraph (3) of III. Loss Payment of this Ordinance or Law Limited Additional Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

## V. EXCLUSIONS

In addition to the exclusions in your Commercial Property Coverage Part, the following exclusions apply to this Ordinance or Law Limited Additional Coverage:

### 1. Failure to Comply Prior to Loss

Under this Ordinance or Law Limited Additional Coverage, we will not pay for loss due to any ordinance or law that:

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

### 2. Pollution

We will not pay under Coverage **A**, **B** and/or **C** of this Additional Coverage 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
- (b) Any costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants."

### 3. "Fungus," Wet or Dry Rot, or Bacteria

As respects this Ordinance or Law Additional Coverage, the exclusion titled "Fungus", Wet Rot, Dry Rot and Bacteria and the Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot and Bacteria in the Causes of Loss – Special Form are deleted. The following exclusion is added:

We will not pay under Coverage **A**, **B** or **C** for:

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

## VI. ORDINANCE OR LAW EXCLUSION

**B.** Exclusions, 1.a. Ordinance or Law of the Causes of Loss – Special Form does not apply to this Additional Coverage.

## ADDITIONAL COVERAGE – OFF-PREMISES SERVICES INTERRUPTION LIMITED ADDITIONAL COVERAGE

The coverage described in this section applies only when an Interruption of Off-Premises Services occurs during the policy period and only if all reasonable means were used to save and preserve the Covered

Property from further damage at the time of and after the occurrence.

- (1) We will pay for direct physical loss of or damage to Covered Property occurring at the premises described in the Declarations caused by the Interruption of Off Premises Services to those premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to property not on the described premises that provided the following services:
  - (a) **Water Supply Services**, meaning the following types of property supplying water to the premises described in the Declarations:
    - i. Pumping stations;
    - ii. Water mains.
  - (b) **Communications Supply Service** means property supplying communication services including telephone, radio, microwave or television services to the premises described in the Declarations such as:
    - i. Communication transmission lines;
    - ii. Coaxial cables;
    - iii. Microwave radio relays except satellites.
  - (c) **Power Supply Service** means the following types of property supplying electricity, steam or gas to the premises described in the Declarations:
    - i. Utility generating plants;
    - ii. Switching stations;
    - iii. Substations;
    - iv. Transformers;
    - v. Transmission lines.

**Power Supply Service** does not include overhead transmission lines.

(2) **Deductibles:**

As respects Business Income and Extra Expense coverage provided in this Off-Premises Services Interruption Limited Additional Coverage, we will only pay for the loss you sustain after the first **12** hours following the direct physical loss or damage to the off premises property to which this Additional Coverage applies. For Direct Damage losses, a **\$1,000** per occurrence deductible applies.

(3) **Annual Aggregate Limit of Insurance**

Subject to the Limit of Insurance shown in the Declarations for any single Building or Business Personal Property insured under this policy and paragraph (4) immediately below, the most we will pay for the sum of **all** direct and indirect loss or damage (i.e., the total of all direct physical loss of or damage to Covered Property, plus all loss payable under Business Income and Extra Expense) under this Off Premises Services Interruption Limited Additional Coverage is **\$250,000**. This is an Annual Aggregate Limit of Insurance and applies no matter how many losses occur or claims are made or how many buildings, premises or locations are covered by this policy.

**Definition:** The term Annual Aggregate Limit of Insurance means this amount is the **most** we will pay for the total of **all** loss or damage to covered Building and Business Personal Property, including loss of income payable under the Business Income with or without Extra Expense Coverage Form(s), from **all** Off Premises Services Interruption(s) (as described in Paragraph (1) above), occurring during a **12**-month policy period (starting with the beginning of the present annual policy period), even if there is more than one occurrence of Off Premises Services Interruption during that period of time.

**How the Annual Aggregate Applies:** If there is more than one Off Premises Services Interruption occurrence in a **12**-month policy period, the most we will pay for the total of all loss or damage sustained during that period of time is the amount shown as the Annual Aggregate Limit of Insurance for Off Premises Services Interruption Limited Additional Coverage in the Table of Coverages of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. Should the first Off Premises Services Interruption not exhaust the Annual Aggregate Limit of Insurance, then the balance of that Limit is available for any subsequent Off Premises Services Interruptions that occur during the **12** month policy period.

With respect to the Annual Aggregate Limit, we will not pay more than a total of **\$250,000** even if the Off Premises Services Interruption continues to be present or active, or recurs, in a later policy period.

(4) **Loss Payment for Buildings and Personal Property Will Not Exceed Insured Limit**

The coverage provided under this Off Premises Services Interruption Limited Additional Coverage does not increase the applicable Limit of Insurance shown in the Declarations on any Covered Property. Under this Off Premises Services Interruption Limited Additional Coverage, we will never pay more for any direct damage loss in any single occurrence than the Limit of Insurance shown in the Declarations for Covered Property.

(5) To the extent that a part of the Utility Services Exclusion(s) might conflict with coverage provided under this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, that part of **B.1.e.** Utility Exclusion does not apply.

(6) If a loss is covered both under this Off Premises Services Interruption Limited Additional Coverage and by a separate endorsement providing Off Premises or Utility Services coverage (specific insurance) attached to this policy, the limits of this Off Premises Services Interruption Limited Additional Coverage Extension will be excess of that separate Utility Services or Off Premises Services Endorsement, and only the deductible applicable to that separate Utility Services or Off Premises Endorsement will apply to the loss.

(7) The Additional Condition, Coinsurance, does not apply to this Off Premises Services Interruption Limited Additional Coverage.

**SPOILAGE LIMITED ADDITIONAL COVERAGE**

Your coverage is extended to insure against direct physical loss or damage to "perishable stock" as described in paragraph **C.** below, but only to the extent described within this **SPOILAGE LIMITED ADDITIONAL COVERAGE.**

**A.** Paragraph **A.1. COVERED PROPERTY** is extended to include the following:

**1. Covered Property**

Covered Property means "perishable stock" at the described premises owned by you or by others that is in your care, custody or control.

**B.** The following is added to Paragraph **A.2. PROPERTY NOT COVERED:**

**q. Property located:**

- (1) On buildings;
- (2) In the open; or
- (3) In vehicles.

**C.** Only as respects coverage provided by this **SPOILAGE LIMITED ADDITIONAL COVERAGE**, the following applies:

**C. SPOILAGE DEFINITION**

**SPOILAGE** means the following:

**a. Breakdown or Contamination**, meaning:

- (1) Change in temperature or humidity resulting from mechanical breakdown or failure of refrigerating, cooling or humidity control apparatus or equipment, only while such equipment or apparatus is at the described premises; and
- (2) Contamination by the refrigerant.

**b. Power Outage**, meaning change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.

**D.** We will not pay for any loss or damage:

1. Covered elsewhere under this Coverage Part or endorsement; or
2. Not covered elsewhere under this Coverage Part or endorsement due to exhaustion of limits; except when Spoilage coverage is provided by the attachment of ISO Spoilage Coverage endorsement CP 04 40.

If ISO Spoilage Coverage endorsement CP 04 40 is attached to your policy, the limit of insurance provided in paragraph **K.** below of this **SPOILAGE LIMITED ADDITIONAL COVERAGE** is excess over any Limit of Insurance shown in the Schedule of the ISO Spoilage Coverage endorsement CP 04 40 or over the amount due from the ISO Spoilage Coverage endorsement, whichever is less.

**E.** Paragraph **A.5. COVERAGE EXTENSIONS** does not apply.

**F.** Paragraph **B. EXCLUSIONS** is replaced by the following:

**B. EXCLUSIONS**

1. Only the following EXCLUSIONS contained in paragraph **B.1.** of the Causes of Loss Form applicable to this Coverage Part apply to Spoilage Coverage:

- a. EARTH MOVEMENT;
- b. GOVERNMENTAL ACTION;
- c. NUCLEAR HAZARD;
- d. WAR AND MILITARY ACTION; and
- e. WATER.

2. The following EXCLUSIONS are added:

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

- a. The disconnection of any refrigerating, cooling or humidity control system from the source of power.
- b. The deactivation of electrical power caused by the manipulation of any switch or other device used to control the flow of electrical power or current.
- c. The inability of an Electrical Utility Company or other power source to provide sufficient power due to:
  - (1) Lack of fuel; or
  - (2) Governmental order.
- d. The inability of a power source at the described premises to provide sufficient power due to lack of generating capacity to meet demand.
- e. Breaking of any glass that is a permanent part of any refrigerating, cooling or humidity control unit.

3. If a Terrorism Exclusion applies to this Coverage Part, it applies to Spoilage Coverage.

**G.** If **Mechanical, Electrical or Pressure Systems Breakdown Endorsement GNY CP 03** is attached to your policy, coverage for Perishable Goods and Refrigerant Contamination provided in GNY CP 03 is superseded by this Spoilage Coverage Extension.

**H.** Paragraph **F. ADDITIONAL CONDITIONS** is replaced by the following:

**ADDITIONAL CONDITION**

The following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

**REFRIGERATION MAINTENANCE AGREEMENTS**

You must maintain a refrigeration maintenance or service agreement. If you voluntarily terminate this agreement and do not notify us, the insurance provided by this endorsement will be automatically suspended at the involved location.

**I.** Paragraph **G. OPTIONAL COVERAGES** does not apply.

**J.** The following is added to the **DEFINITIONS**:

"**Perishable Stock**" means personal property:

- a. Maintained under controlled conditions for its preservation; and
- b. Susceptible to loss or damage if the controlled conditions change.

**K.** The most we will pay for loss or damage during the policy period under this Spoilage Coverage Extension is **\$50,000**. This is an annual aggregate Limit. This annual aggregate limit applies no matter how many locations, buildings or premises are covered by this coverage part.

- L. Spoilage coverage provided by this Coverage Extension is not a Covered Cause of Loss for Business Income and/or Extra Expense losses.

**ADDITIONAL COVERAGE – WATER PERIL LIMITED ADDITIONAL COVERAGE**

- A. References to Zones B, C and X throughout the section which follows refer to Flood Map Zones established by the Federal Emergency Management Agency (FEMA) Mitigation Directorate's administration of the National Flood Insurance Program (NFIP). Should the boundaries of Zone(s) B, C and/or X be revised under the NFIP during the policy period, such that the insured's premises is reassigned to a zone outside Zone(s) B, C or X, coverage under Flood and/or Mudslide under this WATER PERIL Limited Additional Coverage will continue until expiration date of your policy.
- B. Coverage provided by this WATER PERIL Limited Additional Coverage applies to Flood losses occurring in NFIP Zones B, C and X for the Covered Property at described premises for which a Limit of Insurance is shown in the Declarations.
- C. Subject to the provisions of this WATER PERIL Limited Additional Coverage section, coverages only to the extent described immediately below are provided:
  - 1. **Flood**, meaning a general and temporary condition of partial or complete inundation of normally dry land areas due to:
    - a. Surface water, waves, tides, tidal waves, overflow of any body of water or their spray all whether driven by wind or not.
    - b. The overflow of inland or tidal waters;
    - c. The unusual or rapid accumulation or runoff of surface waters from any source; or
  - 2. **Mudslide or mudflow** which are caused by flooding as defined in **C.1.(c)** above. For the purposes of this WATER PERIL Limited Additional Coverage, a mudslide or mudflow involves a river of liquid and flowing mud on the surface of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

All flooding in a continuous or protracted event will constitute a single flood.

- 3. **Sewer Back-up** meaning:

Water that backs up or overflows from a sewer, drain, or sump,

- 4. **Underground Water** meaning:

Water that is under the ground surface pressing on, or flowing or seeping through:

- (i) Foundations, walls, floors or paved surfaces;
- (ii) Basements, whether paved or not; or
- (iii) Doors, windows, or other openings,

for a period, in both 3. and 4., of not more than 13 consecutive days (that is, 13 times twenty four consecutive hours), commencing 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.

The **WATER PERIL Limited Additional Coverage** does not apply to any loss or damage caused by or resulting from any of the causes described in this paragraph **C.** that begins before the inception of this insurance.

- D. We will pay for loss or damage to Covered Property caused by or resulting from WATER PERIL as defined in paragraph **C.** above at the location(s) shown in the Declarations. As used in this WATER PERIL Limited Additional Coverage, the term loss or damage means direct physical loss of or damage to Covered Property caused by the causes described in paragraph **C.** above, including the cost of removal of the debris resulting from the loss or damage to the Covered Property.

**Business Income, Extra Expense and Actual Loss Sustained**

If a Business Income and Extra Expense or Business Income Without Extra Expense Coverage Form is attached to your policy, we will also pay for your loss of income (and extra expense if applicable) arising out of the loss or damage by WATER PERIL to Covered Property.

However, any Actual Loss Sustained Coverage provided by a separate endorsement attached to your policy does not extend to the WATER PERIL Limited Additional Coverage.

#### E. EXCLUSIONS, LIMITATIONS AND RELATED PROVISIONS

1. The Exclusions and Limitation(s) sections of the Causes of Loss - Special Form apply to WATER PERIL Limited Additional Coverage provided in this section, except as provided in **a.** and **b.** immediately below:

a. To the extent that a part of **B.1.g.** Water Exclusion of the Causes of Loss – Special Form might conflict with coverage provided under this WATER PERIL Limited Additional Coverage by the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, that part of the Water Exclusion does not apply. To the extent that a tsunami causes the overflow of tidal waters, the exclusion of earthquake, in the Earth Movement Exclusion of the Causes of Loss – Special Form does not apply.

(1) Only as respects WATER PERIL Limited Additional Coverage, **B.1.g. Water** of the Causes of Loss Special Form is deleted and replaced by the following:

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

Exclusion(s) **g.(3)** and **g.(4)** apply except as coverage is provided under WATER PERIL Limited Additional Coverage.

b. The exclusion of Collapse, in the Causes of Loss-Special Form does not apply to collapse caused by Flood and/or Mudslide otherwise covered by this WATER PERIL Limited Additional Coverage provided in this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.



2. The Additional Coverage – Collapse, in the Causes of Loss – Special Form does not apply to collapse caused by Flood and/or Mudslide as defined in this WATER PERIL Limited Additional Coverage of the PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.
3. The Ordinance Or Law Exclusion in the Causes of Loss Special Form continues to apply with respect to any loss under this WATER PERIL Limited Additional Coverage, unless a separate Ordinance Or Law Coverage endorsement is also attached to your policy. However, if a separate Ordinance Or Law Coverage endorsement is attached to your policy, please see paragraph 1.3. of this Limited Additional Coverage.
4. The following exclusions and limitations are added and apply to the WATER PERIL Limited Additional Coverage provided in this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS:

- a. We will not pay for any loss or damage caused by or resulting from any WATER PERIL that begins before or within **72** hours after the inception date of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. If you request and we provide an increase in the stated Limit of Insurance for WATER PERIL Limited Additional Coverage, the increase will not apply to loss or damage from any WATER PERIL that begins before or within **72** hours after your request was made.

If the Flood is due to the overflow of inland or tidal waters, then the Flood is considered to begin when the water first overflows its banks.

- b. We will not pay for loss or damage caused by or resulting from destabilization of land arising from the accumulation of water in subsurface land areas.
- c. Under this Coverage Part, as set forth under Property Not Covered in the Building and Personal Property Coverage Form to which this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS is attached, land is not covered property, nor is the cost of excavations, grading, backfilling or filling. Therefore, coverage under this WATER PERIL Limited Additional Coverage in this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS does not include the cost of restoring or remediating land due to the collapse or sinking of land caused by or resulting from Flood and/or Mudslide.

However, coverage under this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS includes damage to the covered portions of the building and to covered personal property, caused by collapse or sinking of land along the shore of a body of water as the result of erosion or undermining caused by waves or currents of water which exceed the cyclical levels and cause Flood.

Even if a CHANGE ENDORSEMENT is attached to your policy providing coverage for excavations, grading, backfilling or filling, then the cost of restoring or remediating land due to the collapse or sinking of land caused by or resulting from Flood and/or Mudslide is **not** covered under this WATER PERIL Limited Additional Coverage.

- d. We do not cover loss or damage by Flood to personal property in the open except to the extent that such coverage, if any, is specified in the Flood Coverage Schedule or in the Declarations.
- e. Property Not Covered in the Building and Personal Property Coverage Form to which this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS is attached, is amended and supplemented as follows only with respect to WATER PERIL Limited Additional Coverage:
  - (1) Property Not Covered includes any building or other property that is not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq. and the Coastal Barrier Improvement Act of 1990, Pub. L. 101-591, 16 U.S.C. 3501

et seq.

- (2) Property Not Covered includes boat houses and open structures, and any property in or on the foregoing, if the structure is located on or over a body of water.
- (3) If bulkheads, pilings, piers, wharves, docks, or retaining walls that are not part of a building have been removed from Property Not Covered and added as Covered Property by separate endorsement, this WATER PERIL Limited Additional Coverage does not apply to such property.
- (4) The following are removed from Property Not Covered and are therefore Covered Property:
  - (a) Foundations below the lowest basement floor or the subsurface of the ground; and
  - (b) Underground pipes, flues and drains.
- f. We will not pay for loss or damage caused by sewer back-up or overflow unless such back-up or overflow results from Flood and occurs within **72** hours after the flood recedes.
- g. The Additional Coverage - WATER PERIL Limited Additional Coverage provided here is not a "specified cause of loss."
- i. **"Fungus," Wet or Dry Rot, or Bacteria**

As respects this **WATER PERIL** Limited Additional Coverage provided by this **PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS**, the exclusion titled "Fungus", Wet Rot, Dry Rot in the Causes of Loss – Special Form is deleted and replaced with the following:

**"Fungus," Wet or Dry Rot, or Bacteria**

As respects this WATER PERIL Limited Additional Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, we will not pay for loss or damage caused directly or indirectly by "fungus", wet rot, dry rot and bacteria. Such loss or damage because of the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

This exclusion does not apply to the extent that coverage is provided in the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria of the **Causes of Loss – Special Form** with respect to loss or damage arising from "fungus", wet or dry rot or bacteria that results from Flood.

This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.

As respects this **WATER PERIL** Limited Additional Coverage provided by this **PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS**, the Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot and Bacteria in the **Causes of Loss – Special Form** remains otherwise unmodified.

**F. Additional Coverages And Coverage Extensions**

Other than as provided in **F.2.** below, the following applies to all Additional Coverages and Coverage Extensions provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS, the Causes of Loss – Special Form, the Building and Personal Property Coverage Form or the Condominium Association Coverage Form:

1. Amounts payable under Additional Coverages, Coverage Extensions (except endorsements specifically providing additional WATER PERIL Coverage limits) of this endorsement or any Coverage Form included in your policy, do not increase the Limit of Insurance for WATER PERIL Limited Additional Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

2. With respect to WATER PERIL Limited Additional Coverage, the Debris Removal Additional Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS (and any additional limit for Debris Removal under a Limit Of Insurance clause or an endorsement) does not apply and is replaced with the following:

**DEBRIS REMOVAL**

- a. We will pay your expense to remove debris of Covered Property, when such debris is caused by or results from WATER PERIL. However, we will not pay to remove deposits of mud or earth from the grounds of the described premises.
  - b. We will also pay the expense to remove debris of Covered Property that has floated or been hurled off the described premises by Flood and/or Mudslide.
  - c. This coverage for Debris Removal, as set forth in **F.2.a.** and **F.2.b.** above, does not increase the applicable Limit of Insurance for WATER PERIL Limited Additional Coverage. Therefore, the most we will pay for the total of debris removal and direct physical loss of or damage to Covered Property, plus any loss of income payable arising out of the loss to Covered Property, is the Limit of Insurance for WATER PERIL Limited Additional Coverage shown on the first page of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.
3. With respect to WATER PERIL Limited Additional Coverage, the Coverage Extension for Newly Acquired or Constructed Property and Business Personal Property at Unspecified Locations does not apply.
  4. Various Coverage Extensions, in the Building and Personal Property Coverage Form to which this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS is attached, require coinsurance. If the No-Coinsurance Option applies, then the coinsurance requirement for such Coverage Extensions is eliminated.
  5. **Business Income, Extra Expense and Actual Loss Sustained**  
The Actual Loss Sustained Coverage provided by a separate endorsement attached to your policy does not extend to the WATER PERIL Limited Additional Coverage provided by this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS.

**G. Limit of Insurance**

**1. Application Of Limit And Blanket Annual Aggregate**

Subject to paragraph **G.2.** below, the **\$250,000** Blanket Annual Aggregate Limit of Insurance for WATER PERIL Limited Additional Coverage is the most we will pay during any **12-month** period, no matter how many:

- a. Locations, premises, buildings; or
- b. Types of coverage (such as Building, Business Personal Property, Business Income, Ordinance or Law, etc.);

that occur during that **12-month** policy period.

The Blanket Annual Aggregate Limit of Insurance is the most we will pay for the total of all loss or damage to covered:

- (2) Buildings; and
- (3) Business Personal Property;

including associated

- a. Debris Removal expense; and
- b. Loss of Income (if Business Income with or without Extra Expense Coverage Form(s) are attached to your policy);

that is caused by WATER PERIL (as defined in this Limited Additional Coverage) in a **12-month**

period (starting with the beginning of the present annual policy period), even if there is more than one occurrence of WATER PERIL during that period of time. If there is more than one WATER PERIL in a 12-month period (starting with the beginning of the present annual policy period), the most we will pay for the total of all loss or damage sustained during that period of time and caused by WATER PERIL is the amount shown as the Blanket Annual Aggregate Limit of Insurance for WATER PERIL Limited Additional Coverage on the first page of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS. Should the first WATER PERIL event not exhaust the applicable Limit of Insurance, then the balance of that Limit is available for a subsequent Flood(s) and/or Mudslide(s) that occur during the 12-month policy period.

If a single occurrence of WATER PERIL event begin during one annual policy period and end during the following annual policy period, any Annual Aggregate Limit of Insurance applicable to the following annual policy period will **not** apply to that WATER PERIL loss.

**2. Limitation For Covered Property**

Notwithstanding the Blanket Limit of Insurance described in **G.1.** above, we will not pay more for Covered Property in any single occurrence under this WATER PERIL Limited Additional Coverage than we would pay in the absence of the WATER PERIL Limited Additional Coverage Limit of Insurance. Therefore, the maximum amount payable for Covered Building(s) or Business Personal Property is the Limit of Insurance or stated value (as shown in a Statement of Values on file with us) shown in the Declarations for fire losses.

**3. Ensuing Loss**

Under the WATER PERIL Limited Additional Coverage, we will not pay for loss or damage by fire, explosion or sprinkler leakage. Coverage for Fire, Explosion or Sprinkler Leakage ensuing Flood and/or Mudslide is provided by the Special Causes of Loss form under the exception to Exclusion **B.1.g.**

If a WATER PERIL is covered under this endorsement and an ensuing Fire, Explosion or Sprinkler Leakage loss is covered under the Causes of Loss Special Form by means of an exception to Exclusion **B.1.g.**, the most we will pay for the total of all loss or damage caused by the WATER PERIL and the Fire, Explosion and/or Sprinkler Leakage is the Limit of Insurance applicable to the Fire, Explosion and/or Sprinkler Leakage. We will not pay the sum of the limits for Fire, Explosion and Sprinkler Leakage and WATER PERIL. We will not pay more for the WATER PERIL portion of the loss than the WATER PERIL Limited Additional Coverage Limit of Insurance provided by this endorsement, subject to paragraph G.2. of this Limited Additional Coverage.

In the event of covered ensuing loss, for example, loss caused by Fire, Explosion and/or Sprinkler Leakage which results from the WATER PERIL, the most we will pay, for the total of all loss or damage caused by WATER PERIL, fire, explosion and sprinkler leakage, is the Limit of Insurance applicable to Fire. We will **not** pay the sum of the Fire and WATER PERIL Limits.

**EXAMPLES – ENSUING LOSS**

Two examples follow, using these facts: The Commercial Property Coverage Part, in these examples, includes the Causes of Loss – Basic Form (which covers fire) and this WATER PERIL Coverage. A building is damaged by Flood and by Fire which is caused by the Flood. The value of the damaged building is \$1,000,000. The Limit of Insurance applicable to the building, for the Basic Causes of Loss, is \$800,000. The Limit of Insurance for Flood under WATER PERIL is \$250,000. The Flood Deductible amount is \$10,000.

**EXAMPLE #1**

The damage due to Flood is \$500,000. The damage due to Fire is \$500,000.

Payment for Flood damage is \$250,000 (\$500,000 damage minus \$10,000. Flood deductible = \$490,000; Limit is \$250,000)

Payment for Fire damage is \$500,000 (\$500,000 damage capped at the difference between the Basic Limit and the Flood Limit)

Total Loss Payment is \$750,000.

#### **EXAMPLE #2**

The damage due to Flood is \$800,000. The damage due to Fire is \$100,000.

Payment for Flood damage is \$250,000 (\$800,000 damage minus \$10,000. Flood deductible = \$790,000; Limit is \$250,000)

Payment for Fire damage is \$100,000 (amount of damage)

Total Loss Payment is \$350,000.

**Note:** These Examples are given only to illustrate the situation of flood and ensuing loss. Therefore, the loss payment stated for flood damage does not address the situation where another policy also covers the flood damage.

#### **H. Deductible**

1. The Deductible for coverage provided under this WATER PERIL Limited Additional Coverage is the Deductible applicable under paragraph **H.5.** below, unless modified by endorsement.
  2. We will not pay that part of the loss that is attributable to any Deductible(s) in the National Flood Insurance Program policy.
  3. If WATER PERIL results in another Covered Cause of Loss and if both Covered Causes of Loss cause loss or damage, then only the higher deductible applies (e.g., the Flood deductible or the Fire deductible).
  4. Deductibles described in Paragraph **5.** immediately below are applicable to all Coverage Forms extending coverage to this WATER PERIL Limited Additional Coverage except:
    - a. Business Income (And Extra Expense) Coverage Form;
    - b. Business Income (Without Extra Expense) Coverage Form; and
    - c. Extra Expense Coverage Form.
  5. The Deductible section in the Building and Personal Property Coverage Form is replaced by the following, but only with respect to WATER PERIL and ensuing loss:
    - a. The Deductible provisions apply to each WATER PERIL loss.
    - b. The Deductible for:
      - (1) **Flood and/or Mudslide is \$10,000'**
      - (2) **Sewer Back-up is \$5,000;**
      - (3) **Underground Water is \$5,000;**
- unless an endorsement amending these specific deductibles is attached to your policy.
- c. Separate Deductibles apply to: each building, personal property at each building and personal property in the open. Deductibles are applied separately even if:
    - (1) Two or more buildings sustain loss or damage;
    - (2) Personal property at two or more buildings sustains loss or damage; and/or
    - (3) A building(s) and personal property sustain loss or damage.
  - d. We will not pay for loss or damage until the amount of loss or damage exceeds the applicable Deductible. We will then pay the amount of loss or damage in excess of that Deductible, up to the applicable Limit of Insurance.
  - e. If in one occurrence, there is loss or damage caused by WATER PERIL and loss or damage caused by a Cause of Loss (e.g., fire) that is covered by means of an exception to Exclusion **B.1.g.** of the Causes of Loss – Special Form, then only the Deductible applicable to the WATER PERIL applies.

#### **I. Other Insurance**

The Other Insurance Commercial Property Condition is replaced by the following with respect to the

coverage provided under this WATER PERIL Limited Additional Coverage:

1. If the loss is also covered under a National Flood Insurance Program (NFIP) policy, or if the property is eligible to be written under an NFIP policy but there is no such policy in effect, then we will pay only for the amount of loss in excess of the maximum limit that can be insured under that policy. This provision applies whether or not the maximum NFIP limit was obtained or maintained, and whether or not you can collect on the NFIP policy. We will not, under any circumstances, pay more than the applicable Limit of Insurance for Flood and/or Mudslide as stated in the Flood Coverage Schedule or the first page of this PROTECTO-GUARD - ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR RESTAURANTS as applicable to this WATER PERIL Limited Additional Coverage.

