

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

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Bernalillo County
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Blair Sandoval

Case No. D-202-CV-2020- D-202-CV-2020-06851

EYE ASSOCIATES OF NEW MEXICO, LTD., EYE
SURGERY CENTERS OF NM, LLC, and PECOS
VALLEY EYE SURGERY CENTER, LLC,

Plaintiffs,

v.

THE CINCINNATI INSURANCE COMPANY, an
Ohio Insurance Company and ERICA N. JOHNSON, a
New Mexico Resident,

Defendants.

**COMPLAINT FOR BREACH OF CONTRACT, BAD FAITH,
STATUTORY VIOLATIONS, AND DECLARATORY JUDGMENT**

Plaintiffs Eye Associates of New Mexico, Ltd., Eye Surgery Centers of NM, LLC & Pecos Valley Eye Surgery Center, LLC (collectively “Eye Associates”), by and through their counsel, complain and move for judgment against Defendants The Cincinnati Insurance Company (“Cincinnati”) and Erica N. Johnson (“Ms. Johnson”), and respectfully allege as follows:

NATURE OF THE ACTION

1. The novel coronavirus SARS-CoV-2 (“Coronavirus”) pandemic has had a devastating impact on the United States, killing hundreds of thousands, shutting down the country, and crippling businesses big and small nationwide. New Mexico’s residents and businesses endured and continue to endure significant harm during the pandemic. This action is brought by Plaintiffs Eye Associates, an ophthalmology and optometry practice operating over a dozen locations across New Mexico, against its insurer, Defendants Cincinnati and Erica N. Johnson. Specifically, Eye Associates seeks coverage from Cincinnati for Eye Associates’ loss of its insured premises, lost business income, extra expenses and other business-related losses in light of the Coronavirus and the governmental authorities’ closure and limitation of its covered business premises.

2. Additionally, Eye Associates seeks a declaratory judgment that Cincinnati breached its coverage obligations under the policy. Eye Associates also seeks damages for Cincinnati's and Ms. Johnson's bad faith conduct in violation of the New Mexico Insurance Practices Act. Eye Associates also seeks damages against Cincinnati for damages pursuant to the New Mexico Unfair Practices Act.

3. Over the past several months, Eye Associates has been forced to close normal operations of all 15 clinic locations, 2 surgery centers (Santa Fe Surgery Center & Pecos Valley Eye Surgery Center), plus 5 administrative offices (main administration, support center, training, provider relations and the facility maintenance location). Few patients entered Plaintiffs' facilities only if their condition was diagnosed as urgent and emergent. State and local governments have required Plaintiffs and their employees, customers, and others to "shelter in place" and abide by strict "social distancing" guidelines. The mandated closures resulted in the immediate loss of income for Eye Associates, forcing them to lay off 290 employees. The employees who kept their jobs reduced hours worked to a maximum of 30 hours to help offset the losses.

4. To protect against these sorts of unanticipated losses, Eye Associates purchased from Cincinnati a policy that provided business interruption insurance for all risks that were not expressly excluded. Importantly, the purchased policy does not exclude virus coverage. Put differently, Eye Associates ensured it would be covered in the event of a virus affecting its business. This is critical for companies like Eye Associates in the medical and health industry.

5. The policy also provided express coverage for civil authority government orders like those issued in New Mexico (the "Government Orders"). Plaintiffs, therefore, reasonably believed that their Cincinnati policy would cover the extensive losses they sustained due to the Coronavirus pandemic and the ensuing Government Orders.

6. But Cincinnati has not upheld its promise to provide coverage. Instead, Cincinnati summarily denied coverage – with little to no analysis or review of Eye Associates' claim. Indeed, it is now evident that Cincinnati had already decided – even before Eye Associates submitted its claim – that

it would deny all claims related to the Coronavirus and the Governmental Orders limiting the use or access to property like Eye Associates’ – even without a virus exclusion in the policy.

7. Eye Associates paid premiums for Cincinnati’s “all risks” policy that covers the Coronavirus risk and related Government Orders (and all other risks except those expressly excluded). Eye Associates did not get what it paid for. Cincinnati refuses to honor its coverage promise. Cincinnati’s interpretation of the policy is wrong and self-serving; it constitutes a breach of the contract. Accordingly, Plaintiffs seek compensatory damages, attorneys’ fees and costs, interest, and declaratory relief.

PARTIES

8. Eye Associates of New Mexico, Ltd. is a New Mexico Corporation doing business across New Mexico, with its primary location in Albuquerque, New Mexico.

9. Upon information and belief, Defendant Cincinnati Insurance Company is a duly licensed insurance company authorized to conduct business in the State of New Mexico.

10. Upon information and belief, Defendant Erica N. Johnson is a Senior Claims Specialist and employee of Defendant Cincinnati and is a resident of New Mexico.

JURISDICTION & VENUE

11. Eye Associates brings this action against Cincinnati and Ms. Johnson for first-party coverage for losses stemming from the Coronavirus pandemic and Government Orders. The Government Orders include but are not limited to the March 23, 2020 Executive Order by the Governor of the State of New Mexico and the March 24, 2020 New Mexico Department of Public Health Order. These Government Orders, and others, closed all non-essential businesses, severely restricted Eye Associates’ operations to only emergency medical procedures – a significant reduction from its normal practice – and ordered New Mexico residents to “shelter in place.”

12. Eye Associates’ losses occurred and continue to occur across New Mexico, including in Albuquerque, where Plaintiffs have four business locations.

13. Because the insured risk and premises are located in New Mexico, New Mexico law applies.

14. Further, the New Mexico Superintendent of Insurance is the statutory registered agent for Cincinnati.

15. NMSA 1978, § 59A-16-20 prohibits certain unfair insurance claims practices which occur in New Mexico. Likewise, NMSA 1978, §§ 57-12-1, *et seq.* prohibits certain unfair trade practices which occur in New Mexico.

16. This Court has jurisdiction over this matter and venue is proper in Albuquerque pursuant to NMSA 1978, § 38-3-1.

FACTUAL BACKGROUND

I. EYE ASSOCIATES SERVES NEW MEXICO

17. Eye Associates treats patients throughout New Mexico at 14 locations, including in Albuquerque, Farmington, Gallup, Los Alamos, Los Lunas, Rio Rancho, Santa Fe, Taos, and Roswell. Eye Associates' Las Vegas location was permanently closed due to the Coronavirus pandemic conditions.

18. Insured under the Cincinnati policy are also Eye Associates' two wholly-owned ambulatory eye surgery centers, providing a range of services to the New Mexico community – the Pecos Valley Eye Surgery Center and Santa Fe Eye Surgery Center (a center under Eye Surgery Centers of New Mexico).

19. Eye Associates has over fifty ophthalmologists and optometrists on staff and employed hundreds of people (up to 650 staff members prior to the Coronavirus pandemic), with more than 10 employees staffing most locations on any given day (prior to the Coronavirus pandemic).

20. Eye Associates has conducted business in New Mexico – and Albuquerque specifically – for over 40 years, since 1976.

21. Eye Associates serves its own clientele, but also is a referral source for other medical practitioners, optometrists and ophthalmologists throughout New Mexico who have patients in need of their specialized services and expertise. Eye Associates is also the exclusive provider for Presbyterian Health System for their senior membership in New Mexico.

22. Prior to the Coronavirus pandemic, Eye Associates treated approximately 1300 – 1400 patients a day in their clinics and performed between 80 – 400 surgical procedures, per month in the ambulatory eye surgery centers. Approximately 66% of the patients Eye Associates’ treats are classified as senior patients, many with underlying health conditions which put them at greater risk.

II. THE POLICY

23. Cincinnati assures prospective customers that Cincinnati is “everything insurance should be.”¹

24. Eye Associates recognized that its business needed to be properly protected, so it contracted with Cincinnati for an all-risk commercial property policy, policy number EPP 050 1976 (the “Policy”), effective August 28, 2018 to August 28, 2021. Exhibit 1.

25. The Policy covered all 15 locations for Eye Associates, including its surgical centers.

26. Eye Associates paid premiums, dutifully making all required payments.

A. Direct “Loss” Coverage

27. The Policy Cincinnati sold Eye Associates – like most property policies sold in the United States – is an “all-risk” property damage policy. These types of policies, in contrast to specific peril policies,² cover all risks of loss except for risks that are expressly and specifically excluded. In short, that which is not excluded, is covered.

¹ About Us, The Cincinnati Insurance Company, *available at* <https://www.cinfin.com/about-us> (last visited Nov. 4, 2020).

² Specific peril policies cover a risk of loss if that risk is expressly identified as a covered risk (e.g., hurricane, earthquake, H1N1).

28. In line with this, Defendant Cincinnati committed to “pay for direct ‘loss’ to Covered Property at the ‘premises’ caused by or resulting from any Covered Cause of Loss.” Under the Policy, “Covered Cause of Loss means direct ‘loss’ unless the ‘loss’ is excluded or limited in this Coverage Part.”

29. The Policy defines “loss” as “accidental physical loss or accidental physical damage.” The Policy fails to define “physical loss” or “physical damage.” Consistent with New Mexico contract law, absent a definition in the Policy, words must be accorded their ordinary meaning. Phrases like “physical loss” must be given a separate meaning from “physical damage” so that the Policy language can be read without rendering any words meaningless or surplusage.

30. Under the Policy, Cincinnati agrees to pay \$24 million for loss and business interruption losses.

31. The Policy does not have any applicable exclusions. Specifically, the Policy does not include a virus exclusion. Nor does the Policy exclude governmental shutdown orders relating to viruses or public health emergencies.

32. Accordingly, loss due to the Coronavirus is a “Covered Cause of Loss” under the Policy because it is not excluded.

33. The Policy also provides certain express coverages, including coverage for Business Income Loss and Extra Expenses, Civil Authority orders, and Dependent Property Business Interruption.

B. Business Income and Extra Expense Coverage

34. Business interruption and extra expense insurance is critical for businesses like Eye Associates when faced with unanticipated losses. Cincinnati purports to understand this, promising that “[w]hen it comes to paying claims, we’ll look for coverage – not exceptions, helping to keep your business running in the event of a claim.”³

³ Protection for Businesses and Organizations: Fulfilling our Promises, The Cincinnati Insurance Company, *available at* <https://www.cinfin.com/business-insurance> (last visited Nov. 4, 2020).

35. Cincinnati markets its business interruption insurance as helping to cover “loss of income and necessary extra expenses you incur to keep your business operating,” including lost profits, payroll, taxes, and other operating expenses.⁴

36. Under the Business Income coverage that Cincinnati sold Eye Associates, Cincinnati agrees to “pay for the actual loss of ‘Business Income’ and ‘Rental Value’ you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’”

37. Under the Extra Expense coverage, Cincinnati agrees to pay the “necessary expenses you sustain . . . during the ‘period of restoration’ that you would not have sustained if there had been no direct ‘loss’ to property. . . .” If the Extra Expenses are incurred to reduce Business Income Loss, Cincinnati agrees to pay expenses to “avoid or minimize the ‘suspension’ of business and to continue operations either (a) at the premises . . . or minimize the ‘suspension’ of business if you cannot continue operations.”

38. Under the Policy, “suspension” means: “(a) the slowdown or cessation of your business activities; and (b) that a part or all of the ‘premises’ is rendered untenable.”

39. “Operations” is defined in relevant part as “(a) Your business activities occurring at the ‘premises’; and (b) the tenantability of the ‘premises’[.]”

40. “Period of restoration” means: “the period of time that: (a) Begins at the time of direct ‘loss’ [and] (b) Ends on the earlier of: (1) the date when the property at the ‘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.”

41. Under the Business Income and Extra Expense coverage, the suspension must be caused by “direct ‘loss’ to property” at the insured premises.

C. Civil Authority Coverage

⁴ Protection for Your Commercial Property, The Cincinnati Insurance Company, *available at* <https://www.cinfin.com/business-insurance/products/property-insurance> (last visited Nov. 4, 2020).

42. The Policy provides an independent basis for coverage for Business Income and Extra Expense when civil authorities take certain actions. The Civil Authority coverage provides in relevant part:

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

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage. . . .

43. Cincinnati chose not to define the term "dangerous physical conditions."

44. There are no relevant exclusions to this coverage. The Policy expressly excludes coverage only for governmental action related to the seizure or destruction of property. That is not at issue in this action.

45. But, by excluding specific government actions, Cincinnati acknowledges that *other* government actions are covered perils within the meaning of the Policy.

D. Dependent Property Business Income Coverage

46. Eye Associates relies on multiple referral or feeder businesses that direct customers to its practice.

47. The Policy includes an endorsement for additional coverages that address this: the CinciPlus Commercial Property XC+ (Expanded Coverage Plus) Endorsement. One of the additional coverages, excess and in addition to the main coverages promised by Cincinnati's standard policy, is coverage for business income and extra expense losses stemming from dependent properties.

48. Under the Policy, Cincinnati agrees to "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 'loss' to 'dependent property' caused by or resulting from any Covered Cause of Loss."

49. “Dependent Property” means “property operated by others whom you depend on to . . .

(d) attract customers to your business.”

III. THE CORONAVIRUS PANDEMIC

50. The Coronavirus is linked to a deadly, infectious disease known as COVID-19.

51. According to the United Nations: “People can catch COVID-19 from others who have the virus. The disease can spread from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. These droplets land on objects and surfaces around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth.”⁵

52. Researchers estimate the number of people that an individual infected with COVID-19 will go on to infect is between 3.3 and 6.5.⁶

53. For these reasons, “[p]ublic health experts and elected officials have emphasized again and again that social distancing is the best tool . . . to slow the coronavirus outbreak.”⁷

54. Although COVID-19 droplets are smaller and less visible than rust, mold, or paint, they are physical in form and can travel to other objects and cause harm.

55. These droplets can spread COVID-19 when they land on habitable surfaces where they can pass to a potential human host.⁸

⁵ See COVID-19 Response General FAQs, “How does COVID-19 spread?,” United Nations, *available at* <https://www.un.org/en/coronavirus/covid-19-faqs> (last visited Nov. 4, 2020).

⁶ See Ying Liu et al., The reproductive number of Covid-19 is higher compared to SARS coronavirus, *Journal of Travel Medicine* (Feb. 13, 2020), *available at* <https://academic.oup.com/jtm/article/27/2/taaa021/5735319> (last visited Nov. 4, 2020).

⁷ See Yuliya Pashina-Kottas, et al., “This 3-D Simulation Shows Why Social Distancing Is So Important,” *The New York Times* (Apr. 21, 2020), *available at* <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html> (last visited Nov. 4, 2020).

⁸ See, e.g., “How COVID-19 Spreads,” Centers for Disease Control, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Nov. 4, 2020).

56. Droplets containing COVID-19 infect a variety of surfaces and objects for a period of hours, days, or weeks, if not longer. For instance, research has shown that COVID-19 can persist on surfaces for up to 28 days.⁹

57. In another example, after inspecting a cruise ship inhabited by passengers who carried COVID-19, the CDC reported that the virus was detectable on surfaces inside the ship up to 17 days after passengers had vacated the cabins.¹⁰

58. Further, recent scientific evidence shows that COVID-19 can survive and remain virulent on stainless steel and plastic for three to six days; on glass and banknotes for three days; and on wood and cloth for 24 hours.¹¹ These materials are prevalent and unavoidable throughout Eye Associates' facilities.

59. In addition to attaching to and infecting surfaces, recent scientific communities report that the Coronavirus can be airborne, lingering and spreading in the air, particularly in enclosed places like medical offices.¹²

60. The first public reports of the Coronavirus infecting humans was issued in December 2019, resulting from an outbreak in Wuhan, China.

⁹ Gunter Kampf et al., Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents, 104 J. of Hospital Infection 246 (2020), *available at* [https://www.journalofhospitalinfection.com/article/S0195-6701\(20\)30046-3/fulltext](https://www.journalofhospitalinfection.com/article/S0195-6701(20)30046-3/fulltext) (last visited Nov. 4, 2020).

¹⁰ See Leah E. Moriarty, et al., "Public Health Responses to COVID-19 Outbreaks on Cruise Ships – Worldwide, February-March 2020," 69 Morbidity and Mortality Weekly Report 347 (Mar. 23, 2020), *available at* <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-H.pdf> (last visited Nov. 4, 2020).

¹¹ See Neeltje van Doremalen et al., "Aerosol and Surface Stability of SARS-CoV-2 as Compared to SARS-CoV1," New England Journal of Medicine (Mar. 17, 2020), *available at* <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973> (last visited May 5, 2020); Alex W.H. Chin et al., "Stabilizing of SARS-CoV-2 in different environmental conditions," The Lancet Microbe (Apr. 2, 2020), *available at* [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3) (last visited Nov. 4, 2020).

¹² See "Scientific Brief: SARS-CoV-2 & Potential Airborne Transmission," Center for Disease Control and Prevention, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html> (last visited Nov. 4, 2020).

61. On January 21, 2020, the CDC reported the first American COVID-19 case in the State of Washington.

62. After the virus continued to spread across the country, the United States government declared the Coronavirus outbreak a national emergency beginning on March 1, 2020. Exhibit 2.

IV. THE CORONAVIRUS SPREADS TO NEW MEXICO

63. The first confirmed cases of COVID-19 in New Mexico were reported on March 11, 2020.

64. That same day, on March 11, 2020, because of the Coronavirus's increasing spread, Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act ("Executive Order 2020-04"). Exhibit 3.

65. The purpose of Executive Order 2020-04 was to minimize the spread of COVID-19 and "the attendant physical and economic harms."

66. On March 12, 2020, Kathyleen Kunkel, the Secretary of State of New Mexico's Department of Health, issued the first of multiple public health orders restricting conduct.

67. On March 16, 2020, New Mexico's Department of Health issued a second public health order limiting gatherings of more than 100 people.¹³ See Exhibit 4. The order observed that "the further spread of COVID-19 in the State of New Mexico *poses a threat to the health, safety, wellbeing, and property of the residents in the State*, due to, among other things, illness from COVID-19 . . . and potential closures of schools or other places of public gathering[.]" (Emphasis added).

¹³ The New Mexico Department of Health possesses the legal authority pursuant to the Public Health Act, NMSA 1978, §§ 24-1 to -40, the Public Health Emergency Response Act, NMSA 1978, §§ 12-10A-1 to -10, the Department of Health Act, NMSA 1978, §§ 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

68. The Department of Health further recognized that the Coronavirus “poses an imminent threat of substantial harm to the population of New Mexico.” Citizens were “**strongly advised to stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**” (Emphasis in original).

69. On March 18, 2020, the American Academy of Ophthalmology, which provides the industry standard for proper ophthalmology procedure and due care, also weighed in on the Coronavirus pandemic, deeming it essential that “all ophthalmologists cease providing any treatment other than urgent or emergent care immediately.”¹⁴

70. On March 19, 2020, New Mexico’s Department of Health issued another Public Health Order, requiring that “typical business environments that are not engaged in the provision of an essential service should limit operations to the greatest extent possible and minimize employee contact.”

71. Then, on March 23, 2020, New Mexico’s Department of Health issued a Public Health Order, directing that “all businesses, except those identified as ‘essential businesses’, are hereby directed to reduce the in-person workforce at each business or business location by 100%. ‘Essential businesses’ may remain open provided they minimize their operations and staff to the greatest extent possible, adhere to social distancing protocol and maintain at least six-foot social distancing from other individuals, avoid person-to-person contact, and direct employees to wash their hands frequently. Further, all essential businesses shall ensure that all surfaces are cleaned routinely.” *See* Exhibit 5.

72. Under the order, gatherings of five or more individuals in a single room or connected space where individuals are within six feet of each other was prohibited.

73. The next day, on March 24, 2020, the Department of Health issued an order “imposing temporary restrictions on non-essential health care services, procedures, and surgeries; providing

¹⁴ *See* “Recommendations for Urgent and Nonurgent Patient Care,” American Academy of Ophthalmology (Mar. 18, 2020) *available at* <https://www.aao.org/headline/new-recommendations-urgent-nonurgent-patient-care> (last visited Nov. 4, 2020).

guidance on those restrictions, and requiring a report from certain health care providers.” This order prohibited all facilities like Eye Associates’ from providing non-essential health care services, procedures, and surgeries. *See* Exhibit 6.

74. The March 23, 2020 order defined “non-essential” services as: “health care services, procedures, and surgeries’ include those which can be delayed for three (3) months without undue risk to the patient’s health.” The order included an example of “threat of permanent dysfunction of the . . . eyes” as what would be deemed essential. Thus, although Eye Associates was permitted to provide emergency medical care or surgery, this newest Public Health Order effectively prevented Eye Associates from using its space for the vast majority of its services for at least three months.

75. On April 6, 2020, the Department of Health issued another Public Health Order declaring that: “**The bottom line is that all New Mexicans should be staying in their homes for all but the most essential activities and services.**” (Emphasis in original). This directive, like the others before it, prohibited the majority of Eye Associates’ clientele and staff from entering Eye Associates’ facilities.

76. The order also emphasized that “Social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico.”

77. These orders successively forced Eye Associates to use less of its premises and greatly minimize its operations and staffing, which it did. The Government Orders also required Eye Associates to incur extra expenses for additional cleaning and protective measures for staff and patients.

78. The New Mexico government renewed and expanded on several of its orders over the next several months. Most recently, on October 16, 2020, the directives in Executive Order 2020-004 declaring the statewide public health emergency in New Mexico were extended through November 13, 2020.

79. Local and municipal governments across New Mexico also entered orders mandating that residents shelter in place and that businesses limit or cease operations as certain areas were particularly

hard hit. At times, these local orders mandated more stringent restrictions on the movement of people and the use or access to goods, services, and facilities.

80. For instance, in Gallup, New Mexico, where Eye Associates has an office, a state of emergency was declared under Executive Order 2020-027. Exhibit 7. On April 30, 2020, the Mayor of Gallup requested that Governor Lujan Grisham declare a state of emergency in the City of Gallup, as the “City was in the throes of an unprecedented health crises and that available medical resources had been stretched thin.” Executive Order 2020-027. Thus, on May 1, 2020, the Governor instituted a curfew and ordered that “all roadways providing access to the City of Gallup shall be closed and only Gallup residents, those who work in Gallup, and members of media shall be permitted entry into the municipality[.]” *Id.* at 2.