However, this Provision **I.1.** does not apply under the following circumstances:

- a. At the time of loss, the property is eligible to be written under an NFIP policy but such policy is not in effect due solely to ineligibility of the property at the time this WATER PERIL Limited Additional Coverage was written; or
  - b. An NFIP policy is not in effect because we have agreed to write this WATER PERIL Limited Additional Coverage without underlying NFIP coverage. There is such an agreement only if the Flood Coverage Schedule or the Declarations indicate that the Underlying Insurance Waiver applies.
2. If the loss or damage to Covered Property is covered under this WATER PERIL Limited Additional Coverage and also covered under the MISCELLANEOUS WATER COVERAGE ENDORSEMENT Form WATER01, the most we will pay for the total of all loss or damage to Covered Property is:
    - a. The Blanket Annual Aggregate Limit of Insurance (or the unused remainder of the Blanket Annual Aggregate as described in paragraph **G.1.** above) applicable to WATER PERIL Limited Additional Coverage; or
    - b. The Limit of Insurance applicable to the Covered Property shown in the Declarations.

In no event will we pay the sum of the Limits applicable to each of the coverages (i.e., the sum of the WATER PERIL Limited Additional Coverage Limit plus the Limits for Fire Hydrants and Underground Water - Supply Mains and Backup of Sewers and Drains).

3. If the loss or damage to Covered Property is covered under this WATER PERIL Limited Additional Coverage and is also covered under the BLANKET ORDINANCE OR LAW COVERAGE ENDORSEMENT Form ORD01, the most we will pay for the total of all loss or damage is:
  - a. The Blanket Annual Aggregate Limit of Insurance (or the unused remainder of the Blanket Annual Aggregate as described in paragraph **G.1.** above) applicable to WATER PERIL Limited Additional Coverage; or
  - b. The Limit of Insurance applicable to the Covered Property shown in the Declarations.

In no event will we pay the sum of the Limits applicable to each of the coverages (i.e., the sum of the WATER PERIL Limited Additional Coverage Limit plus the Limits for Ordinance or Law resulting from WATER PERIL).

4. If there is other insurance covering the loss, other than that described in **I.1.**, **I.2.** or **I.3.** above, we will pay our share of the loss. Our share is the proportion that the available Limit of Insurance under this WATER PERIL Limited Additional Coverage bears to the total of the applicable Limits of Insurance under all other such insurance. But we will not pay more than the applicable Limit of Insurance stated in the Declarations for Covered Property as our proportion of the loss for any single occurrence.

**J. Business Income And Extra Expense Period Of Restoration**

This Section **J.** is applicable only to the Coverage Forms specified below:

1. Business Income (And Extra Expense) Coverage Form;
2. Business Income (Without Extra Expense) Coverage Form; and

3. Extra Expense Coverage Form.

The "period of restoration" definition stated in the above Coverage Form, or in any endorsement amending the beginning of the "period of restoration", applies to each occurrence of WATER PERIL.

**AMENDMENTS TO E. ADDITIONAL COVERAGE EXTENSIONS**

**PROPERTY IN TRANSIT**

The following replaces Paragraph c. of Property in Transit:

The most we will pay for loss or damage under this Extension is **\$50,000**.

For loss or damage to "fine arts" in transit, the most we will pay under this Additional Coverage Extension is **\$10,000**. This is an annual aggregate limit.

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

**AMENDMENTS TO THE BUSINESS INCOME COVERAGE FORMS**

The following changes are made to the Business Income (Without Extra Expense) Coverage Form and the Business Income (And Extra Expense) Coverage Form if one of these coverage forms is included in your policy:

**AMENDMENTS TO A. COVERAGE**

**PROPERTY DISTANCE EXTENSION**

The property distance limitations in A. Coverage are increased from 100 feet to **500** feet. Payments under this Additional Coverage will not increase the applicable limit of insurance.

**AMENDMENTS TO A.5. ADDITIONAL COVERAGES**

The following is added as the final paragraph of **A.5.c.**:

**EXTENDED BUSINESS INCOME TIME PERIOD**

**(3)** Additional days for "Business Income" and "Rental Value"

Under the PROTECTO-GUARD ENHANCED PROPERTY COVERAGE ENDORSEMENT, we will add **60** days to the number of days otherwise provided by this policy for Extended Business Income under **(1)(b)(ii)** and/or **(2)(b)(ii)**.

**ADDITIONS TO A.6. COVERAGE EXTENSION**

The following Coverage Extension is added to **A.6.**:

**BUSINESS INCOME - DEPENDENT PROPERTIES**

(1) We will pay up to **\$50,000** 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 or damage to "dependent property" caused by or resulting from a Covered Cause of Loss. We will not pay more than **3%** of this limit for each day's "suspension" of "operations" due to loss arising from any one location.

(2) For Coverage provided under this Business Income - Dependent Properties Coverage Extension, the following replaces the Resumption of Operations provision in the Loss Determination Loss Condition:

We will reduce the amount of your Business Income Loss, other than Extra Expense, to the extent you resume operations, in whole or in part, by using any other available:

- (a) Source of materials; or
- (b) Outlet of your products.

We will reduce your Extra Expense loss to the extent that you can return "operations" to normal and discontinue such Extra Expense.

(3) Definitions:

1. The following definition is added:

"Dependent Property" means property operated by others whom you depend on to:

- a. Deliver materials or services to you or to others for your account (Contributing Locations.) With respect to Contributing Locations, Services does not mean water, communication or power supply services;
- b. Accept your products or services (Recipient Locations);
- c. Manufacture products for delivery to your customers under contract of sale (Manufacturing Locations); or
- d. Attract customers to your business (Leader Locations).

2. The "Period of Restoration" Definition, only with respect to "dependent property," is replaced by the following:

"Period of restoration" means the period of time that:

- a. Begins **72** hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the "dependent property"; and
- b. Ends on the earlier of the following:
  - (i) The date when the property at the premises of the "dependent property" should be repaired, rebuilt or replaced with reasonable speed and similar quality, or
  - (ii) One year after the date of the direct physical loss or damage.

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

- (a) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (b) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants, " or
- (c) 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 "fungus," wet or dry rot, or bacteria. This exclusion of "fungus," wet or dry rot, or bacteria does not apply when "fungus", wet rot or dry rot results from a Covered Cause of Loss. Exclusion **B.2.d.(2)** of the Causes of Loss Special Form continues to apply.

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



## BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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

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

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

### A. Coverage

#### 1. Business Income

Business Income means the:

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

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

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

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

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

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

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

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

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

#### 2. Extra Expense

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

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

- (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.
- (2) Minimize the "suspension" of business if you cannot continue "operations".

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

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

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

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

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

### 5. Additional Coverages

#### a. Civil Authority

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

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

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

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

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

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

whichever is later.

#### b. Alterations And New Buildings

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

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and

(3) Machinery, equipment, supplies or building materials located on or within 100 feet of the described premises and:

- (a) Used in the construction, alterations or additions; or
- (b) Incidental to the occupancy of new buildings.

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

**c. Extended Business Income**

**(1) Business Income Other Than "Rental Value"**

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

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
  - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 30 consecutive days after the date determined in (1)(a) above.

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

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

**(2) "Rental Value"**

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

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

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

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

**d. Interruption Of Computer Operations**

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.
- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss.

(3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:

- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage – Interruption Of Computer Operations is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
- (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage – Interruption Of Computer Operations includes Collapse as set forth in that form.
- (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage – Interruption Of Computer Operations.
- (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.

(4) The most we will pay under this Additional Coverage – Interruption of Computer Operations is \$2,500 for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.

(5) This Additional Coverage – Interruption in Computer Operations does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

#### **6. Coverage Extension**

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

##### **NEWLY ACQUIRED LOCATIONS**

- a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$100,000 at each location.

c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:

- (1) This policy expires;
- (2) 30 days expire after you acquire or begin to construct the property; or
- (3) You report values to us.

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

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

## B. Limits Of Insurance

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

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

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

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

## C. Loss Conditions

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

### 1. Appraisal

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

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

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

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

## 2. Duties In The Event Of Loss

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

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when, and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

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

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (7) Cooperate with us in the investigation or settlement of the claim.
  - (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

### 3. Loss Determination

- a. The amount of Business Income loss will be determined based on:
- (1) The Net Income of the business before the direct physical loss or damage occurred;
  - (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
  - (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
  - (4) Other relevant sources of information, including:
    - (a) Your financial records and accounting procedures;
    - (b) Bills, invoices and other vouchers; and
    - (c) Deeds, liens or contracts.
- b. The amount of Extra Expense will be determined based on:
- (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
    - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
    - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
  - (2) Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

### c. Resumption Of Operations

We will reduce the amount of your:

- (1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
  - (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

### 4. Loss Payment

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

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

### D. Additional Condition

#### COINSURANCE

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

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

1. The Coinsurance percentage shown for Business Income in the Declarations; times
2. The sum of:
  - a. The Net Income (Net Profit or Loss before income taxes), and
  - b. Operating expenses, including payroll expenses,that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

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

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

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

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

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

#### EXAMPLE #1 (UNDERINSURANCE)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000  
The Coinsurance percentage is: 50%  
The Limit of Insurance is: \$ 150,000  
The amount of loss is: \$ 80,000

Step (1):  $\$400,000 \times 50\% = \$200,000$   
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$150,000 \div \$200,000 = .75$

Step (3):  $\$80,000 \times .75 = \$60,000$

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

#### EXAMPLE #2 (ADEQUATE INSURANCE)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000  
The Coinsurance percentage is: 50%  
The Limit of Insurance is: \$ 200,000  
The amount of loss is: \$ 80,000

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

This condition does not apply to Extra Expense Coverage.

#### E. Optional Coverages

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

##### 1. Maximum Period Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.

b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:

- (1) The amount of loss sustained and expenses incurred during the 120 days immediately following the beginning of the "period of restoration"; or
- (2) The Limit of Insurance shown in the Declarations.

**2. Monthly Limit Of Indemnity**

a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.

b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:

- (1) The Limit of Insurance, multiplied by
- (2) The fraction shown in the Declarations for this Optional Coverage.

**EXAMPLE**

When: The Limit of Insurance is: \$ 120,000  
 The fraction shown in the Declarations for this Optional Coverage is: 1/4

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

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

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

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

The remaining \$10,000 is not covered.

**3. Business Income Agreed Value**

a. To activate this Optional Coverage:

(1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":

- (a) During the 12 months prior to the date of the Work Sheet; and
- (b) Estimated for the 12 months immediately following the inception of this Optional Coverage.

(2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:

- (a) The Coinsurance percentage shown in the Declarations; multiplied by
- (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.

b. The Additional Condition, Coinsurance, is suspended until:

- (1) 12 months after the effective date of this Optional Coverage; or
- (2) The expiration date of this policy; whichever occurs first.

c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:

- (1) Within 12 months of the effective date of this Optional Coverage; or
- (2) When you request a change in your Business Income Limit of Insurance.

d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:

- (1) The Business Income Limit of Insurance; divided by
- (2) The Agreed Value.



## EXAMPLE

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

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

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

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

### 4. Extended Period Of Indemnity

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

## F. Definitions

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

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

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

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

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

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

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

4. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
5. "Rental Value" means Business Income that consists of:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
  - b. Continuing normal operating expenses incurred in connection with that premises, including:
    - (1) Payroll; and
    - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
6. "Suspension" means:
  - a. The slowdown or cessation of your business activities; or
  - b. That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

**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.**

## **MASSACHUSETTS – FUNGUS, WET ROT, DRY ROT AND BACTERIA EXCLUSION AND LIMITATIONS**

This endorsement modifies insurance provided under the following:

### CAUSES OF LOSS – SPECIAL FORM

**A.** Exclusion **B.1.h.** is replaced by the following exclusion:

**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 Covered Cause of Loss, we will pay for the loss or damage caused by that Covered 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.

**B.** The **Additional Coverage – Limited Coverage For 'Fungus', Wet Rot, Dry Rot And Bacteria** is replaced by the following:

1. The coverage described in **B.2.** and **B.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 Covered 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 **B.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 Covered 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 the Causes Of Loss – Special Form or under the Additional Coverage – Collapse in that Form.
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.

Policy Number: 8120T23406  
Policy Period: 10-21-2019 TO 10-21-2020

**GREATER NEW YORK INSURANCE GROUP**

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

**FLOOD  
COVERAGE SCHEDULE  
AND CHANGES**

This endorsement modifies and provides supplementary information to the following:

FLOOD COVERAGE ENDORSEMENT  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
ORDINANCE OR LAW COVERAGE  
BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FORMS

If not shown below, information required to complete this endorsement will be shown in the Declarations.

Inception Date of Flood Coverage Endorsement 10/21/2019 Note: There is no coverage for a Flood that begins before or within 72 hours after this date. Refer to Section D.5.a. of the Flood Coverage Endorsement for additional information.

No Coinsurance Option

Flood Deductible: \$ 50,000

Underlying Insurance Waiver

Other Flood Insurance, if any (identify insurer and policy number):

Primary (NFIP)

Other

Annual Aggregate for Flood \$ 5,000,000.

Note: Refer to the Limit of Insurance provisions in the Flood Coverage Endorsement for an explanation.

Description of Personal Property in the Open, if covered for Flood:

Policy Number: 8120T23406

Policy Period: 10-21-2019 TO 10-21-2020

Flood Limit of Insurance – Single Occurrence: The Limit(s) shown in Section A. or B. of this Schedule. Refer to the Limit of Insurance provisions in the Endorsement for an explanation.

**Applicable to Sections A. and B. of this Endorsement:**

1. Bldg. = Building; BPP = Business Personal Property; BI = Business Income Coverage Form; EE Extra Expense Coverage Form
2. A. 4. Additional Coverages, e. Increased Cost of Construction of the Building and Personal Property Coverage Form/Condominium Association Coverage Form does not apply to Flood Coverage.
3. The following is added to the Flood Coverage Endorsement under Section D.
  - a. Flood Coverage applies to losses occurring only in:
    - i. Flood Zones B, C, or X, or
    - ii. Flood Zone D, but only if the loss occurs at a premises listed in the Flood Zone D. Schedule.Flood Coverage does not apply to losses occurring in any other Flood Zone(s).

Flood Zone D Schedule

Premises in Flood Zone D covered for flood:


Additional premises, if any, will appear on a separate Flood Zone D Schedule.

4. Section E. 2. of the Flood Coverage Endorsement is deleted and replaced with the following: Flood Coverage does not apply to the Newly Acquired or Constructed Property/Newly Acquired Locations Coverage Extensions.

Policy Number: 8120T23406  
 Policy Period: 10-21-2019 TO 10-21-2020

**Only the section check-marked applies.**

**Section A.**

Flood Blanket Limit \$ 5,000,000

1. The Flood Blanket Limit is the most we will pay under this Coverage Part for the sum of all loss or damage for the scheduled Property/Coverages at all covered premises for all covered Floods. The Flood Blanket Limit does not apply separately to Premises, Locations, Types of Property or Coverages. This coverage is subject to all other applicable provisions of the Limit of Insurance section in the Flood Coverage Endorsement.

2. Premises Covered

Flood Coverage applies only at premises listed for property coverage in the Designation of Premises Schedule.

3. Flood Coverage applies only to the types of property and/or coverages checked in the Schedule of Property/Coverage for Flood.

4. Flood is a Covered Causes of Loss for the items checked in the schedule, but only to the extent and limits provided by the Flood Endorsement and the Flood Coverage Schedule and Changes. If an endorsement providing Ordinance or Law Coverage is attached to this Coverage Part, the following also applies: The Limits for Ordinance or Law Coverage for losses arising out of Flood are included within the Blanket Limit shown above for Flood Coverage. No further coverage for Ordinance or Law losses arising from Flood Losses is provided under this Coverage Part, including any attached endorsement that provides Ordinance or Law Coverage. Limits shown for Ordinance or Law Coverage elsewhere in this Coverage Part do not apply to Flood losses. This provision supersedes any contradictory provisions in Ordinance or Law Coverage.

**Schedule of Property/Coverage for Flood Coverage**

<input checked="" type="checkbox"/> Bldg	<input type="checkbox"/> BI (CP 00 32)
<input checked="" type="checkbox"/> BPP	<input type="checkbox"/> EE (CP 00 50)
<input checked="" type="checkbox"/> BI (CP 00 30)	Ordinance or Law Coverage
<input type="checkbox"/> Other:	Coverage A <input type="checkbox"/>
	Coverage B <input type="checkbox"/>
	Coverage C <input type="checkbox"/>

**Section B. Flood Separate Limits**

FLODEC

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02/05

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Policy Number: 8120T23406

Policy Period: 10-21-2019 TO 10-21-2020

Subject to the limits shown in the Flood Separate Limits Schedule, Flood Coverage applies:

1. At only those buildings scheduled for Flood Coverage in the Flood Separate Limits Schedule; and
2. For only for the types of property/coverages/limits shown in the Flood Separate Limits Schedule.

This coverage is subject to all other applicable provisions of the Limit of Insurance section in the Flood Coverage Endorsement.

Flood Separate Limits Schedule

	<i>Building</i> Limit	<i>BPP</i> Limit	<i>BI</i> (CP0030)	<i>BI</i> (CP0032)	<i>EE</i> (CP0050)
Loc/ Bldg					
# #	\$	\$	\$	\$	\$
# #	\$	\$	\$	\$	\$
# #	\$	\$	\$	\$	\$
# #	\$	\$	\$	\$	\$
# #	\$	\$	\$	\$	\$
	<i>Ordinance or Law</i>				
	Coverage A.			Coverage B	Coverage C
# #	<input type="checkbox"/> Included in Building Limit Above			\$	\$
# #	<input type="checkbox"/> Included in Building Limit Above			\$	\$
# #	<input type="checkbox"/> Included in Building Limit Above			\$	\$
# #	<input type="checkbox"/> Included in Building Limit Above			\$	\$
# #	<input type="checkbox"/> Included in Building Limit Above			\$	\$

Attach a separate sheet for additional premises if necessary.

Flood is a Covered Causes of Loss for the items shown in the schedule, but only to the extent and limits provided by the Flood Coverage Endorsement and the Flood Coverage Schedule

and Changes. If an endorsement providing Ordinance or Law Coverage is attached to this Coverage Part, the following also applies: The Limits shown in the Separate Limits Schedule for Ordinance or Law Coverage are the most we will pay for Ordinance or Law losses arising out of Flood No further coverage for Ordinance or Law losses arising from Flood losses is provided under this Coverage Part. Limits shown for Ordinance or Law Coverage elsewhere in this policy do not apply to Flood losses. This provision supersedes any contradictory provisions in Ordinance or Law Coverage.



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

## **FLOOD COVERAGE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

- A.** When this endorsement is attached to the Standard Property Policy, the terms Coverage Part and Coverage Form in this endorsement are replaced by the term Policy.
- B.** This endorsement applies to the Covered Property and Coverages for which a Flood Limit of Insurance is shown in the Flood Coverage Schedule or in the Declarations.
- C. Additional Covered Cause Of Loss**  
The following is added to the Covered Causes Of Loss:  
Flood, meaning a general and temporary condition of partial or complete inundation of normally dry land areas due to:
1. The overflow of inland or tidal waters;
  2. The unusual or rapid accumulation or runoff of surface waters from any source; or
  3. Mudslides or mudflows which are caused by flooding as defined in **C.2.** above. For the purpose of this Covered Cause Of Loss, a mudslide or mudflow involves a river of liquid and flowing mud on the surface of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.
- All flooding in a continuous or protracted event will constitute a single flood.
- D. Exclusions, Limitations And Related Provisions**
1. The Exclusions and Limitation(s) sections of the Causes Of Loss Form (and the Exclusions section of the Mortgageholders Errors And Omissions Coverage Form and the Standard Property Policy) apply to coverage provided under this endorsement except as provided in **D.2.** and **D.3.** below.
  2. To the extent that a part of the Water Exclusion might conflict with coverage provided under this endorsement, that part of the Water Exclusion does not apply.
  3. To the extent that a tsunami causes the overflow of tidal waters, the exclusion of earthquake, in the Earth Movement Exclusion, does not apply.
  4. The **Ordinance Or Law** Exclusion in this Coverage Part continues to apply with respect to any loss under this Coverage Part including any loss under this endorsement, unless Ordinance Or Law Coverage is added by endorsement.
  5. The following exclusions and limitations are added and apply to coverage under this endorsement:
    - a. We will not pay for any loss or damage caused by or resulting from any Flood that begins before or within 72 hours after the inception date of this endorsement. If you request and we provide an increase in the stated Limit of Insurance for Flood, the increase will not apply to loss or damage from any Flood that begins before or within 72 hours after your request was made.  
  
If the Flood is due to the overflow of inland or tidal waters, then the Flood is considered to begin when the water first overflows its banks.
    - b. We will not pay for loss or damage caused by or resulting from destabilization of land arising from the accumulation of water in subsurface land areas.

- c. Under this Coverage Part, as set forth under Property Not Covered in the Coverage Form to which this endorsement is attached, land is not covered property, nor is the cost of excavations, grading, backfilling or filling. Therefore, coverage under this endorsement does not include the cost of restoring or remediating land due to the collapse or sinking of land caused by or resulting from Flood. However, coverage under this endorsement includes damage to the covered portions of the building and to covered personal property, caused by collapse or sinking of land along the shore of a body of water as the result of erosion or undermining caused by waves or currents of water which exceed the cyclical levels and cause Flood.
  - d. We do not cover loss or damage by Flood to personal property in the open except to the extent that such coverage, if any, is specified in the Flood Coverage Schedule or in the Declarations.
  - e. Property Not Covered, in the Coverage Form to which this endorsement is attached, is amended and supplemented as follows with respect to Flood Coverage:
    - (1) Property Not Covered includes any building or other property that is not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.* and the Coastal Barrier Improvement Act of 1990, Pub. L. 101-591, 16 U.S.C. 3501 *et seq.*
    - (2) Property Not Covered includes boat houses and open structures, and any property in or on the foregoing, if the structure is located on or over a body of water.
    - (3) If bulkheads, pilings, piers, wharves, docks, or retaining walls that are not part of a building, have been removed from Property Not Covered and added as Covered Property by separate endorsement, this Flood Coverage Endorsement does not apply to such property.
    - (4) The following are removed from Property Not Covered and are therefore Covered Property:
      - (a) Foundations below the lowest basement floor or the subsurface of the ground; and
      - (b) Underground pipes, flues and drains.
  - f. We will not pay for loss or damage caused by sewer back-up or overflow unless such back-up or overflow results from Flood and occurs within 72 hours after the flood recedes.
- E. Additional Coverages And Coverage Extensions**
1. With respect to Flood Coverage, the Debris Removal Additional Coverage (and any additional limit for Debris Removal under a Limit Of Insurance clause or an endorsement) is not applicable and is replaced by the following:
 

**DEBRIS REMOVAL**

    - a. We will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from Flood. However, we will not pay to remove deposits of mud or earth from the grounds of the described premises.
    - b. We will also pay the expense to remove debris of Covered Property that has floated or been hurled off the described premises by Flood.
    - c. This coverage for Debris Removal, as set forth in **E.1.a.** and **E.1.b.** above, does not increase the applicable Limit of Insurance for Flood. Therefore, the most we will pay for the total of debris removal and loss or damage to Covered Property is the Limit of Insurance for Flood that applies to the Covered Property at the affected described premises covered under this endorsement.
  2. With respect to Flood Coverage, the Coverage Extension for Newly Acquired or Constructed Property is amended by adding the following:
    - a. With respect to Flood Coverage, this Coverage Extension does not apply to any building or structure that is not fully enclosed by walls and roof.
    - b. With respect to a building or structure covered under this Coverage Extension, the amounts of coverage stated in the Coverage Extension do not apply to Flood Coverage. Instead, the most we will pay for all loss or damage to property covered under this Coverage Extension is 10% of the total of all Limits of Insurance for Flood Coverage as provided under this endorsement. Such coverage does not increase the Limit of Insurance for Flood.

3. With respect to any applicable Additional Coverages and Coverage Extensions in the Coverage Form to which this endorsement is attached, other than those addressed in **E.1.** and **E.2.** above, amounts payable under such other provisions, as set forth therein, do not increase the Limit of Insurance for Flood.

#### F. Coinsurance

1. The **Coinsurance** Condition, if any, in the applicable Coverage Form applies to the coverage provided under this endorsement, unless the No-Coinsurance Option, in the Flood Coverage Schedule or in the Declarations, is specified as being applicable.
2. Various Coverage Extensions, in the Coverage Form to which this endorsement is attached, require coinsurance. If the No-Coinsurance Option applies, then the coinsurance requirement for such Coverage Extensions is eliminated.

#### G. Limit Of Insurance

##### 1. General Information

Flood Coverage may be written at a Limit of Insurance that is equal to or less than the Limit of Insurance which applies to other Covered Causes of Loss (e.g., Fire) under this Commercial Property Coverage Part.

The Limit of Insurance for Flood is shown in the Flood Coverage Schedule or in the Declarations. If such Limit is not shown, then the Limit applicable to Fire also applies to Flood.

##### 2. Application Of Limit And Aggregate

The Limit of Insurance for Flood is the most we will pay in a single occurrence of Flood for loss or damage caused by the Flood. If there is more than one Flood in a 12-month period (starting with the beginning of the present annual policy period), the most we will pay for the total of all loss or damage sustained during that period of time and caused by Flood is the amount that is identified as the Annual Aggregate for Flood as shown in the Flood Coverage Schedule or the Declarations.

If the Limit of Insurance and the Annual Aggregate amount are the same, or if there is no amount stated as an Annual Aggregate, then the Limit of Insurance is the most we will pay for the total of all loss or damage that is caused by Flood in a 12-month period (starting with the beginning of the present annual policy period), even if there is more than one occurrence of Flood during that period of time. Thus, if the first Flood does not exhaust the applicable Limit of Insurance, then the balance of that Limit is available for a subsequent Flood(s).

If a single occurrence of Flood begins during one annual policy period and ends during the following annual policy period, any Limit of Insurance or Annual Aggregate applicable to the following annual policy period will **not** apply to that Flood.

##### 3. Ensuing Loss

In the event of covered ensuing loss, for example, loss caused by Fire, Explosion and/or Sprinkler Leakage which results from the Flood, the most we will pay, for the total of all loss or damage caused by flood, fire, explosion and sprinkler leakage, is the Limit of Insurance applicable to Fire. We will **not** pay the sum of the Fire and Flood Limits.

#### EXAMPLES – ENSUING LOSS

Two examples follow, using these facts: The Commercial Property Coverage Part, in these examples, includes the Causes of Loss – Basic Form (which covers fire) and this Flood Coverage Endorsement. A building is damaged by Flood and by Fire which is caused by the Flood. The value of the damaged building is \$1,000,000. The Limit of Insurance applicable to the building, for the Basic Causes of Loss, is \$800,000. The Limit of Insurance for Flood is \$400,000. The Flood Deductible amount is \$5,000.

##### EXAMPLE #1

The damage due to Flood is \$500,000. The damage due to Fire is \$500,000.

Payment for Flood damage is \$400,000 (\$500,000 damage minus \$5,000 Flood deductible = \$495,000; Limit is \$400,000).

Payment for Fire damage is \$400,000 (\$500,000 damage capped at the difference between the Basic Limit and the Flood Limit).

Total Loss Payment is \$800,000.

## EXAMPLE #2

The damage due to Flood is \$800,000. The damage due to Fire is \$100,000.

Payment for Flood damage is \$400,000 (\$800,000 damage minus \$5,000 Flood deductible = \$795,000; Limit is \$400,000).

Payment for Fire damage is \$100,000 (amount of damage).

Total Loss Payment is \$500,000.

**Note:** These Examples are given only to illustrate the situation of flood and ensuing loss. Therefore, the loss payment stated for flood damage does not address the situation where another policy also covers the flood damage.

### H. Deductible

1. The Deductible for coverage provided under this endorsement is the Deductible applicable to Flood as shown in the Flood Coverage Schedule or in the Declarations.
2. We will not pay that part of the loss that is attributable to any Deductible(s) in the National Flood Insurance Program policy.
3. If Flood results in another Covered Cause of Loss and if both Covered Causes of Loss cause loss or damage, then only the higher deductible applies (e.g., the Flood deductible or the Fire deductible).

### I. Other Insurance

The **Other Insurance** Commercial Property Condition is replaced by the following with respect to the coverage provided under this endorsement:

1. If the loss is also covered under a National Flood Insurance Program (NFIP) policy, or if the property is eligible to be written under an NFIP policy but there is no such policy in effect, then we will pay only for the amount of loss in excess of the maximum limit that can be insured under that policy. This provision applies whether or not the maximum NFIP limit was obtained or maintained, and whether or not you can collect on the NFIP policy. We will not, under any circumstances, pay more than the applicable Limit of Insurance for Flood as stated in the Flood Coverage Schedule or the Declarations of this Coverage Part.

However, this Provision I.1. does not apply under the following circumstances:

- a. At the time of loss, the property is eligible to be written under an NFIP policy but such policy is not in effect due solely to ineligibility of the property at the time this Flood Coverage Endorsement was written; or
  - b. An NFIP policy is not in effect because we have agreed to write this Flood Coverage Endorsement without underlying NFIP coverage. There is such an agreement only if the Flood Coverage Schedule or the Declarations indicate that the Underlying Insurance Waiver applies.
2. If there is other insurance covering the loss, other than that described in I.1. above, we will pay our share of the loss. Our share is the proportion that the applicable Limit of Insurance under this endorsement bears to the total of the applicable Limits of Insurance under all other such insurance. But we will not pay more than the applicable Limit of Insurance stated in the Flood Coverage Schedule or the Declarations of this Coverage Part.

# GREATER NEW YORK INSURANCE COMPANIES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EARTHQUAKE – VOLCANIC ERUPTION COVERAGE SCHEDULE AND CHANGES

This endorsement modifies and provides supplementary information to the following:

**EARTHQUAKE – VOLCANIC ERUPTION ENDORSEMENT (SUBLIMIT FORM)  
COMMERCIAL PROPERTY CONDITIONS  
BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FORMS  
ORDINANCE OR LAW COVERAGE**

If not shown below, information required to complete this endorsement will be shown in the Declarations.

"Including Masonry Veneer" Option <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Earthquake – Sprinkler Leakage Only <input type="checkbox"/>
Increased Annual Aggregate Limit Option <input type="checkbox"/> Yes

### EARTHQUAKE – VOLCANIC ERUPTION LIMIT(S) OF INSURANCE

The Limit(s) of Insurance shown in **SECTION A.** or **SECTION B.** below is an annual aggregate limit(s). Refer to the Limit of Insurance Provisions in the Earthquake And Volcanic Eruption Endorsement (Sub-Limit Form) for an explanation.

### CHANGES TO COMMERCIAL PROPERTY CONDITIONS

The following is added to G. Other Insurance:

You may purchase Earthquake and Volcanic Eruption Insurance in excess of the amount(s) provided by this policy. Excess Earthquake and Volcanic Eruption insurance will not be considered other insurance, nor shall it be considered in the application of any pro rata liability or apportionment clause.

### APPLICABLE TO SECTIONS A. AND B. OF THIS ENDORSEMENT:

1. Earthquake—Volcanic Eruption Coverage does not apply to **A.4.** Additional Coverages, **e.** Increased Cost of Construction of the Building and Personal Property Coverage Form/Condominium Association Coverage Form.
2. Earthquake—Volcanic Eruption Coverage does not apply to:
  - a. **A.5.** Coverage Extensions, paragraph **a.** Newly Acquired or Constructed Property Coverage Extension of the Building and Personal Property Coverage Form/Condominium Association Coverage Form;
  - b. **A.6.** Coverage Extension, paragraph **a.** Newly Acquired Locations of the Business Income (and Extra Expense) or the Business Income (Without Extra Expense) Coverage Forms.
3. As used in the Schedules, **Bldg.** = Building; **BPP** = Business Personal Property; **BI**= Business Income Coverage Form; **EE** Extra Expense Coverage Form.

Only the SECTION check-marked (☑) applies.

SECTION A. - BLANKET LIMIT

Earthquake Property Damage Deductible: \$ 50,000

1. The Earthquake and Volcanic Eruption Blanket Limit in the Schedule below is the most we will pay under this Coverage Part for the sum of all loss or damage for the scheduled Property/Coverages at all covered premises for all covered Earthquakes and/or Volcanic Eruptions. The Earthquake and Volcanic Eruption Blanket Limit does not apply separately to Premises, Locations, Types of Property or Coverages. This coverage is subject to all other applicable provisions of the Limit of Insurance section in the Earthquake and Volcanic Eruption Endorsement (Sub-Limit Form.)
2. Premises Covered  
Earthquake and Volcanic Eruption Coverage applies only at premises listed for property coverage in the Designation of Premises Schedule attached to your policy.
3. Earthquake and Volcanic Eruption Coverage applies only to the types of property and/or coverages checked in the Schedule of Property/Coverage (below) for Earthquake and Volcanic Eruption.
4. Earthquake and Volcanic Eruption are Covered Causes of Loss for the items checked in the Schedule (below), but only to the extent and limits provided by the Earthquake and Volcanic Eruption Endorsement (Sublimit Form) and the Earthquake-Volcanic Eruption Coverage Schedule and Changes. If an endorsement providing Ordinance or Law Coverage is attached to this Coverage Part, the following also applies: The Limits for Ordinance or Law Coverage for losses arising out of Earthquake or Volcanic Eruption are included within the Blanket Limit shown in the Schedule of Property/Coverage for Earthquake and Volcanic Eruption Coverage. No further coverage for Ordinance or Law losses arising from Earthquake or Volcanic Eruption Losses is provided under this Coverage Part, including any attached endorsement that provides Ordinance or Law Coverage. Limits shown for Ordinance or Law Coverage elsewhere in this Coverage Part do not apply to Earthquake or Volcanic Eruption losses. This provision supersedes any contradictory provisions in Ordinance or Law Coverage.

<b>SCHEDULE OF BLANKET PROPERTY/COVERAGE</b>		
Earthquake and Volcanic Eruption <b>Blanket</b> Limit <u>10,000,000</u>		
<i>Check applicable Covered Property/Coverage(s) for Blanket Limit:</i>		
<input checked="" type="checkbox"/> Bldg	<input type="checkbox"/> BI (CP 00 32)	
<input checked="" type="checkbox"/> BPP	<input type="checkbox"/> EE (CP 00 50)	
<input checked="" type="checkbox"/> BI (CP 00 30)	<b>Ordinance or Law Coverage</b>	
<input type="checkbox"/> Other:	Coverage A	<input type="checkbox"/>
	Coverage B	<input type="checkbox"/>
	Coverage C	<input type="checkbox"/>

**CHANGES**

The following changes are made to Earthquake and Volcanic Eruption Endorsement (Sub-Limit Form)

**Paragraph G. Property Damage Deductible**

- Paragraph G.2.a.(2) is deleted.
- Paragraph G.2.a.(4) is deleted.
- The entirety of paragraphs G.2.b., G.2.c., and G.2.d. are deleted.

**Paragraph H.**

- Paragraph H. is deleted.

**SECTION B. - SEPARATE LIMITS**

Subject to the limits shown in the Separate Limits Schedule (below), Earthquake and Volcanic Eruption Coverage applies:

1. At only those buildings scheduled for Earthquake and Volcanic Eruption Coverage in the Separate Limits Schedule (below); and
2. For only for the types of property/coverages/limits shown in the Separate Limits Schedule (below).

This coverage is subject to all other applicable provisions of the Limit of Insurance section in the Earthquake and Volcanic Eruption Endorsement (Sub-Limit Form.)

SEPARATE LIMIT SCHEDULE						
Loc/Bldg	Deductible (% or \$)	BUILDING Limit	BPP Limit	BUSINESS INCOME AND EXTRA EXPENSE (CP0030)	BUSINESS INCOME (CP0032)	EXTRA EXPENSE (CP0050)
# #		\$	\$	\$	\$	\$
# #		\$	\$	\$	\$	\$
# #		\$	\$	\$	\$	\$
# #		\$	\$	\$	\$	\$
# #		\$	\$	\$	\$	\$

ORDINANCE OR LAW COVERAGE			
Premises	Coverage A	Coverage B	Coverage C
Loc/Bldg	<input type="checkbox"/> Included in Bldg Limit Shown Above	\$	\$
# #	<input type="checkbox"/> Included in Bldg Limit Shown Above	\$	\$
# #	<input type="checkbox"/> Included in Bldg Limit Shown Above	\$	\$
# #	<input type="checkbox"/> Included in Bldg Limit Shown Above	\$	\$
# #	<input type="checkbox"/> Included in Bldg Limit Shown Above	\$	\$

Attach a separate sheet for additional premises if necessary.

Earthquake and Volcanic Eruption are Covered Causes of Loss for the items shown in the schedule, but only to the extent and limits provided by the Earthquake and Volcanic Eruption Endorsement (Sublimit Form) and the Earthquake-Volcanic Eruption Coverage Schedule and Changes.

If an endorsement providing Ordinance or Law Coverage is attached to this Coverage Part, the following also applies:

The Limits shown in the **Separate Limits Schedule** for Ordinance or Law Coverage are the most we will pay for Ordinance or Law losses arising out of Earthquake or Volcanic Eruption. No further coverage for Ordinance or Law losses arising from Earthquake or Volcanic Eruption is provided under this Coverage Part. Limits shown for Ordinance or Law Coverage elsewhere in this policy do not apply to Earthquake or Volcanic Eruption losses. This provision supersedes any contradictory provisions in Ordinance or Law Coverage.

**CHANGES**

The following changes are made to Earthquake and Volcanic Eruption Endorsement (Sub-Limit Form)

**Paragraph G. Property Damage Deductible**

- o Paragraph G.2.a.(4) is deleted.
- o Paragraph G.2.b.(1) is replaced with the following:  
In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount

equal to the percentage or dollar amount (as shown in the **Separate Limits Schedule**) of the limit of insurance on the property that has sustained loss or damage.

- Paragraphs G.2.b.(2), G.2.c., G.2.d. are deleted.

**Paragraph H**

- Paragraph H. is deleted.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EARTHQUAKE AND VOLCANIC ERUPTION ENDORSEMENT (SUB-LIMIT FORM)

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY

- A.** When this endorsement is attached to the Standard Property Policy, the terms Coverage Part and Coverage Form in this endorsement are replaced by the term Policy.
- B.** This endorsement applies to the Covered Property and Coverages for which an Earthquake - Volcanic Eruption Limit of Insurance is shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations.
- C. Additional Covered Causes Of Loss**

1. The following are added to the Covered Causes of Loss:
  - a. Earthquake.
  - b. Volcanic Eruption, meaning the eruption, explosion or effusion of a volcano.

All Earthquake shocks or Volcanic Eruptions that occur within any 168-hour period will constitute a single Earthquake or Volcanic Eruption. The expiration of this policy will not reduce the 168-hour period.

2. If the Earthquake - Volcanic Eruption Coverage Schedule or the Declarations indicate that this endorsement covers Earthquake-Sprinkler Leakage Only, then the Covered Causes of Loss in Paragraph C.1. of this endorsement do not apply, and the following apply instead:
  - a. Sprinkler Leakage resulting from Earthquake.
  - b. Sprinkler Leakage resulting from Volcanic Eruption. Volcanic Eruption means the eruption, explosion or effusion of a volcano.

All Earthquake shocks or Volcanic Eruptions that occur within any 168-hour period will constitute a single Earthquake or Volcanic Eruption. The expiration of this policy will not reduce the 168-hour period.

### **D. Exclusions, Limitations And Related Provisions**

1. The Exclusions and Limitation(s) sections of the Causes of Loss Form (and the Exclusions section of the Mortgageholders Errors and Omissions Coverage Form and the Standard Property Policy) apply to coverage provided under this endorsement, except as provided in **D.2.** and **D.3.** below.
2. To the extent that the Earth Movement Exclusion might conflict with coverage provided under this endorsement, the Earth Movement Exclusion does not apply.
3. The exclusion of collapse, in the Causes of Loss-Special Form and Mortgageholders Errors And Omissions Coverage Form, does not apply to collapse caused by Earthquake or Volcanic Eruption.
4. The Additional Coverage - Collapse, in the Causes of Loss - Broad Form, Causes of Loss - Special Form and Mortgageholders Errors And Omissions Coverage Form, does not apply to the coverage provided under this endorsement. This endorsement includes coverage for collapse caused by Earthquake or Volcanic Eruption.
5. We will not pay for loss or damage caused directly or indirectly by tidal wave or tsunami, even if attributable to an Earthquake or Volcanic Eruption.

6. We will not pay for loss or damage caused by or resulting from any Earthquake or Volcanic Eruption that begins before the inception of this insurance.
7. The Ordinance Or Law Exclusion in this Coverage Part continues to apply with respect to any loss under this Coverage Part including any loss under this endorsement, unless Ordinance Or Law Coverage is added by endorsement.
8. We will not pay for loss of or damage to exterior masonry veneer (except stucco) on wood frame walls caused by or resulting from Earthquake or Volcanic Eruption. The value of such veneer will not be included in the value of Covered Property or the amount of loss when applying the Property Damage Deductible applicable to this endorsement.  
  
This limitation, **D.8.**, does not apply if:
  - a. The Earthquake - Volcanic Eruption Coverage Schedule or the Declarations indicate that the "Including Masonry Veneer" option applies; or
  - b. Less than 10% of the total outside wall area is faced with masonry veneer (excluding stucco).
9. Under this Coverage Part, as set forth under Property Not Covered in the Coverage Form to which this endorsement is attached, land is not covered property, nor is the cost of excavations, grading, backfilling or filling. Therefore, coverage under this endorsement does not include the cost of restoring or remediating land.

**E. No Coinsurance**

The Coinsurance Condition in this policy, if any, does not apply to the coverage provided under this endorsement.

Various Coverage Extensions, in the Coverage Form to which this endorsement is attached, require coinsurance. The coinsurance requirement for such Coverage Extensions is eliminated with respect to coverage provided under this endorsement.

**F. Limit Of Insurance**

**1. General Information**

The term Limit of Insurance means the Limit of Insurance applicable to Earthquake - Volcanic Eruption for the Covered Property or Coverage under which loss or damage is sustained.

The Earthquake - Volcanic Eruption Coverage Schedule or the Declarations provide information on the Limit of Insurance applicable to Covered Property and Coverages for Earthquake - Volcanic Eruption.

**2. Annual Aggregate Limit**

The Limit of Insurance for Earthquake - Volcanic Eruption is an annual aggregate limit and as such is the most we will pay for the total of all loss or damage that is caused by Earthquake or Volcanic Eruption in a 12-month period (starting with the beginning of the present annual policy period), even if there is more than one Earthquake or Volcanic Eruption during that period of time. Thus, if the first Earthquake or Volcanic Eruption does not exhaust the Limit of Insurance, then the balance of that Limit is available for a subsequent Earthquake(s) or Volcanic Eruption(s).

If a single Earthquake or Volcanic Eruption (as defined in Section C. of this endorsement) begins during one annual policy period and ends during the following annual policy period, any Limit of Insurance applicable to the following annual policy period will **not** apply to such Earthquake or Volcanic Eruption.

**3. Increased Annual Aggregate Limit Option**

If the Earthquake - Volcanic Eruption Coverage Schedule or the Declarations indicate that the Increased Annual Aggregate Limit Option applies, then the following applies instead of Paragraph **F.2.** above:

The Limit of Insurance for Earthquake - Volcanic Eruption is the most we will pay in a single Earthquake or Volcanic Eruption (as defined in Section C. of this endorsement) for loss or damage caused by the Earthquake or Volcanic Eruption. If there is more than one Earthquake or Volcanic Eruption in a 12-month period (starting with the beginning of the present annual policy period), the most we will pay for the total of all loss or damage sustained during that period of time and caused by Earthquake or Volcanic Eruption is two times the Limit of Insurance.

If a single Earthquake or Volcanic Eruption (as defined in Section C. of this endorsement) begins during one annual policy period and ends during the following annual policy period, any Limit of Insurance applicable to the following annual policy period will **not** apply to such Earthquake or Volcanic Eruption.

#### 4. Additional Coverages And Coverage Extensions

Amounts payable under an Additional Coverage or Coverage Extension, as set forth in the applicable Coverage Form, do not increase the Limit of Insurance for Earthquake - Volcanic Eruption.

#### 5. Limitation

For property or coverage that is subject to a Blanket Limit on Earthquake - Volcanic Eruption (as shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations), we will not pay more than we would pay in the absence of such Blanket Limit. Therefore, the maximum amount payable for any such item of property or coverage is the Limit of Insurance or stated value (as shown in a Statement of Values on file with us) specific to that item of property or coverage for Covered Causes of Loss other than Earthquake - Volcanic Eruption.

#### 6. Ensuing Loss

If a Cause of Loss (such as fire) is covered by means of an exception to the Earth Movement Exclusion, in the Causes of Loss Form, we will also pay for the loss or damage caused by that other Covered Cause of Loss. But the most we will pay, for the total of all loss or damage caused by the Earthquake, Volcanic Eruption and other Covered Cause of Loss, is the Limit of Insurance applicable to such other Covered Cause of Loss. We will **not** pay the sum of the two Limits.

#### EXAMPLES - ENSUING LOSS

Two examples follow, using these facts: The Commercial Property Coverage Part, in these examples, includes the Causes of Loss - Basic Form (which covers fire) and this Earthquake - Volcanic Eruption Endorsement. A building is damaged by Earthquake, and by Fire which is caused by the Earthquake. The value of the damaged building is \$1,000,000. The Limit of Insurance applicable to the building, for the Basic Causes of Loss, is \$800,000. The Limit of Insurance for Earthquake - Volcanic Eruption is \$400,000. The Earthquake Deductible amount is \$50,000.

##### Example #1

The damage due to Earthquake is \$500,000.

The damage due to Fire is \$500,000.

Payment for Earthquake damage is \$400,000 (\$500,000 damage minus \$50,000 Earthquake deductible = \$450,000; Limit is \$400,000)

Payment for Fire damage is \$400,000 (\$500,000 damage capped at the difference between the Basic Limit and the Earthquake Limit)

Total Loss Payment is \$800,000.

##### Example #2

The damage due to Earthquake is \$800,000.

The damage due to Fire is \$100,000.

Payment for Earthquake damage is \$400,000 (\$800,000 damage minus \$50,000 Earthquake deductible = \$750,000; Limit is \$400,000)

Payment for Fire damage is \$100,000 (amount of damage)

Total Loss Payment is \$500,000.

#### G. Property Damage Deductible

1. The provisions of Section G.2. of this endorsement are applicable to all Coverage Forms except:
  - a. Business Income (And Extra Expense) Coverage Form;
  - b. Business Income (Without Extra Expense) Coverage Form;
  - c. Extra Expense Coverage Form.
2. The Deductible, if any, in this Coverage Part is replaced by the following with respect to Earthquake and Volcanic Eruption:
  - a. **All Policies**
    - (1) The Deductible provisions apply to each Earthquake or Volcanic Eruption.
    - (2) Separate Deductibles are calculated for, and apply to, each building, personal property at each building and personal property in the open. Deductibles are separately calculated and applied even if:
      - (a) Two or more buildings sustain loss or damage;
      - (b) Personal property at two or more buildings sustains loss or damage; and/or
      - (c) A building and the personal property in that building sustain loss or damage.
    - (3) We will not pay for loss or damage until the amount of loss or damage exceeds the applicable Deductible. We will then pay the amount of loss or damage in excess of that Deductible, up to the applicable Limit of Insurance.

(4) When property is covered under the Coverage Extension for Newly Acquired or Constructed Property: In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage of the value of the property at time of loss. The applicable percentage for Newly Acquired or Constructed Property is the highest percentage shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations for any described premises.

(5) If there is loss or damage caused by Earthquake or Volcanic Eruption, and loss or damage caused by a Cause of Loss (e.g., fire) that is covered by means of an exception to the Earth Movement Exclusion, then the only applicable Deductible provisions are those stated in this endorsement.

**b. Calculation Of The Deductible - Specific Insurance Other Than Builders Risk**

**(1) Property Not Subject To Value Reporting Forms**

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake - Volcanic Eruption Deductible) of the value of the property that has sustained loss or damage. The value to be used is that shown in the most recent Statement of Values on file with us.

**(2) Property Subject To Value Reporting Forms**

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake - Volcanic Eruption Deductible) of the value of the property that has sustained loss or damage. The value to be used is the latest value shown in the most recent Report of Values on file with us.

However:

(a) If the most recent Report of Values shows less than the full value of the

property on the report dates, we will determine the deductible amount as a percentage of the full value as of the report dates.

(b) If the first Report of Values is not filed with us prior to loss or damage, we will determine the deductible amount as a percentage of the value shown in the most recent Statement of Values on file with us.

**c. Calculation Of The Deductible - Blanket Insurance Other Than Builders Risk**

**(1) Property Not Subject To Value Reporting Forms**

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake - Volcanic Eruption Deductible) of the value of the property that has sustained loss or damage. The value to be used is that shown in the most recent Statement of Values on file with us.

**(2) Property Subject To Value Reporting Forms**

In determining the amount, if any, that we will pay for property that has sustained loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake - Volcanic Eruption Deductible) of the value of that property as of the time of loss or damage.

**d. Calculation Of The Deductible - Builders Risk Insurance**

**(1) Builders Risk Other Than Reporting Form**

In determining the amount, if any, that we will pay for property that has sustained loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake - Volcanic Eruption Deductible) of the actual cash value of that property as of the time of loss or damage.

**(2) Builders Risk Reporting Form**

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage (as shown in the Earthquake - Volcanic Eruption Coverage Schedule or in the Declarations, concerning the Earthquake - Volcanic Eruption Deductible) of the value of the property that has sustained loss or damage. The value to be used is the actual cash value shown in the most recent Report of Values on file with us.

However:

- (a) If the most recent Report of Values shows less than the actual cash value of the property on the report date, we will determine the deductible amount as a percentage of the actual cash value as of the report date.
- (b) If the first Report of Values is not filed with us prior to loss or damage, we will determine the deductible amount as a percentage of the actual cash value of the property as of the time of loss or damage.

**H. Example - Application Of Deductible In G.2.b.(1) And G.2.c.(1) - For Specific Or Blanket Insurance Other Than Builders Risk (Not Subject To Value Reporting Forms)**

The values, as shown in the most recent Statement of Values on file with us, are:

Building #1 \$500,000

Building #2 \$500,000

Business Personal Property at Building #1 \$250,000

Business Personal Property at Building #2 \$250,000

For this example, assume that the amounts of loss do not exceed the applicable Limits of Insurance (for specific insurance). Also assume that the total amount

of loss does not exceed the applicable blanket Limit of Insurance (for blanket insurance).

Building #1 and Business Personal Property at Building #1 have sustained damage; the amounts of loss are \$95,000 (Building) and \$5,000 (Business Personal Property).

The Deductible is 10%.

Building

Step (1):  $\$500,000 \times 10\% = \$50,000$

Step (2):  $\$95,000 - \$50,000 = \$45,000$

Business Personal Property

Step (1):  $\$250,000 \times 10\% = \$25,000$

The loss, \$5,000, does not exceed the deductible.

The most we will pay is \$45,000. The remainder of the building loss, \$50,000, is not covered due to application of the Deductible. There is no loss payment for the business personal property.

**I. Business Income And Extra Expense Period Of Restoration**

This Section, I, is applicable only to the Coverage Forms specified below:

1. Business Income (And Extra Expense) Coverage Form;
2. Business Income (Without Extra Expense) Coverage Form;
3. Extra Expense Coverage Form.

The "period of restoration" definition stated in the Coverage Form, or in any endorsement amending the beginning of the "period of restoration", applies to each Earthquake or Volcanic Eruption. A single Earthquake or Volcanic Eruption is defined in Section C. of this endorsement.

## BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

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

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

### A. Coverage

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

#### 1. Covered Property

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

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

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

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

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

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

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

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

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

**2. Property Not Covered**

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns;
  - i. Personal property while airborne or waterborne;
  - j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;
- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to your "stock" of prepackaged software;
  - o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
  - p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
    - (1) Are licensed for use on public roads; or
    - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

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

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

### 3. Covered Causes Of Loss

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

### 4. Additional Coverages

#### a. Debris Removal

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

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

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

#### (5) Examples

The following examples assume that there is no Coinsurance penalty.

##### EXAMPLE #1

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

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

##### EXAMPLE #2

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



The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) 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) Only if the loss or damage occurs within 30 days after the property is first moved.

**c. Fire Department Service Charge**

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

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

No Deductible applies to this Additional Coverage.

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

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

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

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

**e. Increased Cost Of Construction**

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

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

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

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

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

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

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

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

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

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

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

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

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

#### f. Electronic Data

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

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

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

## 5. Coverage Extensions

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

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

### a. Newly Acquired Or Constructed Property

#### (1) Buildings

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

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

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

#### (2) Your Business Personal Property

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

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

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

**(3) Period Of Coverage**

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

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

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

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

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

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

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

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

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

**d. Property Off-premises**

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

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

**e. Outdoor Property**

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

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

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

**f. Non-owned Detached Trailers**

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

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

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

**B. Exclusions And Limitations**

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

**C. Limits Of Insurance**

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

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

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

- 1. Fire Department Service Charge;
- 2. Pollutant Clean-up And Removal;
- 3. Increased Cost Of Construction; and
- 4. Electronic Data.

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

**D. Deductible**

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

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

**EXAMPLE #1**

(This example assumes there is no Coinsurance penalty.)

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

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

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

$$\begin{array}{r}
 \$ 60,100 \\
 - \quad 250 \\
 \hline
 \$ 59,850 \text{ Loss Payable – Building \#1}
 \end{array}$$

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 claimed.
  - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.  
  
Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
  - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

### 4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
- (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.
- We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
- (1) We have reached agreement with you on the amount of loss; or
  - (2) An appraisal award has been made.

**h.** A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

#### **5. Recovered Property**

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

#### **6. Vacancy**

##### **a. Description Of Terms**

**(1)** As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in **(1)(a)** and **(1)(b)** below:

**(a)** When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

**(b)** When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

**(i)** Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or

**(ii)** Used by the building owner to conduct customary operations.

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

##### **b. Vacancy Provisions**

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

**(1)** We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

**(a)** Vandalism;

**(b)** Sprinkler leakage, unless you have protected the system against freezing;

**(c)** Building glass breakage;

**(d)** Water damage;

**(e)** Theft; or

**(f)** Attempted theft.

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

#### **7. Valuation**

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

**a.** At actual cash value as of the time of loss or damage, except as provided in **b.**, **c.**, **d.** and **e.** below.

**b.** If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.



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

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

- (1) Awnings or floor coverings;
  - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
  - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:
- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
  - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
  - (3) Nothing if others pay for repairs or replacement.

#### F. Additional Conditions

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

#### 1. Coinsurance

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

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

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

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

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

#### EXAMPLE #1 (UNDERINSURANCE)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 100,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$   
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$100,000 \div \$200,000 = .50$

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

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

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

### EXAMPLE #2 (ADEQUATE INSURANCE)

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

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

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

### EXAMPLE #3

When:	The value of the property is:	
	Building at Location #1:	\$ 75,000
	Building at Location #2:	\$ 100,000
	Personal Property at Location #2:	<u>\$ 75,000</u>
		\$ 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:	<u>\$ 20,000</u>
		\$ 50,000

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

Step (2):  $\$180,000 \div \$225,000 = .80$

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

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

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

## 2. Mortgageholders

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

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

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

**G. Optional Coverages**

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

**1. Agreed Value**

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

**2. Inflation Guard**

- a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
  - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

**EXAMPLE**

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

**3. Replacement Cost**

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

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

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
  - (1) Until the lost or damaged property is actually repaired or replaced; and
  - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

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

- (3) If the conditions in **d.(1)** and **d.(2)** above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
  - (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e.** We will not pay more for loss or damage on a replacement cost basis than the least of **(1)**, **(2)** or **(3)**, subject to **f.** below:
- (1)** The Limit of Insurance applicable to the lost or damaged property;
  - (2)** The cost to replace the lost or damaged property with other property:
    - (a)** Of comparable material and quality; and
    - (b)** Used for the same purpose; or
  - (3)** The amount actually spent that is necessary to repair or replace the lost or damaged property.

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

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

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

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

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

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

#### **H. Definitions**

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

# COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

## A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

## B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

## C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

## D. LEGAL ACTION AGAINST US

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

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

## E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

## F. NO BENEFIT TO BAILEE

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

## G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

## H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

**I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.

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

## MASSACHUSETTS CHANGES

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

**A.** When this endorsement is attached to the Standard Property Policy **CP 00 99** the term Coverage Part in this endorsement is replaced by the term Policy.