81. Access was formally blocked by barricade, directly affecting Eye Associates’ business.¹⁵ This Government Order also limited the number of passengers in vehicles and ordered residents to “shelter in place and stay in their homes unless travel is absolutely necessary for reasons attendant to health, safety, or welfare.” Ex. 7 at ¶¶ 3-4.

82. The State of Emergency in Gallup, including the blocked ingress and egress to Gallup, was extended on May 4 and May 7, per Executive Orders 2020-028 and 2020-029.

83. The situation in New Mexico continues to worsen. Even after Executive Order 2020-004 and the other Government Orders were issued, COVID-19 infections spread rapidly across New Mexico, and the state remains largely shut down with more stringent restrictions looming.

84. Eye Associates took seriously the physical danger presented by the Coronavirus and respected all Government Orders. On March 17, 2020, Eye Associates closed its facilities except to provide limited urgent and emergency services.

¹⁵ Morgan Lee, “New Mexico blocks roads into Gallup as virus cases surge,” AP News, (May 3, 2020) available at <https://apnews.com/article/95e72d5449bc3265da4b83b174865033> (last visited Nov. 4, 2020).

85. As explained, Eye Associates’ closures were ordered by state and local governments who required Plaintiffs and their employees, customers, and others to shelter at home, abide by strict “social distancing” requirements, cease all non-essential activities and adhere to strict affirmative operational standards (like routine disinfecting cleanings of business premises).

86. These Government Orders resulted in losing physical use of, physical access to, and physical enjoyment of Plaintiffs’ property by its owners, patients, employees, and others. The Coronavirus and Government Orders also resulted in a significant interruption to Eye Associates’ business, including the suspension of all non-emergency services and a steep reduction of patient services.

87. For instance, in March 2020, after the Government Orders first took effect, appointments were down substantially. By April and May 2020, appointments were down 81% and 59%, respectively. The following shows the substantial reduction in volumes for each line of business during the peak COVID months of March, April and May.

Month	Medical	Optical	Santa Fe SC	Pecos Valley SC
March	-34%	-42%	-25%	-41%
April	-80%	-97%	-100%	-100%
May	-59%	-87%	-64%	-100%

88. The closures and limitations on business – and immediate losses in revenue – also forced Plaintiffs to limit staff at sites (to maintain social distancing and gathering requirements).

89. Eye Associates’ insured premises remain limited to essential activities, minimum necessary operations, or closed entirely. The surgery centers closed on March 20, 2020. The Santa Fe Surgery Center opened on a limited basis on May 11, 2020 and the Pecos Valley Eye Surgery Center on June 4, 2020.

90. Even with operations limited to only essential services with reduced staffing, there is still a great risk to Eye Associates, as it has treated patients with COVID-19, known or unknown, at its insured premises.

91. Over the course of time since the Coronavirus was announced as a public health emergency, Eye Associates has had 8 employees who have tested positive for COVID-19 and been informed by 7 patients that they had visited Eye Associates' facilities and subsequently tested positive for the Coronavirus.

92. In addition to the lost business income from closing most of its locations, and the dangerous conditions presented from providing limited emergency services, Eye Associates incurred additional expenses relating to the health and safety of its staff, physicians and patients' potential for COVID-19 exposure at its facilities. This includes costs for additional cleaning and protective measures (e.g., cleaning supplies, hand sanitizer, additional PPE, thermometers), and building protective, mitigating measures at Eye Associates' locations (e.g., screens and shields).

93. To date, Eye Associates estimates it has spent over \$49,372 on extra expenses.

94. The period of restoration when this interruption and Eye Associates' losses will end is still unknown. Medical experts have opined that the Coronavirus pandemic and official closures may extend into 2021.

95. The Coronavirus harmed and continues to harm Eye Associates, causing physical loss and loss of intended use and physical damage to the premises, including its air. Medical experts agree that the Coronavirus attaches and remains on building surfaces. The spread of the virus, both airborne and on physical surfaces, and the Government Orders caused the closure and drastic reduction of Eye Associates' business.

96. Moreover, the same conditions resulted in the closure and restriction of access to other businesses immediately surrounding Plaintiffs' business, including many "feeder" businesses, i.e., businesses and medical practices that would refer patients to Eye Associates. That is, the same dangerous

conditions created by the Coronavirus and Government Orders that restricted use, access, and services at Eye Associates' insured premises, also affected the hospitals, doctors' offices, clinics, and others who would have referred patients to Eye Associates in normal times.

97. Worse, the Coronavirus is by no means under control in New Mexico. As of November 5, 2020, the Albuquerque Journal shows New Mexico has over 51,110 confirmed COVID-19 cases and over 1,082 deaths.

98. Fortunately, Eye Associates had the foresight to protect its business from perils and business interruption through insurance from Cincinnati.

V. CINCINNATI FAILED TO FAIRLY INVESTIGATE THE CLAIM

99. Eye Associates' business was directly affected by the Coronavirus and Government Orders. The presence of the Coronavirus caused "direct physical loss of or damage to" each "covered property" by denying use of and damaging the Covered Property and by causing a necessary suspension of operations.

100. The Coronavirus also presented an imminent risk and dangerous conditions at the Covered Properties, including at least one property where a patient had COVID-19 symptoms.

101. The Government Orders prohibited full use of Eye Associates' properties and the area immediately surrounding the Covered Properties, in response to direct loss and the dangerous physical conditions resulting from the Coronavirus. Certain Government Orders also prohibited access to Eye Associates' locations, like Gallup.

102. Several dependent properties that served as referral sources to Eye Associates also were shut down, affecting Eye Associates' business.

103. Accordingly, as a result of the presence of Coronavirus and the Government Orders, Eye Associates lost Business Income and incurred Extra Expense.

104. Before Eye Associates even submitted its claim notice, however, it was discouraged from doing so by Cincinnati's claims handler. Specifically, on March 6, 2020, Eye Associates' insurance

agent, Western Assurance, inquired with Cincinnati about coverage. Without reviewing any facts around the claim or seeking additional information, Cincinnati responded: “Closing the business due to the Coronavirus would not be covered.”

105. Still, Eye Associates knew it was entitled to coverage. Accordingly, on April 2, 2020, Eye Associates notified Cincinnati of its claim under the Policy, seeking coverage for its growing loss.

106. What Eye Associates did not know, however, was that Cincinnati would not pay *any* Coronavirus claims for *any* policyholders.

107. While later representing to Eye Associates that it would diligently investigate business interruption claims connected to the Coronavirus pandemic, Cincinnati told its investors the truth: it would not honor those claims.

108. Specifically, in its public 10-Q filing for Q1 2020, Cincinnati stated:

Virtually all of our commercial property policies do not provide coverage for business interruption claims unless there is direct physical damage or loss to property. Because a virus does not produce direct physical damage to property, no coverage exists for this peril – rendering an exclusion unnecessary. For this reason, most of our standard market commercial property policies in states where we actively write business do not contain a specific exclusion for COVID-19. While we will evaluate each claim based on the specific facts and circumstances involved, our commercial property policies do not provide coverage for business interruption claims unless there is direct physical damage or loss to property.¹⁶

109. Given Cincinnati’s intention to issue categorical denials of all claims arising out of the Coronavirus pandemic, it is no surprise that Cincinnati failed to investigate and evaluate Eye Associates’ claim in a full and neutral manner.

110. Cincinnati also failed to review ample publicly available and easily accessible information regarding Eye Associates’ claim. Additionally, Cincinnati did not visit any of the covered locations.

¹⁶ Form 10-Q, Cincinnati Financial Corporation (filed Apr. 27, 2020), *available at* <https://cincinnatifinancialcorporation.gcs-web.com/node/26056/html> (last visited Nov. 4, 2020).

111. Even now, Cincinnati fails to revise its coverage denial in light of court rulings finding there *is* coverage under its policies for Coronavirus and Government Order business interruption claims. *See North State Deli, LLC, et al. v. The Cincinnati Ins. Co., et al.*, No. 20-CVS-02569 (N.C. Oct. 7, 2020), *see* Exhibit 8; *see also Studio 417, Inc., et al. v. The Cincinnati Ins. Co.*, No. 20cv-03127-SRB (W.D. Mo. Aug. 12, 2020), *see* Exhibit 9.

112. Instead, Cincinnati forced its insured to expend additional time and expense to supply information that it knew it would not consider.

113. Specifically, on April 2, 2020 and April 13, 2020, Cincinnati responded to Eye Associates' claim notice with a series of requests. Cincinnati knew that it would reject the claim out of hand, but nevertheless, asked its policyholder to try to convince Cincinnati to provide promised coverage it had no intention of paying.

114. Eye Associates did not realize that Cincinnati was playing a game. So, Eye Associates acted with diligence in quantifying its loss, documenting its expected revenue losses for Cincinnati and answering its questions.

115. Eye Associates responded on May 5, 2020, explaining that the Coronavirus resulted in physical loss, lost business income, and significant expenses. In support of its claim, Eye Associates gave estimates of its losses and provided copies of the controlling Executive Orders and Public Health Orders.

116. On May 11, 2020, less than a week later, Cincinnati and Ms. Johnson formally denied its coverage obligations. Cincinnati's inordinately short review period (less than a week) – coupled with its earlier promise to its investors that it would not pay any Coronavirus claims – demonstrates that it never intended to provide coverage and failed to perform a timely and fair evaluation of Eye Associates' claim.

117. Instead, Cincinnati was “padding” its file to attempt to show it had complied with its duty to investigate. But Cincinnati did not investigate the claim or properly consider coverage.

VI. CINCINNATI AND MS. JOHNSON IMPROPERLY DENIED COVERAGE

118. Cincinnati's and Ms. Johnson's May 11 denial letter ignored several key issues. As a preliminary matter, Cincinnati and Ms. Johnson ignore that Cincinnati issued an "all risk" policy. That is, the Policy covers Eye Associates for any peril, imaginable or unimaginable, unless expressly excluded or limited. Neither the Coronavirus nor the Government Orders are excluded perils, and thus are covered.

119. Yet, Cincinnati and Ms. Johnson improperly denied coverage by claiming (1) that there was no physical damage or loss to the property; and (2) if there was, the pollution exclusion would preclude coverage. Cincinnati and Ms. Johnson are wrong on both fronts.

120. On July 10, 2020, Eye Associates responded to Cincinnati's and Ms. Johnson's improper denial, asking Cincinnati and Ms. Johnson to reconsider, but Cincinnati and Ms. Johnson refused.

A. Cincinnati Conflates Physical Damage and Physical Loss Coverage

121. The Policy covers "accidental physical loss or accidental physical damage." Cincinnati provides no explanation for why Eye Associates' physical loss of its space by Coronavirus and Government Order is not an "accidental physical loss."

122. Instead, in its April 2, 2020 letter, Cincinnati suggested: "Direct physical loss or damage generally means a physical effect on Covered Property, such as a deformation, permanent change in physical appearance or other manifestation of a physical effect."

123. Importantly, though, Cincinnati ignores that the terms "physical loss" and "physical damage" are undefined in the Policy. Undefined phrases must be construed reasonably and within their ordinary meanings.

124. Here, the Coronavirus and the Government Orders did cause a physical loss of space and the ability to use the insured premises for their intended use and capacity. Losing the ability to access, occupy, or use one's property is a direct loss of physical, material rights and advantages, substantial and

important. Such losses are direct in that ouster of and limitation, prohibition, and/or interdiction of access and use by all nonessential people resulted directly in a physical loss.

125. This physical loss caused the suspension of Eye Associates' business operations.

126. Although Eye Associates presented this clear claim for "direct physical loss" – and the Policy provides coverage for such "direct physical loss" – Cincinnati denied coverage on the basis that the Coronavirus does not result in a "deformation" or "permanent change in physical appearance" of Eye Associates' property.

127. In so doing, Cincinnati failed to distinguish between physical *damage* and physical *loss*. But the phrases are different and should be treated as having independent meanings. Under basic contract interpretation principles, policies are to be interpreted so that all words have meaning and nothing is rendered surplusage.

128. In addition, or in the alternative, Cincinnati also ignores that the presence of virus or disease can constitute physical damage to property – even if not permanent or resulting in a visible deformation. The Coronavirus affixes to surfaces creating dangerous physical conditions. It also can be airborne, thus damaging the insured premises with the physical presence of the Coronavirus. That the surfaces can be repaired by sanitization processes does not disprove that until sanitized, the surfaces are damaged.

129. Cincinnati's belated April 2 examples of what constitutes "direct loss" does not supersede the Policy's undefined terms; nor is Cincinnati's list exhaustive of what constitutes physical loss *or* physical damage.

130. Accordingly, Eye Associates has properly noticed a claim for direct loss under the Policy, and Cincinnati has no basis for denying coverage.

B. The Policy Has No Applicable Exclusions

131. The Policy does not contain a virus exclusion.

132. Cincinnati could have added such an express exclusion to Eye Associates' Policy – which was widely available to the insurance industry when the Policy was issued – but chose not to do so.

133. Cincinnati – as sole drafter of the Policy – relied on materials generated by the Insurance Services Office (“ISO”) in drafting the Policy. The ISO provides standard policy language for use in insurance contracts.

134. The ISO and insurers like Cincinnati became aware of the possibility of virus-related losses during multiple prior health-related crises across the world, including: the 2002 SARS epidemic; 2009 H1N1 swine flu epidemic; 2012 MERS epidemic; 2014 Ebola epidemic; and the 2016 Zika epidemic, among others.

135. In 2006, after the SARS epidemic, the ISO drafted a new endorsement, CP 01 40 07 06, entitled “Exclusion of Loss Due to Virus or Bacteria,” acknowledging that claims for business interruption losses could be filed under existing policy language for losses resulting from pandemics or the presence of disease-causing agents.

136. This new endorsement form was available to the entire insurance market, including Cincinnati. Other insurers incorporated the exclusion into their policies so that they would not “pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.”

137. Despite the widespread recognition of virus-related perils, Cincinnati did not incorporate this exclusion into the Policy it sold Eye Associates. Had Cincinnati wanted to exclude coverage for virus-induced pandemics, it could have done so using this form.

138. Indeed, even Cincinnati acknowledged in its 10-Q filing that *some* of its policies do have virus exclusions – but not the Policy sold to Eye Associates.

139. Cincinnati had ample notice and ability to directly exclude virus-induced Business Interruption coverage since 2006, but failed to do so in Eye Associates' Policy.

140. Now, after selling Eye Associates a policy without a virus exclusion – Cincinnati belatedly tries to rewrite its Policy to preclude coverage. In its May 11 denial letter, Cincinnati invoked the pollution exclusion in lieu of a virus exclusion.

141. The pollution exclusion is not a virus exclusion. There is no language in the policy that supports interpreting it as broadly as Cincinnati now tries to do. At no point is “virus” or “disease” listed as excluded – in this exclusion or elsewhere in the Policy.

142. In fact, certain pollution exclusions in the insurance market expressly include the word “virus”; the Cincinnati pollution exclusion does not. The absence of this specific word is significant in an “all-risk” policy like the one Cincinnati sold Eye Associates.

143. Accordingly, there is no exclusion – virus or pollution – that would preclude coverage for Eye Associates’ claim.

144. Cincinnati’s improper denial turns well-established New Mexico law on its head. For an all-risk policy, Eye Associates is required only to meet its minimal threshold burden of proving that it suffered a loss within the scope of the Policy, which Eye Associates did.

145. The burden then shifts to the insurer, Cincinnati, to prove the claim is excluded. Cincinnati cannot carry this burden.

146. There is no legitimate dispute that Eye Associates lost use of its insured property and its business was significantly interrupted by the Coronavirus and Government Orders – neither of which are excluded perils under the Policy. However, Cincinnati improperly refuses to provide coverage – ignoring the extent of Eye Associates’ loss from covered causes.

147. Instead, Cincinnati incorrectly claims that there is no coverage because Eye Associates has not established physical loss. Yet, Cincinnati’s reasoning is based only on whether there was physical damage – not physical loss. Cincinnati also improperly denies Civil Authority coverage, ignoring the physical loss pled and that the Government Orders expressly acknowledge the dangerous physical conditions – the “attendant harm” – presented by the Coronavirus.

148. Eye Associates provided adequate documentation of its loss, and ample explanation refuting Cincinnati's incorrect coverage position, but Cincinnati continues to withhold coverage.

149. Meanwhile, Eye Associates continues to respect the Government Orders, to the extreme detriment of its business. To date, Eye Associates has forecasted over \$24 million in losses.

150. Cincinnati's repudiation of the insurance contract that Eye Associates purchased to protect its business is unlawful.

151. Cincinnati's improper coverage denial follows from its and Ms. Johnson's failure to conduct a reasonable and fair evaluation of Eye Associates' coverage. Cincinnati and Ms. Johnson did not conduct a non-biased investigation, nor did they diligently consider the evidence that supports Eye Associates' claim. Cincinnati flouts controlling New Mexico law in refusing to pay Eye Associates' claim, instead only going through the motions of an "investigation."

152. Cincinnati has unreasonably deprived Eye Associates of insurance benefits to which it is entitled by purposefully (i) failing to give at least equal regard to Eye Associates' interests in being made whole under the Policy as Cincinnati did to its own interest in attempting to avoid the cost of fulfilling this obligation, and (ii) disregarding its obligation to refrain from doing anything that would frustrate the agreed-upon purposes of the Policy.

153. Cincinnati wrongfully refused to honor its obligations with a reckless disregard for Eye Associates' rights.

154. Cincinnati's misconduct exposed Eye Associates to additional damage and expense, forcing Eye Associates to bear the burden and impact of its business losses while simultaneously incurring the expense of pursuing Cincinnati to fully comply with its Policy obligations.

155. In addition to the unreasonable conduct described above, upon information and belief, Cincinnati may have further breached its duty of good faith and fair dealing by other acts or omissions that Eye Associates has not yet discovered.

FIRST CAUSE OF ACTION
(Breach of Contract against Cincinnati)

156. Plaintiffs incorporate herein the above paragraphs as if fully set forth herein.

157. The Policy is a valid contract under which Eye Associates paid premiums in exchange for Cincinnati's promise to pay Eye Associates for claims covered by the Policy.

158. Specifically, Cincinnati agreed to pay Eye Associates' claims for direct loss caused by or resulting from the necessary suspension of its operations caused by physical damage or loss and/or mandated by civil authority governmental orders, including but not limited to business income and extra expense. Coverage for these losses is in no way limited or excluded under the Policy's terms. This loss includes lost Business Income and Extra Expenses.

159. The Policy further requires payment of losses caused by action of civil authority that prohibits access to premises other than Plaintiffs' premises where the Coronavirus or Government Orders – covered causes of loss – caused damage or loss to those other premises and where access to the area immediately surrounding the affected property is prohibited by civil authority as a result of the damage or dangerous physical conditions.

160. The Policy also requires payment of losses associated with dependent properties. Coverage for these losses is in no way limited or excluded by the Policy's terms.

161. While representing to Eye Associates that it would diligently investigate its business interruption claim, Cincinnati told its investors that it would not honor the claims – in essence, denying the claim before it even received notice by stating in its April 2020 10-Q that “no coverage exists for this peril.”

162. Cincinnati has not honored and has no intention of honoring its obligations under the Policy. By denying coverage to Eye Associates, Cincinnati breached the contract.

163. Cincinnati's reasons for refusing to pay the claims of Eye Associates are frivolous or unfounded.

164. Cincinnati's failure to pay Eye Associates' claim is unreasonable.

165. As a result of Cincinnati's breach of the Policy, Eye Associates has sustained and will continue to sustain substantial damages for which Cincinnati is liable in an amount to be established at trial.

166. Accordingly, Eye Associates is entitled to compensatory and consequential damages, loss of interest (pre-judgment and post-judgment), and statutory attorneys' fees pursuant to NMSA 1978, § 39-2-1.

SECOND CAUSE OF ACTION
(Breach of Duty of Good Faith and Fair Dealing against Cincinnati)

167. Plaintiffs incorporate herein the above paragraphs as if fully set forth herein.

168. In every insurance policy there is an implied duty for the insurance company to deal fairly with the policyholder. Fair dealing means to act honestly and in good faith in the performance of the contract. Here, Cincinnati failed to give equal consideration to its own interests and the interests of its insured, Eye Associates.

169. Cincinnati's reasons for refusing to pay the claims of Eye Associates are frivolous or unfounded.

170. Cincinnati breached its duty of good faith and fair dealing by, including but not limited to: (i) failing to properly investigate Eye Associates' claim; (ii) refusing to timely pay the claim; (iii) ignoring and wrongfully denying Eye Associates' claim; (iv) failing to acknowledge coverage within a reasonable time; and (v) failing to reconsider the claim denial and ignoring Eye Associates' assertion that there was coverage under the Policy. Eye Associates reserves the right to add further allegations of bad faith as more information is learned.

171. When an insurer delays and fails to timely provide first-party coverage to its insured, it may be deemed to be acting unreasonably and in bad faith.

172. The insurer must give equal consideration to its own interests and the interests of its policyholder.

173. Cincinnati's misconduct was performed intentionally, willfully, wantonly or with reckless disregard of the interests of its insured.

174. As a result of Cincinnati's breach of the duty of good faith and fair dealing, Eye Associates has suffered and will continue to suffer damages in an amount to be established at trial, including noneconomic damages.

175. Accordingly, Eye Associates is entitled to compensatory and consequential damages, loss of interest (pre-judgment and post-judgment), punitive damages and statutory attorneys' fees pursuant to NMSA 1978, § 39-2-1.

THIRD CAUSE OF ACTION
(Violations of New Mexico's Insurance Practices Act against Cincinnati and Ms. Johnson)

176. Plaintiffs incorporate herein the above paragraphs as if fully set forth herein.

177. Cincinnati and Ms. Johnson are "insurers" under the meaning of New Mexico's Trade Practices and Frauds Act [NMSA 1978, § 59A-16-1, *et seq.*].

178. Cincinnati and Ms. Johnson either knowingly, or with such frequency as to indicate a general business practice, violated certain portions of the New Mexico Insurance Practices Act, NMSA § 59A-16-20:

(A) Misrepresenting to insureds pertinent facts or policy provisions relating to coverages at issue;

(B) Failing to acknowledge and act reasonably promptly upon communications with respect to claims from insureds arising under policies;

(C) Failing to adopt and implement reasonable standards for the prompt investigation and processing of insureds' claims arising under policies;

(D) Failing to affirm or deny coverage of claims of insureds within a reasonable time after proof of loss requirements under the policy have been completed and submitted by the insured;

(N) failing to promptly provide an insured a reasonable explanation of the basis relied on in the policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

179. Due to Cincinnati's and Ms. Johnson's violations of NMSA § 59A-16-20, Eye Associates is entitled to recover actual damages, attorneys' fees and costs.