**B.** If loss or damage is caused by fire or lightning, the **Vacancy** Loss Condition is replaced by the following:

#### VACANCY OR UNOCCUPANCY

If the building where loss or damage occurs, whether intended for occupancy by owner or tenant, has been vacant or unoccupied for more than:

1. 60 consecutive days for residential premises of 3 units or less; or
2. 30 consecutive days for all other premises;

immediately before that loss or damage, we will not pay for the loss or damage.

A building is vacant when it does not contain enough business personal property to conduct customary operations.

**C.** The **Mortgageholders** Additional Condition is replaced by the following:

We will pay for covered loss of or damage to real estate to each mortgageholder shown in the Declarations, or in an attached schedule, in the order of precedence, as interests may appear.

**D.** Paragraph **3.d.** of the **Replacement Cost** Optional Coverage is replaced by the following:

- 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:
    - (a)** On the described premises; or
    - (b)** At some other location in the Commonwealth of Massachusetts; and
  - (2)** Unless the repairs or replacement are made within a reasonable time, but no more than 2 years after the loss or damage.

With respect to tenants' improvements and betterments, if covered, 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 Condition of the applicable 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.** The following provisions are added:

1. In spite of any provision of any general or special law:
  - a.** We will not pay for loss or damage to real property caused by any Covered Cause of Loss if the amount of loss is \$5,000 or more unless you first submit to us a certificate of municipal liens from the collector of taxes of the city or town where the property is located.
  - b.** We will pay to the city or town any amount outstanding on the certificate of municipal liens arising from the provisions of Massachusetts General Law Chapters 40, 59, 60, 80, 83 and 164, Sections 58B through 58F.

The payment will not exceed the amount of loss payable under this Coverage Part.

We will send you and the mortgageholder proof of our payment to the city or town.

- c.** The claim of the city or town will have priority over the claim of any mortgageholder, assignee, you or any other interested party, except where otherwise provided by the laws of the United States.

d. We will not be liable to any city, town, mortgageholder, assignee, you or any other interested party for:

- (1) Amounts paid to a city or town; or
- (2) Amounts not paid to a city or town based upon a certificate showing that no municipal liens exist.

e. Paragraphs 1.a., 1.b., 1.c., and 1.d. above will not apply to any owner-occupied one-to four-family dwelling if the owner of the dwelling lived there when the claim for loss or damage arose.

2. We will not pay any claim for:

- a. Loss, damage or destruction of \$1,000 or more to a building or structure; or
- b. Loss, damage or destruction, of any amount, that causes a building or structure to become:
  - (1) Dangerous to life or limb; or
  - (2) Unused, uninhabited or abandoned and open to the weather;

as provided under Massachusetts General Law, Section 6 of Chapter 143;

without giving at least 10 days' written notice before such payment to:

- c. The Building Commissioner or the appointed Inspector of Buildings; and
- d. The Board of Health or the Board of Selectmen of the city or town where the property is located.

3. If at any time before our payment, the city or town notifies us by certified mail of its intent to begin proceedings designed to perfect a lien under Massachusetts General Law:

- a. Chapter 143, Section 3A or 9; or
- b. Chapter 111, Section 127B;

we will not pay while the proceedings are pending. The proceedings must be started within 30 days after we receive the notice.

Any lien perfected under the Massachusetts General Laws referred to in 3.a. and 3.b. above will extend to the city or town and may be enforced by it against the proceeds of this policy.

4. We will not be liable to any city, town, mortgageholder, assignee, you or any other interested party for:

- a. Amounts paid to a city or town; or
- b. Amounts not paid to a city or town; under Provisions 2. and 3. above.

F. The following condition is added and supersedes any provisions to the contrary:

#### **NONRENEWAL**

This provision applies to coverage on real property which is used predominantly for residential purposes and consists of not more than four dwelling units, and to coverage on personal property of a person residing in such real property:

- 1. Ordinarily we will renew this policy automatically and send you the renewal notice. Our notice will explain what you should do if you do not want to continue this policy.
- 2. We may elect not to renew this policy. We may do so by delivering to you or mailing to you at your last mailing address shown in the Declarations, written notice of nonrenewal, accompanied by the specific reasons for nonrenewal, at least 45 days before the expiration date of this policy. However, if your policy was executed on behalf of us, in whole or in part, by or on behalf of your insurance agent or our insurance broker, we will send such written notice only to the agent or broker. Every insurance agent or broker receiving this notice is required to, within 15 days of its receipt, send a copy to you unless the agent or broker has replaced the insurance.



G. The following is added:

### STANDARD FIRE POLICY PROVISIONS

Your policy contains Legal Action Against Us, Appraisal and Cancellation Provisions. Massachusetts law requires that the Suit, Appraisal and Cancellation Provisions of the Massachusetts Standard Fire Policy supersede any similar provisions contained in your policy. Therefore, all Legal Action Against Us, Appraisal and Cancellation Provisions contained in your policy are void. The Suit, Appraisal and Cancellation Provisions of the Massachusetts Standard Fire Policy shall apply instead.

In consideration of the Provisions and Stipulations Herein or Added Hereto and of the Premium Specified in the Declarations, this company, for the term of years specified in the Declarations from inception date (At 12:01 A.M. Standard Time) to expiration date (At 12:01 A.M. Standard Time) at location of property involved, to an amount not exceeding the amount(s) specified in the Declarations, does insure the Insured named in the Declarations and legal representatives, to the extent of the actual cash value of the property at the time of loss, but in no event for more than the interest of the insured, against all Loss By Fire, Lightning And By Removal From Premises Endangered By The Perils Insured Against In This Policy, Except As Hereinafter Provided, to the property described in the Declarations while located or contained as described in this policy or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

**Concealment  
Fraud**

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

**Uninsurable  
And Excepted  
Property**

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

**Perils Not  
Included**

This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in the neighboring premises; (j) nor shall this company be liable for loss by theft.

**Other  
Insurance**

Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

**Conditions Suspending Or Restricting Insurance** Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring **(a)** while the hazard is increased by any means within the control or knowledge of the insured; or **(b)** while the described premises, whether intended

for occupancy by owner or tenant, are vacant or unoccupied beyond a period of sixty consecutive days, for residential premises of three units or less and thirty (30) consecutive days for all other premises, or **(c)** as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

**Other Perils Or Subjects** Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

**Added Provisions** The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

**Waiver Provisions** No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

**Cancellation Of Policy** This policy shall be cancelled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this company by giving to the insured a five days written notice of cancellation, and to the mortgagee to whom this policy is payable twenty days written notice of cancellation except where the stated reason for cancellation is nonpayment of premium where, in such instance, this policy may be cancelled at any time by this company by giving to the insured a ten days written notice of cancellation, and the mortgagee a twenty days written notice of cancellation, with or without tender of the excess paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand and shall state or be accompanied by a statement of the specific reason or reasons for such cancellation. After this policy has been in effect for sixty days, or after sixty days from any anniversary date, no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following: **(1)** nonpayment of premium; **(2)** conviction of a crime arising out of acts increasing the hazard insured against; **(3)** discovery of fraud or material misrepresentation by the insured in obtaining the policy; **(4)** discovery of willful or reckless acts or omissions by the insured increasing the hazard insured against; **(5)** physical changes in the property insured which result in the property becoming uninsurable; or **(6)** a determination by the commissioner that continuation of the policy would violate or place the insurer in violation of the law. Where the stated reason is nonpayment of premium, the insured may continue the coverage and avoid the effect of the cancellation by payment at any time prior to the effective date of cancellation.

**Mortgagee  
Interests And  
Obligations**

Notwithstanding any other provisions of this policy, if this policy shall be made payable to a mortgagee of the covered real estate, no act or default of any person other than such mortgagee or his agent or those claiming under him, whether the same occurs before or during the term of this policy, shall render this policy void as to such mortgagee nor affect such mortgagee's right to recover in case of loss on such real estate; provided, that the mortgagee shall on demand pay according to the established scale of rate for any increase of risk not paid for by the insured; and whenever this company shall be liable to a mortgagee for any sum for loss under this policy for which no liability exists as to the mortgagor, or owner, and this company shall elect by itself, or with others, to pay the mortgagee the full amount secured by such mortgage, then the mortgagee shall assign and transfer to the company interested, upon such payment, the said mortgage together with the note and debt thereby secured.

**Pro Rata  
Liability**

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved.

**Requirements  
In Case Loss  
Occurs**

The insured shall give immediate written notice to this company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed and damaged property, showing in detail the quantity, description, actual cash value and amount of loss claimed; and the insured shall forthwith render to this company a signed, sworn statement in proof of loss which sets forth to the best knowledge and belief of the insured the following: the time and cause of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupancy, location, possession or exposures of said property, since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and detailed estimates for repair of the damage. The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

**When Loss Payable** In case of any loss or damage, the company within thirty days after the insured shall have submitted a statement, as provided in the preceding clause, shall either pay the amount for which it shall be liable, which amount if not agreed upon shall be ascertained by award of referees as hereinafter provided, or replace the property with other of the same kind and goodness, or it may, within fifteen days after such statement is submitted, notify the insured of its intention to rebuild or repair the premises, or any portion thereof separately covered by this policy, and shall thereupon enter upon said premises and proceed to rebuild or repair the same with reasonable expedition. It is moreover understood that there can be no abandonment of the property described to the company, and that the company shall not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as provided above. The company shall be liable for the payment of interest to the insured at a rate of one percent over the prime interest rate on the agreed figure commencing thirty days after the date an executed proof of loss for such figure is received by the company, said interest to continue so long as the claim remains unpaid.

**Appraisal** In case of loss under this policy and a failure of the parties to agree as to the amount of loss, it is mutually agreed that the amount of such loss shall be referred to three disinterested men, the company and the insured each choosing one out of three persons to be named by the other, and the third being selected by the two so chosen, and the award in writing by a majority of the referees shall be conclusive and final upon the parties as to the amount of loss or damage, and such reference, unless waived by the parties, shall be a condition precedent to any right of action in law or equity to recover for such loss; but no person shall be chosen or act as a referee, against the objection of either party, who has acted in a like capacity within four months.

**Suit** No suit or action against this company for the recovery of any claim by virtue of this policy shall be sustained in any court of law or equity in this commonwealth unless commenced within two years from the time the loss occurred; provided, however, that if, within said two years, in accordance with the provisions of the preceding paragraph, the amount of the loss shall have been referred to arbitration after failure of the parties to agree thereon, the limitation of time for bringing such suit or action shall in no event be less than ninety days after a valid award has been made upon such reference or after such reference or award has been expressly waived by the parties. If suit or action upon this policy is enjoined or abated, suit or action may be commenced at any time within one year after the dissolution of such injunction, or the abatement of such suit or action, to the same extent as would be possible if there was no limitation of time provided herein for the bringing of such suit or action.

**Subrogation** This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.

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

## **NEW YORK CHANGES**

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

**A.** If this policy covers the interest of the owner of any of the following types of buildings or structures:

1. Residential, except owner-occupied single-family or owner-occupied two-family buildings or structures;
2. Commercial; or
3. Industrial;

the following provision is added:

Before payment to you for loss or damage to the above buildings or structures caused by or resulting from fire, we will:

- (1) Deduct from your payment the claim of any tax district that issues a certificate of lien in accordance with the Insurance Law; and
- (2) Pay directly to the tax district the amount of the claim.

When we pay that claim, we will have no obligation to pay the amount of that claim to you. Our payment of that claim within 30 days of our receipt of the certificate of lien will be a conclusive presumption that the claim was valid and properly paid.

**B.** The following is added with respect to any Condition of this Coverage Part which requires you to notify us of loss or to notify us of an accident, claim or "suit":

1. Notice given by or on your behalf; or
2. Written notice by or on behalf of any claimant; to any of our agents in New York State, which adequately identifies you, will be the same as notice to us.

**C. Legal Action Against Us**

1. The **Legal Action Against Us** Loss Condition in the Legal Liability Coverage Form is replaced by the following:

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from you; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

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

2. Paragraph **b.** of Additional Condition **H.5. Legal Action Against Us** in the Mortgageholders Errors And Omissions Coverage Form is replaced by the following:

**b.** No person or organization has a right under Coverages **C** and **D**:

- (1) To join us as a party or otherwise bring us into a "suit" asking for damages from you; or
- (2) To sue us on this Coverage Form unless all of its terms have been fully complied with.

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

- D.** The **Examination Of Your Books And Records** Common Policy Condition is replaced by the following:

**Examination Of Your Books And Records**

1. Except as provided in **2.** below, 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.
2. We will conduct an audit to determine the final premium due or to be refunded, for coverage for which an advance or deposit premium was paid based on estimated exposure. But the audit may be waived if:
  - a. The total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1,500; or
  - b. The policy requires notification to the insurer with the specific identification of any additional exposure units (e.g., buildings) for which coverage is requested.

If the audit is not waived, it must be completed within 180 days after:

- a. The expiration date of the policy; or
- b. The anniversary date, if this is a continuous policy or a policy written for a term longer than one year.

- E.** The following sentence is deleted from Paragraph **A.** in the Legal Liability Coverage Form:

We will have the right and duty to defend any "suit" seeking those damages.

The following sentence is added to Paragraph **A.** in the Legal Liability Coverage Form:

We will have the right and duty to defend any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent.

- F.** The following sentence is deleted from Paragraph **A.3.** in the Mortgageholders Errors And Omissions Coverage Form:

We will have the right and duty to defend any "suit" seeking those damages.

The following is added to Paragraph **A.3.** in the Mortgageholders Errors And Omissions Coverage Form:

We will have the right and duty to defend any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent.

- G.** The following Condition is added to Paragraph **D.** of the Legal Liability Coverage Form and Paragraph **F.4.** of the Mortgageholders Errors And Omissions Coverage Form:

**Transfer Of Duties When A Limit Of Insurance Is Used Up**

1. If we conclude that, based on claims or "suits" which have been reported to us and to which this insurance may apply, a Limit of Insurance is likely to be used up in the payment of judgments or settlements, we will notify the first Named Insured, in writing, to that effect.
2. When the Limit of Insurance has actually been used up in the payment of judgments or settlements:
  - a. We will notify the first Named Insured, in writing, as soon as practicable, that:
    - (1) Such a limit has actually been used up; and
    - (2) Our duty to defend "suits" seeking damages subject to that limit has also ended.
  - b. We will initiate, and cooperate in, the transfer of control, to any appropriate insured, of all claims and "suits" seeking damages which are subject to that limit and which are reported to us before that limit is used up. That insured must cooperate in the transfer of control of said claims and "suits".

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate insured is cooperating in completing such transfer.

We will take no action whatsoever with respect to any claim or "suit" seeking damages that would have been subject to that limit, had it not been used up, if the claim or "suit" is reported to us after that limit of insurance has been used up.

c. The first Named Insured, and any other insured involved in a "suit" seeking damages subject to that limit, must arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.

3. The first Named Insured will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with Paragraph 2.b. above.

The duty of the first Named Insured to reimburse us will begin on:

a. The date on which the applicable limit of insurance is used up, if we sent notice in accordance with Paragraph 1. above; or

b. The date on which we sent notice in accordance with Paragraph 2.a. above, if we did not send notice in accordance with Paragraph 1. above.

4. The exhaustion of any limit of insurance by the payments of judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.

H. Except as provided in I. below, the **Appraisal** Condition is replaced by the following:

**Appraisal**

1. If we and you disagree on the value of the property, the extent of the loss or damage or the amount of the loss or damage, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. If we or you fail to proceed with the appraisal of the covered loss after a written demand is made by either party, then either party may apply to a court having jurisdiction for an order directing the party that failed to proceed with the appraisal to comply with the demand for the appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such order.

3. The two appraisers will select an umpire. If they cannot agree within 15 days upon such umpire, 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, the extent of the loss or damage and the amount of the loss or damage. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

4. 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.

I. The **Appraisal** Condition in:

1. Business Income (And Extra Expense) Coverage Form **CP 00 30**; and

2. Business Income (Without Extra Expense) Coverage Form **CP 00 32**;

is replaced by the following:

**Appraisal**

1. If we and you disagree on the amount of Net Income and operating expense, the extent of the loss or damage or the amount of the loss or damage, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. If we or you fail to proceed with the appraisal of the covered loss after a written demand is made by either party, then either party may apply to a court having jurisdiction for an order directing the party that failed to proceed with the appraisal to comply with the demand for the appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such order.

3. The two appraisers will select an umpire. If they cannot agree within 15 days upon such umpire, 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, the extent of the loss or damage and the amount of the loss or damage. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

4. 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.

- J. The following provision is added to the Commercial Property Coverage Part:

**Estimation Of Claims**

Upon request, we will furnish you or your representative with a written estimate of damages to real property specifying all deductions, provided such an estimate has been prepared by us or has been prepared on our behalf for our own purposes. This estimate will be provided within 30 days after your request or its preparation, whichever is later.

- K. The following provision is added to the Legal Liability Coverage Form and supersedes any provision to the contrary:

Failure to give prompt notice to us, as required under this Coverage Form, shall not invalidate any claim made by you or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by you or any other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.



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

## PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

### SCHEDULE\*

Premises Number	Building Number	Protective Safeguards Symbols Applicable
001	002	P-1, P-2, P-9
002	001	
003	001	P-1, P-2, P-9
<b>Describe any "P-9":</b>		
UL300 COMPLIANT FIRE SUPPRESSION SYSTEM		
* Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

**A.** The following is added to the Commercial Property Conditions:

**Protective Safeguards**

As a condition of this insurance, you are required to:

1. Maintain the protective safeguards listed in the Schedule, and over which you have control, in complete working order;
2. Actively engage and maintain in the "on" position at all times any automatic fire alarm or other automatic system listed in the Schedule; and
3. Notify us if you know of any suspension of or impairment in any protective safeguard listed in the Schedule.

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

**B.** The following is added to the Exclusions section of:

- Causes Of Loss – Basic Form
- Causes Of Loss – Broad Form
- Causes Of Loss – Special Form
- Mortgageholders Errors And Omissions Coverage Form
- Standard Property Policy

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you failed to comply with any condition set forth in Paragraph **A.**

**C.** The protective safeguards to which this endorsement applies are identified by the following symbols:

**"P-1" Automatic Sprinkler System**, including related supervisory services.

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

## PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

### SCHEDULE\*

Premises Number	Building Number	Protective Safeguards Symbols Applicable
004	001	P-1, P-2, P-9
005	001	P-1, P-2, P-9
006	001	P-1, P-2, P-9
<b>Describe any "P-9":</b>		
UL300 COMPLIANT FIRE SUPPRESSION SYSTEM		
* Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

**A.** The following is added to the Commercial Property Conditions:

**Protective Safeguards**

As a condition of this insurance, you are required to:

1. Maintain the protective safeguards listed in the Schedule, and over which you have control, in complete working order;
2. Actively engage and maintain in the "on" position at all times any automatic fire alarm or other automatic system listed in the Schedule; and
3. Notify us if you know of any suspension of or impairment in any protective safeguard listed in the Schedule.

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

**B.** The following is added to the Exclusions section of:

- Causes Of Loss – Basic Form
- Causes Of Loss – Broad Form
- Causes Of Loss – Special Form
- Mortgageholders Errors And Omissions Coverage Form
- Standard Property Policy

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you failed to comply with any condition set forth in Paragraph **A.**

**C.** The protective safeguards to which this endorsement applies are identified by the following symbols:

**"P-1" Automatic Sprinkler System**, including related supervisory services.

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

## PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

### SCHEDULE\*

Premises Number	Building Number	Protective Safeguards Symbols Applicable
007	001	P-1, P-2, P-9
008	001	P-1, P-2, P-9
009	001	P-1, P-2, P-9
<b>Describe any "P-9":</b> UL300 COMPLIANT FIRE SUPPRESSION SYSTEM		
* Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

**A.** The following is added to the Commercial Property Conditions:

**Protective Safeguards**

As a condition of this insurance, you are required to:

1. Maintain the protective safeguards listed in the Schedule, and over which you have control, in complete working order;
2. Actively engage and maintain in the "on" position at all times any automatic fire alarm or other automatic system listed in the Schedule; and
3. Notify us if you know of any suspension of or impairment in any protective safeguard listed in the Schedule.

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

**B.** The following is added to the Exclusions section of:

- Causes Of Loss – Basic Form
- Causes Of Loss – Broad Form
- Causes Of Loss – Special Form
- Mortgageholders Errors And Omissions Coverage Form
- Standard Property Policy

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you failed to comply with any condition set forth in Paragraph **A.**

**C.** The protective safeguards to which this endorsement applies are identified by the following symbols:

**"P-1" Automatic Sprinkler System**, including related supervisory services.

Automatic Sprinkler System means:

- a. Any automatic fire protective or extinguishing system, including connected:
  - (1) Sprinklers and discharge nozzles;
  - (2) Ducts, pipes, valves and fittings;
  - (3) Tanks, their component parts and supports; and
  - (4) Pumps and private fire protection mains.
- b. When supplied from an automatic fire protective system:
  - (1) Non-automatic fire protective systems; and
  - (2) Hydrants, standpipes and outlets.

**"P-2" Automatic Fire Alarm**, protecting the entire building, that is:

- a. Connected to a central station; or
- b. Reporting to a public or private fire alarm station.

**"P-3" Security Service**, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

**"P-4" Service Contract** with a privately owned fire department providing fire protection service to the described premises.

**"P-5" Automatic Commercial Cooking Exhaust And Extinguishing System** installed on cooking appliances and having the following components:

- a. Hood;
- b. Grease removal device;
- c. Duct system; and
- d. Wet chemical fire extinguishing equipment.

**"P-9"**, the protective system described in the Schedule.

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

## SPOILAGE COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM

### SCHEDULE

Premises Number	Building Number	Limit Of Insurance
001	001	\$50,000
<b>Description Of Property:</b> PERISHABLE STO  <b>Deductible:</b> \$500  <b>Refrigeration Maintenance Agreement:</b> X  <b>Selling Price:</b>		
<b>Causes Of Loss</b>		
<b>Breakdown Or Contamination:</b> X  <b>Power Outage:</b> X		
Premises Number	Building Number	Limit Of Insurance
004	001	\$50,000
<b>Description Of Property:</b> PERISHABLE STO  <b>Deductible:</b> \$500  <b>Refrigeration Maintenance Agreement:</b> X  <b>Selling Price:</b>		
<b>Causes Of Loss</b>		
<b>Breakdown Or Contamination:</b> X  <b>Power Outage:</b> X		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

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

## SPOILAGE COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM

### SCHEDULE

Premises Number	Building Number	Limit Of Insurance
006	001	\$50,000
<b>Description Of Property:</b> PERISHABLE STO  <b>Deductible:</b> \$500  <b>Refrigeration Maintenance Agreement:</b> X  <b>Selling Price:</b>		
<b>Causes Of Loss</b>		
<b>Breakdown Or Contamination:</b> X  <b>Power Outage:</b> X		
Premises Number	Building Number	Limit Of Insurance
008	001	\$50,000
<b>Description Of Property:</b> PERISHABLE STO  <b>Deductible:</b> \$500  <b>Refrigeration Maintenance Agreement:</b> X  <b>Selling Price:</b>		
<b>Causes Of Loss</b>		
<b>Breakdown Or Contamination:</b> X  <b>Power Outage:</b> X		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

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

## SPOILAGE COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM

### SCHEDULE

Premises Number	Building Number	Limit Of Insurance
009	001	\$50,000
<b>Description Of Property:</b> PERISHABLE STO  <b>Deductible:</b> \$500  <b>Refrigeration Maintenance Agreement:</b> X  <b>Selling Price:</b>		
<b>Causes Of Loss</b>		
<b>Breakdown Or Contamination:</b> X  <b>Power Outage:</b> X		
Premises Number	Building Number	Limit Of Insurance
005	001	\$50,000
<b>Description Of Property:</b> PERISHABLE STO  <b>Deductible:</b> \$500  <b>Refrigeration Maintenance Agreement:</b> X  <b>Selling Price:</b>		
<b>Causes Of Loss</b>		
<b>Breakdown Or Contamination:</b> X  <b>Power Outage:</b> X		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

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

## SPOILAGE COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM

### SCHEDULE

Premises Number	Building Number	Limit Of Insurance
003	001	\$50,000
<b>Description Of Property:</b> PERISHABLE STO  <b>Deductible:</b> \$500  <b>Refrigeration Maintenance Agreement:</b> X  <b>Selling Price:</b>		
<b>Causes Of Loss</b>		
<b>Breakdown Or Contamination:</b> X  <b>Power Outage:</b> X		
Premises Number	Building Number	Limit Of Insurance
007	001	\$50,000
<b>Description Of Property:</b> PERISHABLE STO  <b>Deductible:</b> \$500  <b>Refrigeration Maintenance Agreement:</b> X  <b>Selling Price:</b>		
<b>Causes Of Loss</b>		
<b>Breakdown Or Contamination:</b> X  <b>Power Outage:</b> X		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		



The Coverage Form to which this endorsement applies is extended to insure against direct physical loss or damage by the Covered Causes of Loss, but only with respect to coverage provided by this endorsement.

**A. Paragraph A.1., Covered Property,** is replaced by the following:

**1. Covered Property**

Covered Property means "perishable stock" at the described premises owned by you or by others that is in your care, custody or control.

**B.** With respect to the coverage provided by this endorsement, property located on buildings or in the open or in vehicles is considered to be Property Not Covered.

**C. Paragraph A.3., Covered Causes Of Loss,** is replaced by the following:

**3. Covered Causes Of Loss**

Covered Causes of Loss means the following only if indicated by an "X" in the Schedule:

- a.** Breakdown or Contamination, meaning:
  - (1)** Change in temperature or humidity resulting from mechanical breakdown or mechanical failure of refrigerating, cooling or humidity control apparatus or equipment, only while such equipment or apparatus is at the described premises; and
  - (2)** Contamination by the refrigerant.

- b.** Power Outage, meaning change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.

**D. Selling Price**

If Selling Price is indicated by an "X" in the Schedule, the following is added to the **Valuation Loss Condition**:

We will determine the value of finished "perishable stock" in the event of loss or damage at:

- 1.** The selling price, as if no loss or damage had occurred;
- 2.** Less discounts and expenses you otherwise would have had.

**E. Paragraph A.5., Coverage Extensions,** does not apply.

**F. Paragraph B., Exclusions,** is replaced by the following:

**B. Exclusions**

- 1.** Only the following Exclusions contained in Paragraph **B.1.** of the Causes of Loss Form applicable to this Coverage Part apply to Spoilage Coverage:
  - a.** Earth Movement;
  - b.** Governmental Action;
  - c.** Nuclear Hazard;
  - d.** War And Military Action; and
  - e.** Water.

2. The following Exclusions are added:

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

- a. The disconnection of any refrigerating, cooling or humidity control system from the source of power.
- b. The deactivation of electrical power caused by the manipulation of any switch or other device used to control the flow of electrical power or current.
- c. The inability of an Electrical Utility Company or other power source to provide sufficient power due to:
  - (1) Lack of fuel; or
  - (2) Governmental order.
- d. The inability of a power source at the described premises to provide sufficient power due to lack of generating capacity to meet demand.
- e. Breaking of any glass that is a permanent part of any refrigerating, cooling or humidity control unit.

G. Paragraph **D.**, **Deductible**, is replaced by the following:

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Schedule of this endorsement. We will then pay the amount of loss or damage in excess of that Deductible, up to the applicable Limit of Insurance. No other deductible in this policy applies to the coverage provided by this endorsement.

H. Paragraph **F.**, **Additional Conditions**, is replaced by the following:

**ADDITIONAL CONDITION**

The following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

**REFRIGERATION MAINTENANCE AGREEMENTS**

If Breakdown or Contamination is designated as a Covered Cause of Loss and a refrigeration maintenance agreement is shown as applicable by an "X" in the Schedule, the following condition applies:

You must maintain a refrigeration maintenance or service agreement. If you voluntarily terminate this agreement and do not notify us, the insurance provided by this endorsement will be automatically suspended at the involved location.

I. Paragraph **G.**, **Optional Coverages**, does not apply.

J. The following is added to the **Definitions**:

"Perishable stock" means personal property:

- a. Maintained under controlled conditions for its preservation; and
- b. Susceptible to loss or damage if the controlled conditions change.

## CAUSES OF LOSS – SPECIAL FORM

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

### A. Covered Causes Of Loss

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

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

that follow.

### B. Exclusions

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

#### a. Ordinance Or Law

The enforcement of any ordinance or law:

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

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

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

#### b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

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

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

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

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

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

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

#### c. Governmental Action

Seizure or destruction of property by order of governmental authority.

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

**d. Nuclear Hazard**

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

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

**e. Utility Services**

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

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

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

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

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

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

**f. War And Military Action**

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

**g. Water**

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

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

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

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

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

This exclusion does not apply:

- 1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
- 2. To the extent that coverage is provided in the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

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

- 2. We will not pay for loss or damage caused by or resulting from any of the following:
  - a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:
    - (1) Electrical or electronic wire, device, appliance, system or network; or
    - (2) Device, appliance, system or network utilizing cellular or satellite technology.

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

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

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

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.

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

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
  - (1) You do your best to maintain heat in the building or structure; or
  - (2) You drain the equipment and shut off the supply if the heat is not maintained.
- h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:
  - (1) Acting alone or in collusion with others; or
  - (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.

k. Collapse, including any of the following conditions of property or any part of the property:

- (1) An abrupt falling down or caving in;
- (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
- (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

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

This exclusion, k., does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage – Collapse; or
- (b) To collapse caused by one or more of the following:
  - (i) The "specified causes of loss";
  - (ii) Breakage of building glass;
  - (iii) Weight of rain that collects on a roof; or
  - (iv) Weight of people or personal property.

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

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

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

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

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

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

c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;  
of part or all of any property on or off the described premises.

#### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

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

We will not pay for:

- (1) Any loss caused by or resulting from:
  - (a) Damage or destruction of "finished stock"; or
  - (b) The time required to reproduce "finished stock".This exclusion does not apply to Extra Expense.
- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

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

(5) Any other consequential loss.

**b. Leasehold Interest Coverage Form**

(1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.

(2) We will not pay for any loss caused by:

- (a) Your cancelling the lease;
- (b) The suspension, lapse or cancellation of any license; or
- (c) Any other consequential loss.

**c. Legal Liability Coverage Form**

(1) The following exclusions do not apply to insurance under this Coverage Form:

- (a) Paragraph **B.1.a.**, Ordinance Or Law;
- (b) Paragraph **B.1.c.**, Governmental Action;
- (c) Paragraph **B.1.d.**, Nuclear Hazard;
- (d) Paragraph **B.1.e.**, Utility Services; and
- (e) Paragraph **B.1.f.**, War And Military Action.

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

**(a) Contractual Liability**

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

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

**(b) Nuclear Hazard**

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

**5. Additional Exclusion**

The following provisions apply only to the specified property.

**LOSS OR DAMAGE TO PRODUCTS**

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

### C. Limitations

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

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

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

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

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

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

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

However, this limitation does not apply to:

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

(2) Business Income Coverage or Extra Expense Coverage.

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

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

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

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

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

(1) Glass; or

(2) Containers of property held for sale.

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

However, this limitation does not apply:

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

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

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

a. \$2,500 for furs, fur garments and garments trimmed with fur.

b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.

c. \$2,500 for patterns, dies, molds and forms.

d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

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

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



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

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

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

#### D. Additional Coverage – Collapse

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

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

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

- a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
  - (1) A cause of loss listed in 2.a. or 2.b.;
  - (2) One or more of the "specified causes of loss";
  - (3) Breakage of building glass;
  - (4) Weight of people or personal property; or

(5) Weight of rain that collects on a roof.

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

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

4. With respect to the following property:

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

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

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

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

- a. The collapse of personal property was caused by a cause of loss listed in 2.a. through 2.d.;
- b. The personal property which collapses is inside a building; and
- c. The property which collapses is not of a kind listed in 4., regardless of whether that kind of property is considered to be personal property or real property.

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

6. This Additional Coverage – Collapse does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
7. This Additional Coverage – Collapse will not increase the Limits of Insurance provided in this Coverage Part.
8. The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in **D.1.** through **D.7.**

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

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
  - a. A "specified cause of loss" other than fire or lightning; or
  - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
  - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
  - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
  - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

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

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

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

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph **F.2.** (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage – Collapse.
6. The following, **6.a.** or **6.b.**, applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form.

- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

## F. Additional Coverage Extensions

### 1. Property In Transit

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

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
  - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
  - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
  - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$5,000.

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

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

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

### 3. Glass

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

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

## G. Definitions

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.

b. Falling objects does not include loss or damage to:

- (1) Personal property in the open; or
- (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

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

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

## **TENTATIVE RATE**

The rates used in the development of the premium for the Commercial Property Coverage Part are tentative. We will adjust the premium effective from the inception date of this Coverage Part once the rates are promulgated. If this is a renewal of a policy previously issued by us, we will adjust the premium effective from the renewal date of this Coverage Part once the rates are promulgated.

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

## **NEW YORK CHANGES – FUNGUS, WET ROT AND DRY ROT**

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

- A.** In the Causes Of Loss – Basic Form, Causes Of Loss – Broad Form, Causes Of Loss – Special Form, and Mortgageholders Errors And Omissions Coverage Form, the exclusion titled "Fungus", Wet Rot, Dry Rot And Bacteria and the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria are deleted. Under these forms, the following exclusion is added:
- We will not pay for loss or damage caused by or resulting from "fungus", wet rot or dry rot. However, this exclusion does not apply when "fungus", wet rot or dry rot results from a Covered Cause of Loss.
- B.** In the Building And Personal Property Coverage Form and the Condominium Association Coverage Form, under the Additional Coverage – Increased Cost Of Construction, Paragraph **A.4.e.(5)** is replaced by the following:
- Under this Additional Coverage, we will not pay for:
1. The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants"; or
  2. Any costs associated with the enforcement of or compliance with 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".
- C.** Paragraph **C.** of Ordinance Or Law Coverage Endorsement **CP 04 05** is replaced by the following:
- We will not pay under Coverage **A, B** or **C** of this endorsement for:
1. Enforcement of or compliance with any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants"; or
  2. The costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".
- D.** Paragraph **A.** of Ordinance Or Law – Increased Period Of Restoration Endorsement **CP 15 31** is replaced by the following:
- If a Covered Cause of Loss occurs to property at the premises described in the Declarations, coverage is extended to include the amount of actual and necessary loss you sustain during the increased period of "suspension" of "operations" caused by or resulting from a requirement to comply with any ordinance or law that:
1. Regulates the construction or repair of any property;
  2. Requires the tearing down of parts of any property not damaged by a Covered Cause of Loss; and
  3. Is in force at the time of loss.
- However, coverage is not extended under this endorsement to include loss caused by or resulting from the enforcement of or compliance with any ordinance or law which requires:
1. The demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants"; or
  2. 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".

E. Paragraph E.3. of Functional Building Valuation Endorsement CP 04 38 is replaced by the following:

We will not pay under this endorsement for:

1. Enforcement of or compliance with any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants"; or
2. The costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

**GENERAL LIABILITY DECLARATIONS  
COMMERCIAL GENERAL LIABILITY COVERAGE PART**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
FORM OF BUSINESS: <b>CORPORATION</b>			
TYPE OF POLICY <b>OCCURRENCE</b>			
LOCATION OF ALL PREMISES YOU OWN/RENT/OCCUPY THAT WE INSURE UNDER THIS POLICY <b>SEE DESIGNATION OF PREMISES SCHEDULE</b>			
THESE DECLARATIONS ARE COMPLETED ON THE ATTACHED COMMERCIAL GENERAL LIABILITY COVERAGE PART SCHEDULE(S).			
<b>LIMITS OF INSURANCE</b>			
<b>COVERAGE</b>		<b>LIMIT OF LIABILITY</b>	
AGGREGATE LIMITS OF LIABILITY		\$ 2,000,000	Products/Completed Operations Aggregate
		\$ 2,000,000	General Aggregate
COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY  DAMAGE TO PREMISES RENTED TO YOU		\$ 1,000,000	any one occurrence subject to the Products/Completed Operations and General Aggregate Limits of Liability
		\$ 100,000	any one premises subject to the Coverage A occurrence and the General Aggregate Limits of Liability
COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY		\$ 1,000,000	any one person or organization subject to the General Aggregate Limits of Liability
COVERAGE C - MEDICAL PAYMENTS		\$ 5,000	any one person subject to the Coverage A occurrence and the General Aggregate Limits of Liability
ENDORSEMENTS ATTACHED TO THIS COVERAGE FORM: <b>SEE SCHEDULE OF FORMS AND ENDORSEMENTS</b>			
TAX OR SURCHARGE:		\$	
<b>TOTAL</b> ANNUAL PREMIUM - THIS COVERAGE PART INCLUDING ANY LIQUOR LIABILITY AND OWNERS & CONTRACTORS:		PREMISES/OPER \$ 174,532	PROD/CP/OPER \$ 1,526
<b>THIS POLICY CONTAINS AGGREGATE LIMITS; REFER TO SECTION III - LIMITS OF INSURANCE FOR DETAILS.</b>			

GNY 020 (11/04)

**DAVIO'S\_COMPLAINT\_000209**



**COMMERCIAL GENERAL LIABILITY  
COMMERCIAL GENERAL COVERAGE PART SCHEDULE**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>16916</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>001/001</b>	EXPOSURE <b>\$6,491,939</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR</b>		<b>.516</b>	<b>3,350.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.023</b>	<b>149.00</b>	
CLASS CODE <b>16916</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>001/001</b>	EXPOSURE <b>6,491,939</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>105.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.025</b>	<b>5.00</b>	
CLASS CODE <b>53375</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>001/001</b>	EXPOSURE <b>\$250,000</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>FOOD PRODUCTS MFG. - FROZEN</b>		<b>.077</b>	<b>19.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.206</b>	<b>52.00</b>	

**COMMERCIAL GENERAL LIABILITY  
COMMERCIAL GENERAL COVERAGE PART SCHEDULE**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>53375</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>001/001</b>	EXPOSURE <b>250,000</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>1.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.025</b>	<b>2.00</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>001/001</b>	EXPOSURE <b>\$2,413,968</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS, TAVERNS, HOTELS, MOTELS, INCLUDING PACKAGE SALES</b>		<b>4.098</b>	<b>9,892.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
			<b>INCL</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>001/001</b>	EXPOSURE <b>2,413,968</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>309.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	

**COMMERCIAL GENERAL LIABILITY  
COMMERCIAL GENERAL COVERAGE PART SCHEDULE**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>61212</b>	PREMIUM BASIS <b>SQUARE FEET</b>	PREMISES/OPERATIONS		
LOCATION <b>002/001</b>	EXPOSURE <b>1,000</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>BUILDINGS OR PREMISES - BANK OR OFFICE - MERCANTILE OR MANUFACTURING (LESSOR'S RISK ONLY) - OTHER THAN NOT-FOR-PROFIT (PRODUCTS- COMPLETED OPERATIONS ARE SUBJECT TO THE GENERAL AGGREGATE LIMIT)</b>		<b>23.740</b>	<b>24.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
			<b>INCL</b>	
CLASS CODE <b>61212</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>002/001</b>	EXPOSURE <b>1,000</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>1.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
CLASS CODE <b>16916</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>004/001</b>	EXPOSURE <b>\$5,013,657</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR</b>		<b>.606</b>	<b>3,038.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.023</b>	<b>115.00</b>	

**COMMERCIAL GENERAL LIABILITY  
COMMERCIAL GENERAL COVERAGE PART SCHEDULE**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>16916</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>004/001</b>	EXPOSURE <b>5,013,657</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>95.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.025</b>	<b>4.00</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>004/001</b>	EXPOSURE <b>\$2,245,042</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS, TAVERNS, HOTELS, MOTELS, INCLUDING PACKAGE SALES</b>		<b>5.233</b>	<b>11,748.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
			<b>INCL</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>004/001</b>	EXPOSURE <b>2,245,042</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>367.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	

**COMMERCIAL GENERAL LIABILITY  
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NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>16916</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>006/001</b>	EXPOSURE <b>\$4,819,103</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR</b>		<b>.606</b>	<b>2,920.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.023</b>	<b>111.00</b>	
CLASS CODE <b>16916</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>006/001</b>	EXPOSURE <b>4,819,103</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>91.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.025</b>	<b>3.00</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>006/001</b>	EXPOSURE <b>\$2,350,257</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS, TAVERNS, HOTELS, MOTELS, INCLUDING PACKAGE SALES</b>		<b>5.233</b>	<b>12,299.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
			<b>INCL</b>	

**COMMERCIAL GENERAL LIABILITY  
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**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>58161</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>006/001</b>	EXPOSURE <b>2,350,257</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>384.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
CLASS CODE <b>16916</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>008/001</b>	EXPOSURE <b>\$4,098,857</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR</b>		<b>.606</b>	<b>2,484.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.023</b>	<b>94.00</b>	
CLASS CODE <b>16916</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>008/001</b>	EXPOSURE <b>4,098,857</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>78.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.025</b>	<b>3.00</b>	

**COMMERCIAL GENERAL LIABILITY  
COMMERCIAL GENERAL COVERAGE PART SCHEDULE**

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**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>58161</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>008/001</b>	EXPOSURE <b>\$1,502,725</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS, TAVERNS, HOTELS, MOTELS, INCLUDING PACKAGE SALES</b>		<b>4.098</b>	<b>6,158.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
			<b>INCL</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>008/001</b>	EXPOSURE <b>1,502,725</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>192.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
CLASS CODE <b>16916</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>009/001</b>	EXPOSURE <b>\$7,800,000</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR</b>		<b>.516</b>	<b>4,025.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.023</b>	<b>179.00</b>	

**COMMERCIAL GENERAL LIABILITY  
COMMERCIAL GENERAL COVERAGE PART SCHEDULE**

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NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>16916</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>009/001</b>	EXPOSURE <b>7,800,000</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>126.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.025</b>	<b>6.00</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>009/001</b>	EXPOSURE <b>\$2,600,000</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS, TAVERNS, HOTELS, MOTELS, INCLUDING PACKAGE SALES</b>		<b>4.098</b>	<b>10,655.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
			<b>INCL</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>009/001</b>	EXPOSURE <b>2,600,000</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>333.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	



**COMMERCIAL GENERAL LIABILITY  
COMMERCIAL GENERAL COVERAGE PART SCHEDULE**

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NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>16916</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>005/001</b>	EXPOSURE <b>\$3,398,141</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR</b>		<b>3.445</b>	<b>11,707.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.080</b>	<b>272.00</b>	
CLASS CODE <b>16916</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>005/001</b>	EXPOSURE <b>3,398,141</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>293.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.025</b>	<b>7.00</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>005/001</b>	EXPOSURE <b>\$1,412,186</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS, TAVERNS, HOTELS, MOTELS, INCLUDING PACKAGE SALES</b>		<b>7.936</b>	<b>11,207.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
			<b>INCL</b>	

**COMMERCIAL GENERAL LIABILITY  
COMMERCIAL GENERAL COVERAGE PART SCHEDULE**

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NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>58161</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>005/001</b>	EXPOSURE <b>1,412,186</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>280.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
CLASS CODE <b>16916</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>003/001</b>	EXPOSURE <b>\$4,562,166</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR</b>		<b>4.209</b>	<b>19,202.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.056</b>	<b>255.00</b>	
CLASS CODE <b>16916</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>003/001</b>	EXPOSURE <b>4,562,166</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>546.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.025</b>	<b>7.00</b>	

**COMMERCIAL GENERAL LIABILITY  
COMMERCIAL GENERAL COVERAGE PART SCHEDULE**

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NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>58161</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>003/001</b>	EXPOSURE <b>\$1,964,220</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS, TAVERNS, HOTELS, MOTELS, INCLUDING PACKAGE SALES</b>		<b>11.213</b>	<b>22,025.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
			<b>INCL</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>003/001</b>	EXPOSURE <b>1,964,220</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>626.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
CLASS CODE <b>16916</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>007/001</b>	EXPOSURE <b>\$4,546,924</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS - WITH SALE OF ALCOHOLIC BEVERAGES THAT ARE 30% OR MORE OF BUT LESS THAN 75% OF THE TOTAL ANNUAL RECEIPTS OF THE RESTAURANTS - WITHOUT DANCE FLOOR</b>		<b>3.439</b>	<b>15,637.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
			<b>.056</b>	<b>255.00</b>

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NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>16916</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>007/001</b>	EXPOSURE <b>4,546,924</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>444.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
		<b>.025</b>	<b>7.00</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS <b>GROSS SALES</b>	PREMISES/OPERATIONS		
LOCATION <b>007/001</b>	EXPOSURE <b>\$2,031,944</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>RESTAURANTS, TAVERNS, HOTELS, MOTELS, INCLUDING PACKAGE SALES</b>		<b>11.213</b>	<b>22,784.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
			<b>INCL</b>	
CLASS CODE <b>58161</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION <b>007/001</b>	EXPOSURE <b>2,031,944</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>TERRORISM</b>		<b>.025</b>	<b>647.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	

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NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>		EFFECTIVE DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER	
CLASS CODE <b>92100</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION	EXPOSURE	RATE	PREMIUM	
CLASS DESCRIPTION <b>EMPLOYEE BENEFITS LIABILITY</b>			<b>204.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
CLASS CODE <b>44444</b>	PREMIUM BASIS	PREMISES/OPERATIONS		
LOCATION	EXPOSURE <b>5</b>	RATE	PREMIUM	
CLASS DESCRIPTION <b>IDENTITY RECOVERY</b>			<b>25.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	
CLASS CODE <b>44444</b>	PREMIUM BASIS <b>Flat Charge</b>	PREMISES/OPERATIONS		
LOCATION	EXPOSURE	RATE	PREMIUM	
CLASS DESCRIPTION <b>PROTECTO-GUARD RESTAURANT COVERAGE</b>			<b>200.00</b>	
		PRODUCTS/COMPL OPERATIONS		
		RATE	PREMIUM	

# COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

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

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

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

## SECTION I – COVERAGES

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

#### 1. Insuring Agreement

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

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

- b. This insurance applies to "bodily injury" and "property damage" only if:

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

- (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

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

### b. Contractual Liability

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

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

### c. Liquor Liability

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

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

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

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

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

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

### d. Workers' Compensation And Similar Laws

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

### e. Employer's Liability

"Bodily injury" to:

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

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

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

**f. Pollution**

- (1)** "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a)** At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i)** "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii)** "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii)** "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b)** At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c)** Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i)** Any insured; or
    - (ii)** Any person or organization for whom you may be legally responsible; or
  - (d)** At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - (i)** "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - (ii)** "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - (iii)** "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
  - (e)** At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".



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

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

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

**g. Aircraft, Auto Or Watercraft**

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

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

This exclusion does not apply to:

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

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

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

**h. Mobile Equipment**

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

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

**i. War**

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

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

**j. Damage To Property**

"Property damage" to:

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

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

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

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

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

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

**k. Damage To Your Product**

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

**l. Damage To Your Work**

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

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

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

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

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

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

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

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

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

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

**o. Personal And Advertising Injury**

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

**p. Electronic Data**

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

However, this exclusion does not apply to liability for damages because of "bodily injury".

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

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

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

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

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

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

### **1. Insuring Agreement**

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

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

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

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

### **2. Exclusions**

This insurance does not apply to:

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

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

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

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

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

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

**d. Criminal Acts**

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

**e. Contractual Liability**

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

**f. Breach Of Contract**

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

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

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

**h. Wrong Description Of Prices**

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

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

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

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

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

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

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

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

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

**k. Electronic Chatrooms Or Bulletin Boards**

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

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

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

**m. Pollution**

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

**n. Pollution-related**

Any loss, cost or expense arising out of any:

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

**o. War**

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

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

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

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

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

## COVERAGE C – MEDICAL PAYMENTS

### 1. Insuring Agreement

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

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

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

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

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

### 2. Exclusions

We will not pay expenses for "bodily injury":

#### a. Any Insured

To any insured, except "volunteer workers".

#### b. Hired Person

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

#### c. Injury On Normally Occupied Premises

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

#### d. Workers' Compensation And Similar Laws

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

#### e. Athletics Activities

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

#### f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

#### g. Coverage A Exclusions

Excluded under Coverage A.

## SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

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

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

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

These payments will not reduce the limits of insurance.

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

- a.** The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b.** This insurance applies to such liability assumed by the insured;
- c.** The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d.** The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e.** The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f.** The indemnitee:

**(1)** Agrees in writing to:

- (a)** Cooperate with us in the investigation, settlement or defense of the "suit";
- (b)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c)** Notify any other insurer whose coverage is available to the indemnitee; and
- (d)** Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

**(2)** Provides us with written authorization to:

- (a)** Obtain records and other information related to the "suit"; and
- (b)** Conduct and control the defense of the indemnitee in such "suit".

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

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

## **SECTION II – WHO IS AN INSURED**

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

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

2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
    - (1) "Bodily injury" or "personal and advertising injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
      - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
      - (d) Arising out of his or her providing or failing to provide professional health care services.
    - (2) "Property damage" to property:
      - (a) Owned, occupied or used by;
      - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;
 

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

### SECTION III – LIMITS OF INSURANCE

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

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

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

#### **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

##### **1. Bankruptcy**

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

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

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

- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.
 You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### **3. Legal Action Against Us**

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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



#### 4. Other Insurance

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

##### a. Primary Insurance

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

##### b. Excess Insurance

(1) This insurance is excess over:

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

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

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

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** — Coverage **A** — Bodily Injury And Property Damage Liability.

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

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

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

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

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

##### c. Method Of Sharing

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

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

#### 5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

**7. Separation Of Insureds**

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

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

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

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

**9. When We Do Not Renew**

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

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

**SECTION V – DEFINITIONS**

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

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

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

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

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

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

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

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

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

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

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

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

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

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

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

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

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your "advertisement"; or
  - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**16. "Products-completed operations hazard":**

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

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

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

**17. "Property damage" means:**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

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

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

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

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

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

**21.** "Your product":

**a.** Means:

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

**b.** Includes:

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

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

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

**22.** "Your work":

**a.** Means:

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

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

**b.** Includes:

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

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

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

**CHANGES IN COMMERCIAL GENERAL LIABILITY  
COVERAGE FORM**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A.** Paragraph **1.a.** of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) is replaced by the following:

**1. Insuring Agreement**

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

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

**B.** Paragraph **2.b.** of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) is replaced by the following:

**2. Exclusions**

This insurance does not apply to:

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

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



C. Paragraph 1.a. of COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY (Section I - Coverages) is replaced by the following:

1. Insuring Agreement

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

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

D. The first sentence of SUPPLEMENTARY PAYMENTS - COVERAGES A AND B is replaced by the following:

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

E. Paragraph 2.c.(3) of the DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT Condition (Section IV - Commercial General Liability Conditions) is replaced by the following:

2. Duties in the Event of Occurrence, Offense, Claim or Suit

c. You and any other involved insured must:

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

F. Paragraph 2.d. of the DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT Condition (Section IV - Commercial General Liability Conditions) is replaced by the following:

2. Duties in the Event of Occurrence, Offense, Claim or Suit

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

G. The second paragraph of paragraph 4.b. of the OTHER INSURANCE Condition (Section IV - Commercial General Liability Conditions) is replaced by the following:

4. Other Insurance

b. Excess Insurance

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

**H.** The definition of "suit" in DEFINITIONS is replaced by the following:

- 16.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.





THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## AMENDMENT OF INSURING AGREEMENT - KNOWN INJURY OR DAMAGE

This endorsement modifies insurance provided under the following:

### LIQUOR LIABILITY COVERAGE PART (OCCURRENCE VERSION)

Paragraph 1. **Insuring Agreement** of Section I is replaced by the following:

#### 1. **Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

- b. This insurance applies to "injury" only if:
- (1) The "injury" occurs during the policy period in the "coverage territory"; and

- (2) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "injury" or claim, knew that the "injury" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "injury" occurred, then any continuation, change or resumption of such "injury" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Injury" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim, includes any continuation, change or resumption of that "injury" after the end of the policy period.
- d. "Injury" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim:
  - (1) Reports all, or any part, of the "injury" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "injury"; or
  - (3) Becomes aware by any other means that "injury" has occurred or has begun to occur.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION – VIOLATION OF STATUTES THAT GOVERN E-MAILS, FAX, PHONE CALLS OR OTHER METHODS OF SENDING MATERIAL OR INFORMATION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

**2. Exclusions**

This insurance does not apply to:

**DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES**

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

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

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

**2. Exclusions**

This insurance does not apply to:

**DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES**

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

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

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

## **NEW YORK CHANGES – COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Paragraph 1. Insuring Agreement of Section I – Coverage A Bodily Injury And Property Damage Liability** is replaced by the following:

#### **1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

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

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
  - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

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

B. Paragraph 1.a. of Section I – Coverage B Personal And Advertising Injury Liability is replaced by the following:

**1. Insuring Agreement**

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

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

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

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

C. The following is added as Paragraph e. to the Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition (Paragraph 2. of Section IV – Commercial General Liability Conditions):

e. Notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant, to any agent of ours in New York State, with particulars sufficient to identify the insured, shall be considered to be notice to us.

D. Paragraph 3. of Section IV – Commercial General Liability Conditions is replaced by the following:

**3. Legal Action Against Us**

a. Except as provided in Paragraph b., no person or organization has a right under this Coverage Part:

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

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

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

b. With respect to "bodily injury" and "personal and advertising injury" claims, if we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an insured:

(1) Brings an action to declare the rights of the parties under the policy; and

(2) Names the injured person, someone acting for the injured person or other claimant as a party to the action.

E. The following provision is added and supersedes any provision to the contrary:

Failure to give notice to us as required under this Coverage Part shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

F. The definition of "loading or unloading" in the **Definitions** Section does not apply.

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

## **MASSACHUSETTS CHANGES – CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

### LIQUOR 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:
    - (1)** 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
    - (2)** 30 days before the effective date of cancellation if we cancel for any other reason.
- However, if this policy has been in effect for 60 days or more, we may cancel this policy by giving the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation. The notice requirement does not apply to cancellation due to:
- (1)** Nonpayment of premium; or
  - (2)** The first Named insured's loss of license.
- B.** If this policy has been issued pursuant to section 64A, 64B or 67 of Mass. Gen. Law Ann., Chapter 138., we may cancel this policy for nonpayment of premium by giving the first Named Insured written notice of at least 30 days before the effective date of cancellation.
- C.** The following is added and supersedes any other provision to the contrary:
- NONRENEWAL**
- If we decide not to renew this policy, we may do so by giving the first Named Insured written notice of our intent not to renew at least 60 days before the expiration of the policy. The notice requirement does not apply to nonrenewal due to:
- (1)** Nonpayment of premium; or
  - (2)** The first Named insured's loss of license.

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

## **EXCLUSION – DESIGNATED PROFESSIONAL SERVICES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Description Of Professional Services</b>
1. ALL PROFESSIONAL SERVICES
2.
3.
4.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

With respect to any professional services shown in the Schedule, the following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" due to the rendering of or failure to render any professional service.

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## TOTAL POLLUTION EXCLUSION WITH A BUILDING HEATING, COOLING AND DEHUMIDIFYING EQUIPMENT EXCEPTION AND A HOSTILE FIRE EXCEPTION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

This insurance does not apply to:

#### f. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

This exclusion does not apply to:

- (a) "Bodily injury" if sustained within a building which is or was at any time owned or occupied by, or rented or loaned to, any insured and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests; or
- (b) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:
- (i) At any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste; or

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

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



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

## **NEW YORK CHANGES – TRANSFER OF DUTIES WHEN A LIMIT OF INSURANCE IS USED UP**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following Condition is added to COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

**Transfer of Duties When a Limit of Insurance Is Used Up.**

a. If we conclude that, based on "occurrences," offenses, claims or "suits" which have been reported to us and to which this insurance may apply, the:

- (1) General Aggregate Limit (other than the Products/Completed Operations Aggregate Limit);
- (2) Products/Completed Operations Aggregate Limit;
- (3) Personal and Advertising Injury Limit;
- (4) Each Occurrence Limit; or
- (5) Fire Damage Limit

is likely to be used up in the payment of judgments or settlements, we will notify the first Named Insured, in writing, to that effect.

b. When a limit of insurance described in paragraph a. above has actually been used up in the payment of judgments or settlements:

- (1) We will notify the first Named Insured, in writing, as soon as practicable, that:
  - (a) Such a limit has actually been used up; and
  - (b) Our duty to defend "suits" seeking damages subject to that limit has also ended.
- (2) We will initiate, and cooperate in, the transfer of control, to any appropriate insured, of all claims and "suits" seeking damages which are subject to that limit and which are reported to us before that limit is used up. That insured must cooperate in the transfer of control of said claims and "suits".