FOURTH CAUSE OF ACTION
(Violation of the New Mexico Unfair Practices Act against Cincinnati)

180. Plaintiffs incorporate herein the above paragraphs as if fully set forth herein.

181. The New Mexico Unfair Trade Practices Act ("UPA"), NMSA 1978, § 57-12-2(D) prohibits unfair, deceptive or unconscionable sales practices.

182. UPA Section 57-12-2(D)(14) prohibits: "using . . . ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive." Ambiguity exists with respect to coverage offered by Cincinnati.

183. UPA Section 57-12-2(D)(17) prohibits: "failing to deliver the quality or quantity of goods or services contracted for." Cincinnati promised to indemnify Eye Associates by offering first-party all-risk insurance coverage and charging a premium for coverage, and now denies all coverage.

184. UPA Section 57-12-2(E) prohibits any person from engaging in any "act or practice in connection with the sale . . . or in connection with the offering for sale . . . of any goods or services . . . that to a person's detriment . . . takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree." The Policy sold by Cincinnati is a first-party commercial property policy which includes coverage for Eye Associates, which Cincinnati is now withholding on a basis it failed to disclose to Eye Associates when it first sold the Policy.

185. Cincinnati thus offered first-party commercial property insurance with an intent not to supply the reasonably expected coverage.

186. At the time and under the circumstances surrounding the sale of the Policy, and thereafter, Cincinnati knew, or as a professional provider of insurance should have known, that under New Mexico

law its denial of coverage under the circumstances would amount to a failure to deliver the quality of goods and/or services promised at the time of sale.

187. At the time of the sale of the Policy, Cincinnati knew, or as a professional provider of insurance, should have known that under New Mexico law it makes no difference whether it intended to deceive or defraud Eye Associates.

188. Cincinnati's acts and omissions were unfair and deceptive trade practices, which proximately resulted in damages to Eye Associates, and were otherwise in violation of the UPA Section 57-12-1, *et seq.*

189. Cincinnati has willfully engaged in unfair and deceptive trade practices or unconscionable trade practices entitling Eye Associates to an award treble damages.

190. Plaintiffs additionally seek recovery of their attorneys' fees and costs pursuant to NMSA 1978, § 57-12-10(C).

FIFTH CAUSE OF ACTION
(Declaratory Judgment against Cincinnati)

191. Plaintiffs incorporate herein the above paragraphs as if fully set forth herein.

192. Eye Associates seeks a declaratory judgment pursuant to NMSA 1978, §§ 44-6-1, 44-6-2, and 44-6-4, *et seq.*, for the purpose of determining an actual controversy between Eye Associates and Cincinnati.

193. An actual and justiciable controversy exists between Eye Associates and Cincinnati regarding the terms and conditions of coverage under the Policy with respect to a proper adjustment of the claim, including but not limited to, Cincinnati's wrongful refusal to pay the full business interruption loss due to Eye Associates based upon the physical loss of its space and related business interruption and extra expenses from the Coronavirus and/or the Government Orders.

194. As a direct and proximate result of Cincinnati's coverage denial and its failure to properly investigate, there exists an actual controversy between the parties that requires an action for declaratory judgment pursuant to NMSA 1978 §§ 44-6-2 and 44-6-4.

195. Eye Associates' loss is covered under the Policy. Eye Associates seeks a judicial determination and declaration that Cincinnati is obligated to insure the direct physical loss to Eye Associates under the Policy.

196. This controversy is ripe and of sufficient immediacy to justify the issuance of a declaratory judgment.

197. A judicial declaration is necessary and appropriate at this time because Eye Associates and Cincinnati have failed to reach agreement on Cincinnati's obligations under the Policy.

198. Cincinnati's acts and omissions warrant the entry of a judgment declaring and determining that as a matter of law Cincinnati breached their obligations to act reasonably, promptly and fully investigate the claim, and provide the requisite coverage.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for the following judgment in its favor and against Cincinnati:

- 1) An order finding Cincinnati to have breached the Policy and must promptly provide coverage;
- 2) An order finding Cincinnati to have breached its duty of good faith and fair dealing;
- 3) Declaratory relief, as described herein to include that Eye Associates' business income, extra expenses, civil authority, and dependent properties losses incurred in connection with the Coronavirus and Government Orders are insured losses under the Policy, and Cincinnati is obligated to pay the full amount of these losses;
- 4) Consequential and compensatory damages;
- 5) An award of punitive and exemplary damages;
- 6) Treble damages under the New Mexico Unfair Practices Act, NMSA 1978§ 57-12-10;
- 7) Statutory damages pursuant to New Mexico's Trade Practices and Frauds Act;

- 8) Attorneys' fees and costs, as provided by law;
- 9) Pre- and post-judgment interest at the highest rate allowed by law; and
- 10) Such other and further relief as this Court may deem just, equitable or proper.

JURY DEMAND

Plaintiffs demand a trial by jury of the claims so triable.

Respectfully submitted,

PEIFER, HANSON, MULLINS & BAKER, P.A.

By: /s/Robert E. Hanson

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Attorneys for Plaintiffs

e-CLAS Banner Page

Environment: PRODUCTION

Policy Number: EPP 050 19 76 / EBA 050 19 76

Effective Date: 08-28-2018

Named Insured: EYE ASSOCIATES OF NEW MEXICO, LTD, EYE SURGERY CENTERS OF NM,
LLC, PECOS VALLEY EYE SURGERY CENTER, LLC

30-001

WESTERN ASSURANCE CORP.
P.O. BOX 94600
ALBUQUERQUE, NM 87199-4600

Thank you for placing this coverage with The Cincinnati Insurance Companies!

EXHIBIT

1



**The Cincinnati Insurance Company
The Cincinnati Casualty Company
The Cincinnati Indemnity Company**

Policy Number: EPP 050 19 76

Effective Date: 08-28-2018

Named Insured: EYE ASSOCIATES OF NEW MEXICO, LTD, EYE SURGERY CENTERS OF NM,
LLC, PECOS VALLEY EYE SURGERY CENTER, LLC

For professional advice and policy questions or changes, please contact your local independent agency:

WESTERN ASSURANCE CORP.
P.O. BOX 94600
ALBUQUERQUE, NM 87199-4600

505-265-8481

Dear Policyholder:

Thank you

Thank you for trusting The Cincinnati Insurance Companies with your commercial insurance coverage. We recognize that locally based independent agents have the working knowledge to help you choose the right insurance company for your needs. Together with your local independent insurance agency, we are committed to providing you with the highest level of service.

Please review your enclosed policy information to verify your coverage details, as well as deductibles and coverage amounts. Should your needs change, your agent is available to review and update your policy.

Please promptly report claims

If you experience a policy-related loss, you may report it by contacting your local professional independent agency representing The Cincinnati Insurance Companies or by directly calling us toll-free at **877-242-2544** and providing your policy number and claim-related information.

Sincerely,

Steve Spray
Senior Vice President - Commercial Lines

NOTICE TO POLICYHOLDERS

DIRECT BILL ACCOUNT CREDIT PROCEDURE

This is a notice of how an account credit will be applied to your policy or to all of the policies being billed as single account.

Account Credits

- A.** If your account is comprised of a **single policy** and an endorsement or premium audit results in a credit (return premium), the credit is applied to that policy. If your account does not have a future installment due at the time the endorsement or audit is processed, the credit is refunded to the payor listed for your account. If you do not wish for credits to be automatically applied to future unpaid installments, please contact us to request a refund. Please note that the amount of the refund may vary based upon the date you contact us and your billing schedule.
- B.** If your account is comprised of **more than one policy** and an endorsement or premium audit results in a credit (return premium), the credit is applied in the following manner:
- Payments previously applied to your account are deferred.
 - The credit that results from the endorsement or audit is applied to the policy generating the credit.
 - The payments that were deferred are then reapplied to the account in order to satisfy the amount due.
 - Any excess payment that results from the credit is applied proportionately to your policies with a future payment or installment due.
 - If you do not wish for credits to be automatically applied to future unpaid installments, please contact us to request a refund. Please note that the amount of the refund may vary based upon the date you contact us and your billing schedule.
 - If your account does not have a future installment or payment due at the time the endorsement or audit is processed, the credit is refunded to the payor listed for your account.

(Does not apply to audit return premium for payors located in New York; Does not apply to premiums due more than 30 days from the date of processing for payors located in New Hampshire. These credits are automatically refunded to the payor)

To request a refund, contact us at:

Mailing Address

The Cincinnati Insurance Company
PO Box 14529
Cincinnati, OH 45250-0529

Toll free phone number

877-942-2455

Electronic mail

CinciBill@cinfin.com

DISCLOSURE OF DIRECT BILL FEES AND CHARGES

NO COVERAGE IS PROVIDED BY THIS DISCLOSURE, nor can it be construed to replace any provision of your policy. YOU SHOULD READ YOUR POLICY AND REVIEW YOUR DECLARATIONS PAGE CAREFULLY for complete information on the coverages provided.

Your insurance premium is being paid directly to us rather than to your insurance agency. We appreciate your prompt payment of the premium. Please note that these fees apply only in the event your payment is late, is returned to us for insufficient funds, or if your policy was previously canceled for nonpayment of premium and has been reinstated at either your or your agents request. We are not required to reinstate a policy once cancellation for nonpayment of premium has become effective. The decision to reinstate coverage is solely at the discretion of the company.

Not all fees are applicable in all states. The types of fees are listed below. Following the description of each fee, we list the states where the fee applies and the amount of the fee. Fees are not levied in KY, MD, MT and NC.

Non-Sufficient Funds (NSF) Charge: The first time a premium payment is returned due to Non-Sufficient Funds (NSF), the premium due is the installment amount. For each succeeding return of payment while continuously insured with The Cincinnati Insurance Companies, a charge is added to your next account statement. The amount of the charge is determined by the fees filed with and approved by the state where the payor of your account is located.

\$10 AK, FL, NJ, RI, and SC;

\$15 MA;

\$20 NY; and

\$25 AL, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, LA, ME, MI, MN, MS, MO, NE, NV, NH, NM, ND, OH, OK, OR, PA, SD, TN, TX, UT, VT, VA, WA, WI, WV and WY.

Reinstatement Charge: The first time your account is reinstated for nonpayment of premium, the premium due is the installment amount. For each succeeding reinstatement due to nonpayment of premium while continuously insured with The Cincinnati Insurance Companies, a charge is added to your next account statement. The amount of the charge is determined by the fees filed with and approved by the state where the payor of your account is located.

\$10 AK, RI, and SC;

\$15 MA;

\$20 NY; and

\$25 AL, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, LA, ME, MI, MN, MS, MO, NE, NV, NH, NM, ND, OH, OK, OR, PA, SD, TN, TX, UT, VT, VA, WA and WY.

Late Charge: A charge is added to your next account statement each time your payment is received and processed after the due date as shown on the account statement. This fee will not apply to Electronic Funds Transfer (EFT). The amount of the charge is determined by the fees filed with and approved by the state where the payor of your account is located.

\$10 AK, FL, RI, and SC;

\$15 MA; and

\$25 AL, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, LA, ME, MI, MN, MS, MO, NE, NV, NH, NM, ND, OH, OK, OR, PA, SD, TN, TX, UT, VT, VA, WA, WI and WY.



The Cincinnati Casualty Company

A Stock Insurance Company

Headquarters: 6200 S. Gilmore Road, Fairfield, OH 45014-5141

Mailing address: P.O. Box 145496, Cincinnati, OH 45250-5496

www.cinfin.com ■ 513-870-2000

COMMON POLICY DECLARATIONS

Billing Method: DIRECT BILL

POLICY NUMBER EPP 050 19 76 / EBA 050 19 76

NAMED INSURED EYE ASSOCIATES OF NEW MEXICO, LTD, EYE SURGERY CENTERS OF NM, LLC, PECOS VALLEY EYE SURGERY CENTER, LLC

ADDRESS 8801 HORIZON BLVD NE
(Number & Street, ALBUQUERQUE, NM 87113-1533
Town, County,
State & Zip Code)

Previous Policy Number:

NEW

Policy Period: At 12:01 A.M., STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

All coverages except Automobile and / or Garage

Policy number: EPP 050 19 76 FROM: 08-28-2018 TO: 08-28-2021

Automobile and / or Garage

Policy number: EBA 050 19 76 FROM: 08-28-2018 TO: 08-28-2019

Agency WESTERN ASSURANCE CORP. 30-001

City ALBUQUERQUE, NM

Legal Entity / Business Description

LIMITED LIABILITY COMPANY

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.

FORMS APPLICABLE TO ALL COVERAGE PARTS:

IL0017	11/98	COMMON POLICY CONDITIONS
IA102A	09/08	SUMMARY OF PREMIUMS CHARGED
IA904	04/04	SCHEDULE OF LOCATIONS
IA4236	01/15	POLICYHOLDER NOTICE TERRORISM INSURANCE COVERAGE
IP446	08/01	NOTICE TO POLICYHOLDERS
IA4006	07/10	SPECIAL PER OCCURRENCE DEDUCTIBLE ENDORSEMENT
IA4238	01/15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
IA4305NM	03/16	NEW MEXICO CHANGES - CANCELLATION AND NONRENEWAL
IA4308NM	07/10	NEW MEXICO POLICYHOLDER NOTIFICATION OF RATE MODIFICATION ON NEW BUSINESS
IA4310NM	08/07	NEW MEXICO CHANGES - PROPERTY CLAIMS SETTLEMENT IN THE EVENT OF A CATASTROPHE
IA4338	05/11	SIGNATURE ENDORSEMENT
FMQ502	07/08	COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS
GAQ532	07/08	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
MAQ553	06/07	ACCOUNTS RECEIVABLE COVERAGE PART DECLARATIONS
MAQ556	06/07	COMMERCIAL ARTICLES COVERAGE PART DECLARATIONS
MAQ573	06/07	ELECTRONIC DATA PROCESSING EQUIPMENT COVERAGE FORM DECLARATIONS
MAQ554	05/10	GENERAL FLOATER COVERAGE PART DECLARATIONS
CAQ519XCP	03/09	CINCIPLUS® CRIME XC+® (EXPANDED COVERAGE PLUS) COVERAGE PART DECLARATIONS

FORMS APPLICABLE TO ALL COVERAGE PARTS:

CAQ516 03/09 CRIME AND FIDELITY COVERAGE PART DECLARATIONS (COMMERCIAL
ENTITIES)

AAQ505 03/06 BUSINESS AUTO COVERAGE PART DECLARATIONS

USQ513 05/10 COMMERCIAL UMBRELLA LIABILITY COVERAGE PART DECLARATIONS

09-21-2018 10:16

Countersigned _____ (Date) By _____ (Authorized Representative)

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 non-payment 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.

SUMMARY OF PREMIUMS CHARGED

Attached to and forming part of

POLICY NUMBER: EPP 050 19 76 / EBA 050 19 76

Effective Date: 08-28-2018

Named Insured: EYE ASSOCIATES OF NEW MEXICO, LTD, EYE SURGERY CENTERS OF NM, LLC, PECOS VALLEY EYE SURGERY CENTER, LLC

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM CHARGE IS INDICATED

Commercial Property Coverage Part	\$	29,941
Commercial General Liability Coverage Part	\$	14,536
Commercial Auto Coverage Part	\$	7,706
Commercial Umbrella / Excess Liability Coverage Part	\$	6,965
CRIME AND FIDELITY COVERAGE PART	\$	990
CRIME EXPANDED COVERAGE PLUS	\$	100
ACCOUNTS RECEIVABLE	\$	1,040
COMMERCIAL ARTICLES	\$	58
ELECTRONIC DATA PROCESSING EQUIPMENT	\$	500
GENERAL FLOATER	\$	3,000
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
Terrorism Coverage	\$	443
Installment Charge	\$	
ANNUAL TOTAL PAYMENTS	\$	65,279

MONTHLY

First
Installment

Remaining
Installment(s)

*SEE BILLING STATEMENT MAILED SEPARATELY

Automobile Coverages, Employers Liability, Employment Practices Liability Coverage, Professional Liability Coverage, Terrorism Coverage and / or Wrongful Acts Coverage, if included in the policy, are subject to Annual Adjustment of rates and premium on each anniversary of the policy.

Commercial Umbrella and Excess Liability, if included in the policy, may be subject to Annual Adjustment of premium on each anniversary. Refer to the Commercial Umbrella or Excess Liability Coverage Part Declarations form to see if this is applicable.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE OF LOCATIONS

<u>LOC.</u>	<u>STREET ADDRESS</u>	<u>CITY</u>	<u>STATE</u>	<u>ZIP CODE</u>
1	806 DR MARTIN LUTHER KING JR AVE NE	ALBUQUERQUE,	NM	87102-3657
2	311 E NIZHONI BLVD	GALLUP,	NM	87301-5871
3	622 W MAPLE ST STE E	FARMINGTON,	NM	87401-6589
4	412 S PASEO DE ONATE # 2	ESPANOLA,	NM	87532-3486
5	2947 RODEO PARK DR E	SANTA FE,	NM	87505-6303
6	8801 HORIZON BLVD NE	ALBUQUERQUE,	NM	87113-1533
7	248 MILLS AVE	LAS VEGAS,	NM	87701-4125
8	1623 CENTRAL AVE	LOS ALAMOS,	NM	87544-3018
9	1740 GRANDE BLVD SE	RIO RANCHO,	NM	87124-1799
10	5200 EUBANK BLVD NE	ALBUQUERQUE,	NM	87111-1759
11	6808 ACADEMY PARKWAY EAST NE	ALBUQUERQUE,	NM	87109-4486
12	1399 WEIMER RD STE 300	TAOS,	NM	87571-6347
13	5757 HARPER DR NE	ALBUQUERQUE,	NM	87109-3566
14	1603 MAIN ST SW STE C	LOS LUNAS,	NM	87031-8766
15	1606 SE MAIN ST	ROSWELL,	NM	88203-5411

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE OF LOCATIONS

<u>LOC.</u>	<u>STREET ADDRESS</u>	<u>CITY</u>	<u>STATE</u>	<u>ZIP CODE</u>
16	4411 THE 25 WAY NE STE 325 ALBUQUERQUE, NM			87109-5853
17	6349 US HIGHWAY 550 CUBA, NM			87013

POLICYHOLDER NOTICE

TERRORISM INSURANCE COVERAGE

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.

Your policy may contain coverage for certain losses caused by terrorism.

Premium:

In accordance with the federal Terrorism Risk Insurance Act, we are required to notify you of the portion of the premium, if any, attributable to the coverage for terrorist acts certified under the Terrorism Risk Insurance Act.

- Refer to the SUMMARY OF PREMIUMS CHARGED or DECLARATIONS PAGE for the portion of your premium that is attributable to coverage for terrorist acts certified under the Act.

Federal Participation:

The Act also requires us to provide disclosure of federal participation in payment of terrorism losses.

- Under your policy, any losses caused by certified acts of terrorism would be partially reimbursed by the United States Government, Department of Treasury, under a formula established by federal law. Under this formula, the federal share equals a percentage, as specified in the Schedule below, 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.
- **Schedule:**

Federal Share of Terrorism Losses	
Percentage	Calendar Year
85%	2015
84%	2016
83%	2017
82%	2018
81%	2019
80%	2020

Cap on Insurer Participation:

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.

NOTE: IF YOUR POLICY IS A RENEWAL POLICY, THIS NOTICE IS PROVIDED TO SATISFY THE REQUIREMENTS UNDER THE TERRORISM RISK INSURANCE ACT FOR POLICYHOLDER DISCLOSURE: (1) AT THE TIME OF OUR OFFER TO RENEW THE POLICY AND (2) AT THE TIME THE RENEWAL IS COMPLETED.

**THE CINCINNATI INSURANCE COMPANY
THE CINCINNATI CASUALTY COMPANY
THE CINCINNATI INDEMNITY COMPANY**

NOTICE TO POLICYHOLDERS

Please be advised that in your application for insurance you disclosed information to The Cincinnati Insurance Company, The Cincinnati Casualty Company and The Cincinnati Indemnity Company. The information disclosed in the application and all information subsequently collected by any of these companies may be shared among all three.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL PER OCCURRENCE DEDUCTIBLE ENDORSEMENT

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
CRIME AND FIDELITY COVERAGE PART**

A. Special Per Occurrence Deductible

1. If an "occurrence" happens to Covered Property under the Commercial Property Coverage Part and to Covered Property under at least one of the following:

- a. The Commercial Inland Marine Coverage Part, and
- b. The Crime and Fidelity Coverage Part;

the most we will deduct from any loss or damage in any one "occurrence" is the deductible indicated on the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS**.

2. This endorsement does not apply to any of the forms listed in Paragraphs a. and b.:

- a. * **Electronic Data Processing Coverage Form, Section III, 2. Deductible, a.(2) Specified Losses Deductible**

*** Water Backup from Sewers, Drains, Septic Systems or Sump Pumps Endorsement**

Windstorm or Hail Percentage Deductible Form

Earthquake and Volcanic Eruption Endorsement

Earthquake and Volcanic Eruption Endorsement (Sub-Limit Form)

Flood Coverage Endorsement

Equipment Breakdown Coverage (Including Production Equipment)

Equipment Breakdown Coverage (Excluding Production Equipment)

*** Temperature Change Coverage Form**

Commercial Crime Coverage Form, A. Insuring Agreements, 1. Employee Theft, 2. Forgery or Alteration, 6. Computer Fraud and 7. Funds Transfer Fraud

Crime Expanded Coverage (XC®) Coverage or Expanded Coverage Plus Forms, A. Insuring Agreements, 1. Employee Theft and 2. Forgery or Alteration

Government Crime Coverage Form, A. Insuring Agreements, 1. Employee Theft - Per Loss Coverage, 2. Employee Theft - Per Employee Coverage, 3. Forgery or Alteration, 7. Computer Fraud and 8. Funds Transfer Fraud

- * Or such coverage as provided in the CinciPlus® Commercial Property or Commercial Property Power Expanded Coverage or Expanded Coverage Plus Forms

- b. ☐ **Other**

B. Definition

For the purpose of this endorsement only, any definition of "occurrence" is deleted in its entirety and the following definition is added to:

1. **COMMERCIAL PROPERTY CONDITIONS,**
2. **COMMERCIAL INLAND MARINE CONDITIONS,**
3. **COMMERCIAL CRIME COVERAGE FORM,**
4. **CRIME EXPANDED COVERAGE (XC®) COVERAGE FORM, and**
5. **GOVERNMENT CRIME COVERAGE FORM:**

"Occurrence" means all loss, damage, or a sequence of loss or damage, casualties or disasters arising from a single happening or event.

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:

All Commercial Lines Coverage Parts, Coverage Forms, Policies and Endorsements subject to the federal Terrorism Risk Insurance Act and any amendments and extensions thereto

- A.** The following definition is added with respect to the provisions of this endorsement:

"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 the federal Terrorism Risk Insurance 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. Cap On Losses from Certified Acts of Terrorism**

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 ex-

ceeds \$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.

- C. Application of Other Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability, omission or absence of a terrorism exclusion, does not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part, Coverage Form, Policy or Endorsement such as losses excluded by:

1. Exclusions that address war, warlike action, insurrection, rebellion, revolution, military action, nuclear hazard, nuclear materials, nuclear reaction, radiation, or radioactive contamination;
2. Exclusions that address pollutants, contamination, deterioration, fungi or bacteria; or
3. Any other exclusion,

regardless if the "certified act of terrorism" contributes concurrently or in any sequence to the loss.

- D. Sunset Clause**

If the federal Terrorism Risk Insurance Act expires or is repealed, then this endorsement is null and void for any act of terrorism that takes place after the expiration or repeal of the Act.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW MEXICO CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

CHEMICAL DRIFT LIMITED LIABILITY COVERAGE PART
CINCINNATI CYBER DEFENSE™ COVERAGE PART
CINCINNATI DATA DEFENDER™ COVERAGE PART
CINCINNATI NETWORK DEFENDER™ COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CONTRACTOR'S ERRORS AND OMISSIONS COVERAGE PART - CLAIMS-MADE
CONTRACTORS' LIMITED POLLUTION LIABILITY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
ELECTRONIC DATA LIABILITY COVERAGE PART
EMPLOYEE BENEFITS LIABILITY COVERAGE PART
EMPLOYMENT PRACTICES LIABILITY COVERAGE PART
FARM COVERAGE PART
GOLF COURSE CHEMICAL APPLICATION LIMITED LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MACHINERY AND EQUIPMENT COVERAGE PART
MANUFACTURER'S ERRORS AND OMISSIONS COVERAGE PART CLAIMS-MADE
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART
SEPTIC SYSTEMS DESIGN AND INSPECTION ERRORS AND OMISSIONS COVERAGE PART

- A. Paragraph 2. of the **Cancellation** Common Policy Condition is replaced by the following:
2. **Permissible Reasons and Notice Period**
- a. If this Policy is in effect less than 60 days and is not a renewal of a policy we issued, we may cancel for any reason by mailing or delivering to the first Named Insured written notice of cancellation at least 10 days before the effective date of cancellation provided that the cancellation becomes effective before the Policy has been in effect for 60 days.
- b. If Paragraph a. does not apply, we may cancel only for one or more of the following reasons:
- (1) Nonpayment of premium.
 - (2) There has been a substantial change in the risk assumed by us since the Policy was issued.
 - (3) The Policy was obtained through material misrepresentation, fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by us.
- (4) Willful and negligent acts or omission by the insured have substantially increased the hazards insured against.
- (5) You presented a claim based on fraud or material misrepresentation.
- c. If we cancel subject to 2.b. above, we will mail or deliver to the first Named Insured written notice of cancellation at least:
- (1) 10 days before the effective date of cancellation, for the reason set forth in 2.b.(1).
 - (2) 30 days before the effective date of cancellation, for the reason set forth in 2.b.(2).
 - (3) 15 days before the effective date of cancellation, for a reason set forth in 2.b.(3), 2.b.(4) or 2.b.(5).
- The written notice will state the reason for cancellation, except that such statement may

be omitted from a notice mailed to an additional insured or lien holder under this policy.

- B.** The following Condition is added and supersedes any condition to the contrary:

NONRENEWAL

1. If we decide not to renew this policy, we will mail to the first Named Insured written

notice of the nonrenewal not less than 30 days:

- a. The expiration of this Policy; or
- b. The anniversary date of this Policy, if the policy is written for a term of more than one year.

Proof of mailing will be sufficient proof of notice.

NEW MEXICO POLICYHOLDER NOTIFICATION OF RATE MODIFICATION ON NEW BUSINESS

We are advising you either a credit and / or debit was applied to your new policy. In accordance with 13 NMAC 8.5.8 of the New Mexico Code, any rate modification plan must provide that an applicant will be notified in writing by the insurer at the issuance of a new policy of the factors and resulting amounts which resulted in the rating modification and whether a debit or credit. Therefore, the applicant will be fairly apprised of any corrective action that might be appropriate with respect to the insurance risk.

Named Insured: EYE ASSOCIATES OF NEW MEXICO, LTD, EYE SURGERY CENTERS OF NM,
LLC, PECOS VALLEY EYE SURGERY CENTER, LLC

Policy Number EPP 050 19 76

Effective Date 08-28-2018

Agency WESTERN ASSURANCE CORP. 30-001

Agency Code 30-001

Producer _____ Phone # 505-265-8481

☒ Property

Factor	Reasons for notification
0.900	Individual Risk Premium Modification: <input checked="" type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
0.750	Large Premium Discount: Credit Factor
	Loss Free Discount: Credit Factor
	Substandard Condition Charges: Debit Factor
	Other:

Resulting percentage: 0.675

☐ Inland Marine

Factor	Reasons for notification
	Individual Risk Premium Modification: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Other:

Resulting percentage:

☐ Farm

Factor	Reasons for notification
	Individual Risk Premium Modification: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Other:

Resulting percentage:

☒ **General Liability**

Factor	Reasons for notification
0.820	Experience: <input checked="" type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Schedule Rating Plan: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Large Premium Discount: Credit Factor
	Other:

Resulting percentage: 0.820

☒ **Automobile**

Factor	Reasons for notifications
0.800	Experience: <input checked="" type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Automobile Unit Discount: Credit Factor
	Schedule Rating Plan: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Other:

Resulting percentage: 0.800

☐ **Businessowners Package Policy**

Factor	Reasons for notifications
	Experience: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Schedule Rating Plan: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Large Premium Discount: Credit Factor
	Multiple Building Credit: Credit Factor
	Other:

Resulting percentage:

☐ **Internet Liability**

Factor	Reasons for notifications
	Individual Risk Premium Modification: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Other:

Resulting percentage:

☐ **Dentist's Package Program**

Factor	Reasons for notifications
	Building Age Credit: Credit Factor
	Experience: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Schedule Rating Plan: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Large Premium Discount: Credit Factor
	Other:

Resulting percentage:

☐ **Professional Liability**

Factor	Reasons for notifications
	Experience: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Schedule Rating Plan: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Other:

Resulting percentage:

☒ **Crime and Fidelity**

Factor	Reasons for notifications
	Experience: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
0.750	Schedule Rating Plan: <input checked="" type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Other:

Resulting percentage: 0.750

☐ **Umbrella**

Factor	Reasons for notifications
	Schedule Rating Plan: <input type="checkbox"/> Credit Factor <input type="checkbox"/> Debit Factor
	Other:

Resulting percentage:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW MEXICO CHANGES - PROPERTY CLAIMS SETTLEMENT IN THE EVENT OF A CATASTROPHE

This endorsement modifies insurance provided under the following:

**COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART
MACHINERY AND EQUIPMENT COVERAGE PART**

- A.** The provisions of this endorsement apply to a claim for direct physical loss or damage to Covered Property, provided that:
 - 1.** The claim is for loss or damage that results from a catastrophe declared by the Superintendent of Insurance; and
 - 2.** The catastrophic event is a Covered Cause of Loss.
- B.** The word loss, as used in this endorsement, includes "loss" as defined in certain coverage forms.
- C.** The following provisions, **C.1.** and **C.2.**, are added to the policy and supersede any provisions to the contrary:
 - 1.** If you reported your claim to us:
 - a.** Before the catastrophe was declared, we will reach agreement with you on the amount of loss within 90 days after the date the catastrophe was declared;
 - b.** After the catastrophe was declared, we will reach agreement with you on the amount of loss within 90 days
 - 2.** However, the time periods specified in **C.1.** above will be extended by the period of time taken to resolve the following situations:
 - a.** We suspect the claim is fraudulent and commence an investigation to make such a determination;
 - b.** You do not provide the necessary information regarding the nature of the claim, following our request for such information; or
 - c.** You filed suit against us in connection with the claim before expiration of the applicable 90-day period.
- D.** All other provisions of this policy continue to apply in the event of a catastrophe, including the Suit Against Us and Appraisal conditions.
- E.** This endorsement does not invalidate our right to deny your claim, nor the right of either party to seek judgment in a court having jurisdiction.

SIGNATURE ENDORSEMENT

IN WITNESS WHEREOF, this policy has been signed by our President and Secretary in the City of Fairfield, Ohio, but this policy shall not be binding upon us unless countersigned by an authorized representative of ours. The failure to countersign does not void coverage in Arizona, Virginia and Wisconsin.



Secretary



President

The signature on any form, endorsement, policy, declarations, jacket or application other than the signature of the President or Secretary named above is deleted and replaced by the above signatures.

THE CINCINNATI CASUALTY COMPANY

A Stock Insurance Company

COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

Attached to and forming part of POLICY NUMBER: **EPP 050 19 76**

Named Insured is the same as it appears on the Common Policy Declarations unless otherwise stated here.

Loc. (address)

PER STATEMENT OF VALUES ON FILE
REFER TO IA904

COVERAGE PROVIDED			OPTIONAL COVERAGES Applicable only when an entry is made								
Item	Coverage	Limits	Coin- surance	Covered Cause Of Loss	Business Income Indemnity						
					Inflation Guard (%)	Replace- ment Cost (x)	Replace- ment Cost Incl. Stock (x)	Agreed Value (x)	Monthly Limit (fraction)	Maximum Period (X)	Extended Period (Days)
	BLANKET BUSINESS PERSONAL PROPERTY	18,639,840	90%	SPECIAL		X		X			
	BLANKET BUSINESS INCOME W/EXTRA EXPENSE (b)	24,000,000	80%	SPECIAL							
14-1	BUSINESS INCOME W/EXTRA EXPENSE (b)	409,500	80%	SPECIAL							

DEDUCTIBLE: \$500.00 unless otherwise stated \$ 2,500

MORTGAGE HOLDER

Item	Name and Address
9-1	DEL SOL PROPERTIES LLC PO BOX 25465 ALBUQUERQUE, NM 87125-0465

FORMS AND / OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:

FM101	05/16	BUILDING AND PERSONAL PROPERTY COVERAGE FORM (INCLUDING SPECIAL CAUSES OF LOSS)
FA4053	04/06	CINCIPLUS™ COMMERCIAL PROPERTY EXPANDED COVERAGE (XC™) PLUS ENDORSEMENT SUMMARY OF COVERAGE LIMITS
FA4060NM	08/07	NEW MEXICO CHANGES
FA450	05/16	COMMERCIAL PROPERTY CONDITIONS
FA480	02/16	LOSS PAYABLE PROVISIONS
FA250	05/16	CINCIPLUS® COMMERCIAL PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT
FA213	05/16	BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

BUILDING AND PERSONAL PROPERTY COVERAGE FORM (INCLUDING SPECIAL CAUSES OF LOSS)

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BUILDING AND PERSONAL PROPERTY COVERAGE FORM

(INCLUDING SPECIAL CAUSES OF LOSS)

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**.

SECTION A. COVERAGE

We will pay for direct "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the following types of property for which a Limit of Insurance is shown in the Declarations:

a. Building

Building, means the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery and equipment;
 - (b) Building glass, including any lettering and ornamentation;
 - (c) Signs attached to a building or structure that is Covered Property;
 - (d) Awnings and canopies;
- (4) Personal property owned by you that is used to maintain or service a covered building 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 a covered building;

- (b) Materials, equipment, supplies and temporary structures, on or within 1,000 feet of the "premises", used for making additions, alterations or repairs to a covered building.

b. Outdoor Signs

Your outdoor signs permanently installed and not attached to a covered building, and located within 1,000 feet of the "premises".

c. Outdoor Fences

Your outdoor fences.

d. Business Personal Property

Your Business Personal Property consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater. Your Business Personal Property consists of the following unless otherwise specified in the Declarations or on the **BUSINESS PERSONAL PROPERTY - SEPARATION OF COVERAGE ENDORSEMENT**.

- (1) Furniture;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) The cost of 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 used in your business for which you have a contractual responsibility to insure. Such leased property is not considered personal property of others in your care, custody or control;

(8) Personal Property of Others that is in your care, custody or control or for which you are legally liable.

(a) This does not include personal effects owned by you, your officers, your partners, or if you are a limited liability company, your members or your managers, or your employees (including leased and temporary workers), except as provided in **5. Coverage Extensions, I. Personal Effects**;

(b) This does not include property of others for which you are legally liable as:

- 1) A carrier for hire; or
- 2) An arranger of transportation, including car loaders, consolidators, brokers, freight forwarders, or shipping associations; and

(9) Sales samples.

2. Property Not Covered

Covered Property does not include:

a. Accounts, Deeds, Money or Securities

Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, a. Accounts Receivable**, Accounts, bills, currency, deeds, food stamps or other evidences of debt, "money", notes or "securities";

b. Animals

Animals, unless

- (1) Owned by others and boarded by you; or
- (2) Owned by you and covered as "stock" while inside of buildings;

and then only as provided in **3. Covered Causes of Loss, c. Limitations**.

c. Automobiles

Automobiles held for sale;

d. Contraband

Contraband, or property in the course of illegal transportation or trade;

e. Electronic Data

Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, d. Electronic Data**, "Electronic data". This Paragraph **e.** does not apply to your "stock" of prepackaged software or to "electronic data" which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.

f. Excavations, Grading & Backfilling

The cost of excavations, grading, backfilling or filling;

g. Foundations

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, Water or Growing Crops

Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetative roof);

i. Paved Surfaces

Bridges, roadways, walks, patios or other paved surfaces;

j. Property While Airborne or Waterborne

Personal property while airborne or waterborne;

k. Pilings or Piers

Pilings, piers, bulkheads, wharves or docks;

l. Property More Specifically Insured

Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except as provided in **G. Other Insurance** of the **COMMERCIAL PROPERTY CONDITIONS**;

m. Retaining Walls

Retaining walls that are not part of any building described in the Declarations;

n. Underground Pipes, Flues or Drains

Underground pipes, flues or drains;

o. Valuable Papers & Records and Cost to Research

Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, r. Valuable Papers and Records**, the cost to research, replace or restore the information on "valuable papers and records", including those which exist as "electronic data".

This does not apply to "valuable papers and records" held for sale by you.

p. Vehicles or Self-Propelled Machines

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 "premises".

This paragraph does not apply to:

- (1) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (2) Vehicles or self-propelled machines, other than autos, you hold for sale;
- (3) Rowboats or canoes out of water and located at the "premises"; or
- (4) Trailers, but only as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, o. Trailers (Nonowned Detached)**.

q. Property While Outside of Buildings

The following property while outside of buildings (except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions**):

- (1) Grain, hay, straw or other crops;
- (2) Signs, except:
 - (a) Signs attached to a covered building or structure;
 - (b) Signs for which a Limit of Insurance is shown in the Declarations.
- (3) Outdoor fences, except outdoor fences for which a Limit of Insurance is shown in the Declarations;
- (4) Radio antennas, television antennas or satellite dishes; including their lead-in wiring, masts, and towers; and

- (5) Trees, shrubs or plants (other than trees, shrubs or plants that are "stock" or part of a vegetative roof).

3. Covered Causes of Loss

a. Covered Causes of Loss

Covered Causes of Loss means direct "loss" unless the "loss" is excluded or limited in this Coverage Part.

b. Exclusions

- (1) We will not pay for "loss" caused directly or indirectly by any of the following, unless otherwise provided. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

(a) Ordinance or Law

Except as provided in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law**, the enforcement of or compliance with any ordinance or law:

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

This exclusion applies whether "loss" results from:

- 1) An ordinance or law that is enforced even if the building or structure has not been damaged; or
- 2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of any building or structure, or removal of its debris, following a direct "loss" to that building or structure.

(b) Earth Movement

- 1) Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
- 2) Landslide, including any earth sinking, rising or shifting related to such event;

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

But if Earth Movement, as described in (b)1) through 4) above, results in fire or explosion, we will pay for the "loss" 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" caused by that fire, building glass breakage or volcanic action.

Volcanic action means direct "loss" resulting from the eruption of a volcano when the "loss" is caused by:

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

With respect to coverage for Volcanic Action, 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 "loss" to the described property.

This Earth Movement 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.

(c) Governmental Action

Seizure or destruction of property by order of governmental authority. However, we will pay for "loss" 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.

(e) Utility Services

- 1) Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, q. Utility Services**, the failure of power, communication, water or other utility services supplied to the "premises", however caused, if the failure:

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

Failure of any utility service includes lack of sufficient capacity and reduction in supply. "Loss" caused by a surge of power is also excluded if the surge would not have occurred but for an event causing the failure of power.

However, if the failure or surge of power, or the failure of communication, water, wastewater removal or other utility service results in a Covered Cause of Loss, we will pay for that portion of "loss" 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, meaning the partial or complete inundation of normally dry land areas due to:
 - a) The unusual or rapid accumulation or runoff of rain or surface waters from any source; or
 - b) Waves, tidal waters, tidal waves (including tsunami); or
 - c) Water from rivers, ponds, lakes, streams, or any other body of water that rises above, overflows from, or is not contained within its natural or man-made boundary;and all whether driven by wind or not, including storm surge.
- 2) Mudslides or mudflows, which are caused by flooding as defined above in Paragraph (g)1) above. 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;

- 3) Water that has entered and then backs up through and is discharged from a sewer, drain, septic system, sump pump system or related equipment; 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.
- 5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraphs (g)1), 3) or 4), or material carried or otherwise moved by mudslide or mudflow as described in Paragraph (g)2).

This exclusion applies regardless of whether any of the above in Paragraphs (g)1) through (g)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.

However, if any of the above, as described in Paragraphs (g)1) through (g)5), results in fire, explosion or sprinkler leakage, we will pay for that portion of "loss" caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

(h) "Fungi", Wet Rot, Dry Rot, and Bacteria

- 1) Presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot or bacteria. But if "fungi", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the "loss" caused by that "specified cause of loss".

2) This exclusion does not apply:

- a) When "fungi", wet or dry rot or bacteria results from fire or lightning; or
- b) To the extent that coverage is provided in **SECTION A. COVERAGE, 5. Coverage Extensions, g. "Fungi", Wet Rot, Dry Rot and Bacteria - Limited Coverage** with respect to "loss" from 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" caused by or resulting from any of the following:

(a) Electrical Current

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:

- 1) Electrical current, including arcing;
- 2) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- 3) Pulse of electromagnetic energy; or
- 4) Electromagnetic waves or microwaves.

However, if fire results, we will pay for "loss" caused by that fire.

(b) Delay or Loss of Use

Delay, loss of use or loss of market.

(c) Smoke, Vapor, Gas

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

(d) Miscellaneous Causes of Loss

- 1) Wear and tear;
- 2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- 3) Smog;
- 4) Settling, cracking, shrinking or expansion;
- 5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
- 6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. However, if mechanical breakdown results in elevator collision, we will pay for that portion of "loss" caused by that elevator collision; or
- 7) The following causes of loss to personal property:
 - a) Marring or scratching;
 - b) Except as provided in **SECTION A. COVERAGE, 4. Additional Coverages, a. Change in Temperature or Humidity and 5. Coverage Extensions, q. Utility Services;**
 - i) Dampness or dryness of atmosphere; and
 - ii) Changes in or extremes of temperature.

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

(e) Explosion of Steam Apparatus

Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. However, if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for that portion of "loss" caused by that fire or combustion explosion. We will also pay for "loss" 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) Water Seepage

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) Freezing of Plumbing

Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protection systems) caused by or resulting from freezing, unless:

- 1) You did your best to maintain heat in the building or structure; or
- 2) You drained the equipment and shut off the supply if the heat was not maintained.

(h) Dishonest or Criminal Acts

Dishonest or criminal acts (including theft) by you, any of your partners, members (if a limited liability company), officers, managers, employees (including leased workers or temporary employees) directors, trustees, or authorized representatives; whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion applies whether or not an act occurs during the hours of operation.

This **Dishonest or Criminal Acts** exclusion does not apply to acts of destruction by your employees (including leased workers or temporary employees) or by authorized representatives; except theft by employees (including leased workers or temporary employees) is not covered.

(i) Voluntary Parting Under False Pretense

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) Exposure to Weather

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

(k) Collapse

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 Paragraph (k)1) or 2) above.

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

This exclusion **Collapse** does not apply:

- 1) To the extent that coverage is provided under the **SECTION A. COVERAGE, 5. Coverage Extensions, c. Collapse**; or
- 2) To collapse caused by one or more of the following:

- a) The "specified causes of loss";
- b) Breakage of building glass;
- c) Weight of rain that collects on a roof; or
- d) Weight of people or personal property.

(l) Pollutants

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

This exclusion does not apply to "loss" to glass caused by chemicals applied to the glass.

m) Loss or Damage to Product

We will not pay for "loss" to Covered Property consisting of 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 "loss" caused by that Covered Cause of Loss.

(n) Neglect

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

- (3) We will not pay for "loss" caused by or resulting from any of the following in Paragraphs (3)(a) through (3)(c). However, if an excluded cause of loss that is listed in Paragraphs (3)(a) through (3)(c) results in a Covered Cause of Loss, we will pay for that portion of "loss" caused by that Covered Cause of Loss:

(a) Weather Conditions

Weather conditions, but this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions, (1)(a)** through **(1)(h)** to produce the "loss".

(b) Acts or Decisions

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

(c) Defects, Errors, and Omissions

- 1) An act, error, or omission (negligent or not) relating to:

- a) Land use;
- b) Design, specifications, construction, workmanship;
- c) Planning, zoning, development, surveying, siting, grading, compaction; or
- d) Maintenance, installation, renovation, repair, or remodeling

of part or all of any property on or off the "premises";

- 2) A defect, weakness, inadequacy, fault, or unsoundness in materials used in construction or repair of part or all of any property on or off the "premises"; or
- 3) The cost to make good any error in design.