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate insured is cooperating in completing such transfer.

We will take no action whatsoever with respect to any claim or "suit" seeking damages that would have been subject to that limit, had it not been used up, if the claim or "suit" is reported to us after that limit of insurance has been used up.

(3) The first Named Insured, and any other insured involved in a "suit" seeking damages subject to that limit, must arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.

c. The first Named Insured will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with paragraph b.(2) above.

The duty of the first Named Insured to reimburse us will begin on:

- (1) The date on which the applicable limit of insurance is used up, if we sent notice in accordance with paragraph a. above; or
- (2) The date on which we sent notice in accordance with paragraph b.(1) above, if we did not send notice in accordance with paragraph a. above.

d. The exhaustion of any limit of insurance by the payments of judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.

# **GNY INSURANCE COMPANIES**

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

## **BASIC CONSTRUCTION EXCLUSION**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

This insurance does not apply to "bodily injury" or "property damage" arising out of construction or demolition operations which are performed by or on behalf of the Named Insured in the course of any job which involves the new construction or demolition of any load bearing wall, floor, ceiling or roof of a building or structure, provided, however, that nothing herein limits, prohibits or restricts insurance coverage for the repair, alteration, maintenance or refurbishing of a load bearing wall, floor, ceiling or roof.

## GREATER NEW YORK INSURANCE GROUP

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT OF OTHER INSURANCE CONDITION (OCCURRENCE VERSION)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART (OCCURRENCE VERSION)

Paragraph 4.b. of the Other Insurance Condition - (Section IV - Commercial General Liability Conditions) is replaced by the following:

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
  - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of COVERAGE A (SECTION I).
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or products or completed operations, for which you have been added as an additional insured by attachment of an endorsement.
- (3) Any other primary insurance available to you that covers liability for damages arising out of the premises or operations, or products or completed operations, for which another party has agreed under contract to indemnify you or hold you harmless.

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

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

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

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

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ CAREFULLY.  
UNDERLYING GNY LIABILITY AND UMBRELLA ENDORSEMENT**

THIS POLICY IS ISSUED BY THE  
**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO' S</b>	<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b> ENDORSEMENT NUMBER
IF THIS ENDORSEMENT IS LISTED IN THE POLICY DECLARATIONS, IT IS IN EFFECT FROM THE TIME COVERAGE UNDER THIS POLICY COMMENCES. OTHERWISE, THE EFFECTIVE DATE OF THIS ENDORSEMENT IS AS SHOWN ABOVE AT THE SAME TIME OR HOUR OF THE DAY AS THE POLICY BECAME EFFECTIVE.	COUNTERSIGNED BY:  _____ AUTHORIZED REPRESENTATIVE	

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM.

You are eligible, subject to our uniformly applied underwriting standards, to purchase a Commercial Umbrella Liability Policy from us only with the purchase from us of a Commercial General Liability Policy. This Commercial General Liability Policy provides underlying insurance for the Commercial Umbrella Liability Policy.

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

## **PENNSYLVANIA AMENDATORY – DEFENSE COSTS**

This endorsement modifies insurance provided under the following:

**DIRECTORS' AND OFFICERS' LIABILITY COVERAGE PART**

The following is added to Paragraph **1. A. Insuring Agreement** of **Section 1 – Coverages** and applies to any other provision in the policy that sets forth a duty to defend:

If we initially defend an insured or pay for an insured's defense but later determine that none of the "civil claims", for which we provided a defense or defense costs, are covered under this insurance, we have the right to reimbursement for the defense costs we have incurred.

The right to reimbursement under this provision will only apply to the costs we have incurred after we notify you in writing that there may not be coverage and that we are reserving our rights to terminate the defense or the payment of defense costs and to seek reimbursement for defense costs.

All other policy terms and conditions remain unchanged.

**GREATER NEW YORK INSURANCE GROUP**  
**PROTECTO – GUARD**  
**ENHANCED GENERAL LIABILITY COVERAGE ENDORSEMENT**  
**FOR RESTAURANTS**

This endorsement modifies insurance provided under the following:

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

<b>SCHEDULE</b>	
<b>GENERAL LIABILITY COVERAGE</b>	<b>LIMIT OF INSURANCE</b> (INCLUDES LIMITS PROVIDED BY COVERAGE FORMS LISTED ABOVE)
Damage To Premises Rented To You	<b>\$1,000,000</b>
Notice to Company	Included
Knowledge of Occurrence	Included
Unintentional Errors or Omission	Included
Mental Anguish included in the Definition of "Bodily Injury"	Included

**AMENDMENTS TO THE COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

The following modifies insurance provided under the **Commercial General Liability Coverage Form**

**AMENDMENTS TO COMMERCIAL GENERAL LIABILITY COVERAGE FORM - SECTION III - LIMITS OF INSURANCE**

**DAMAGE TO PREMISES RENTED TO YOU**

The following is added as the last sentence to paragraph **6.** in Section **III**:

In addition to the limit shown in the Declarations for Damage to Premises Rented To You, and subject to the terms of that coverage, under the PROTECTO-GUARD GENERAL LIABILITY ENHANCED COVERAGE ENDORSEMENT we will pay **\$900,000** "Property Damage" to any one premises while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

**AMENDMENTS TO COMMERCIAL GENERAL LIABILITY COVERAGE FORM - SECTION V. - DEFINITIONS**

As respects the coverage provided by the **PROTECTO-GUARD GENERAL LIABILITY ENHANCED COVERAGE ENDORSEMENT**, the following amends the Definition of "Bodily Injury":

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

**AMENDMENTS TO COMMERCIAL GENERAL LIABILITY COVERAGE FORM - SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

As respects the coverage provided by the **PROTECTO-GUARD GENERAL LIABILITY ENHANCED COVERAGE ENDORSEMENT**, the following are added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

**PREMIUM AUDIT:**

Paragraph **5.** Premium Audit does not apply. If written, this provision also applies to Paragraph **5.** Premium

Audit contained in **SECTION IV - LIQUOR LIABILITY CONDITIONS** of any Liquor Liability Coverage Form attached to your policy.

**NOTICE TO COMPANY**

If a liability claim is made to an insured arising from an "occurrence" that caused "bodily injury" to a person the insured disputes is an employee; and if the insured timely notifies its workers' compensation insurer of the occurrence; and if a workers' compensation board or law court finally determines that the person is not an employee of the insured; then the insured's delay in reporting the "occurrence" to us will not be deemed late notice of the "occurrence" under paragraph 2., Duties In The Event Of Occurrence, Offense, Claim or Suit, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, if the insured reports the "occurrence" to us promptly on learning of the final determination.

**KNOWLEDGE OF OCCURRENCE:**

It is agreed that, for the purpose of determining whether a Named Insured has complied with paragraph 2. Duties In The Event of Occurrence, Offense, Claim or Suit of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, that the knowledge of an "occurrence" by an agent, servant, or employee of the Named Insured shall not in itself constitute knowledge by the Named Insured. However, the Named Insured shall be deemed to have such knowledge if a "controlling person" of such Named Insured shall have such knowledge, including, but not limited to, circumstances in which an agent, servant, or employee with knowledge of the "occurrence" shall have imparted such knowledge to a "controlling person" of such Named Insured.

The term "controlling person" shall mean the following:

- a. If the Named Insured is an individual –that person, his or her spouse, or a person having temporary custody of his or her property after his or her death;
- b. If the Named Insured is a partnership or joint venture –any partner or joint venturer, or the spouse of any partner or joint venturer, or a person having temporary custody of the property of a partner or joint venturer after his or her death;
- c. If the Named Insured is a corporation –any executive officer, director or stockholder of such Named Insured;
- d. If the Named Insured is a limited liability company –any member of such Named Insured; any manager of such named Insured; any executive officer or director of such Named Insured if the Named Insured has executive officers or directors.
- e. If the Named Insured is a trust (including a Business Trust) –any trustee of the Named Insured; any executive officer or director of such Named Insured if the Named Insured has executive officers or directors.
- f. If the Named Insured is an organization other than a partnership, joint venture or limited liability company –any executive officer, director or trustee of the Named Insured or any other person holding a similar office.

The term "knowledge of an 'occurrence'" is strictly limited to knowledge of an "occurrence" under COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY or to an event constituting an accident under COVERAGE C – MEDICAL PAYMENTS. It shall have no bearing to knowledge of an "offense" described in the definition of "Personal and Advertising Injury" and covered under COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY. It shall also have no bearing on knowledge of a claim or "suit."

It is agreed that knowledge of an "occurrence" by the agent, servant or employee of the insured shall not in itself constitute knowledge by the insured unless the named insured or any partner or any executive officer of the insureds corporation shall have received such notice from the agent, servant or employee.

**UNINTENTIONAL ERROR OR OMISSIONS:**

It is agreed that failure of the insured to disclose all hazards existing as of the inception date of the policy shall not prejudice the insured with respect to the coverage afforded by this policy provided such failure or any omission is not intentional.



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

## **EXCLUSION FOR PUNITIVE DAMAGES AND SIMILAR AWARDS AND PENALTIES**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

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

#### **2. Exclusions**

This insurance does not apply to:

#### **Punitive Damages and Similar Awards and Penalties**

Any liability for fines, penalties, “punitive damages,” exemplary damages, treble, or multiple damages directly or vicariously assessed against the Insured.

- B.** The following definition is added to the **Definitions** Section:

**“Punitive damages”** means damages that may be imposed to punish a wrongdoer, to deter others from similar conduct, or both.

- C. Defense.** If a suit is brought against an Insured seeking compensatory damages covered by this policy, as well as sums excluded by this endorsement, we will defend the “suit.” However, we will have no obligation to pay for any interest under subparagraph 1. g. of the **SUPPLEMENTARY PAYMENTS** provision attributable to any sum excluded by this endorsement.

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

## **EMPLOYMENT-RELATED PRACTICES EXCLUSION**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

This insurance does not apply to:

"Bodily injury" to:

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

This exclusion applies:

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

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

This insurance does not apply to:

"Personal and advertising injury" to:

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

This exclusion applies:

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

Policy# 8120T23406

Policy Period: 10-21-2019 to 10-21-2020

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EMPLOYEE BENEFITS LIABILITY COVERAGE

**THIS ENDORSEMENT PROVIDES CLAIMS-MADE COVERAGE.  
PLEASE READ IT CAREFULLY.**

This endorsement changes insurance provided under the:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

### SCHEDULE

Coverage	Limit Of Insurance		Deductible		Premium
Employee Benefits Programs	\$1,000,000	Each Employee	\$1,000	Each Employee	\$ INCL .
	\$1,000,000	Aggregate			
Retro Date:	10/21/2019				
Endorsement Period	Effective Date 10-21-19		Expiration Date 10-21-2020		

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

**A. The following is added to Section I – Coverages:**

**COVERAGE – EMPLOYEE BENEFITS LIABILITY**

**1. Insuring Agreement:**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission, of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages, even if the allegations of the "suit" are groundless or fraudulent. However, we will have no duty to defend the insured against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any "claim" or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Paragraph E. (Section III – Limits Of Insurance); and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

- b. This insurance applies to damages only if:

- (1) The act, error or omission, is negligently committed in the "administration" of your "employee benefit program";
- (2) The act, error or omission, did not take place before the Retro Date, if any, shown in the Schedule nor after the end of the endorsement period; and

- (3) The claim" for damages, because of an act, error or omission, is first made against any insured, during the endorsement period or the Extended Reporting Period.
- c. A "claim" will be deemed to have been first made at the earliest of the following:
  - (1) When during the endorsement period or the "ERP" we receive a written notice of a:
    - (a) "Claim," or
    - (b) "Suit,"
 from an insured or a third party or
  - (2) When, during the endorsement period or within sixty days after the expiration date shown in the schedule, any insured:
    - (a) First has information relating to a circumstance or incident that is likely to result in a covered "claim" or "claims," and
    - (b) Sends us a "notice of incident." If the "notice of incident" is sent within sixty days after the expiration date shown in the schedule, all "claims" related to that incident will be deemed to be first made when the insured first sent the "notice of incident" to us.
- d. All "claims" for damages made by an "employee" because of any:
  - (a) Act, error or omission; or
  - (b) Series of related acts, errors or omissions,
 including damages claimed by such "employee's" dependents and/or beneficiaries, will be deemed to have been made at the time the first of those "claims" is made against any insured.
- e. During the "claims-made relationship," and during the "ERP," a person employed or otherwise affiliated with you and covered by this "EBL" during such affiliation shall continue to be covered after such affiliation has ceased, for such person's covered acts, errors or omissions during such affiliation.
- f. The retro date will not be changed during the "claims-made relationship" or during the "ERP".

## 2. Exclusions:

This insurance does not apply to:

### a. Dishonest, Fraudulent, Criminal Or Malicious Act

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

### b. Bodily Injury, Property Damage, Or Personal And Advertising Injury

"Bodily injury", "property damage" or "personal and advertising injury".

### c. Failure To Perform A Contract

Damages arising out of failure of performance of contract by any insurer.

### d. Insufficiency Of Funds

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

### e. Inadequacy Of Performance Of Investment/ Advice Given With Respect To Participation

Any "claim" based upon:

- (1) Failure of any investment to perform;
- (2) Errors in providing information on past performance of investment vehicles; or
- (3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**f. Workers' Compensation And Similar Laws**

Any "claim" arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**g. ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**h. Available Benefits**

Any "claim" for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**i. Taxes, Fines Or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**j. Employment-Related Practices**

Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.

**k. Known Injury**

- (1) Acts,
- (2) Errors, or
- (3) Omissions

that occurred prior to the beginning of the "claims-made relationship" if any insured first had knowledge of such acts, errors or omissions prior to the beginning of such "claims made relationship."

**l. Discrimination or Humiliation.**

Damages arising out of Discrimination or Humiliation

**m. Prior acts of a "New Named Insured":**

Acts, errors or omissions of a "New Named Insured" that occurred prior to the time the "New Named Insured" became an insured under this coverage.

**B. For the purposes of the coverage provided by this endorsement:**

- 1. All references to Supplementary Payments – Coverages **A** and **B** are replaced by Supplementary Payments – Coverages **A, B** and **Employee Benefits Liability**.
- 2. Paragraphs **1.b.** and **2.** of the Supplementary Payments provision do not apply.

**C. For the purposes of the coverage provided by this endorsement, Paragraphs **2.** and **4.** of **Section II – Who Is An Insured** are replaced by the following:**

- 2. Each of the following is also an insured:
  - a. Each of your "employees" who is or was authorized to administer your "employee benefit program".
  - b. Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
  - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Endorsement.
- 4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the endorsement period, whichever is earlier.

- b. Coverage under this provision does not apply to any act, error or omission that was committed before you acquired or formed the organization.
- D. For the purposes of the coverage provided by this endorsement, Paragraph 3. of **Section II – Who Is An Insured** does not apply.
- E. For the purposes of the coverage provided by this endorsement, **Section III – Limits Of Insurance** is replaced by the following:

**1. Limits Of Insurance**

- a. The Limits of Insurance shown in the Schedule and the rules below fix the most we will pay regardless of the number of:
  - (1) Insureds;
  - (2) "Claims" made or "suits" brought;
  - (3) Persons or organizations making "claims" or bringing "suits";
  - (4) Acts, errors or omissions; or
  - (5) Benefits included in your "employee benefit program".
- b. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- c. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and/or beneficiaries, as a result of:
  - (1) An act, error or omission; or
  - (2) A series of related acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

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

**2. Deductible**

- a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Schedule as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
- b. The deductible amount stated in the Schedule applies to all damages sustained by any one "employee", including such "employee's" dependents and/or beneficiaries, because of all acts, errors or omissions to which this insurance applies.
- c. The terms of this insurance, including those with respect to:
  - (1) Our right and duty to defend any "suits" seeking those damages; and
  - (2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or "claim"
 apply irrespective of the application of the deductible amount.
- d. We may pay any part or all of the deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.
- F. For the purposes of the coverage provided by this endorsement, Conditions 2. and 4. of **Section IV – Conditions** are replaced by the following:

## 2. Duties In The Event Of An Act, Error Or Omission, Or "Claim" Or "Suit"

- a. You must see to it that we are notified as soon as practicable of an act, error or omission that may result in a "claim". To the extent possible, notice should include:
  - (1) What the act, error or omission was and when it occurred; and
  - (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
- b. If a "claim" is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the "claim" or "suit" and the date received; and
  - (2) Notify us as soon as practicable.You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of an act, error or omission to which this insurance may also apply.Late notice will not invalidate a claim if it was not reasonably possible to give notice sooner, and notice was given as soon as possible.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.

## 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this endorsement, our obligations are limited as follows:

### a. Primary Insurance

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

### b. Excess Insurance

- (1) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the endorsement period and that applies to an act, error or omission on other than a claims-made basis, if:
  - (a) No Retro Date is shown in the Schedule of this insurance; or
  - (b) The other insurance has a policy period that continues after the Retro Date shown in the Schedule of this insurance.
- (2) When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of the total amount that all such other insurance would pay for the loss in absence of this insurance; and the total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Schedule of this endorsement.

**c. Method Of Sharing**

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

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

- G.** For the purposes of the coverage provided by this endorsement, the following Extended Reporting Period provisions are added.

**EXTENDED REPORTING PERIOD**

1. Except if 2. of this "ERP" provision applies, we provide an automatic 1 year "ERP" that is triggered when:
  - a. This "EBL" is canceled or not renewed, whether by you or by us; or
  - b. We renew or replace this endorsement with insurance that does not apply to an act, error or omission on a claims-made basis
  - c. By endorsement or upon renewal:
    - (1) The limits are decreased, or
    - (2) Coverage is reduced, or
    - (3) The deductible is increased, or
    - (4) A new exclusion is added, or
    - (5) Any other change is effected that produces coverage less favorable to the insured.

However, the "ERP" triggered by a reduction of coverage or other change in coverage less favorable to the insured applies only to the coverage that has been terminated. .

2. We will not provide an "ERP" if:
  - (a) Termination of coverage" results from fraud or nonpayment of premium, and
  - (b) The "claims-made relationship" has continued less than one year."
3. The "ERP" does not extend the endorsement period or change the scope of coverage provided. It applies only to "claims" for acts, errors or omissions that were first committed before the end of the endorsement period but not before the Retro Date, if any, shown in the Schedule. Once in effect, the Extended Reporting Period may not be canceled.
4. If the Extended Reporting Period is in effect, subject to:
  - (a) The Each Employee Limit, and
  - (b) The amount of coverage remaining in the aggregate limit of liability,,we will provide an extended reporting period for claims first received and recorded during the Extended Reporting Period.
5. Within 30 days after termination of coverage, we will advise the First Named Insured in writing of the automatic extended reporting period.

- H.** For the purposes of the coverage provided by this endorsement, the following definitions are added to the **Definitions** Section:

1. "Administration" means:
  - a. Providing information to "employees", including their dependents and/or beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
  - b. Handling records in connection with the "employee benefit program"; or
  - c. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include handling payroll deductions.

2. "Cafeteria plans" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.



3. "Claim" means any demand, or "suit", made by an "employee" or an "employee's" dependents and/or beneficiaries, for damages as the result of an act, error or omission.
4. "Employee benefit program" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
  - a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
  - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
  - c. Unemployment insurance, social security benefits, workers' compensation and disability benefits;
  - d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies; and
  - e. Any other similar benefits designated in the Schedule or added thereto by endorsement.
5. "Claims-made relationship" means the period of time between:
  - a. The effective date of the first claims-made "EBL" policy we provide to the insured, and
  - b. The cancellation or non-renewal of the last consecutive claims-made "EBL" coverage that continues such coverage.

where there has been no gap in coverage. The term "claims-made relationship" does not include any period covered by the "ERP."
6. "Termination of Coverage" means whether made by us or you at any time:
  - a. Cancellation or non-renewal of this "EBL" Coverage;
  - b. Decrease in limits,
  - c. Reduction of coverage,
  - d. Increased deductible,
  - e. New exclusion; or
  - f. Any other change in coverage less favorable to the insured.

A reduction in the aggregate limit due to the payment of "claims" will not be deemed such a lessening of coverage.
7. "EBL" means Employee Benefits Liability.
8. "ERP" means Extended Reporting Period
9. "New Named Insured" means any Named Insured that is added to this coverage after the date on which we effected the first "EBL" to begin the "claims made relationship."
10. "Notice of incident" means whenever the insured has information relating to a circumstance or incident and gives notice of such incident in writing during the endorsement period or within sixty days following the expiration of the policy to us.
- I. For the purposes of the coverage provided by this endorsement, Definitions 5. and 18. in the **Definitions** Section in the CGL Coverage Form are replaced by the following:
  5. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
  18. "Suit" means a civil proceeding in which damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:
    - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
    - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

J. This coverage is not auditable. The audit condition does not apply to this endorsement

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

## **FUNGI OR BACTERIA EXCLUSION**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**
- 2. Exclusions**
- This insurance does not apply to:
- Fungi Or Bacteria**
- a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.
- This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.
- B. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**
- 2. Exclusions**
- This insurance does not apply to:
- Fungi Or Bacteria**
- a. "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.
- b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.
- C. The following definition is added to the Definitions Section:**
- "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

# **GNV INSURANCE COMPANIES**

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

## **ASBESTOS HAZARD EXCLUSION ENDORSEMENT**

This endorsement modifies such insurance as is afforded by the provisions of the policy related to the following:

BUSINESSOWNERS COVERAGE FORM  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

It is understood and agreed that such insurance as is afforded by this policy is subject to the following additional exclusion:

A. This policy does not apply:

1. to "bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard"; or
2. to any loss, cost or expense arising out of any governmental direction or request that the Named Insured test for, monitor, clean up, remove, treat or neutralize "asbestos".

B. **ADDITIONAL DEFINITIONS**

1. Asbestos hazard means:
  - a. an actual exposure or threat of exposure to the harmful properties of "asbestos"; or
  - b. the presence of "asbestos" in any place, whether or not within a building or structure.
2. Asbestos means the mineral in any form, including but not limited to fibers or dust.

**LIQUOR LIABILITY DECLARATIONS  
COMMERCIAL GENERAL LIABILITY COVERAGE PART**

THIS POLICY IS ISSUED BY THE

**STRATHMORE INSURANCE COMPANY**

NAMED INSURED <b>75 ARLINGTON ST, INC. DBA DAVIO'S</b>		<b>EFFECTIVE</b> DATE <b>10-21-19</b>	POLICY NUMBER <b>8120T23406</b>	
			ENDORSEMENT NUMBER	
FORM OF BUSINESS: <b>CORPORATION</b>				
<b>LIMITS OF INSURANCE</b>				
<b>COVERAGES</b>			<b>LIMIT OF LIABILITY</b>	
AGGREGATE LIMIT			\$ 2,000,000	
EACH COMMON CAUSE LIMIT			\$ 1,000,000	
TYPE OF POLICY:  <b>OCCURRENCE</b>				
LOCATION OF ALL PREMISES YOU OWN/RENT/OCCUPY THAT WE INSURE UNDER THIS POLICY <b>75 ARLINGTON ST, BOSTON, MA 02116; 111 S 17TH ST, PHILADELPHIA, PA 19103; 1 PATRIOT PL, FOXBOROUGH, MA 02035; 443 LEXINGTON AVE, NEW YORK, NY 10028; 427 WALNUT ST, LYNNFIELD, MA 01940; 201 MAIN ST, KING OF PRUSSIA, PA 19406; 151 GRANITE ST, BRAINTREE, MA 02184; 51 LIBERTY DR, BOSTON, MA 02110</b>				
CLASS CODE	PREMIUM BASIS		RATE	PREMIUM
CLASS DESCRIPTION		<b>SEE SCHEDULE</b>		
ENDORSEMENTS ATTACHED TO THIS COVERAGE FORM:			SEE GENERAL LIABILITY DEC.	
TAX OR SURCHARGE:			SEE GENERAL LIABILITY DEC.	
<b>TOTAL</b> ANNUAL PREMIUM - THIS COVERAGE PART:			SEE GENERAL LIABILITY DEC.	

## LIQUOR LIABILITY COVERAGE FORM

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

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

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

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

### SECTION I – LIQUOR LIABILITY COVERAGE

#### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

b. This insurance applies to "injury" only if:

- (1) The "injury" occurs during the policy period in the "coverage territory"; and

(2) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "injury" or claim, knew that the "injury" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "injury" occurred, then any continuation, change or resumption of such "injury" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Injury" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim, includes any continuation, change or resumption of that "injury" after the end of the policy period.
- d. "Injury" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim:
  - (1) Reports all, or any part, of the "injury" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "injury"; or
  - (3) Becomes aware by any other means that "injury" has occurred or has begun to occur.

#### 2. Exclusions

This insurance does not apply to:

##### a. Expected Or Intended Injury

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

##### b. Workers' Compensation And Similar Laws

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

**c. Employer's Liability**

"Bodily injury" to:

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

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

**d. Liquor License Not In Effect**

"Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is not in effect.

**e. Your Product**

"Injury" arising out of "your product". This exclusion does not apply to "injury" for which the insured or the insured's indemnitees may be held liable by reason of:

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

**f. Other Insurance**

Any "injury" with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the limits of insurance.

This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

**g. War**

"Injury", however caused, arising, directly or indirectly, out of:

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

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

**SUPPLEMENTARY PAYMENTS**

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

- 1. All expenses we incur.
- 2. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- 3. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- 4. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- 5. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- 6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- 7. Expenses incurred by the insured for first aid administered to others at the time of an event to which this insurance applies.

These payments will not reduce the limits of insurance.

**SECTION II – WHO IS AN INSURED**

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:
    - (1) "Injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (a) above; or
      - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (a) or (b) above.
    - (2) "Property damage" to property:
      - (a) Owned or occupied by; or
      - (b) Rented or loaned;
        - to that "employee", any of your other "employees", by any of your partners or members (if you are a partnership or joint venture), or by any of your members (if you are a limited liability company).
  - b. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - b. Coverage does not apply to "injury" that occurred before you acquired or formed the organization.
- No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

**SECTION III – LIMITS OF INSURANCE**

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
- 2. The Aggregate Limit is the most we will pay for all "injury" as the result of the selling, serving or furnishing of alcoholic beverages.
- 3. Subject to the Aggregate Limit, the Each Common Cause Limit is the most we will pay for all "injury" sustained by one or more persons or organizations as the result of the selling, serving or furnishing of any alcoholic beverage to any one person.

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

**SECTION IV – LIQUOR LIABILITY CONDITIONS**

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



## 2. Duties In The Event Of Injury, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "injury" which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "injury" took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any "injury".
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury" to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

## 3. Legal Action Against Us

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

## 4. Other Insurance

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

### a. Primary Insurance

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **b.** below.

### b. Method Of Sharing

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

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

## 5. Premium Audit

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

- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

## 6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

## 7. Separation Of Insureds

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

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

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

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

## 9. When We Do Not Renew

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

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

## SECTION V – DEFINITIONS

- 1. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- 2. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the "injury" occurs in the course of travel or transportation between any places included in Paragraph a. above; or

- c. All other parts of the world if the "injury" arises out of:

- (1) Goods or products made or sold by you in the territory described in Paragraph a. above; or
- (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business;

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

- 3. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 4. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
- 5. "Injury" means damages because of "bodily injury" and "property damage", including damages for care, loss of services or loss of support.
- 6. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- 7. "Property damage" means:
  - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it.
- 8. "Suit" means a civil proceeding in which damages because of "injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 9. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

**10. "Your product":**

**a. Means:**

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

**b. Includes:**

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
  - (2)** The providing of or failure to provide warnings or instructions.
- c.** Does not include vending machines or other property rented to or located for the use of others but not sold.