(4) Special Exclusions

The Special Exclusions apply only to **SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense**; and if attached to this policy, the following coverage forms: **BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM, BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM, and EXTRA EXPENSE COVERAGE FORM.**

We will not pay for:

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

This Exclusion **(4)(a)** does not apply to Extra Expense.

- (b) Any "loss" caused by or resulting from damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (c) Any increase of "loss" caused by or resulting from:
 - 1) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
 - 2) Suspension, lapse or cancellation of any license, lease or contract. However, 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.
- (d) Any Extra Expense caused by or resulting from suspension, lapse

or cancellation of any license, lease or contract beyond the "period of restoration".

- (e) Any other indirect "loss".

c. Limitations

The following limitations apply to all policy forms and endorsements shown on the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS**, unless otherwise stated:

(1) Limitations - Various Types of Property

We will not pay for "loss" to property as described and limited in this section. In addition, we will not pay for any "loss" that is a consequence of "loss" as described and limited in this section.

(a) Steam Apparatus

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" 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

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) Building Interiors

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" is caused by or results from thawing of

snow, sleet or ice on the building or structure.

(d) Theft of Building Materials

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; or
- 2) "Business Income" coverage or Extra Expense coverage.

(e) Missing Property

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

(f) Transferred Property

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

(g) Vegetative Roofs

Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:

- 1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
- 2) Changes in or extremes of temperature;
- 3) Disease;
- 4) Frost or hail; or
- 5) Rain, snow, ice or sleet.

(2) Limitations - Various Property for Specified Causes

We will not pay for "loss" 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 deemed necessary.

- (b) Contractors equipment, machinery and tools 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 1,000 feet of the "premises"; or
- 2) To Business Income coverage or to Extra Expense coverage.

(3) Limitation - Personal Property Theft

This Limitation does not apply to "Business Income" coverage or to Extra Expense coverage. For each category described in Paragraph c.(3)(a) through (3)(d) below, the most we will pay for "loss" in any one occurrence of theft to all property in that category, regardless of the types or number of articles for that category that are lost or damaged in that occurrence, are the following special limits:

- (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 limitation 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 not additional Limits of Insurance.

(4) Limitation - System or Appliance Defects

- (a) 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; and
- (b) We will not pay to replace the substance that escapes as described in Paragraph c.(4)(a) above.

But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage results in discharge of any substance from an automatic fire protection system, or is directly caused by freezing.

However, this Limitation **c.(4)(a)** does not apply to "Business Income" Coverage or to Extra Expense Coverage.

4. Additional Coverages

Unless stated otherwise, **SECTION C. DEDUCTIBLE** does not apply to Paragraph **4. Additional Coverages**.

Unless stated otherwise, these Paragraph **4. Additional Coverages** apply on a per location basis.

a. Change in Temperature or Humidity

We will pay for direct "loss" to your covered Business Personal Property caused by a change in temperature or humidity or contamination by refrigerant resulting from damage by a Covered Cause of Loss to equipment used for refrigerating, cooling, humidifying, dehumidifying, air conditioning, heating, generating or converting power (including their connections and supply or transmission lines and pipes) when located on the "premises".

This Coverage is included within the Limits of Insurance shown in the Declarations.

b. Debris Removal

- (1)** Subject to Paragraphs **b.(2), (3)** and **(4)** of this Additional Coverage, we will pay your expense to remove debris of Covered Property and other debris that is on the "premises", when such debris is caused by or results from a Covered Cause of Loss that occurs during the "coverage term". The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct "loss".
- (2)** Debris Removal does not apply to costs to:
 - (a)** Extract "pollutants" from land or water;
 - (b)** Remove, restore or replace polluted land or water;
 - (c)** Remove debris of property of yours that is not insured under this Coverage Part, or property in your possession that is not Covered Property;

(d) Remove debris of property owned by or leased to the landlord of the building where your "premises" are located, unless you have a contractual responsibility to insure such property and it is insured under this Coverage Part;

(e) Remove any property that is Property Not Covered, including property addressed under **5. Coverage Extensions, k. Outdoor Property**.

(f) Remove property of others of a type that would not be Covered Property under this Coverage Part;

(g) Remove deposits of mud or earth from the grounds of the "premises".

(3) Subject to the exceptions in Paragraph **b.(4)** below, the following provisions apply:

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

(b) Subject to Paragraph **b.(3)(a)**, 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 "loss" to the Covered Property that has sustained "loss".

(4) We will pay up to an additional \$10,000 for debris removal expense for each "premises", in any one occurrence of direct "loss" 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 "loss" exceeds the Limit of Insurance on the Covered Property that has sustained "loss".

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

Therefore, if Paragraph **b.(4)(a)** and/or **(4)(b)** apply, our total payment for direct

"loss" and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained "loss", 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 (\$50,000 - \$500)	\$49,500
Debris Removal Expense	\$10,000
Debris Removal Expense Payable (\$10,000 is 20% of \$50,000)	\$10,000

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 (\$80,000 - \$500)	\$79,500
Debris Removal Expense	\$30,000
Debris Removal Expense Payable	
Basic Amount	\$10,500
Additional Amount	\$10,000

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

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the "loss" payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the "loss" payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal ex-

pense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

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 \$5,000 in any one occurrence for your liability, which is determined prior to the direct "loss", for fire department service charges:

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

Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed. This Coverage is in addition to the Limits of Insurance shown in the Declarations.

d. Fire Protection Equipment Recharge

- (1) We will pay for the expenses you incur to recharge your automatic fire suppression system or portable fire extinguishers when the equipment is discharged:
 - (a) To combat a covered fire to which this insurance applies;
 - (b) As a result of another covered Cause of Loss other than fire; or
 - (c) As a result of an accidental discharge.
- (2) We will not pay your expenses to recharge fire protection equipment as a result of a discharge during testing or installation.
- (3) If it is less expensive to do so, we will pay your costs to replace your automatic fire suppression system or portable fire extinguishers rather than recharge that equipment.

The most we will pay in any one occurrence under this Additional Coverage is \$25,000. This Coverage is in addition to the Limits of Insurance shown in the Declarations.

e. Inventory or Appraisal

- (1) We will pay the necessary expenses you incur to prepare claim information as required by this Coverage Part. Expenses must result from:
 - (a) Taking inventories;
 - (b) Making appraisals; and

- (c) Preparing a statement of loss and other supporting exhibits.
- (2) We will not pay for any expenses:
 - (a) Incurred to prove that "loss" is covered;
 - (b) Incurred under **SECTION D. LOSS CONDITIONS, 2. Appraisal**;
 - (c) Incurred for examinations under oath;
 - (d) Billed by and payable to independent or public adjusters; or
 - (e) To prepare claims not covered by this Coverage Part.

The most we will pay for any one occurrence under this Additional Coverage is \$10,000. This Coverage is in addition to the shown in the Declarations.

f. Key and Lock Expense

- (1) If a key or master key is lost, stolen, or damaged, we will pay for:
 - (a) The actual expense of the new keys; and
 - (b) The adjustment of locks to accept new keys; or
 - (c) If required, new locks, including the expense of their installation;
 but only for locks at buildings or structures covered by this Coverage Part.
- (2) This Coverage does not apply to keys that were given to former employees.

The most we will pay in any one occurrence under this Additional Coverage is Limit of Insurance \$1,000. This Coverage is in addition to the Limit of Insurance shown in the Declarations.

g. Ordinance or Law

- (1) If a covered building or structure sustains direct "loss" from a Covered Cause of Loss, resulting in the enforcement of or compliance with an ordinance or law that is in force at the time of "loss" and regulates the demolition, construction or repair of buildings or structures, or establishes zoning or land use requirements at the "premises", then subject to **SECTION D, LOSS CONDITIONS, 4. Loss Payment**, we will pay:

(a) Loss of Use of Undamaged Parts of Buildings

The costs you incur to rebuild at the same "premises" any undamaged portion of your building or structure caused by enforcement of or compliance with an ordinance or law requiring demolition of undamaged parts of the same building or structure. We will only pay the costs to satisfy 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.

(b) Demolition Costs

The costs you incur to demolish and clear the site of undamaged parts of the same building or structure as a result of Paragraph **g.(1)(a)** above.

(c) Increased Costs of Construction

- 1) For buildings or structures to which **SECTION F. OPTIONAL COVERAGES, 3. Replacement Cost** applies, the increased costs to comply with the minimum standards of an ordinance or law to:
 - a) Repair or reconstruct damaged portions of that building or structure; and
 - b) Reconstruct or remodel undamaged portions of that building or structure whether or not demolition is required;

However, this increased cost of construction applies only if the building or structure is repaired, reconstructed or remodeled and is intended for occupancy similar to the building or structure it replaces, unless such occupancy is not permitted by zoning or land use ordinance or law.

- 2) For this Paragraph **g.(1)(c)** only, the increased costs to repair or reconstruct the following:

- a) The cost of excavations, grading, backfilling and filling;
- b) Foundation of the building;
- c) Pilings;
- d) Underground pipes, flues and drains.

The items listed in Paragraphs **g.2)a)** through **g.2)d)** above are deleted from **SECTION A. COVERAGE, 2. Property Not Covered**;

(2) We will not pay for:

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

(3) 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 or structure was undamaged; and
- (b) With which you failed to comply.

(4) The terms of this Additional Coverage apply separately to each building or structure covered by this Coverage Part.

The most we will pay under this Additional Coverage is \$10,000 per building. This is in addition to the Limit of Insurance shown in the Declarations for the building suffering "loss".

h. Pollutant Clean Up and Removal

We will pay your expenses to extract "pollutants" from land or water at the "premises" if the discharge, dispersal, seepage,

migration, release, escape or emission of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the "coverage term". 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 "premises" is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss during each "coverage term". This Coverage is in addition to the Limit of Insurance shown in the Declarations.

i. Preservation of Property

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

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the "loss" occurs within 60 days after the property is first moved.

This Coverage is included within Limit of Insurance shown in the Declarations for such Covered Property.

j. Rewards

We will pay to provide a reward for information that leads to a conviction for arson, theft, vandalism, or burglary. The conviction must involve a covered "loss" caused by arson, theft, vandalism, or burglary.

The most we will pay for "loss" in any one occurrence under this Additional Coverage is \$10,000. This Coverage is in addition to the Limit of Insurance shown in the Declarations.

5. Coverage Extensions

Unless amended within a particular Coverage Extension, each Extension applies to property located in or on the building described in the Declarations or in the open (or in a vehicle or portable storage unit) within 1,000 feet of the "premises".

The limits applicable to the Coverage Extensions are in addition to the Limit of Insurance shown in the Property Declarations. Limits of Insurance specified in these Extensions apply per location unless stated otherwise.

SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance, does not apply to these Coverage Extensions.

a. Accounts Receivable

SECTION C. DEDUCTIBLE does not apply to this Coverage Extension.

(1) When you sustain direct "loss" to your accounts receivable records caused by a Covered Cause of Loss, we will pay:

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

(2) Coverage does not apply to:

- (a) Records of accounts receivable in storage away from the "premises"; or
- (b) Contraband, or property in the course of illegal transportation or trade.

(3) We will extend coverage to include:

(a) Removal

If you give us written notice within 30 days of removal of your records of accounts receivable because of imminent danger of direct "loss" from a Covered Cause of Loss, we will pay for "loss" while they are:

- 1) At a safe place away from your "premises"; or
- 2) Being taken to and returned from that place.

This Removal coverage is included within the Limit of Insurance applicable to this Coverage Extension.

(b) Away From Your Premises

The most we will pay in any one occurrence is \$5,000, regardless of the number of locations, for "loss" caused by a Covered Cause of Loss to Accounts Receivable while they are away from your "premises".

This Away From Premises Limit is in addition to the Limit of Insurance applicable to this Coverage Extension.

(4) **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply to this Coverage Extension, except as follows:

- (a) **Exclusion (1)(c) Governmental Action;**
- (b) **Exclusion (1)(d) Nuclear Hazard;**
- (c) **Exclusion (1)(f) War and Military Action.**

(5) In addition to Paragraph **a.(4)** of this Coverage Extension, we will not pay for "loss" resulting from any of the following:

(a) Dishonest or criminal acts by:

- 1) You, your partners, employees, directors, trustees or authorized representatives;
- 2) A manager or a member if you are a limited liability company;
- 3) Anyone else with an interest in the records of accounts receivable, or their employees or authorized representatives; or
- 4) Anyone else entrusted with the records of accounts receivable for any purpose.

This Paragraph **a.(5)(a)** applies whether or not such persons are acting alone or in collusion with other persons or such act occurs during the hours of employment.

However, this Paragraph **a.(5)(a)** does not apply to dishonest acts of a carrier for hire or to acts of destruction by your employees. However, theft by employees is still not covered.

(b) 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.

- (c) Bookkeeping, accounting or billing errors or omissions.
- (d) Electrical or magnetic injury, disturbance or erasure of "electronic data" that is caused by or results from:
 - 1) Programming errors or faulty machine instructions;
 - 2) Faulty installation or maintenance of data processing equipment or component parts;
 - 3) An occurrence that took place more than 100 feet from your "premises"; or
 - 4) Interruption of electrical power supply, power surge, blackout or brownout if the cause of such occurrence took place more than 100 feet from your "premises".

But we will pay for direct "loss" caused by lightning.

- (e) Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- (f) A "loss" that requires any audit of records or any inventory computation to prove its factual existence.

(6) Determination of Receivables:

- (a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of direct "loss", the following method will be used:
 - 1) Determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the direct "loss" occurs; and
 - 2) Adjust that total for any normal fluctuations in the amount of accounts receiv-

able for the month in which the direct "loss" occurred or for any demonstrated variance from the average for that month.

- (b) The following will be deducted from the total amount of accounts receivable, however that amount is established:

- 1) The amount of the accounts for which there is no direct "loss"; and
- 2) The amount of the accounts that you are able to re-establish or collect; and
- 3) An amount to allow for probable bad debts that you are normally unable to collect; and
- 4) All unearned interest and service charges.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$25,000.

b. Business Income and Extra Expense

SECTION C. DEDUCTIBLE does not apply to this Coverage Extension.

(1) Business Income

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

With respect to the requirements of the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purpose of this Coverage Extension only, your "premises" is the portion of the building that you rent, lease or occupy, including:

- (a) Any area within the building or on the site at which the "premises" are located if that area ser-

vices or is used to gain access to the "premises"; and

- (b) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

(2) Extra Expense

- (a) We will pay Extra Expense you sustain during the "period of restoration". Extra Expense means necessary expenses you sustain (as described in Paragraphs **(2)(b)**, **(c)** and **(d)**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- (b) If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **(2)(c)**) to:
 - 1) Avoid or minimize the "suspension" of business and to continue "operations" either:
 - a) At the "premises"; or
 - b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
 - 2) Minimize the "suspension" of business if you cannot continue "operations".
- (c) We will also pay expenses to:
 - 1) Repair or replace property; or
 - 2) Research, replace or restore the lost information on damaged "valuable papers and records";

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal

"operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.

- (d) Extra Expense does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

(3) Civil Authority

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

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

This Civil Authority coverage for "Business Income" will begin immediately after the time of that action and will apply for a period of up to 30 days from the date of that action.

This Civil Authority coverage for Extra Expense will begin immediately after the time of that action and will end:

- 1) 30 consecutive days after the time of that action; or
- 2) When your "Business Income" coverage ends;

whichever is later.

(4) Alterations and New Buildings

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

- (a) New buildings or structures, whether complete or under construction;
- (b) Alterations or additions to existing buildings or structures; and
- (c) Machinery, equipment, supplies or building materials located on or within 1,000 feet of the "premises" and:
 - 1) Used in the construction, alterations or additions; or
 - 2) Incidental to the occupancy of new buildings.

If such direct "loss" 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 "loss" had not occurred.

(5) Newly Purchased or Leased Locations

We will pay the actual loss of "Business Income" you sustain and Extra Expense you incur due to direct "loss" to Covered Property at any location you purchase or lease caused by or resulting from a Covered Cause of Loss. This coverage for the Newly Purchased or Leased Locations will end when any of the following first occurs:

- (a) This policy expires;
- (b) You report values to us;
- (c) 90 days pass from the date you acquire or begin to construct the Covered Property.

(6) Extended Business Income

- (a) For "Business Income" Other Than "Rental Value", if the necessary "suspension" of your "operations" produces a "Business Income" or Extra Expense "loss" payable under this Coverage Part, we will pay for the actual loss of "Business Income" you sustain and Extra Expense you incur during the period that:
 - 1) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
 - 2) Ends on the earlier of:

- a) 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 "loss" had occurred; or
- b) 60 consecutive days after the date determined in **b.(6)(a)1)** above.

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

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

- (b) For "Rental Value", if the necessary "suspension" of your "operations" produces a "Rental Value" "loss" payable under this Coverage Part, we will pay for the actual loss of "Rental Value" you incur during the period that:

- 1) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- 2) Ends on the earlier of:
 - a) 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 "loss" had occurred; or
 - b) 60 consecutive days after the date determined in **b.(6)(b)1)** 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 "premises" are located.

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

(7) Interruption of Computer Operations

- (a) Subject to all provisions of this Coverage Extension, 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" as described in **SECTION A. COVERAGE, 5. Coverage Extensions, d. Electronic Data.**
- (b) Paragraph **b.(7)(a)** does not apply to "loss" sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in Paragraph **b.(7)(c)** has not been exhausted.
- (c) The most we will pay under Paragraph **b.(7)** of this Coverage Extension is \$2,500 for all "loss" sustained and expense incurred in the "coverage term", regardless of the number of interruptions or the number of "premises" or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for subsequent interruptions in that "coverage term". A balance remaining at the end of a "coverage term" does not carry over to the next "coverage term". With respect to an interruption that begins in a "coverage term" and continues or results in additional "loss" or expense in a subsequent "coverage term", all "loss" and expense is deemed to be sustained in the "coverage term" in which the interruption began.

This \$2,500 coverage for Interruption of Computer Operations does not increase the Limit of Insurance provided in this Coverage Extension.

The most we will pay for "loss" in any one occurrence under this "Business Income" and Extra Expense Coverage Extension is \$25,000.

c. Collapse

The coverage provided under this Coverage Extension applies only to an abrupt collapse as described and limited in Paragraphs **c.(1)** through **c.(7)** below.

- (1) For the purpose of this Coverage Extension only, abrupt collapse means an abrupt falling down or caving in of a building or structure or any part of a building or structure with the result that the building or structure or part of the building or structure cannot be occupied for its intended purpose.
- (2) We will pay for direct "loss" to Covered Property, caused by abrupt collapse of a building or structure or any part of a building or structure insured under this Coverage Part, or that contains Covered property insured under this Coverage Part, if such collapse is caused by one or more of the following:
 - (a) Building or structure decay that is hidden from view, unless the presence of such decay is known or should reasonably have been 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 or should reasonably have been 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 materials or methods in construction, remodeling, or renovation if the abrupt collapse occurs after construction, remodeling, or renovation is complete but only if the collapse is caused in part by:
 - 1) A cause of loss listed in Paragraph **c.(2)(a)** or **c.(2)(b)** of this Coverage Extension;
 - 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 Coverage Extension does not apply to:
- (a) A building or structure or any part of a building or structure that is in danger of falling down or caving in;
 - (b) A part of a building or structure that is standing, even if it has separated from another part of the building or structure; or
 - (c) A building or structure that is standing or any part of a building or structure 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; including their 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 Paragraph **c.(2)(a)** through **c.(2)(d)**, we will pay for "loss" to that property only if:
- (a) Such "loss" is a direct result of the abrupt collapse of a building or structure insured under this Coverage Part; and
 - (b) The property is Covered Property under this Coverage Part.
- (5) If personal property abruptly falls down or caves in and such collapse

is **not** the result of abrupt collapse of a building or structure, we will pay for direct "loss" 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 **c.(2)(a)** through **c.(2)(d)** of this Coverage Extension;
- (b) The personal property that collapses is inside a building; and
- (c) The property that collapses is not of a kind listed in Paragraph **c.(4)** above of this Coverage Extension, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph **c.(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 Coverage Extension 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 Coverage Extension shall not increase the Limit of Insurance provided in this Coverage Part.
- (8) The term Covered Cause of Loss includes Collapse as described and limited in Paragraphs **c.(1)** through **c.(7)**.

d. Electronic Data

- (1) This Coverage Extension does not apply to your "stock" of prepackaged software, or to "electronic data" which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
- (2) We will pay for the cost to replace or restore "electronic data" which has been destroyed or corrupted by a Covered Cause of Loss that applies to **SECTION A. COVERAGE, 1. Covered Property, d. Business Personal Property**. To the extent that "electronic data" is not replaced or restored, the "loss" will be valued at the cost of replacement of the me-

dia on which the "electronic data" was stored with blank media of substantially identical type.

- (3) For the purposes of this Coverage Extension only, 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, that is designed to damage or destroy any part of the system or disrupt its normal operation. However, there is no coverage for "loss" 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 or "electronic data".
- (4) The most we will pay for all direct "loss" under this Coverage Extension, regardless of the number of "premises" or computer systems involved, is \$2,500. This limit is the most we will pay for the total of all direct "loss" arising out of all occurrences that take place in the "coverage term". If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent "loss" sustained in the "coverage term". A balance remaining in a "coverage term" does not carry over to the next "coverage term". With respect to an occurrence which begins in the "coverage term" and continues or results in additional "loss" in a subsequent "coverage term", all "loss" is deemed to be sustained in the "coverage term" in which the occurrence began.

e. Exhibitions, Fairs or Trade Shows

We will pay for direct "loss" caused by a Covered Cause of Loss to your Covered Property, including covered property of others, while it is located at exhibitions, fairs or trade shows. This Coverage Extension does not apply while Covered Property is in transit to or from the exhibition, fair or trade show.

The most we will pay for "loss" in any one occurrence is \$10,000.

The Limit of Insurance provided under this Coverage Extension does not apply per location.

f. Fences

We will pay for direct "loss" caused by a Covered Cause of Loss to your outdoor fences that are located within 1,000 feet of the "premises" and not otherwise insured as Covered Property in this Coverage Part.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$5,000.

g. Fungi, Wet Rot, Dry Rot, and Bacteria - Limited Coverage

- (1) The coverage described in Paragraphs **g.(2)** and **g.(3)** of this Coverage Extension only apply when the "fungi", wet or dry rot or bacteria is the result of a Covered Cause of Loss that occurs during the "coverage term" 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.
- (2) We will pay for "loss" by "fungi", wet or dry rot or bacteria. As used in this Coverage Extension, the term "loss" means:
- (a) Direct "loss" to Covered Property caused by "fungi", wet or dry rot or bacteria, including the cost of removal of the "fungi", 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 "fungi", 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 "fungi", wet or dry rot or bacteria are present.
- (3) For the coverage described under Paragraph **g.(2)** of this Coverage Extension, the most we will pay for "loss", regardless of the number of claims, is \$15,000. This limit is the most we will pay for the total of all "loss" arising out of all occurrences that take place in the "coverage term". With respect to a particular occurrence of "loss" which results in "fungi", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungi", wet or dry rot or bacteria continues to be pre-

sent or active, or recurs, in a subsequent "coverage term".

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

If there is covered "loss" to Covered Property, not caused by "fungi", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Coverage Extension, except to the extent that "fungi", 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 Coverage Extension.

- (5) The terms of this Coverage Extension do not increase or reduce the coverage provided under:

(a) **SECTION A. COVERAGE, 5. Coverage Extensions, c. Collapse;**

(b) **SECTION A. COVERAGE, 5. Coverage Extensions, s. Water, Other Liquids, Powder or Molten Material Damage**

- (6) The following (6)(a) or (6)(b) apply only if "Business Income", "Rental Value", or Extra Expense Coverage applies to the "premises" and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable "Business Income", "Rental Value", or Extra Expense Coverage.

(a) If the "loss" which resulted in "fungi", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to "loss" to property caused by "fungi", 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" other than "fungi", wet or dry rot or bacteria but remediation of "fungi", 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.

tion of "fungi", 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.

- (7) This Coverage Extension does not apply to lawns, trees, plants or shrubs that are part of any vegetative roof.

h. Glass

- (1) If a Covered Cause of Loss occurs to building glass that is Covered Property, we will also pay necessary expenses you incur to:

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

(b) Repair or replace encasing frames;

(c) Remove or replace obstructions (except expenses to remove or replace window displays); and

(d) Repair or replace alarm tapes.

- (2) If you are a tenant at a covered "premises" and:

(a) The building you occupy is not Covered Property; and

(b) You are legally liable for direct "loss" to the building glass in that building;

such building glass, for the purposes of this Paragraph **h.(2)**, is Covered Property. The most we will pay for "loss" in any one occurrence is \$5,000. This building glass is subject to the building deductible as described in **SECTION C. DEDUCTIBLE**.

- (3) For the purposes of this Coverage Extension only, **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply except as follows:

(a) **Exclusion (1)(b) Earth Movement;**

(b) **Exclusion (1)(c) Governmental Action;**

- (c) **Exclusion (1)(d) Nuclear Hazard;**
- (d) **Exclusion (1)(f) War and Military Action;**
- (e) **Exclusion (2)(d)1** Wear and tear; and
- (f) As listed in **Exclusion (2)(d)2**: Rust or other corrosion, hidden or latent defect or any quality in property that causes it to damage or destroy itself.

i. **Newly Purchased, Leased or Constructed Property**

(1) Buildings

If buildings are Covered Property in this Coverage Part, we will pay for direct "loss" caused by a Covered Cause of Loss to:

- (a) Your new buildings or additions while being built on the "premises";
- (b) Buildings you newly purchase or become newly required to insure by written contract that are:
 - 1) Intended for use by you as a warehouse; or
 - 2) Similarly used by you as buildings insured under this Coverage Part.

The most we will pay for "loss" in any one occurrence to a building under this Coverage Extension is 1,000,000 for each building.

(2) Business Personal Property

- (a) If business personal property is Covered Property in this Coverage Part, we will pay for direct "loss" caused by a Covered Cause of Loss to business personal property you newly purchase or are required to insure by written contract:
 - 1) While located at buildings described in Paragraph **a.(1)** of this Coverage Extension; or
 - 2) While located in a leased building or space therein that you are not required to insure. Such lease must be for a period of 12 consecutive months or longer.

- (b) Paragraph **a.(2)(a)** of this Coverage Extension does not apply to:

- 1) Any business personal property covered under **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, e. Exhibitions, Fairs, or Trade Shows or m. Property Off Premises;**
- 2) Any business personal property that is covered under **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, p. Transportation** or is otherwise considered to be in-transit to or from a "premises".
- 3) Business personal property of others that is temporarily in your possession in the course of installing or performing work on such property, or temporarily in your possession in the course of your manufacturing or wholesaling activities.

The most we will pay for "loss" in any one occurrence to your Business Personal Property under this Coverage Extension is \$500,000 at each building.

(3) Period of Coverage

Coverage provided under this Coverage Extension will end when any of the following first occurs:

- (a) This policy expires,
- (b) For buildings described in Paragraph **(1)(a)** of this Coverage Extension, 90 days pass from the date you begin construction on that part of the building that would qualify as Covered Property;
- (c) For business property described in Paragraph **(1)(b)** and Paragraph **(2)(a)1**, 90 days after your purchase or lease;
- (d) For business personal property described in Paragraph **(2)(a)2**, 90 days from the effective date

of the lease of the building space in the building; or

(e) You report values to us.

We will charge you additional premium for values reported from the date you lease or purchase the property, or begin construction on that part of the building that would qualify as Covered Property.

j. Nonowned Building Damage

If you are a tenant at a covered "premises" and:

- (1) The building you occupy is not Covered Property; and
- (2) You are legally liable for direct "loss" to that building;

We will pay for direct "loss" to that building caused by burglary, robbery, theft or attempted theft.

This Coverage Extension does not apply to:

- (1) Glass, including lettering and ornamentation, and also necessary:
 - (a) Repair or replacement of encasing frames or alarm tapes; and
 - (b) Expenses incurred to board up openings or remove or replace obstruction.
- (2) Building materials and equipment removed from the "premises".

This Coverage Extension does not apply if you have purchased other insurance in your name on the building you occupy as required by the lease.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$25,000.

k. Outdoor Property

We will pay for direct "loss" caused by a Covered Cause of Loss to the following types of your Covered Property:

- (1) Radio antennas, television antennas or satellite dishes (including their lead-in wiring, masts and towers);
- (2) Trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or part of a vegetative roof), including debris removal ; and
- (3) If you are a tenant, to your awnings that are attached to a building you occupy;

but only if caused by or resulting from any of the following causes of loss if they are included as Covered Causes of Loss under this Coverage Part:

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

We will pay for the debris removal expenses of the above type property that are not your Covered Property if such debris is on your "premises" due to the Covered Causes of Loss described in this Coverage Extension. If you are a tenant, we do not pay debris removal expenses for trees, plants or shrubs owned by the landlord or owner of the building you occupy.

No other coverage for debris removal expenses provided in this Coverage Part applies to this Outdoor Property Coverage Extension.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$5,000, but not more than \$1,000 for any one tree, shrub or plant.

l. Personal Effects

If business personal property is Covered Property in this Coverage Part, we will pay for direct "loss" caused by a Covered Cause of Loss to personal effects owned by:

- (1) You, your officers, or your partners, or if you are a limited liability company, your members or your managers; or
- (2) Your employees (including temporary and leased employees), including tools owned by your employees that are used in your business. However, employee tools are not covered for theft.

This Coverage Extension does not apply to "money" or "securities".

If theft is included as a Covered Cause of Loss under this Coverage Part, then this Coverage Extension has a \$500 per occurrence limitation for direct "loss" by theft.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$10,000.

m. Property Off Premises

(1) We will pay for direct "loss" caused by a Covered Cause of Loss to your Covered Property, including covered personal property of others, while it is away from the "premises", if it is:

- (a) Temporarily at a location you do not own, lease or operate; or
- (b) In storage at a location you lease, provided the lease was executed for the first time after the beginning of the current "coverage term".

(2) This Coverage Extension does not apply to Covered Property at exhibitions, fairs, trade show, or in transit.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$10,000.

The Limit of Insurance provided by this Coverage Extension does not apply per location.

n. Signs

We will pay for direct "loss" caused by a Covered Cause of Loss, including debris removal expense, to signs not otherwise insured by this Coverage Part.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$5,000.

The Limit of Insurance provided by this Coverage Extension does not apply per location.

o. Trailers (Nonowned Detached)

(1) If business personal property is Covered Property in this Coverage Part, we will pay for direct "loss" caused by a Covered Cause of Loss to trailers that you do not own, provided that:

- (a) The trailer is used in your business;
- (b) The trailer is temporarily in your care, custody or control at the "premises"; and
- (c) You have a contractual responsibility to pay for "loss" to the trailer.

(2) We will not pay for any direct "loss" 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) This insurance is excess over the amount due, whether you can collect on it or not, from any other insurance covering such property.

(4) This Coverage Extension does not apply to any property inside or on the trailer.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$5,000.

p. Transportation

We will pay for direct "loss" caused by a Covered Cause of Loss to your Covered Property, including covered personal property of others while it is in or on a vehicle, including loading and unloading of the property.

The most we will pay for "loss" in any one occurrence is \$10,000.

The Limit of Insurance provided by this Coverage Extension does not apply per location.

q. Utility Services

We will pay for:

(1) Direct "loss" to Covered Property at your "premises" except for direct "loss" resulting from the partial or complete failure of Wastewater Removal Services; and

(2) Loss of "Business Income" you sustain and Extra Expenses you incur as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense;**

caused by or resulting from the partial or complete failure of utility services to the "premises".

The partial or complete failure of the utility services listed below must be caused by direct "loss" caused by a Covered Cause of Loss to the following property:

(1) Power Supply Property, meaning the following types of property supplying

electricity, steam or natural gas to the "premises":

- (a) Utility generating plants;
 - (b) Switching stations;
 - (c) Substations;
 - (d) Transformers; and
 - (e) Transmission, distribution, service, or similar lines, excluding all such overhead lines of any type.
- (2) Water Supply Property, meaning the following types of property supplying water to the "premises":
- (a) Pumping stations; and
 - (b) Water mains.
- (3) Wastewater Removal Property, meaning a utility system for removing wastewater and sewage from the "premises", other than a system designed primarily for draining storm water. The utility property includes sewer mains, pumping stations and similar equipment for moving the effluent to a holding, treatment or disposal facility, and includes such facilities. Coverage under this Coverage Extension does not apply to interruption in service caused by or resulting from a discharge of water or sewage due to heavy rainfall or flooding.
- (4) Communication Supply Property, meaning property supplying communication services, including service relating to Internet access or access to any electronic, cellular or satellite network; telephone, radio, microwave or television services to the "premises", such as:
- (a) Communication transmission, distribution, service or similar lines, including fiber optic lines, excluding all such overhead lines of any type;
 - (b) Coaxial cables; and
 - (c) Microwave radio relays, excluding satellites.

This Coverage Extension does not apply to "loss" to "electronic data", including destruction or corruption of "electronic data".

The most we will pay for all direct "loss" and loss of "Business Income" and Extra Expense in any one occurrence is \$25,000.

r. Valuable Papers and Records

SECTION C. DEDUCTIBLE does not apply to this Coverage Extension.

- (1) Subject to Paragraph r.(3) of this Coverage Extension, we will pay necessary costs you incur to research, replace or restore lost or damaged information on "valuable papers and records" that are your property or the property of others in your care, custody or control; resulting from direct "loss" caused by a Covered Cause of Loss.
- (2) Coverage does not apply to:
- (a) Property that cannot be replaced with other property of like kind and quality;
 - (b) Property held as samples or for delivery after sale;
 - (c) Property in storage away from the "premises", except as provided in Paragraph r.(4)(b) of this Coverage Extension;
 - (d) Contraband, or property in the course of illegal transportation or trade;
 - (e) "Valuable papers and records" in the form of "electronic data", including the materials on which the "electronic data" is recorded.
- (3) The most we will pay for "loss" is the least of the following amounts:
- (a) The cost of reasonably restoring the damaged property to its condition immediately before the "loss";
 - (b) The cost of replacing the damaged property with substantially identical property; or
 - (c) The actual cash value of the damaged property at the time of "loss".

However, we will not pay for "loss" unless or until the damaged property is actually replaced or restored; and then only if such replacement or restoration occurs within 36 months from the date of direct "loss".

- (4) We will extend coverage to include:

(a) Removal

If you give us written notice within 30 days of removal of your "valuable papers and records"

because of imminent danger of direct "loss" from a Covered Cause of Loss, we will pay for direct "loss" while they are:

- 1) At a safe place away from your "premises"; or
- 2) Being taken to and returned from that place.

This Removal coverage is included within the Limits of Insurance applicable to this Coverage Extension.

(b) Away From Your Premises

We will pay up to \$5,000 in any one occurrence, regardless of the number of locations, for direct "loss" caused by a Covered Cause of Loss to "valuable papers and records" while they are away from your "premises".

This Away From Premises limit is in addition to the Limit of Insurance applicable to this Coverage Extension.

(5) SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions does not apply to this Coverage Extension except as follows:

- (a) Exclusion (1)(c) Governmental Action;**
- (b) Exclusion (1)(d) Nuclear Hazard; and**
- (c) Exclusion (1)(f) War and Military Action.**

(6) In addition to Paragraph r.(5) of this Coverage Extension, we will not pay for direct "loss" resulting from any of the following:

- (a) Dishonest or criminal acts by:**
 - 1) You, your partners, employees, directors, trustees or authorized representatives;
 - 2) A manager or a member if you are a limited liability company;
 - 3) Anyone else with an interest in the records of accounts receivable, or their employees or authorized representatives; or
 - 4) Anyone else entrusted with the records of accounts receivable for any purpose.

This Paragraph **r.(6)(a)** applies whether or not such persons are acting alone or in collusion with other persons or such act occurs during the hours of employment.

However, this Paragraph **r.(6)(a)** does not apply to dishonest acts of a carrier for hire or to acts of destruction by your employees. However, theft by employees is still not covered.

- (b) Errors or omissions in processing or copying.** However, we will pay for that portion of direct "loss" caused by resulting fire or explosion if these causes of loss would be covered by this Coverage Part.
- (c) Electrical or magnetic injury, disturbance or erasure of electronic recordings.** But we will pay for direct "loss" caused by lightning.
- (d) Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.**

The most we will pay for "loss" in any one occurrence is \$25,000.

s. Water Damage, Other Liquids, Powder or Molten Material Damage

If a covered direct "loss" to which this insurance applies was caused by or resulted from water or other liquid, powder or molten material damage, we will also pay the cost to tear out and replace any otherwise undamaged part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

SECTION 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, except as amended in **SECTION A. COVERAGE, 3. Covered Causes of Loss, c. Limitations, 4. Additional Coverages, and 5. Coverage Extensions.**

SECTION C. DEDUCTIBLE

Except as otherwise provided; in any one occurrence of direct "loss" we will first reduce the amount of "loss" if required by **SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance or SECTION F. OPTIONAL COVERAGES, 1. Agreed Value.** If the adjusted amount of direct "loss" is less than or equal to the Deductible, we will not pay for that direct "loss". If the adjusted amount of direct "loss" exceeds the Deductible, we will then

subtract the Deductible from the adjusted amount of direct "loss", and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves direct "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.

1. Deductible Examples

Example No. 1:

(This example assumes there is no coinsurance penalty as outlined in **SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance**).

Deductible: \$250

Limit of Insurance - Bldg. 1: \$60,000

Limit of Insurance - Bldg. 2: \$80,000

"Loss" to Bldg. 1: \$60,100

"Loss" to Bldg. 2: \$90,000

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

The Deductible will be subtracted from the amount of "loss" in calculating the "loss" payable for Bldg. 1:

$\$60,100 - \$250 = \$59,850$ "Loss" Payable - Bldg. 1

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

Total amount of "loss" payable: $\$59,850 + \$80,000 = \$139,850$.

Example No. 2:

(This example also assumes there is no coinsurance penalty).

The Deductible and Limits of Insurance are the same as those in Example No. 1:

"Loss" to Bldg. 1: \$70,000 (Exceeds Limit of Insurance plus Deductible)

"Loss" to Bldg. 2: \$90,000 (Exceeds Limit of Insurance plus Deductible)

"Loss" Payable - Bldg. 1: \$60,000 (Limit of Insurance)

"Loss" Payable - Bldg. 2: \$80,000 (Limit of Insurance)

Total amount of "loss" payable: \$140,000.

2. Glass Deductible

When direct "loss" to the building you occupy only involves building glass, the Deductible for that "loss" will be the lesser of:

- a. \$500; or
- b. The Deductible shown in the Declarations for that Covered Property.

SECTION D. 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, 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 value of the property, the amount of Net Income and operating expense, 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 still retain our right to deny the claim.

3. Duties in the Event of Loss or Damage

- a. In the event of "loss" to Covered Property, you must see that the following are done in order for coverage to apply:
 - (1) Notify the police if a law may have been broken.
 - (2) Give us prompt notice of the "loss". Include a description of the property involved.
 - (3) As soon as possible, give us a description of how, when and where the "loss" occurred.
 - (4) Take all reasonable steps to protect the Covered Property from further damage. If feasible, set the damaged property aside and in the best possible order for examination. Keep a

record of your expenses necessary to protect the Covered Property for consideration in the settlement of the claim. This will not increase your limit of insurance. However, in no event will we pay for any subsequent "loss" resulting from a cause of loss that is not a Covered Cause of Loss.

- (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" 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) Submit a signed sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.
- (9) 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.

4. Loss Payment

- a. In the event of "loss" insured by this Coverage Part, at our option, we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality.

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 **SECTION D. LOSS CONDITIONS, 7. Valuation** or any applicable provision that amends or supercedes this valuation condition.

- b. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property, except as provided in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law**.
- 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. Our payment for "loss" to personal property of others and personal effects will only be for the account of the owner of the property.
- g. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- h. We will pay for insured "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
 - (1) We have reached agreement with you on the amount of "loss"; or
 - (2) An appraisal award has been made.

i. Loss Payment - Ordinance or Law.

With respect to **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law**:

(1) Loss of Use of Undamaged Parts of Building

When there is a loss in value of an undamaged portion of a building or structure to which this coverage applies, the loss payment for that building, including damaged and undamaged portions, will be determined as follows:

- (a) If **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION F. OPTIONAL COVERAGES, 3. Replacement Cost** applies and the property is repaired or replaced, on the same "premises" or another "premises"; we will not pay more than the lesser of:

- 1) The amount you actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same "premises" and to the same height, floor area, style and comparable quality of the original property insured; or
- 2) The limit of insurance indicated in **SECTION A. COVERAGE, 4. Additional Coverages g. Ordinance or Law for Loss of Use of Undamaged Parts of Building** for the building that has suffered "loss".

- (b) If **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION F. OPTIONAL COVERAGES, 3. Replacement Cost** 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:

- 1) The "actual cash value" of the building at the time of "loss"; or
- 2) The limit of insurance indicated in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law for Loss of Use of Undamaged Parts of Building** for the building that has suffered "loss".

(2) Demolition Costs

Loss payment for Demolition Costs will be determined as follows:

We will not pay more than the lesser of the following:

- (a) The amount you actually spend to demolish and clear the site of the "premises"; or

- (b) The limit of insurance indicated in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law for Demolition Costs** for the building that has suffered "loss".

(3) Increased Costs of Construction

Loss payment for **Increased Costs of Construction** will be determined as follows:

- (a) We will not pay for the increased cost of construction until the property is actually repaired or replaced, at the same "premises" or another location and unless the repairs or replacement are made as soon as reasonably possible after the direct "loss", 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** is the lesser of:

- 1) The increased cost of construction at the same "premises"; or
- 2) The limit of insurance indicated in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law for Increased Costs of Construction** for the building that has suffered "loss".

- (c) If the ordinance or law requires relocation to another location the most we will pay for the increased cost of construction is the lesser of:

- 1) The increased cost of construction at the new location; or
- 2) The limit of insurance indicated in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law for Increased Costs of Construction** for the building that has suffered "loss".

(4) Proportional Payments

If the building or structure sustains both direct "loss" that is covered un-

der this Coverage Part and direct "loss" that is not covered under this Coverage Part; and as a result of the direct "loss" in its entirety you are required to comply with the ordinance or law, we will not pay the full amount of direct "loss" otherwise payable under the terms of **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law**. Instead, we will pay a proportion of such direct "loss"; meaning the proportion that the covered direct "loss" bears to the total direct "loss".

j. Loss Determination - Business Income and Extra Expense

With respect to **SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense**,

- (1) The amount of "Business Income" and "Rental Value" "loss" will be determined based on:
 - (a) The Net Income of the business before the direct "loss" occurred;
 - (b) The likely Net Income of the business if no direct "loss" 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;
 - (c) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct "loss"; and
 - (d) Other relevant sources of information, including:
 - 1) Your financial records and accounting procedures;
 - 2) Bills, invoices and other vouchers; and
 - 3) Deeds, liens or contracts.
- (2) The amount of Extra Expense will be determined based on:
 - (a) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct "loss"

had occurred. We will deduct from the total of such expenses:

- 1) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
- 2) 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

- (b) Necessary expenses that reduce the "Business Income" and "Rental Value" "loss" that otherwise would have been incurred.

(3) Resumption of Operations

We will reduce the amount of your:

- (a) "Business Income" and "Rental Value" "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 "premises" or elsewhere.
 - (b) Extra Expense "loss" to the extent you can return "operations" to normal and discontinue such Extra Expense.
- (4) If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

k. Party Walls

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 all other provisions of this **SECTION D. LOSS CONDITIONS, 4. Loss Payment** including:

- (1) Limit of Insurance shown in the Declarations;
- (2) **SECTION D. LOSS CONDITIONS, 7. Valuation**; and
- (3) **SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance**.

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 **COMMERCIAL PROPERTY CONDITIONS, I. Transfer Of Rights Of Recovery Against Others To Us** in this Coverage Part.

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 Coverage Part 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 Coverage Part 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:
 - 1) Rented to a lessee or sublessee and used by them to conduct their customary operations; or
 - 2) 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 direct "loss" occurs has been vacant for more than 60 consecutive days before that "loss", we will:

- (1) Not pay for any "loss" 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) Reduce the amount we would otherwise pay for the "loss" by 15% with respect to Covered Causes of Loss other than those listed in **b.(1)(a)** through **b.(1)(f)** of this Loss Condition.