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

## **CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

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

- A.** If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.
- "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:
1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
  2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- B.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

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

**EXCLUSION – ACCESS OR DISCLOSURE OF  
CONFIDENTIAL OR PERSONAL INFORMATION AND  
DATA-RELATED LIABILITY – LIMITED BODILY INJURY  
EXCEPTION NOT INCLUDED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

**2. Exclusions**

This insurance does not apply to:

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

Damages arising out of:

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

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

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

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

**2. Exclusions**

This insurance does not apply to:

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

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

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

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

## **EXCLUSION – UNMANNED AIRCRAFT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Exclusion 2.g. Aircraft, Auto Or Watercraft** under **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

### **2. Exclusions**

This insurance does not apply to:

#### **g. Aircraft, Auto Or Watercraft**

##### **(1) Unmanned Aircraft**

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

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

##### **(2) Aircraft (Other Than Unmanned Aircraft), Auto Or Watercraft**

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

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

This Paragraph **g.(2)** does not apply to:

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

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

(i) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

(ii) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

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

**2. Exclusions**

This insurance does not apply to:

**Unmanned Aircraft**

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

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

This exclusion does not apply to:

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

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

C. The following definition is added to the **Definitions** section:

"Unmanned aircraft" means an aircraft that is not:

1. Designed;

2. Manufactured; or

3. Modified after manufacture;

to be controlled directly by a person from within or on the aircraft.

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

**PRODUCTS/COMPLETED OPERATIONS HAZARD  
REDEFINED**

This endorsement modifies insurance provided under the following:

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

**SCHEDULE**

**Description of Premises and Operations:**

AS SHOWN ON DESIGNATION OF PREMISES SCHEDULE

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

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

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

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

"Products-completed operations hazard":

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





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

## **DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Designated Location(s):**

AS SHOWN ON DESIGNATION OF PREMISES SCHEDULE

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

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which can be attributed only to operations at a single designated "location" shown in the Schedule above:
  - 1. A separate Designated Location General Aggregate Limit applies to each designated "location", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  - 2. The Designated Location General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  - 3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Location General Aggregate Limit for that designated "location". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location General Aggregate Limit for any other designated "location" shown in the Schedule above.
  - 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Location General Aggregate Limit.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which cannot be attributed only to operations at a single designated "location" shown in the Schedule above:
1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Location General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Location General Aggregate Limit.
- D.** For the purposes of this endorsement, the **Definitions** Section is amended by the addition of the following definition:
- "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
- E.** The provisions of Section **III** – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES – LIQUOR LIABILITY COVERAGE FORM

This endorsement modifies insurance provided under the following:

### LIQUOR LIABILITY COVERAGE PART

A. Paragraph 1. **Insuring Agreement** of Section I is replaced by the following:

#### 1. **Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

b. This insurance applies to "injury" only if:

- (1) The "injury" occurs during the policy period in the "coverage territory"; and

- (2) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "injury" or claim, knew that the "injury" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "injury" occurred, then any continuation, change or resumption of such "injury" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Injury" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim, includes any continuation, change or resumption of that "injury" after the end of the policy period.
- d. "Injury" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim:
  - (1) Reports all, or any part, of the "injury" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "injury"; or
  - (3) Becomes aware by any other means that "injury" has occurred or has begun to occur.

**B.** The following is added as Paragraph **e.** to **Duties In The Event Of Injury, Claim Or Suit** under Paragraph **2.** of **Section IV – Liquor Liability Conditions:**

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

**e.** Notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant, to any agent of ours in New York State, with particulars sufficient to identify the insured, shall be considered to be notice to us.

**C.** Paragraph **3.** of **Section IV – Liquor Liability Conditions** is replaced by the following:

**3. Legal Action Against Us**

**a.** Except as provided in Paragraph **b.**, no person or organization has a right under this Coverage Part:

- (1)** To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- (2)** To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

**b.** With respect to "injury" claims related to "bodily injury", if we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an insured:

- (1)** Brings an action to declare the rights of the parties under the policy; and
- (2)** Names the injured person, someone acting for the injured person or other claimant as a party to the action.

**D.** The following provision is added and supersedes any provision to the contrary:

Failure to give notice to us as required under this Coverage Part shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

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

## **NEW YORK CHANGES – TRANSFER OF DUTIES WHEN A LIMIT OF INSURANCE IS USED UP**

This endorsement modifies insurance under the following:

### LIQUOR LIABILITY COVERAGE PART

The following Condition is added to LIQUOR LIABILITY CONDITIONS (Section IV):

#### **Transfer of Duties When a Limit of Insurance Is Used Up.**

- a. If we conclude that, based on "injuries", claims or "suits" which have been reported to us and to which this insurance may apply, the Aggregate Limit or the Each Common Cause Limit is likely to be used up in the payment of judgments or settlements, we will notify the first Named Insured, in writing, to that effect.
- b. When a limit of insurance described in paragraph a. above has actually been used up in the payment of judgments or settlements:
  - (1) We will notify the first Named Insured, in writing, as soon as practicable, that:
    - (a) Such a limit has actually been used up; and
    - (b) Our duty to defend "suits" seeking damages subject to that limit has also ended.
  - (2) We will initiate, and cooperate in, the transfer of control, to any appropriate insured, of all claims and "suits" seeking damages which are subject to that limit and which are reported to us before that limit is used up. That insured must cooperate in the transfer of control of said claims and "suits".

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate insured is cooperating in completing such transfer.

We will take no action whatsoever with respect to any claim or "suit" seeking damages that would have been subject to that limit, had it not been used up, if the claim or "suit" is reported to us after that limit of insurance has been used up.

- (3) The first Named Insured, and any other insured involved in a "suit" seeking damages subject to that limit, must arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.
- c. The first Named Insured will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with paragraph b.(2) above.

The duty of the first Named Insured to reimburse us will begin on:

  - (1) The date on which the applicable limit of insurance is used up, if we sent notice in accordance with paragraph a. above; or
  - (2) The date on which we sent notice in accordance with paragraph b.(1) above, if we did not send notice in accordance with paragraph a. above.
- d. The exhaustion of any limit of insurance by the payments of judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.

# U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

**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 an authorized representative.

By:

By:

Handwritten signature of Elizabeth Heck in blue ink, written over a horizontal line.

**Elizabeth Heck**

President and Chief Executive Officer

Handwritten signature of Thomas D. Hughes in blue ink, written over a horizontal line.

**Thomas D. Hughes**

Corporate Secretary



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DAVIO'S\_COMPLAINT\_000289



# EXHIBIT B

## EXPLANATORY MEMORANDUM – RESPONSE TO OBJECTION 1 DATED 4-30-2010

The chief object of this filing is to submit a Company Exception to ISO State Exception Rule A.6.

Currently, this ISO rule imposes a Mandatory application of a Virus and Bacteria Exclusion CP 01 78 to the coverage afforded by the ISO Commercial Property Coverage Form. The ISO initial filing of this endorsement indicated that the exclusion was appropriate due to "pandemic" exposure to loss which was not anticipated in the standard coverage forms or in development of the loss costs for Commercial Property. Therefore, we assume that this Exclusion is deleting coverage across the entire NY Commercial Fire and Allied book written by the ISO member companies that utilize the ISO product, unless modified by such a Company exception.

Because the application of this Exclusion is to Commercial Property, we anticipate losses to fall largely in Business Personal Property ("stock") and Business Interruption/Time Element coverage segments. We also anticipate that it will not affect large segments of GNY's current book, but rather solely to some isolated risks.

The GNY Insurance Companies wishes to make this endorsement CP 01 78 Optional on individual risks rather than Mandatory on a panacea basis. Because the GNY Insurance Companies is largely a niche market of habitational business, we feel that our exposure to this type of loss ("pandemic") is minimal, since such contagious disease is largely transmitted to third parties via ingestion or some other direct contact to an insured's products. While it is possible that some type of disease (airborne Legionnaires Disease, for example) could spread through a HVAC system in any selected Apartment or Condo Building, it is highly unlikely that it would spread throughout a vast proportion of the apartments and condominiums across NYC that we insure.

While GNY does write some business in the restaurant classifications and we acknowledge that some exposure is inherent in such classifications due to the "Typhoid Mary" or contagious disease hazard (as some saw in the Hepatitis B exposure via a green onion vector some years ago), we feel such exposure is minimal since we do not write large concentrations of these risks in the same locales who could potentially use the same vendors of supplies. We do not write "chain" restaurants utilizing the same suppliers.

For all of the above reasons, we believe application of this Exclusion is appropriate on occasion, only to certain individual risks which sell or distribute products to the public. Additionally, GNY's underwriting management feels that such an endorsement would be considered imposed on a restaurant account only if the risk presented with claim history indicative of recent incident and loss control with little remediation.

Therefore, to answer your specific questions, we do not anticipate that any of our insured's will voluntarily request this exclusion; some (habitational risks) because it would never enter their minds as a problem for which they would voluntarily reduce coverage; others (restaurants) because they feel that such an event is well within the realm of possible fortuitous occurrences and should be covered should such an event arise.

We anticipate that the Company will impose this exclusion on such individual risks that present with recent loss history of this type of claim and loss control that would give us concerns of an on-going nature (cavalier attitude of management regarding implementation of hand washing procedures by food handling staff); i.e., we would impose attachment of this Exclusion in accordance with prudent supportable underwriting analysis of risk (since the variables involved could be of substantial scope). We do not anticipate imposing this exclusion on any specific classification (though restaurants are probably the most likely to experience such events) or across large segments of our book of business, since we do not feel the exposure to loss is very high in any segment of our existing Commercial Property book (though we acknowledge the possibility for Apartments, Condominiums and Office/Retail Buildings to experience such an event).

Because of the broad scope of the potential events which may occur, we feel that it is largely impossible to create a rule which takes in every aspect of exposure to communicable disease. Is it possible to simply indicate something in your proposed revision of our rule to state "This Exclusion will be applied on a case-by-case basis to risks which present with recent loss history which in the underwriters judgment indicates a potential higher than average exposure to loss"?

As indicated, our main object of this filing is to remove the carte blanche application of this Exclusion and not deny coverage to the majority portion of our book.

# **EXHIBIT C**

Exhibit RT-1 – Side by Side Comparison

**[Currently Filed and approved ISO Original Rule]**

ADDITIONAL RULE(S)

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**A6. EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

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Attach New York - Exclusion Of Loss Due To Virus Or Bacteria Endorsement [CP 01 78](#) to all policies.

**[Our Proposed New Rule]**

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**ADDITIONAL RULE(S)**

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The following Additional Rule in the ISO State Exceptions is amended:

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**A6. EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

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RULE A6. EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA is replaced by the following:

ISO form CP 01 78 is an optional form.

**Premium Determination When Exclusion is Applied:**

Upon the introduction of this endorsement in 2006, the ISO position regarding the above Exclusion endorsement is that this exposure represents a “pandemic exposure to loss” and therefore is not assumed in the promulgation of Commercial Fire and Allied Lines data collection which is the basis for the development of loss costs. ISO indicates that they never anticipated extending such an exposure under the existing coverage form(s) of the period (at that time, filings would have assumed the CP 04 02 edition of the Commercial Property Coverage Forms.

Under the unmodified ISO rule attributed to this endorsement, this endorsement is applied to all policies on a mandatory basis. We have modified this rule to make it an Optional endorsement, based on Risk Characteristics indicated in the sections which follow.

Because coverage for such a pandemic exposure was not anticipated for coverage, there is therefore no increment included in ISO Commercial Fire and Allied Lines loss costs currently that represents a charge for this exposure. There is therefore no credit afforded in the application of the exclusion to any policy if added to any specific risk in accordance with the following exposure to loss:

**Risk Characteristics For Application of Exclusion (CP 01 78):**

1. Historical report of an event which may or may not have resulted in loss involving sickness (including death) arising out of an insured’s clients’ (and/or any other person to whom the insured’s clients’ have contact) exposure to disease or infection while on the

insured's premises or due to contact with the insured's operations, employees; or products.

2. Such claim or loss must arise from the action or order of a civil authority to close the insured's operation in order to limit public exposure to such contagion, sickness and death; or
3. Such historical event or incident can arise from the action of the insured to close the insured's operation in order to limit public exposure to such contagion, sickness and death due to the insured's prudent expectation that such an event is likely to occur.
4. Account will be considered acceptable upon submission of clearance by civil authority governing type of business insured operates or through certification by duly authorized Public Health or contagious disease expert.
5. Issues described under paragraphs 1 through 3 above may be waived if proximate cause of the incident/event is traced to vendor or supplier of the insured with which the insured has severed its relationship and/or if the insured was proven not to have contributed to the incident.
6. Issues described under paragraphs 1 through 3 above may not be waived if the insured is a restaurant and the proximate cause of the incident/event is traced to improper food handling practices, storage or sanitation infractions or improperly cooked ground beef.

**RISK CHARACTERISTICS DETERMINING WHEN EXCLUSION IS NOT APPLIED:**

Application of the Exclusion is determined solely on the above-noted criteria (“**Risk Characteristics For Application of Exclusion**”). Coverage provided by omission of the exclusion is therefore otherwise written freely and without restriction.

**Premium Determination When Exclusion is NOT Attached:**

Apply the Factor in the Table below against the combined Building, Business Personal Property or Business Income including/without Extra Expense adjusted premium for the location after application of all other modification factors.

<b>Grade</b>	<b>Exposure</b>	<b>Charge</b>
High	Restaurants/Hotels/Grocery or Food Product Manufacturers with Products Liability exposure; No prior loss history.	Factor: .025
Medium	Buildings (lessors') with Restaurant, Grocery or Retail exposures; No Questionable Loss Control pertaining to cleaning of ventilation systems; No prior loss history.	Factor: .015
Low	All other Classifications; No prior loss history.	Flat: \$25

# EXHIBIT D

April 27, 2020

75 Arlington St, Inc. dba Davio's  
P.O. Box 786  
Sagamore Beach, MA 02562-0786  
Attention: Steven DiFillippo

Re: Insured: 75 Arlington St, Inc. dba Davio's  
Location: All covered locations  
Date of Loss: March 17, 2020  
Policy No.: 8120T23406  
File No: F0684066-02  
Loss: COVID-19

Dear Mr. Steven DiFillippo:

The Strathmore Insurance Company ("Strathmore") received your claim on March 17, 2020, in which you claim losses income caused by the spoilage/contamination of your food inventory and the governors' orders to limit dining to takeout only, stemming from the COVID-19 pandemic.

You allege that your food was spoiled/contaminated by the coronavirus yet you have not provided any evidence supporting or alluding to this conclusion. Unfortunately, your policy only provides coverage for spoilage/contamination that results from either a change in temperature caused by a mechanical breakdown or from contamination by a refrigerant, and therefore spoilage/contamination coverage does not apply based upon the facts provided. Furthermore, in the event that a spoilage/contamination loss as defined in the policy did occur, spoilage/contamination itself is not a covered cause of loss for Business Income losses, and therefore no coverage exists for any consequential damages that might result from the spoilage/contamination.

Loss of Business Income is only covered when a suspension of your operations is caused by physical loss of or damage to property at the described premises from a covered cause of loss. In addition, your policy's coverage for civil authority only provides coverage for your loss of business income when access to the described premises is prohibited due to an order of civil authority because of damage by a covered cause of loss to property away from the described premises. In this case, we understand that local authorities have not prohibited access to the area immediately surrounding your property due to physical damage to another property caused by a covered cause of loss within one mile of your property. Instead, local authorities ordered certain categories of businesses, including restaurants, to close to the public in order to prevent the spread of a contagious virus from person to person. This does not constitute physical loss of or damage to either covered property at the described premises or damage to any property in the surrounding area which would limit access to the insured location(s). Therefore, we are unable provide coverage for your loss of Business Income.

Your policy states, in relevant parts:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
(CP 00 10 06 07)**

**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.

\* \* \*

**CAUSES OF LOSS --- SPECIAL FORM  
(CP 10 30 06 07)**

**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 or compliance with 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.

**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.

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

\* \* \*

**SPOILAGE COVERAGE (CP 04 40 06 07)**



The Coverage Form to which this endorsement applies is extended to insure against direct physical loss or damage by the Covered Causes of Loss, but only with respect to coverage provided by this endorsement.

**A. Paragraph A.1., Covered Property,** is replaced by the following:

**1. Covered Property**

Covered Property means "perishable stock" at the described premises owned by you or by others that is in your care, custody or control.

**C. Paragraph A.3., Covered Causes of Loss,** is replaced by the following:

**3. Covered Causes of Loss**

Covered Causes of Loss means the following only if indicated by an "X" in the Schedule:

**a. Breakdown or Contamination, meaning:**

**(1)** Change in temperature or humidity resulting from mechanical breakdown or mechanical failure of refrigerating, cooling or humidity control apparatus or equipment, only while such equipment or apparatus is at the described premises; and

**(2)** Contamination by the refrigerant.

**b. Power Outage, meaning change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.**

**F. Paragraph B., Exclusions,** is replaced by the following:

**B. Exclusions**

**1. Only the following Exclusions contained in Paragraph B.1. of the Causes of Loss Form applicable to this Coverage Part apply to Spoilage Coverage:**

**a. Earth Movement;**

**b. Governmental Action;**

**c. Nuclear Hazard;**

**d. War And Military Action; and**

**e. Water.**

**2. The following Exclusions are added:**

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

- a.** The disconnection of any refrigerating, cooling or humidity control system from the source of power.
- b.** The deactivation of electrical power caused by the manipulation of any switch or other device used to control the flow of electrical power or current.
- c.** The inability of an Electrical Utility Company or other power source to provide sufficient power due to:
  - (1) Lack of fuel; or
  - (2) Governmental order.
- d.** The inability of a power source at the described premises to provide sufficient power due to lack of generating capacity to meet demand.

\* \* \*

**PROTECTO --- GUARD  
ENHANCED PROPERTY COVERAGE ENDORSEMENT FOR *RESTAURANTS*  
(PROGRD R)**

**SPOILAGE LIMITED ADDITIONAL COVERAGE**

Your coverage is extended to insure against direct physical loss or damage to "perishable stock" as described in paragraph C. below, but only to the extent described within this SPOILAGE LIMITED ADDITIONAL COVERAGE.

**L.** Spoilage coverage provided by this Coverage Extension is not a Covered Cause of Loss for Business Income and/or Extra Expense losses.

\* \* \*

**BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM  
(CP 00 30 06 07)**

**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 such premises.

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

- (a) The portion of the building which you rent, lease or occupy;
- (b) The area within 100 feet of the Building or within 100 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- (c) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

## **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, if 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

\* \* \*

No coverage can be afforded for your claimed inventory losses or for your loss of business income due to the COVID-19 virus. Based upon this information, we are unable to indemnify you for this loss.

The grounds on which Strathmore sets forth this denial may not be exclusive. Strathmore reserves its rights to later assert further terms, conditions, and exclusions of its policy, when additional information is received indicating that any of these apply.

The actions taken by Strathmore are without prejudice to its rights under the terms and conditions of its policy issued to you, and no act of any agent, servant, or employee of Strathmore, including its claims department and its attorneys, shall constitute a waiver or

estoppel of any defense, term, provision or condition under Strathmore policy, all such defenses being specifically reserved by Strathmore.

Pertaining to your locations in the state of Massachusetts:

If you wish to take this matter up with the Commonwealth of Massachusetts Office of Consumer Affairs and Business Regulation Division of Insurance, you can file a complaint with:

The Commonwealth of Massachusetts  
Office of Consumer Affairs and Business Regulation  
Division of Insurance  
1000 Washington Street, Suite 810, Boston, Massachusetts 02118-6200  
or  
call (617) 521-7794.

Suit No suit or action against this company for the recovery of any claim by virtue of this policy shall be sustained in any court of law or equity in this commonwealth unless commenced within two years from the time the loss occurred; provided, however, that if, within said two- years, in accordance with the provisions of the preceding paragraph, the amount of the loss shall have been referred to arbitration after failure of the parties to agree thereon, the limitation of time for bringing such suit or action shall in no event be less than ninety days after a valid award has been made upon such reference or after such reference or award has been expressly waived by the parties. If suit or action upon this policy is enjoined or abated, suit or action may be commenced at any time within one year after the dissolution of such injunction, or the abatement of such suit or action, to the same extent as would be possible if there was no limitation of time provided herein for the bringing of such suit or action.

Pertaining to your locations in the state of New York:

If you wish to take this matter up with the New York State Department of Financial Services, you may file a complaint on its website at:  
<http://www.dfs.ny.gov/consumer/fileacomplaint.htm> ,or in writing at

The New York State Department Financial Services  
Consumer Assistance Unit  
25 Beaver Street, New York, New York 10004-2319  
or at  
One Commerce Plaza, Albany, New York 12257.

*Any Person who knowingly and with intent to defraud insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent act, which a crime and shall also be subject to a civil penalty not to exceed \$5,000 and the stated value of the claim for each such violation.*

Pertaining to your locations in the state of Pennsylvania:

If you wish to take this matter up with the Pennsylvania Insurance Department, you may file a complaint on its website at:

[http://www.insurance.pa.gov/portal/server.pt/community/contact\\_us/9305](http://www.insurance.pa.gov/portal/server.pt/community/contact_us/9305)

or in writing at:

The Pennsylvania Insurance Department  
1326 Strawberry Square, Harrisburg, PA 17120.

*Any Person who knowingly and with intent to defraud insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent act, which a crime and subjects such persons to criminal and civil penalties.*

In New York, Pennsylvania and Massachusetts, we must advise you that no one may bring a legal action against the insurance company under this coverage part unless:

1. There has been full compliance with all the terms of this coverage part; and
2. The action is brought within two (2) years after the date on which the direct physical loss or damage occurred.

Very truly yours,  
**Strathmore Insurance Company**

By: \_\_\_\_\_  
Jonathan Martinez  
Senior Claims Examiner

cc: **Richards Robinson Sheppard Insurance LLC**  
**152 Conant Street**  
**Beverly, MA 01915**

# **EXHIBIT E**

September 2, 2020

**CONFIDENTIAL**

**Via Electronic Mail Only (*jmartinez@GNY.com; propertyclaims@GNY.com*)**

Strathmore Insurance Company  
c/o Jonathan Martinez, Senior Claims Examiner  
200 Madison Avenue  
New York, New York 10016

Re: Named Insureds: 75 Arlington St., Inc. dba Davio's  
and as per Named Insured Endorsement ("Davio's")  
Policy No.: 8120T23406 (the "Policy")  
Your File No.: F0684066-02

Dear Mr. Martinez:

We represent your insured, Davio's, in connection with the above-referenced claim. We write concerning Strathmore Insurance Company's ("Strathmore") improper denial of Davio's recent claim and bad faith failure to conduct a meaningful investigation of that claim. For these reasons, further detailed below, Davio's demands relief pursuant to Massachusetts General Law, c. 93A, §§ 2 and 11.

As set forth below, Davio's loss of use of its physical premises due to the pandemic triggers Strathmore's Business Income and related coverages, and none of the Policy's exclusions apply. For at least these reasons, Strathmore's coverage position is not supported and Davio's requests that Strathmore immediately reverse its denial and assume all its obligations under the policy and applicable law.

**Davio's Claim**

As you are aware, on March 17, 2020, Davio's submitted a claim for its losses caused by the novel SARS-CoV-2 pandemic, commonly referred to as "Coronavirus" or "COVID-19," under the Policy.<sup>1</sup> Specifically, Davio's has suffered direct physical loss of or damage to

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<sup>1</sup> Strathmore's denial letter listed March 17, 2020 as the date of loss for Davio's claim. To clarify, Davio's claim is ongoing and is not limited to only March 17, 2020.



Strathmore Insurance Company  
September 2, 2020  
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property, resulting necessary suspension of its business operations, extra expense, business income losses as a result of civil authority orders predicated on the physical loss of or damage to property (“Stay at Home Orders”), and necessary suspensions of its business operations due to the direct physical loss or damage to “dependent properties.”

The Policy covers Davio’s locations in Massachusetts, Pennsylvania, and New York. All of these locations are subject to various Stay at Home Orders which impact, among other businesses, those operated by Davio’s. COVID-19 and the Stay at Home Orders have prohibited Davio’s normal business operations and access to its premises. Had Strathmore undertaken a full investigation of Davio’s claim and a fair reading of its own Policy language, it would have properly concluded that these interruptions trigger coverage under the Policy.

### **Strathmore’s Claims Handling**

After being notified of Davio’s claim on March 17, 2020, a Strathmore representative called Steven DiFillippo, Davio’s CEO. This was the extent of Strathmore’s claims “investigation.” Strathmore did not send an adjuster to any of Davio’s nine loss locations and failed to make any inquiry into the facts relevant to Strathmore’s coverage position. Strathmore’s subsequent claims investigation was cursory at best. It seems that Strathmore had made its coverage determination before picking up the phone.

Days later, Strathmore issued a blanket denial on what essentially amounts to a form letter. In fact, Strathmore was in such haste to deny Davio’s claim that you neglected to sign the letter or affix the letter to Strathmore’s letterhead. Strathmore’s failure to even complete its own form denial letter underscores Strathmore’s perfunctory investigation and subsequent denial.

### **Strathmore’s Coverage Denial is Improper under the Policy Language and as a Matter of Law**

Setting aside the mere haste, Strathmore’s denial is devoid of legal and factual analysis of Davio’s claim. It fails to mention the physical loss of or damage to property caused by COVID-19 or the Stay at Home Orders, which have resulted in the suspension of Davio’s operations. These Orders are essential to fully analyzing Davio’s loss.

In denying Davio’s claim, Strathmore has taken the position that “loss of business income is covered only when a suspension of operations is caused by physical loss of or damage to property at the described premises from a covered cause of loss,” while failing to provide what in fact constitutes a “covered cause of loss” or, frankly, any information explaining Strathmore’s position as to *why* Davio’s losses have not resulted from such “a covered cause of loss.” Strathmore summarily concludes that coverage for the Stay at Home Orders is excluded because local authorities “have not prohibited access to the area immediately surrounding your

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property due to physical damage to another property caused by a covered loss within one mile,” but have “ordered certain categories of business, including restaurants, to close...to prevent the spread of a contagious virus from person to person,” which does not constitute a covered loss. In other words, Strathmore denied Civil Authority coverage on the same, unexplained basis that COVID-19 is not “physical loss of or damage.”

Strathmore’s position is not only erroneous, but it ignores the policy language and relevant case law. The Policy covers “physical loss of” property *or* “damage to” property. It only requires one of the two options to trigger coverage. Yet, both are triggered here, because authorities from multiple jurisdictions ordered the closure of certain categories of businesses, including that of Davio’s, due to COVID-19. Even the governmental entities have recognized, in mandating closures, that “the virus physically is causing property loss and damage.” *See, e.g.,* New York City Mayor’s Emergency Executive Order No. 100.

Courts around the country also have ruled against Strathmore’s claimed basis for denying coverage. *See, e.g., Manpower Inc. v. Ins. Co. of the State of Pennsylvania*, No. 08C0085, 2009 WL 3738099 (E.D. Wis. Nov. 3, 2009). In *Manpower*, the court stated that “direct physical loss” must mean something other than “direct physical damage.” *Id.* at \*5. The court went on to hold that the insured had sustained a “loss” of its interest in the property when the collapse of a neighboring building prevented the insured from using its own property for its intended purpose. *Id.* at \*6; *see also Total Intermodal Servs. Inc. v. Travelers Prop. Cas. Co. of Am.*, No. CV 17-04908, 2018 WL 3829767 (C.D. Cal. July 11, 2018).

Thus, by the plain terms of Strathmore’s policy and applicable law, Davio’s inability to use its insured premises to operate its business due to dangers presented by COVID-19 in all relevant geographic locations is sufficient to trigger Strathmore’s “Business Income,” and related coverages. Strathmore’s apparent attempt to avoid that conclusion by citing to the technical terms of its Civil Authority coverage does not change that fact—all that is necessary to recover lost Business Income is “direct physical loss of or damage” to covered locations due to a covered cause of loss. Due to this plain language and that Strathmore nowhere in its policy stated that shuttered locations due to a pandemic is not a covered cause of loss, its Business Income, and related coverages are triggered.