7. Valuation

We will determine the value of Covered Property in the event of direct "loss" as follows:

- a. At "Actual Cash Value" as of the time of direct "loss", except as provided in **b.**, **c.**, **d.**, and **e.** below.
- b. If the Limit of Insurance for Building satisfies **SECTION E. ADDITIONAL CONDITIONS, 1. 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 or compliance with any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at 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. Tenant's Improvements and Betterments at:
 - (1) Replacement Cost 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.
 - (4) For the purposes of valuation, tenants' improvements and betterments are not considered to be the personal property of others.

SECTION E. 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 direct "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 direct "loss" by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in step (1);

- (3) Multiply to 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 No. 1 (Underinsurance):

The value of the property is: \$250,000
 The coinsurance percentage is: 80%
 The Limit of Insurance 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):

$\$100,000 \text{ divided by } \$200,000 = .50$

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 No. 2 (Adequate Insurance):

The value of the property is: \$250,000
 The coinsurance percentage is: 80%
 The Limit of Insurance is: \$200,000
 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):

$\$200,000 : \$200,000 = 1.00$

Step (3):

$\$40,000 \times 1.00 = \$40,000$

Step (4):

$\$40,000 - \$250 = \$39,750$.

We will pay no more than \$39,750 "loss" in excess of the Deductible. No penalty applies.

- 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 No. 3:

The values of the property are:

Bldg. at Location No. 1:	\$75,000
Bldg. at Location No. 2:	\$100,000
Personal Property at Location No. 2:	<u>\$75,000</u>
	250,000

The coinsurance percentage is: 90%
The Limit of Insurance for Buildings and Personal

Property at Location Nos. 1 and 2 is:	\$180,000
The Deductible is:	\$1,000
The amount of "loss" is:	
Bldg. at Location No. 2:	\$30,000
Personal Property at Location No. 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):

$\$180,000 : \$225,000 = .80$

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. Mortgage Holders

- a. The term "mortgage holder" includes trustee.
- b. We will pay for covered "loss" to buildings or structures to each mortgage holder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgage holder has the right to receive loss payment even if the mortgage holder 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 mortgage holder will still have the right to receive loss payment if the mortgage holder:

- (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
- (2) Submits a signed, sworn statement 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 mortgage holder.

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

- e. If we pay the mortgage holder for any "loss" 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 mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.

At our option, we may pay to the mortgage holder 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 mortgage holder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least ten days before the expiration date of this policy.

SECTION F. 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 direct "loss" to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Limit of Insurance indicated in the most current Statement of Values that applies to this Coverage Part.
- b. If the Agreed Value Optional Coverage is deleted from the policy, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage does not apply.
- c. The terms of this Optional Coverage apply only to "loss" that occurs:
 - (1) On or after the effective date of this Optional Coverage; and
 - (2) Before the policy expiration date.
- d. This Agreed Value Optional Coverage does not apply to **SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense.**

2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applies 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 beginning of the current "coverage term" or any other Coverage Part change amending the Limit of Insurance, multiplied by
 - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), multiplied by
 - (3) The number of days since the beginning of the current "coverage term" or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365. In the event of "loss", this number of days ends at the original date of "loss".

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
 $\$100,000 \times .08 \times (146/365) = \$3,200$

3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces "Actual Cash Value" in **SECTION D. LOSS CONDITIONS, 7. Valuation** of this **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.
- b. This Optional Coverage does not apply to:
 - (1) Personal Property of others, except leased personal property as described in **SECTION A. COVERAGE, 1. Covered Property, d.(7)**. The valuation of such leased personal property will be based on the amount for which you are liable under the lease, but not to exceed the replacement cost of the leased item.
 - (2) Personal effects;
 - (3) Contents of a residence;
 - (4) Manuscripts;
 - (5) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac;
 - (6) "Stock" unless the Replacement Cost including "Stock" option is shown in the Declarations; or
 - (7) Property, that at the time of "loss":
 - (a) Is outdated, or obsolete and is stored or not being used; or
 - (b) Has no practical value to you.
- c. You may make a claim for "loss" 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" 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".
- d. We will not pay on a replacement cost basis for any "loss":
 - (1) Until the lost or damaged property is actually repaired or replaced with other property of generally the same construction and used for the same

purpose as the lost or damaged property; and

- (2) Unless the repairs or replacement have been completed or at least underway within 2 years following the date of "loss".
- e. We will not pay more for "loss" on a replacement cost basis than the least of:
 - (1) The Limit of Insurance applicable to the lost or damaged property;
 - (2) The cost to replace, on the same "premises", 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 you actually spend that is necessary to repair or replace the lost or damaged property.
- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use, or repair of any building or structure except as provided in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law.**

SECTION G. DEFINITIONS

1. "Actual cash value" means replacement cost less a deduction that reflects depreciation, age, condition and obsolescence.
2. "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 sustained, including payroll.
3. "Computer programs" 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.
4. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:
 - a. The year commencing on the Effective Date of this Coverage Part at 12:01 A.M. standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if

any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 A.M. standard time at your mailing address shown in the Declarations on the earlier of:

- (1) The day the policy period shown in the Declarations ends; or
 - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
- b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
5. "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.
 6. "Finished stock" means stock you have manufactured, except "stock" you have manufactured that is held for sale on the "premises" of any retail outlet insured under this Coverage Part.
 7. "Fungi" means any type or form of fungus, and includes, but is not limited to, any form or type of mold, mushroom or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.
 8. "Loss" means accidental physical loss or accidental physical damage.
 9. "Money" means:
 - a. Currency, coins and bank notes whether or not in current use; and
 - b. Travelers checks, registered checks and money orders held for sale to the public.
 10. "Operations" means:
 - a. Your business activities occurring at the "premises"; and
 - b. The tenantability of the "premises", if coverage for "Business Income" including "Rental Value" or "Rental Value" applies.
 11. "Period of restoration" means the period of time that:
 - a. Begins at the time of direct "loss".
 - b. Ends on the earlier of:

- (1) The date when the property at the "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.
 - c. "Period of restoration" does not include any increased period required due to the enforcement of or compliance with 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".
 - d. The expiration date of the policy will not cut short the "period of restoration".
12. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, asbestos, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property, or the environment regardless of whether injury or damage is caused directly or indirectly by the "pollutants" and whether:
- a. You are regularly or otherwise engaged in activities which taint or degrade the environment; or
 - b. You use, generate or produce the "pollutant".
13. "Premises" means the Locations and Buildings described in the Declarations.
14. "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 "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.
15. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:
- a. Tokens, tickets, revenue and other stamps whether or not in current use; and
 - b. Evidences of debt issued in connection with credit or charge cards, which are not of your own issue; but does not include "money". Lottery tickets held for sale are not "securities" or evidences of debt.
16. "Sinkhole collapse" means the sudden settlement or collapse of earth supporting the Covered Property into subterranean voids created by the action of water on a limestone or similar rock formation. This does not include:
- a. The cost of filling sinkholes;
 - b. Sinking or collapse of land into man-made subterranean cavities; or
 - c. The value of the land.
17. "Specified causes of loss" means 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; and water damage.
- a. Falling objects does not include "loss" 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.
 - b. Water damage means:
 - (1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam; and
 - (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the "premises" and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear.

But water damage does not include "loss" otherwise excluded under the terms of **BUILDING AND BUSINESS PERSONAL PROPERTY, SECTION A. COVERAGE, 3. Covered Causes of Loss, (g) Water**. Therefore, for example, there is no coverage under this Coverage Part in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe which was caused by or related to weather-induced flooding, even if wear and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the Exclusion **(g) Water**, there is no coverage for "loss" caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear.

To the extent that accidental discharge or leakage of water falls within the criteria set forth in **18.b.(1)** or **18.b.(2)** of this definition of "Specified causes of loss", such

water is not subject to the provisions of Exclusion **(g) Water**.

18. "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.
19. "Suspension" means:
 - a. The slowdown or cessation of your business activities; and
 - b. That a part or all of the "premises" is rendered untenable.
20. "Valuable papers and records" means inscribed, printed or written documents, manuscripts or records, including abstracts, books, card index systems, deeds, drawings, films, maps, mortgages, or proprietary information.

But "valuable papers and records" does not mean "money" or "securities" or "electronic data", including the materials on which the "electronic data" is recorded.

COMMERCIAL PROPERTY EXPANDED COVERAGE (XC™) PLUS ENDORSEMENT

SUMMARY OF COVERAGE LIMITS

This is a summary of the Coverages and the Limits of Insurance provided by the Commercial Property Expanded Coverage (XC™) Plus Endorsement, **FA 250**, in combination with the Commercial Property Coverage Form, **FM101**, which is included in this policy. **No coverage is provided by this summary.** Refer to endorsement **FA 250** and the Commercial Property Coverage Form, **FM 101**, to determine the scope of your insurance protection.

<u>Blanket Coverages:</u>	<u>Blanket Coverage Limit:</u>	Page No. (FA 250):
	\$ 150,000 in total for all loss arising from all Blanket Coverages arising from a single occurrence, except as noted otherwise in the form.	
Accounts Receivable		1
Debris Removal		8
Electronic Data Processing Property (EDP):		3
Duplicate and Backup Electronic Data	\$2,000 Outside of the Blanket Coverage Limit	3
Newly Acquired EDP	\$10,000 Outside of the Blanket Coverage Limit	4
In Transit or Away From Premises	\$10,000 Outside of the Blanket Coverage Limit	4
Worldwide Laptop Coverage		4
Ordinance or Law (Increased Construction Costs and Demolition)		6
Peak Season		8
Personal Property of Others		8
Tenant Move Back Expenses		7
Valuable Papers and Records		6

<u>Other Coverages</u> (not subject to Blanket Coverage Limit):	<u>Limit of Insurance:</u>	Page No. (FA 250):
Brands and Labels	\$25,000	11
Business Income and Extra Expense:	\$100,000	1
Business Income From Dependent Properties	\$5,000 (sub-limit, subject to a 24 hour deductible)	1
Interruption of Computer Operations	\$25,000 (sub-limit, subject to a 24 hour deductible)	2

<u>Other Coverages</u> (not subject to Blanket Coverage Limit):	<u>Limit of Insurance:</u>	Page No. (FA 250):
Fine Arts	\$25,000	5
Fire Department Service Charge	\$25,000	7
Fire Protection Equipment Recharge	\$50,000	8
Inflation Guard	4% on all Building Property referenced in the Declarations	11
Non-Owned Building Damage:		10
Loss caused by theft, burglary or robbery	Up to the Business Personal Property (BPP) Limit of Insurance	10
Loss by any other Covered Cause of Loss	\$25,000 or the BPP Limit of Insurance (whichever is less)	10
Ordinance or Law (other than Increased Construction Costs and Demolition)	Subject to the Building Limit of Insurance	6
Outdoor Property	\$25,000 (\$1,000 for any one tree, shrub or plant)	7
Paved Surfaces	\$20,000	9
Personal Effects	\$25,000 (\$1,000 for loss by theft)	7
Pollutant Clean Up and Removal	\$25,000	6
Signs	\$10,000	7
Temperature Change	\$5,000	9
Underground Property	Subject to the Building Limit of Insurance	6
Water Backup from Sewers, Drains or Sumps	\$10,000	7

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW MEXICO CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

- A.** With respect to coverage provided under this Coverage Part for one through four family residential buildings which you own and lease to others for use as a residence the Replacement Cost Optional Coverage applies. For such one through four family residential buildings, Paragraphs **c.** and **d.** of the Replacement Cost Optional Coverage are replaced by the following:
- c.** We will pay, subject to the Limit of Insurance, no more than the "actual cash value" of the damaged residential building until the actual repair or replacement is complete. However if the "actual cash value" amount is insufficient to initiate repair or replacement of the damaged residential building, we will advance to you the amount necessary for you to initiate such repair or replacement. After the payment of "actual cash value" or such greater amount as described above, we will advance further amounts as necessary to continue the repair or replacement. The total of all advances and other payments hereunder will not exceed the amount allowed under Paragraph **e.** of the Replacement Cost Optional Coverage, nor will that total exceed the amount of loss payment we agree upon.
- Under this loss settlement procedure, the following special provisions apply:
- (1) You shall promptly forward to us evidence of the agreement with the party repairing or replacing the damaged residential building showing the cost and estimated completion date of the repairs to the building;
- (2) We will send to you the balance, if any, of the loss payment previously agreed upon when you forward to us evidence of the completion of the repairs to the damaged residential building.
- d.** You may disregard the replacement cost optional coverage provisions and make claim under this policy, for "loss" to a residential building, on an "actual cash value" basis. You may then make claim within 180 days after "loss" for any additional liability according to the provisions stated in **c.** above.

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 direct "loss", 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", we will not pay more than the actual amount of the "loss".

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 "loss" occurred.

E. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

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". 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", other than that described in 1. above, we will pay only for the amount of covered "loss" in excess of the amount due from that other insurance, whether you can collect on it or not. **However, we will not reimburse any deductible or difference between Actual Cash Value and Replacement Cost valuations.** We will not pay more than the applicable Limit of Insurance.

H. Policy Period, Coverage Territory

Under this Coverage Part:

1. We cover "loss" commencing:
 - a. During the policy period shown in the Declarations; and
 - b. Within the coverage territory.
2. The coverage territory:
 - 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 direct "loss" to impair them. But you may waive your rights against another party in writing:

1. Prior to a direct "loss" to your Covered Property or Covered Income.
2. After a direct "loss" to your Covered Property or Covered Income only if, at time of direct "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.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
1	1	WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713	B

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

C. Lender's Loss Payable

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:

- a. Warehouse receipts;
- b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
 - a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.

4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

D. Contract of Sale

1. The Loss Payee shown in the Schedule of this endorsement is a person or organization you have entered a contract with for the sale of Covered Property.
2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
 - a. Adjust losses with you; and
 - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
1	1	WELLS FARGO EQUIPMENT FINANCE INC 733 MARQUETTE AVE STE 700 MINNEAPOLIS, MN 55402-2340	B

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

C. Lender's Loss Payable

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
 - b. A contract for deed;

- c. Bills of lading;
- d. Financing statements; or
- e. Mortgages, deeds of trust, or security agreements.

2. For Covered Property in which both you and a Loss Payee have an insurable interest:

- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
- c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.

4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

D. Contract of Sale

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2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
 - a. Adjust losses with you; and
 - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
2	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

C. Lender's Loss Payable

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
 - b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
- 2.** For Covered Property in which both you and a Loss Payee have an insurable interest:
- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
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 - a. Adjust losses with you; and
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2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
3	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

C. Lender's Loss Payable

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:

- a. Warehouse receipts;
- b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
 - a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
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 - a. Adjust losses with you; and
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3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
4	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

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1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
 - b. A contract for deed;

- c. Bills of lading;
- d. Financing statements; or
- e. Mortgages, deeds of trust, or security agreements.

2. For Covered Property in which both you and a Loss Payee have an insurable interest:

- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
- c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
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 - a. Adjust losses with you; and
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3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
5	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

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- 2.** For Covered Property in which both you and a Loss Payee have an insurable interest:
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 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
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 - a. Adjust losses with you; and
 - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

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1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
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3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

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LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
5	1	PITNEY BOWES 2225 AMERICAN DR NEENAH, WI 54956-1005	B

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

C. Lender's Loss Payable

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
 - b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
- 2.** For Covered Property in which both you and a Loss Payee have an insurable interest:
- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.

4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

D. Contract of Sale

1. The Loss Payee shown in the Schedule of this endorsement is a person or organization you have entered a contract with for the sale of Covered Property.
2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
 - a. Adjust losses with you; and
 - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
6	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

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1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
 - b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
- 2.** For Covered Property in which both you and a Loss Payee have an insurable interest:
- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
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 - a. Adjust losses with you; and
 - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

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1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

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LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
6	1	MAIL FINANCE INC 478 WHEELERS FARMS RD MILFORD, CT 06461-9105	B

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
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C. Lender's Loss Payable

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
 - b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
- 2.** For Covered Property in which both you and a Loss Payee have an insurable interest:
- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
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 - a. Adjust losses with you; and
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3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
7	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

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 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
- 2.** For Covered Property in which both you and a Loss Payee have an insurable interest:
- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

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LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
8	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

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 - a. Warehouse receipts;
 - b. A contract for deed;

- c. Bills of lading;
- d. Financing statements; or
- e. Mortgages, deeds of trust, or security agreements.

2. For Covered Property in which both you and a Loss Payee have an insurable interest:

- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
- c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

(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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

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- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
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1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
8	1		B
OPTOS INC 67 FOREST ST MARLBOROUGH, MA 01752-3088			

- A. Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

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1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
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2. For Covered Property in which both you and a Loss Payee have an insurable interest:
 - a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
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 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
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1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
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LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
9	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

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- c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

- (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

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LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
10	1		B

WELLS FARGO BANK NA
PO BOX 659713
SAN ANTONIO, TX 78265-9713

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

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2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

C. Lender's Loss Payable

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
 - b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
- 2.** For Covered Property in which both you and a Loss Payee have an insurable interest:
- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.

4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

D. Contract of Sale

1. The Loss Payee shown in the Schedule of this endorsement is a person or organization you have entered a contract with for the sale of Covered Property.
2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
 - a. Adjust losses with you; and
 - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
11	1		B

WELLS FARGO BANK NA
PO BOX 659713
SAN ANTONIO, TX 78265-9713

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

C. Lender's Loss Payable

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
 - b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
 - a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.

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D. Contract of Sale

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2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
 - a. Adjust losses with you; and
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3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

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2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
12	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
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1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:

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- b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
 - a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

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 - a. Adjust losses with you; and
 - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
13	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

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1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - a. Warehouse receipts;
 - b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
 - a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.

4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

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 - a. Adjust losses with you; and
 - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

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LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
14	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

C. Lender's Loss Payable

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:

- a. Warehouse receipts;
- b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
- 2.** For Covered Property in which both you and a Loss Payee have an insurable interest:
- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.

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 - a. Adjust losses with you; and
 - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
15	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

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 - b. A contract for deed;

- c. Bills of lading;
 - d. Financing statements; or
 - e. Mortgages, deeds of trust, or security agreements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

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 - a. Adjust losses with you; and
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3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

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1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
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LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
16	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

B. Loss Payable

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1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:

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 - a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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

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

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1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
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LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
17	1		B
WELLS FARGO BANK NA PO BOX 659713 SAN ANTONIO, TX 78265-9713			

- A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

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1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:

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 - b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (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 Loss Payee.

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

- d. If we pay the Loss Payee for any "loss" 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 Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
- (2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
 - a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.

4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

D. Contract of Sale

1. The Loss Payee shown in the Schedule of this endorsement is a person or organization you have entered a contract with for the sale of Covered Property.
2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
 - a. Adjust losses with you; and
 - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CINCIPLUS[®]
COMMERCIAL PROPERTY XC+[®]
(EXPANDED COVERAGE PLUS) ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

The insurance coverage and Limits of Insurance provided by this endorsement are excess of, and apply in addition to, any similar or identical coverage provided by any other endorsement attached to this Coverage Part, or by any other Coverage Part forming a part of the policy of insurance of which this Coverage Part forms a component.

SCHEDULE

Blanket Coverage Limit	\$150,000
Applicable only to those coverages subject to the Blanket Coverage Limit, as indicated in this endorsement	

A. Accounts Receivable

For the purposes of this endorsement only:

1. In **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, a. Accounts Receivable**, the second paragraph in (3)(b) **Away From Your Premises** is deleted in its entirety and replaced by the following:

This limit of insurance for Away From Your Premises coverage is not included within the Blanket Coverage Limit and is separate and in addition to the Blanket Coverage Limit.

2. In **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, a. Accounts Receivable**, the last paragraph is deleted in its entirety and replaced by the following:

The most we will pay for loss in any one occurrence under this Accounts Receivable Coverage Extension is the Blanket Coverage Limit as provided in Section X of this endorsement.

B. Business Income and Extra Expense

For the purposes of this endorsement only, in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVER-**

AGE, 5. Coverage Extensions, b. Business Income and Extra Expense is modified as follows:

1. Business Income From Dependent Properties

- a. For **Business Income from Dependent Properties** only, Paragraph **b.(1)** is deleted in its entirety and replaced by the following:

(1) Business Income From Dependent Properties

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 "loss" to "dependent property" caused by or resulting from any Covered Cause of Loss.

However, coverage under this endorsement does not apply when the only "loss" to "dependent property" is "loss" to "electronic data", including destruction or corruption of "electronic data". If the "dependent property" sustains "loss" to "electronic data" and other property, coverage under this endorsement will not

continue once the other property is repaired, rebuilt, or replaced.

b. Limit of Insurance for Dependent Properties

The most we will pay for loss in one occurrence under **Business Income From Dependent Properties** is \$5,000. This Limit of Insurance is included within, and is not in addition to, the Limit of Insurance for the "Business Income" and Extra Expense Coverage Extension.

c. Loss Determination for Dependent Properties

For **Business Income from Dependent Properties** only, the following is added:

Resumption of Operations

We will reduce the amount of your:

- (1) "Business Income" loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available

- (a) Source of materials; or
- (b) Outlet for your products.

- (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.

d. Definitions

SECTION G. DEFINITIONS is amended to include the following definitions:

- (1) "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). But any property which delivers the following services is not a Contributing Location with respect to such services:

- 1) Water Supply services;
- 2) Power Supply services; or
- 3) Communication supply services, including services relating to internet access or access to any electronic network;

- (b) Accept your products or services;

- (c) Manufacture products for delivery to your customers under contract of sale; or

- (d) Attract customers to your business.

- (2) The "Period of restoration" Definition, with respect to "dependent property", is replaced by the following:

"Period of restoration" means the period of time that:

- (a) Begins 24 hours after the time of direct "loss" caused by or resulting from any Covered Cause of Loss at the "premises" of the "dependent property"; and

- (b) Ends on the date when the property at the "premises" of the "dependent property" should be repaired, rebuilt or replaced with reasonable speed and similar quality.

"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".

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

The most we will pay is the **Business Income From Dependent Properties** sub-limit of insurance. This Limit of Insurance is included within, and is not in addition to, the Limit of Insurance for the "Business Income" and Extra Expense Coverage Extension.