Once its coverage is triggered, as here, Strathmore can only avoid paying for Davio’s claim by proving that a policy exclusion applies. In fact, if Strathmore intends to rely on any particular policy exclusion to deny coverage, under Massachusetts General Laws, Chapter 176(D), Sec. 3, § (9)(n), it must “provide promptly a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim.” Strathmore’s letter comes nowhere close to meeting this standard.

Related to the Stay at Home Orders, Strathmore quoted two exclusions: (1) ordinance or law and (2) acts or decisions. Strathmore did not provide any explanation for why these

Strathmore Insurance Company  
September 2, 2020  
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exclusions might apply, which runs afoul of Strathmore's legal obligation to provide a "reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim." M.G.L. c. 176(D), Sec. 3, § (9)(n). The briefest review of either exclusion would show that neither applies.

First, the ordinance or law exclusion does not apply in these circumstances. Strathmore states that this exclusion provides that Strathmore "will not pay for loss caused directly or indirectly by the enforcement of any ordinance or law regulating the use of any property, regardless of any other cause or event that contributes concurrently or in any sequence to the loss." Strathmore's position (i) ignores the fact that Davio's claim is predicated on the direct physical loss of or damage to Covered Property and the resulting civil authority orders, not on an ordinance or law and (ii) directly conflicts with the express grant of Civil Authority coverage.

Second, the acts or decisions exclusion does not apply for the same reasons. But it is not clear that a Massachusetts court would apply the exclusion in any event, because Massachusetts courts have found this exclusion to be ambiguous. *See, e.g., Jussim v. Massachusetts Bay Ins. Co.*, 33 Mass. App. Ct. 235, 238-39 (1992), *aff'd as amended*, 415 Mass. 24 (1993) ("The clause...cannot be taken literally. If it were to be so taken, it would exclude coverage from all acts and decisions of any character of all persons, groups, or entities. Such an interpretation would leave the insurance policy practically worthless."); *see also Merrimack Mut. Fire Ins. Co. v. Slater*, No. 2004110, 2007 WL 2045429, at \*6 (Mass. Super. June 13, 2007) (finding exclusion for "acts or decisions including the failure to act or decide of any person, group organization or governmental body, was overbroad and was unconscionable for the insurer to rely upon in denying coverage).

Critically, ***the Policy does not contain an exclusion for losses caused by a virus, infectious disease, or a pandemic.*** As you are well aware, virus and pandemic exclusions are common throughout the insurance industry and could have been included by Strathmore, yet the Policy contains no such exclusions. Under Massachusetts law, that decision prevents Strathmore from avoiding coverage for Davio's losses. *See Green Mountain Ins. Co., Inc. v. Wakelin*, 484 Mass. 222, 233-34 (2020) ("we cannot 'countenance the insurer's revisionist attempt to make a policy exclusion sweep more broadly than its language dictates,' particularly where the insurer had the ability to include different exclusionary language in its policy and failed to do so."); *Vermont Mut. Ins. Co. v. Zamsky*, 732 F.3d 37, 44 (1st Cir. 2013) ("Vermont Mutual drafted the policies at issue here. If it wanted to exclude from coverage all injuries occurring at an owned premises that it did not insure, it would have been child's play to say so. But Vermont Mutual eschewed this straightforward course and chose instead to sound an uncertain trumpet. Under such circumstances, we do not believe that the SJC would countenance the insurer's revisionist attempt to make a policy exclusion sweep more broadly than its language dictates."); *Makrigiannis v. Nintendo of Am., Inc.*, 442 Mass. 675, 681 (2004) (observing that if the insurer "intended to exclude coverage" under certain conditions "it could have expressly stated such an exclusion").

Strathmore Insurance Company  
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In short, Davio's made a claim for physical loss of and damage to its property and the surrounding property. No exclusion applies. Davio's complied with all of the Policy's conditions to coverage. Yet, Strathmore issued a blanket denial of Davio's following a cursory investigation. Although we are well aware of the insurance industry practice of denying claims for business interruption as a result of COVID-19, no matter what the facts and circumstances may be, Strathmore failed to apply even a passing veneer of reasonableness.

### **Strathmore's Unfair Claims Settlement Practices**

Strathmore's conduct constitutes a substantial violation of Massachusetts law. Section two of M.G.L. c. 93A provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Any violation by an insurer of the provisions of M.G.L. c. 176D are a *per se* violation of M.G.L. c. 93A. *See Hopkins v. Liberty Mut. Ins. Co.*, 434 Mass. 556 (2001).

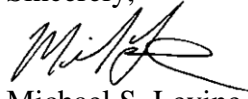
Strathmore has engaged in unfair claims settlement practices in violation of M.G.L. c. 176D § 9 by, among other things, misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue, failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies, refusing to pay claims without conducting a reasonable investigation based upon all available information, and failing to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear, and compelling Davio's to institute litigation to recover amounts due under an insurance policy by offering substantially less (in this case, nothing) than the amounts ultimately recovered in actions brought by such insureds.

For these reasons, Davio's hereby demands that Strathmore (1) withdraw its baseless denial of coverage; (2) promptly commence the adjustment of Davio's losses; and (3) advance payment to Davio's in an amount supported by the proper adjustment of its claim up to the Policy's limit. In the event this claim is not amicably resolved by payment within the next thirty (30) days, Davio's may bring legal claims against Strathmore for violations of c. 93A and 176D, in which case Davio's will be entitled to recover, and intends to pursue, treble damages upon proof that Strathmore willfully or knowingly violated c. 176D or § 2 of c. 93A or, in the alternative, refused to grant Davio's relief upon demand in bad faith or with knowledge or reason to know that the acts complained of violated c. 176D or § 2 of c. 93A, as well as Davio's attorney's fees and costs.

No statement in this letter should be construed as a waiver of any rights or defenses available to Davio's under the terms, conditions, exclusions, or endorsements of the Policy, nor to bar Davio's from asserting any rights or defenses that may be available now or in the future. Davio's reserves all rights under the Policy and at law. We look forward to your prompt response.

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Sincerely,



Michael S. Levine

cc: Steven DiFillippo  
Christopher M. Pardo, Esq.  
Rachel E. Hudgins, Esq.

# EXHIBIT F

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September 30, 2020

Michael S. Levine  
Hunton Andrews Kurth  
2200 Pennsylvania Avenue, NW  
Washington, D.C. 20037

Re: Insureds: 75 Arlington St., Inc. d/b/a Davio's, and others  
Location: Multiple Locations  
Date of Loss: March 17, 2020  
Policy No.: 8120T23406  
File No.: F0684066-02  
Loss: COVID-19

Dear Mr. Levine:

We represent the Strathmore Insurance Company ("Strathmore") in connection with the above-referenced claim. This letter responds to your letter to Jonathan Martinez of Strathmore dated September 2, 2020, which you sent on behalf of 75 Arlington St., Inc. d/b/a Davio's ("Davio's") and the other insureds listed on Strathmore policy number 8120T23406 (the "Policy").

As an initial matter, we note that you incorrectly characterize your letter as a demand for "relief pursuant to Massachusetts General Law, c. 93A, §§ 2 and 11." The demand letter requirement of Chapter 93A appears only in Section 9, which pertains to persons *other than* for-profit businesses like Davio's. While your letter is not a demand made pursuant to Chapter 93A, we provide this response to further explain why Strathmore's coverage decision is well grounded in the Policy terms and the law, and to demonstrate why Davio's has no viable cause of action against Strathmore in relation to this insurance claim.

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As an initial matter, Strathmore denies your accusations that it conducted an inadequate investigation of Davio's claim and engaged in conduct that violates General Laws Chapter 93A or 176D. Strathmore undertook a reasonable and adequate investigation of the basis for your client's claim, which included, among other steps, a discussion and written communications with its chief executive officer, Steven DiFillippo, who held himself out as having the knowledge and information relevant to the claim. After completing its investigation, Strathmore provided Davio's with a detailed explanation of its coverage position with citation to policy provisions and recitation of facts. We appreciate that Davio's disagrees with Strathmore's coverage determination, but the disagreement does not make Strathmore's decision, or the claim review that led to it, an unfair claim settlement practice within the meaning of Massachusetts General Laws Chapter 176D, § 3(9), or an unfair or deceptive practice under Chapter 93A. Strathmore does not doubt that Davio's business, like countless others around the country, has been impacted by changes in consumer behavior attributable to the spread of SARS-CoV-2 ("Coronavirus") and by government restrictions imposed to combat the spread of COVID-19. As Strathmore explained in its letter disclaiming coverage, however, losses associated with those factors are not insured by the Policy.

**Strathmore correctly determined that the losses claimed by Davio's are not covered under the Policy's Business Income or Extra Expense provisions.**

Your letter of September 2 asserts that Davio's is entitled to Business Income and Extra Expense coverage. As you are aware, both coverages require, (1) "direct physical loss of or damage to" property at insured premises caused by a Covered Cause of Loss; and (2) a necessary suspension of the insured's operations caused by the direct physical loss or damage. Strathmore was correct in concluding that neither requirement is satisfied here.

During his initial telephone and email communications with Mr. Martinez in March and April 2020, Mr. DiFillippo initially told Mr. Martinez that he believed Coronavirus was present in all of Davio's insured locations, though Davio's never provided information to support that assumption. Your letter of September 2, 2020 says nothing about Coronavirus being present in any of the insured premises, nor do you claim that any of Davio's property was physically damaged by Coronavirus (as if such a thing were possible). Instead, you state that the Davio's was deprived of the *use* of its restaurant premises due to "civil authority orders," and that the loss of use constitutes both "physical loss" and "physical damage" that is "sufficient to trigger Strathmore's 'Business Income' and related coverages." Thus, it is clear from your letter that Davio's acknowledges that Mr. DiFillippo's initial assumption about the presence of



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Coronavirus was unfounded.<sup>1</sup> In any case, Strathmore disputes that Coronavirus is capable of causing direct physical loss of or damage to property—a position that is supported by recent court decisions in the COVID-19 context, including in states where Davio’s operates. *See Social Life Magazine, Inc. v. Sentinel Ins. Co.*, No. 20-Civ-3311 (VEC), tr. at 5, 15 (S.D.N.Y. May 14, 2020) (in denying insured’s motion for injunctive relief, court ruled that Coronavirus “damages lungs,” “[i]t doesn’t damage printing presses” or other property, and “this is just not what’s covered under these insurance policies”); *Sandy Point Dental v. Cincinnati Ins. Co.*, 2020 WL 5630465 (N.D. Ill. Sept. 21, 2020) (“The coronavirus does not physically alter the appearance, shape, color, structure, or other material dimension of the property. Consequently, plaintiff has failed to plead a direct physical loss—a prerequisite to coverage.”) *Gavrilides Mgmt. Co., v. Michigan Ins. Co.*, Case No. 20-258-CB-C30 (Mich. Circuit Court, Ingham County, July 2, 2020) (in granting insurer’s motion for summary disposition, court observed that for direct physical loss of or damage to property to exist, “there has to be something that physically alters the integrity of the property. There has to be some tangible, i.e., physical damage to the property.”).

Strathmore also disputes that the “physical loss of or damage to property” requirement of Business Income and Extra Expense coverage is satisfied by Davio’s alleged loss of use of its property due to government orders issued to minimize person-to-person contact. As an initial matter, the factual premise of your argument is incorrect. Specifically, your letter asserts that “authorities from multiple jurisdictions ordered the closure of certain categories of businesses, including that of Davio’s.” Mr. DiFillippo made that same representation to Mr. Martinez by email in March 2020, and Mr. Martinez erroneously repeated it in his letter of April 27, 2020. The fact of the matter is that no state or local government official in Massachusetts, New York, or Pennsylvania issued any order closing restaurants, at any time. The authorities did temporarily ban on-premises dining in restaurants, but they also expressly authorized—and, in Massachusetts they actively encouraged—restaurants to remain open and to prepare and serve food and beverages through carry-out and delivery service. Thus, if Davio’s closed its doors to customers, it did so on its own volition, not because it was ordered to do so by any civil authority.

While Davio’s use of the dining rooms of its restaurants may have been impaired by government orders regulating on-premises dining, that impairment does not constitute “physical

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<sup>1</sup> Mr. Martinez correctly explained to Mr. DiFillippo in his letter of April 27, 2020, that the spoilage of food claimed by Davio’s is not covered under the Policy because it was not caused by a change in temperature resulting from a mechanical breakdown or from refrigerant contamination. Your September 2nd letter makes no mention of food spoilage and does not address Strathmore’s coverage position on it, so Strathmore can only assume that Davio’s accepts and agrees with Strathmore’s decision.

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loss of or damage to property” within the meaning of the Policy’s Business Income and Extra Expense coverages. You say in your letter that Strathmore’s position “ignores the policy language and relevant case law,” but you identify no authority in Massachusetts or elsewhere (nor are we aware of any) holding that a mere loss or impairment of the use of insured property constitutes “physical loss” or “physical damage” in the absence of some tangible, physical change in the condition inside the property that renders it unfit for use. On the contrary, numerous courts have *rejected* that proposition.

The two unreported decisions mentioned in your letter—*Manpower, Inc. v. Ins. Co. of the State of Pennsylvania* and *Total Intermodal Services, Inc. v. Travelers Prop. Cas. Co. of America*—do not support your argument. Contrary to your reading of *Manpower*, the building that was damaged was not a “neighboring building;” it was part of the same structure that was leased, used and occupied by the insured. The insured’s lease included an interest in and the use of common areas, including the building’s structural systems, elevators, lobbies, and mechanical systems (HVAC, electrical, water, sewer). Fittingly, the policy insured business interruptions resulting from damage not only to the part of the premises leased exclusively by the insured, but also to common elements of the building that it “used or intended to use.” When a partial collapse severely damaged the structural elements, common areas, and mechanical systems of the building that were regularly used by the insured, the court held that physical loss and damage had occurred that was sufficient to trigger business income coverage. Unlike the insured in *Manpower*, Davio’s does not claim any form of physical, material, tangible alteration of its property from an external cause.

*Total Intermodal* is likewise inapposite. The issue there was whether the insured had sustained a *physical* loss of its cargo that was mistakenly diverted to China and became unrecoverable. Applying California law to a different type of insurance policy, the court held that a permanent and physical dispossession of cargo constitutes physical loss. Unlike the insured in *Total Intermodal*, Davio’s does not claim to have been permanently dispossessed of any property.

We think the more relevant decisions on the “physical loss” question are the many holding that the impairment of the use of insured property due to government orders issued to promote social distancing does not constitute “physical loss” or “physical damage” for purposes of Business Income or Extra Expense coverage. They include: *Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, No. 4-20-cv-222-CRW-SBJ (S.D. Iowa Sept. 29, 2020) (dismissing claims of dental practice because “virus-related closures of business do not amount to direct loss to property”); *Mudpie, Inc. v. Travelers Cas. Ins. Co. of America*, 2020 WL 5525171 (N.D. Cal. Sept. 14, 2020) (dismissing retailer’s action for business income coverage and rejecting argument that loss

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of use of premises due to government's temporary closure order was "physical loss" because the "complaint contains no allegations of a physical force which "induced a detrimental change in the property's capabilities...."); *Pappy's Barber Shops, Inc. v. Farmers Grp., Inc.*, 2020 WL 5500221, at \*6 (S.D. Cal. Sept. 11, 2020) (insured's inability to operate barber shops because of government closure orders in response to COVID-19 was not "direct physical loss of or damage to" the premises; motion to dismiss granted); *IOE, LLC v. Travelers Indemn. Co. of Conn.*, 2020 WL 5359653 (C.D. Cal. Sept. 2, 2020) (granting insurer's motion to dismiss and rejecting insured's allegation that its inability to use its dining room to serve patrons was a "physical loss" of its premises; court admonished that "[a]n insured cannot recover by attempting to artfully plead temporary impairment to economically valuable use of property as physical loss or damage."); *Malaube, LLC, v. Greenwich Ins. Co.*, 2020 WL 5051581 \*7-8 (S.D. Fla. Aug. 26, 2020) (recommending dismissal of restaurant's complaint and finding that insured "has not alleged any physical harm," due to government restriction of on-premises dining, and that "the restaurant merely suffered economic losses – not anything tangible, actual, or physical"); *Diesel Barbershop, LLC v. State Farm Lloyds*, 2020 WL 4724305 (W.D. Tex. Aug. 13, 2020) (allegation that barber shop's temporary inability to conduct business at insured premises due to state and county social distancing orders did not support physical loss or damage); *Rose's 1 LLC, et al. v. Erie Insurance Exchange*, 2020 WL 4589206 \*2 (D.C. Super. Ct. Aug. 6, 2020) (granting insurer's motion for summary judgment and ruling that government restriction of on-premises dining "did not effect any direct changes to the properties," and "did not have any effect on the material or tangible structure of the insured properties"); *Gavrilides Mgmt. Co. v. Michigan Ins. Co.*, No. 20-258-CB(Cir. Ct. for Ingham County, Michigan, Tr. of Hrg., July 1, 2020) (granting motion to dismiss restaurant's complaint that lacked "allegations of direct physical loss of or damage to . . . property" and rejecting as "just simply nonsense" insured's argument that inability to serve customers in dining room was a "physical loss" of property).

Your argument that Davio's alleged "inability to use its insured premises to operate its business" triggers the Policy's Business Income and Extra Expense coverages is flawed for another reason: it ignores the Policy's "loss of use" exclusion, which bars coverage for all loss and damage caused by or resulting from any loss of use. *See Mudpie, supra* ("The separate provision for loss of use suggests that the "direct physical loss of ... property" clause was not intended to encompass a loss where the property was rendered unusable without an intervening physical force. The provision also undermines Mudpie's claim that "a reasonable purchaser of insurance would read the policy as providing coverage for a loss of functionality.") Courts in Massachusetts and elsewhere do not construe insurance policies in a way that negates any term or favors one over another. *See Allmerica Fin. Corp. v. Certain Underwriters at Lloyd's, London*, 449 Mass. 621, 628 (2007).

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In summary, the foregoing decisions and principles validate the reasonableness of Strathmore's determination that government orders in Massachusetts, New York and Pennsylvania issued in response to Coronavirus did not cause any "physical loss of or damage to property" at Davio's restaurants, and therefore, did not trigger Business Income or Extra Expense coverage. In addition, because there is no indication of any direct physical loss of or damage to property at any Davio's location, Davio's "operations" at its locations could not have been "suspended" by such loss or damage. As you know, there can be no coverage under the Business Income or Extra Expense provisions in the absence of such a suspension.

**The Policy's Dependent Property Coverage also does not apply.**

It is unclear from your September 2, 2020 letter whether you contend Davio's experienced a loss of Business Income or Extra Expense that is covered by the Policy's Dependent Property coverage. This is because your letter mentions "dependent properties" only once, and provides no factual basis for such a claim. Nevertheless, we will briefly address that coverage.

The "Dependent Properties" coverage extension appears in the *Protecto-Guard* Enhanced Property Coverage Endorsement for *Restaurants* (Form PROGRD R), which modifies the Policy's Business Income (And Extra Expense) Coverage Form. The *Protecto-Guard* form grants "up to \$50,000 for the actual loss of business income you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration.'" (*Protecto-Guard* Endorsement, p. 36). To be covered, the "suspension" must be caused by direct physical loss or damage to "dependent property" caused by or resulting from a Covered Cause of Loss. The term "dependent property" is defined to mean:

"Dependent property" means property operated by others whom you depend on to:

- a. Deliver materials or services to you or others for your account (Contributing Locations.) With respect to Contributing Locations, Services does not mean water, communication or power supply services;
- b. Accept your products or services (Recipient Locations);
- c. Manufacture products for delivery to your customers under contract of sale (Manufacturing Locations); or
- d. Attract customers to your business (Leader Locations).

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We direct you to the *Protecto-Guard* endorsement for the other important terms and conditions of, and the other definitions applicable to, the Dependent Properties coverage.

You and your client provided no information to Strathmore to support any of the requirements of this limited coverage. You have alleged, however, that Davio's business operations were impaired by orders of civil authority in Massachusetts, New York and Pennsylvania that temporarily banned on-premises dining at restaurants. Taking that statement at face value, it is obvious that Davio's operations were not suspended, in whole or in part, by any physical loss of or damage to property at the premises of a Dependent Property. Therefore, that limited coverage does not apply.

**Strathmore's determination that Davio's financial losses do not fall within the Policy's Civil Authority additional coverage was correct, was made in good faith, and is factually unchallenged.**

Your letter of September 2, 2020, also asserts that Davio's sustained "business income losses as a result of civil authority orders predicated on the physical loss of or damage to property ("Stay at Home Orders")" and suggests that Strathmore acted improperly by declining payment for such losses. Again, we respectfully disagree.

As Mr. Martinez explained in his April 27 letter to Davio's, Civil Authority coverage protects against the actual loss of Business Income that is sustained where an action of civil authority prohibits access to premises described in the Policy. Even where access is prohibited (in Davio's case, it was not), the coverage is available only if all of the following additional requirements are satisfied: (1) a Covered Cause of Loss must cause damage to property other than at the described premises; (2) access to the area immediately surrounding the damaged property must be prohibited by civil authority as a result of the damage, and the described premises must be within that area of prohibited access but not more than one mile from the damaged property; and (3) the action of civil authority must be taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage away from insured premises, or must be taken to enable a civil authority to have unimpeded access to that damaged property.

Your letter provides no information suggesting that any of these requirements is satisfied. For instance, you identify no property away from, but within one mile of, a Davio's location that suffered any direct physical loss or damage from a Covered Cause of Loss. Nor do you identify any area around such "damaged property" to which a civil authority prohibited access. In addition, you have provided no facts suggesting that any order was issued because of existing

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property damage away from a Davio's location, or due to some continuing threat from a Covered Cause of Loss.

Additionally, a review of the relevant orders reveals that none "prohibits access" to Davio's premises. Scores of decisions from courts around the country hold that to "prohibit access" under the Civil Authority coverage means to completely prevent and forbid people from approaching, reaching, and entering the insured premises. There is no indication that ever happened at any of Davio's locations. As discussed above, state and municipal government officials in Massachusetts, New York, and Pennsylvania issued directives that temporarily restricted on-premises dining at restaurants, but those orders merely limited how Davio's could *use* its premises while conducting business there. They did not prevent and forbid *access* to its premises. Restaurants in all of those states were expressly authorized to prepare and serve food and beverages to their customers for carry-out and delivery service. As you are probably aware, many restaurants chose to remain open and to continue serving their customers subject to those orders.

Your letter dismisses the foregoing requirements as mere "technical terms of...Civil Authority coverage." But they are *essential elements* that must be satisfied for coverage to apply. Because these requirements are unsatisfied, Strathmore's determination that the Policy's Civil Authority coverage does not apply to Davio's alleged losses was fair, reasonable and correct under the Policy.

### **The Policy excludes the losses claimed by Davio's.**

Because Strathmore justifiably concluded that Davio's did not sustain a loss covered by the Business Income, Extra Expense, Civil Authority or Dependent Property coverages, there is no need to discuss exclusions. Nevertheless, we address them because your letter concludes, incorrectly, that no exclusion applies.

As explained in Mr. Martinez's letter of April 27, 2020, the Policy's Ordinance or Law exclusion bars coverage for any loss that is caused directly or indirectly by the enforcement of a law regulating the *use* of insured property, and the exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss. In March 2020, Mr. DiFillippo of Davio's assured Strathmore that Davio's revenue losses were the direct result of government orders in Massachusetts, New York and Pennsylvania that directed Davio's to close its restaurants. As it turns out, that wasn't true. The government orders allowed Davio's to prepare and serve food and beverages to customers for carry-out and delivery, but did not permit Davio's to use its dining rooms for on-premises consumption of food or beverages. The orders

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are simply laws that regulate Davio's *use* of its insured property. Thus, the Ordinance or Law exclusion applies. We find no merit in the unexplained theory in your letter that the exclusion conflicts with the Civil Authority coverage. The exclusion applies to bar coverage where loss is caused by a government order regulating the use of the premises, whereas Civil Authority extends Business Income and Extra Expense coverage to situations where access to insured premises is prohibited by a government order or action under specific circumstances. Where, as in this case, access to insured premises was never prohibited, but certain activities at the insured premises were regulated by government order, there is no coverage for any loss claimed by Davio's.

Relatedly, we disagree with your contention that Strathmore's reliance on the "Acts or Decisions" exclusion is inappropriate. As noted above, Davio's claims that its losses were caused by government orders (*i.e.*, acts) that temporarily banned patrons from gathering and dining in restaurants. And, Davio's apparently made a business decision to close all of its locations instead of continuing to serve its customers through carry-out or delivery sales. These alleged losses fall within the Acts Or Decisions exclusion. Furthermore, the Massachusetts decisions cited in your letter do not involve circumstances that bear any resemblance to those presented here. In short, Strathmore had a reasonable, good faith basis for citing the Acts Or Decisions exclusion in support of its coverage decision.

Finally, your contention that the Policy covers the losses claimed by Davio's because it contains no exclusion that uses the terms "virus" or "pandemic" is illogical. As demonstrated in this letter and in Strathmore's letter of April 27, 2020, Davio's did not sustain any loss or incur any expense of a type to which the Policy responds. Because there is no coverage in the first instance, it is immaterial that the Policy does not feature what you describe as a "virus" or "pandemic" exclusion.

**Strathmore's investigation of Davio's claim was fair and reasonable.**

Finally, we briefly address the unfounded accusation in your September 2<sup>nd</sup> letter that Strathmore engaged in unfair practices in the investigation and handling of Davio's claim. Your letter does little more than recite the words of Chapter 176D, § 3(9), and concludes that Strathmore has engaged in the conduct described in the statute. Your inability to articulate any *facts* to support that conclusion is telling.

The truth is that Strathmore conducted a prompt, fair and reasonable investigation of Davio's claim. Strathmore's work began on March 17, 2020—the day the loss was reported—when Jonathan Martinez contacted Mr. DiFillippo, the CEO of Davio's, by telephone. During

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that call, Mr. Martinez attempted to gather some important information about the loss from Mr. DiFillippo. He did not succeed. While simply trying to do his job, Mr. Martinez was forced to endure a tirade of profanities, personal insults, and other verbal abuse at the hands of Mr. DiFillippo. Mr. DiFillippo refused to answer Mr. Martinez's questions or provide the important information reasonably requested by Mr. Martinez. Undeterred, Mr. Martinez made a number of follow-up requests of Mr. DiFillippo by email. After several weeks, Mr. DiFillippo finally provided some information in response to Mr. Martinez' inquiries. Thus, the statement in your letter that Mr. Martinez "failed to make inquiry into the facts relevant to Strathmore's coverage position" is simply false. After considering Mr. DiFillippo's responses and other information obtained by Strathmore, and upon a review of the Policy, Strathmore concluded—correctly—that Davio's did not experience a loss covered by the Policy. Strathmore communicated its coverage position, and the facts and Policy provisions that support it, in a detailed, 7-page letter dated April 27, 2020.

You argue in your letter that Strathmore should have undertaken further investigation into Davio's claim, as if to suggest that there was information Mr. DiFillippo and Davio's possessed but decided to withhold from Mr. Martinez. Yet, you have not identified what relevant information Strathmore would have learned had it made further inquiry of Davio's, interviewed someone other than the company's chief executive officer, or visited one or more of the restaurants (which you claim were ordered to be closed by government officials). In summary, there is no merit to your accusation that Strathmore failed to undertake a reasonable investigation.

For all of the foregoing reasons, it remains Strathmore's position that the Policy's Business Income, Extra Expense, Civil Authority and Dependent Property coverages do not apply to the losses claimed by Davio's. Moreover, Strathmore is confident that it investigated this claim reasonably, adequately and in good faith. Though you and your client have every right to disagree with Strathmore's ultimate coverage determination, you have no good faith basis to accuse the company of unfair claim settlement practices or a violation of Massachusetts General Laws Chapter 93A. All such accusations are denied.

Strathmore reminds Davio's that it continues to reserve all rights granted to it under the Policy, in law and in equity, and that neither this letter nor any other action or representation by Strathmore, its employees or legal counsel shall constitute or be construed as a waiver or compromise of any such right, or of any term or condition of the Policy. Moreover, our citation to Policy provisions in this letter is not intended to be exhaustive, and Strathmore reserves the right to rely on other terms, conditions, exclusions and limitations.



# Robinson+Cole

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Sincerely,



Gregory P. Varga

Copy To: Jonathan Martinez, Strathmore Insurance Company