2. Interruption of Computer Operations

- a. For **Interruption of Computer Operations** only, all references to \$2,500 in **b. Business Income and Extra**

Expense, Paragraph (7)(c) are deleted and replaced by \$25,000.

- b. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION G. DEFINITIONS** is amended as follows:

With respect to a "suspension" of "operations" caused only by an interruption in computer operations due to the destruction or corruption of "electronic data" as described in **SECTION A. COVERAGE, 5. Coverage Extensions, d. Electronic Data**, Paragraph a. of Definition 11. "Period of restoration" is deleted and replaced by the following:

- a. Begins 24 hours after the time of direct "loss".

3. **Business Income and Extra Expense Revised Limits of Insurance**

The last paragraph is deleted in its entirety and replaced by the following:

The most we will pay for loss in any one occurrence under this "Business Income" and Extra Expense Coverage Extension is \$100,000.

C. **Electronic Data Processing Property**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended by adding the following:

Electronic Data Processing Property

(1) **Covered Property**

You may extend the Coverage provided by this Coverage Part to apply to direct "loss" to Covered Property consisting of your:

- (a) Data processing equipment;
- (b) Air conditioning and other electrical equipment, used exclusively with your data processing equipment;
- (c) Programming documentation and instruction manuals;
- (d) "Electronic data", but only as excess over what is valid and collectible under **SECTION A. COVERAGE, 5. Coverage Extensions, d. Electronic Data**;
- (e) Media, meaning materials on which "electronic data" is recorded, such as magnetic tapes, disc packs, paper tapes and cards, floppy discs and

compact discs used in processing units; and

- (f) Property of others in your care, custody or control that is similar to property described in (1)(a) through (e) above.

(2) **Property Not Covered**

This Coverage Extension does not apply to:

- (a) Accounts, records, documents and other "valuable papers and records" unless they are programming documentation or instruction manuals.

However, we will cover these items once they are converted to "electronic data" form.

- (b) "Electronic data" or media that cannot be replaced with similar property of equal quality.
- (c) Your property that you have rented or leased to someone else and that property is not at your "premises".
- (d) Any machine or apparatus that is used for research, medical, diagnostic, surgical, dental or pathological purposes.

- (e) "Production equipment".

(3) **Exclusions**

- (a) **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply except as follows:

- 1) **Exclusion (1)(c) Governmental Action**;
- 2) **Exclusion (1)(d) Nuclear Hazard**;
- 3) **Exclusion (1)(f) War and Military Action**;
- 4) **Exclusion (2)(b) Delay or Loss of Use**;
- 5) **Exclusion (2)(d) Miscellaneous Causes of Loss, 1) Wear and tear**;
- 6) **Exclusion (2)(h) Dishonest or Criminal Acts**;
- 7) **Exclusion (3)(b) Acts or Decisions**; and
- 8) **Exclusion (3)(c) Defects, Errors and Omissions**.

- (b) In addition to Paragraph (3)(a) of this Coverage Extension, we will not pay for the following:

Hidden or latent defect, gradual deterioration, and depreciation. However, if direct "loss" by a Covered Cause of Loss results, we will pay for that resulting "loss".

(4) Duplicate and Backup "Electronic Data"

We will pay for direct "loss" resulting from any of the Covered Causes of Loss to duplicate and backup "electronic data" that you store at a "premises" not described in the Declarations providing such "electronic data" is not covered by another policy. The most we will pay for loss in any one occurrence is \$2,000. This Limit of Insurance is in addition to the other limits provided by this Coverage Extension.

(5) Newly Purchased Electronic Data Processing Property

BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, i. Newly Purchased, Leased or Constructed Property is deleted in its entirety and replaced by the following:

- (a) We will pay for direct "loss" from a Covered Cause of Loss to newly purchased or leased Covered Property described in Paragraph (1) of this Coverage Extension while at:

- 1) Locations that are newly purchased or leased;
- 2) Your newly constructed buildings or additions at a "premises"; or
- 3) Any "premises" described in the Declarations.

- (b) Insurance under this Coverage Extension for such newly acquired property, or Covered Property already insured by this Coverage Extension which is moved to a newly acquired location, will end when any of the following first occurs:

- 1) This Coverage Part expires;
- 2) 90 days pass from the date you acquire your new property or move Covered Property to a newly acquired location; or
- 3) You report values to us.

The most we will pay for loss in any one occurrence is \$10,000. This Limit of Insurance

is in addition to the other limits provided by this Coverage Extension.

(6) In Transit or Away From Premises

SECTION A. COVERAGE, 5. Coverage Extensions, e. Exhibitions, Fairs or Trade shows, m. Property Off Premises and p. Transportation are deleted in their entirety and replaced by the following:

- (a) You may extend the insurance provided by this Coverage Extension to apply to Covered Property as described in Paragraph (1):

- 1) While in or on a vehicle, including loading and unloading; or
- 2) While at a location that is not your "premises".

- (b) This **In Transit or Away From Premises** coverage does not apply per location.

The most we will pay for loss in any one occurrence is \$10,000. This Limit of Insurance is not in addition to the other limits provided by this Coverage Extension.

(7) Worldwide Laptop Coverage

- (a) You may extend the insurance provided by this Coverage Extension to apply to your laptops, notebooks and similar highly portable personal computers, including their peripherals and accessories, while such specific Covered Property is:

- 1) In your or your employee's care, custody and control;
- 2) Not located at a "premises" you own or lease; and
- 3) Not located in the coverage territory stated in Paragraph 2. of the Commercial Property Condition **H. Policy Period, Coverage Territory**, provided that location is not under a United States Department of State trade or travel restriction at the time of "loss".

- (b) This **Worldwide Laptop Coverage** does not apply per location.

(8) Electronic Data Processing Property Deductible

SECTION C. DEDUCTIBLE is amended to include the following:

We will not pay for direct "loss" in any one occurrence unless the amount of "loss" exceeds the Deductible shown in the Declarations. We will then pay the amount of

"loss" in excess of the Deductible, up to the Limit of Insurance provided by this Coverage Extension.

However, direct "loss" caused by or resulting from any of the following Causes of Loss will have the greater of the Deductible shown in the Declarations or \$1,000 as the applicable deductible:

- a. "Loss" caused by faulty construction, error in design or processing, or service or work upon the data processing system;
- b. "Loss" resulting in mechanical breakdown, short circuiting, blowout, or other electrical damage, unless caused by lightning; or
- c. "Loss" caused by or resulting from interruption of power supply, power surge, blackout or brownout.

(9) Electronic Data Processing Property Valuation

SECTION D. LOSS CONDITIONS, 7. Valuation is deleted in its entirety and replaced by the following:

7. Valuation of Electronic Data Processing Property

In the event of direct "loss", we will determine the value of Covered Property as described in Paragraph (1) of this Coverage Extension as follows:

- a. Except for "electronic data":
 - (1) If you repair or replace this Electronic Data Processing property within a reasonable time following the direct "loss", the property will be valued at the full cost of repair or replacement.

However, the most we will pay is the least of the following:
 - (a) The actual cost to repair or restore the property with materials of like kind and quality;
 - (b) The cost of replacing that property with property of similar quality and function;
 - (c) The amount you actually and necessarily spend to repair or replace the property; or

(d) The Limit of Insurance applicable to the property.

(2) If you do not repair or replace this property within a reasonable time following a direct "loss", the most we will pay will be the least of the following:

- (a) "Actual cash value" of the property;
- (b) "Actual cash value" of repairs with material of like kind and quality; or
- (c) The Limit of Insurance applicable to the property.

We reserve the right to repair or replace the property or to pay for the property in money.

In the event of "loss", the value of property will be determined at the time of direct "loss".

b. For "electronic data":

We will not pay more than the actual reproduction costs of your "electronic data". If you do not replace or reproduce your "electronic data" following the "loss", the most we will pay is the cost of blank media as described in Paragraph C.(1)(e) of this Coverage Extension.

(10) Electronic Data Processing Property Additional Definition

The following definition is added to **SECTION G. DEFINITIONS** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**:

"Production equipment" means any machinery and related components, including any integrated or dedicated computer system, which is used, or can be used, to produce or process other tangible property.

The most we will pay in total for all loss in any one occurrence for coverages described in Paragraphs C.(1), (6), and (7) is the Blanket Coverage Limit as provided in Section X of this endorsement.

D. Fine Arts

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY**

COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions is amended to include the following:

Fine Arts

- (1) We will pay for direct "loss" to paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit. The direct "loss" must be caused by or result from a Covered Cause of Loss.
- (2) **SECTION D. LOSS CONDITIONS, 7. Valuation** is deleted in its entirety and replaced by the following:

We will determine the value of Covered Property in the event of direct "loss" at the market value at the time of "loss".

The most we will pay for loss in any one occurrence under this Coverage Extension is \$25,000.

E. Ordinance or Law

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law**, the last paragraph is deleted in its entirety and replaced by the following:

The most we will pay for loss in any one occurrence under Paragraph (a) **Loss of Use of Undamaged Parts of the Building** is the Limit of Insurance shown in the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS** as applicable to the covered building or structure sustaining direct "loss". This Coverage is included within, and not in addition to, that applicable Limit of Insurance.

The most we will pay for all loss in any one occurrence under Paragraph (b) **Demolition Costs** and Paragraph (c) **Increased Costs of Construction** is the Blanket Coverage Limit as provided in Section X of this endorsement per building or structure sustaining direct "loss". This is an additional Limit of Insurance applicable to the building or structure sustaining loss.

F. Pollutant Clean Up and Removal

For the purposes of this endorsement only, in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages, h. Pollutant Clean Up and Removal**, the last paragraph is deleted in its entirety and replaced by the following:

The most we will pay for each "premises" under this Pollutant Clean Up and Removal Coverage Extension is \$25,000. This limit includes the sum of all covered expenses arising out of

Covered Causes of Loss during each "coverage term". This is in addition to the Limits of Insurance shown in the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS**.

G. Underground Property

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

Underground Property

- (1) We will pay for direct "loss" resulting from any of the Covered Causes of Loss to:

- (a) Foundations of covered buildings, structures, machinery or boilers, if their foundations are below the lowest basement floor or the surface of the ground if there is no basement; and
- (b) Underground pipes, flues or drains if they are attached to Covered Property.

- (2) **SECTION A. COVERAGE, 2. Property Not Covered, g. Foundations** is deleted in its entirety and replaced by the following:

g. Foundations

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;

except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions**.

- (3) **SECTION A. COVERAGE, 2. Property Not Covered, n. Underground Pipes, Flues or Drains** is deleted in its entirety and replaced by the following:

n. Underground Pipes, Flues or Drains

Underground pipes, flues or drains, except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions**.

The most we will pay for loss in any one occurrence is the Limit of Insurance shown in the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS** as applicable to the covered building or structure incurring direct "loss". This Coverage is included within, and

not in addition to, that applicable Limit of Insurance.

H. Valuable Papers and Records

For the purposes of this endorsement only:

1. In **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, r. Valuable Papers and Records**, the second paragraph in **(4)(b) Away From Your Premises** is deleted in its entirety and replaced by the following:

This limit of insurance for **Away From Your Premises** coverage is not included within the Blanket Coverage Limit and is separate and in addition to the Blanket Coverage Limit.

2. In **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, r. Valuable Papers and Records**, the last paragraph is deleted in its entirety and replaced by the following:

The most we will pay for loss in any one occurrence under this Valuable Papers and Records Coverage Extension is the Blanket Coverage Limit as provided in Section X of this endorsement.

I. Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems

For the purposes of this endorsement only:

- (1) **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions, (1)(g) Water**, Paragraph 3) is deleted in its entirety and replaced by the following:

- 3) Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems**, water that has entered and then backs up through and is discharged from a sewer, drain, septic system, sump pump system or related equipment; or

- (2) **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions, (1)(g) Water**, Paragraph 5) is deleted in its entirety and replaced by the following:

- 5) Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems**, 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 as described in Paragraph (g)2).

- (3) **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

Water Backup Discharged From Sewers, Drains, Septic or Sump Pump Systems

We will pay for "loss" caused by or resulting from water or waterborne material that has entered and then backs up through and is discharged from a sewer, drain (including roof drains and related fixtures), septic system, sump pump system or related equipment.

- (4) **SECTION C. DEDUCTIBLE** is amended by adding the following:

Water Backup Deductible

We will not pay for "loss" in any one occurrence caused by or resulting from water or waterborne material which backs up through and is discharged from a sewer, drain, septic system, sump pump system or related equipment, until the amount of "loss" exceeds the Deductible shown in the Declarations, or \$1,000, whichever is greater. We will then pay the amount of "loss" in excess of that deductible, up to the applicable limit indicated in Paragraph (5) of this Coverage Extension.

- (5) The most we will pay for loss in any one occurrence under this Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems Coverage Extension is \$10,000, including any "Business Income", "Rental Value" and Extra Expense loss.

J. Fire Department Service Charge

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages, c. Fire Department Service Charge** is deleted in its entirety and replaced by 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 in any one occurrence for Fire Department Service Charge for your liability, which is determined prior to direct "loss", for fire department service charges:

- (1) Assumed by contract or agreement; or

(2) Required by local ordinance.

This Coverage is in addition to the Limits of Insurance shown in the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS** and applies per location. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

K. Signs

For the purposes of this endorsement only, in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, n. Signs**, the second paragraph is deleted in its entirety and replaced by the following:

The most we will pay for loss in any one occurrence under this Sign Coverage Extension is \$10,000.

L. Outdoor Property

For the purposes of this endorsement only, in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, k. Outdoor Property**, the last paragraph is deleted in its entirety and replaced by the following:

The most we will pay for loss in any one occurrence under this Outdoor Property Coverage Extension is \$25,000, but not more than \$1,000 for any one tree, shrub, or plant.

M. Personal Effects

For the purposes of this endorsement only, in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, l. Personal Effects**, the last two paragraphs are deleted in their entirety and replaced by the following:

If theft is included as a Covered Cause of Loss under this Coverage Part, then this Personal Effects Coverage Extension has a \$1,000 per occurrence limitation for direct "loss" by theft.

The most we will pay for loss in any one occurrence under this Personal Effects Coverage Extension is \$25,000.

N. Tenant Move Back Expenses

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

Tenant Move Back Expenses

- (1) We will reimburse you for expenses you pay for Covered Move Back Costs of your

tenants who temporarily vacate a portion of the building at a "premises". The vacancy must have occurred while the portion of the building rented by your tenant could not be occupied due to direct "loss" to your Covered Property caused by or resulting from a Covered Cause of Loss during the "coverage term". The move back must be completed within 60 calendar days after the portion of the building rented by your tenant has been repaired or rebuilt and is ready for occupancy.

- (2) Covered Move Back Costs means only documented, reasonable and necessary costs of:

- (a) Packing, insuring and transporting business personal property;
- (b) Re-establishing electric utility and communication services, less refunds from discontinued services;
- (c) Assembling and setting up fixtures and equipment; or
- (d) Unpacking and re-shelving stock and supplies.

- (3) If your tenants have valid and collectible insurance for Covered Move Back Costs, we will pay only for the amount of Covered Move Back Costs in excess of the amount payable from such other insurance.

The most we will pay for loss in any one occurrence under this Tenant Move Back Expenses Coverage Extension is the Blanket Coverage Limit as provided in Section X of this endorsement.

O. Peak Season

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

Peak Season

- 1. In the event that the limit of insurance stated in the Declarations for Business Personal Property is insufficient to fully insure a covered "loss" due to a Peak Season Demand for your inventory, we will pay up to the Blanket Coverage Limit as provided in Section X of this endorsement.
- 2. Peak Season Demand means a temporary (90 consecutive days or less) increase in your inventory to meet a seasonal demand as verified by:
 - a. Your previous inventory records for that historical period of time; and
 - b. Custom and practice in your industry.

P. Personal Property of Others

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

Personal Property of Others

In the event that the limit of insurance stated in the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS** for Business Personal Property is insufficient to fully insure a covered "loss" to both your Covered Personal Property and property described in Paragraph (8) of **SECTION A. COVERAGE, 1. Covered Property, d. Business Personal Property**, we will pay up to the Blanket Coverage Limit in any one occurrence as provided in Section X of this endorsement for such property.

Q. Debris Removal

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

In the event that the limits of insurance stated in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages, b. Debris Removal** are insufficient to fully cover a "loss" insured thereunder, we will pay up to the Blanket Coverage Limit in any one occurrence as provided in Section X of this endorsement.

R. Fire Protection Equipment Recharge

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages, d. Fire Protection Equipment Recharge**, the last paragraph is deleted and replaced by the following:

The most we will pay for loss in any one occurrence under this Fire Protection Equipment Recharge Coverage Extension is \$50,000. This Coverage is in addition to the Limits of Insurance shown in the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS**.

S. Paved Surfaces

For the purposes of this endorsement only:

1. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 2. Property Not Covered, i. Paved Surfaces** is deleted in its entirety and replaced by the following:

Except as provided in **4. Additional Coverages, Paved Surfaces**, bridges, road-

ways, walks, patios or other paved surfaces.

2. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages** is amended to include the following:

Paved Surfaces

We will pay for direct "loss" resulting from any of the Covered Causes of Loss to bridges, roadways, walks, patios or other paved surfaces.

The most we will pay for loss in any one occurrence under this Paved Surfaces Coverage Extension is \$25,000.

T. Temperature Change

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

Temperature Change

(1) Coverage

- (a) **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 1. Covered Property** is deleted in its entirety and replaced by the following:

Covered Property means "perishable stock" located in a building at a "premises".

- (b) **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 2. Property Not Covered** is deleted in its entirety and replaced by the following:

Covered Property does not include:

"Perishable Stock" Not in Buildings

"Perishable stock" located on buildings, in or on vehicles, or otherwise in the open.

(2) Covered Causes of Loss

BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, a. Covered Causes of Loss is deleted in its entirety and replaced by the following:

a. Covered Causes of Loss

Covered Causes of Loss means direct "loss" from "temperature change" to Covered Property unless "loss" is

excluded or limited in this Coverage Part.

(3) Excluded Causes of Loss

(a) **BUILDING AND PERSONAL PROPERTY COVERAGE FORM SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply to this Coverage Extension, except as follows:

- (1) **Exclusion (1)(b) Earth Movement;**
- (2) **Exclusion (1)(c) Governmental Action;**
- (3) **Exclusion (1)(d) Nuclear Hazard;**
- (4) **Exclusion (1)(f) War and Military Action;**
- (5) **Exclusion (1)(g) Water; or**
- (6) **Exclusion (1)(h) "Fungi", Wet Rot, Dry Rot, and Bacteria.**

(b) In addition to Paragraph (3)(a) of this Coverage Extension, we will not pay for direct "loss" caused by or resulting from any of the following:

- 1) The disconnecting of any heating, refrigerating, cooling or humidity control system from the source of its power;
- 2) The deactivation of electrical power caused by the manipulation of any switch or other device (on "premises") used to control the flow of electrical power or current;
- 3) The inability of an Electrical Utility Company or other power source to provide sufficient power due to:
 - a) Lack of fuel; or
 - b) Governmental order;
- 4) The inability of a power source at the "premises" to provide sufficient power due to the lack of generating capacity to meet demand; or
- 5) Breaking of any glass that is a permanent part of any heating, refrigeration, cooling or humidity control unit.

(4) Limits of Insurance

BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION B. LIMITS

OF INSURANCE is deleted in its entirety and replaced by the following:

SECTION B. LIMITS OF INSURANCE

- a. The most we will pay for all direct "loss" in any one occurrence under this Temperature Change Coverage Extension is \$5,000, including any "Business Income", "Rental Value", and Extra Expense loss.
- b. The Limit of Insurance for Temperature Change is not an additional amount of insurance and will not increase the Limit of Insurance shown in the Declarations for Business Personal Property or "stock".

(5) Duties in the Event of Loss

BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 3. Duties in the Event of Loss or Damage, a.(2) is deleted in its entirety and replaced by the following:

- (2) All claims under this Temperature Change Coverage Extension should be reported immediately upon occurrence. Include a description of the damaged "perishable stock". All damaged "perishable stock" must be available for inspection and verification.

(6) Coinsurance

BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance does not apply to the coverage provided by this endorsement.

(7) Definitions

BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION G. DEFINITIONS is amended to include the following definitions:

"Perishable stock" means personal property:

- a. Preserved and maintained under controlled conditions; and
- b. Susceptible to "loss" if the controlled conditions change.

"Temperature change" means:

- a. The fluctuation or total interruption of electrical power, either on or off "premises", resulting from conditions beyond your control.
- b. Mechanical breakdown or mechanical failure of any refrigerating or cooling

apparatus or equipment (on "premises") including the blowing of any fuse, fuses, or circuit breakers, only while such equipment is at the "premises".

- c. Contamination by refrigerant.
- d. Damage due to the freezing of "perishable stock" that is not meant to be frozen resulting from the faulty operation of any stationary heating plant, when such "perishable stock" is contained within a building at the "premises".

U. Nonowned Building Damage

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, j. Nonowned Building Damage** is deleted in its entirety and replaced by the following:

If you are a tenant, you may extend the insurance provided by this Coverage Part for Business Personal Property to direct "loss" that occurs to the building at a "premises" you occupy but do not own.

This Coverage Extension applies only if your lease makes you legally responsible for that part of the building sustaining "loss".

This Coverage Extension does not apply to:

- (1) Glass, including lettering and ornamentation, and also necessary:
 - (a) Repair or replacement of encasing frames or alarm tapes; and
 - (b) Expenses incurred to board up openings or remove or replace obstruction.
- (2) Building materials and equipment removed from the "premises".

The most we will pay for loss in any one occurrence under this Nonowned Building Damage Coverage Extension is:

- (1) The actual "loss" sustained up to the applicable Limit of Insurance for Business Personal Property for direct "loss" caused by theft, burglary or robbery, or the attempt of the foregoing; or
- (2) The applicable Limit of Insurance for Business Personal Property or \$25,000; whichever is less, for "loss" caused by any

other Covered Cause of Loss, not referenced in Paragraph **U.(1)** above.

V. Inflation Guard

For the purposes of this endorsement only, the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS** is amended to show 4% for Inflation Guard in the **OPTIONAL COVERAGES - Inflation Guard** column for each scheduled Building Property. If an Inflation Guard percentage is already indicated on the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS** for that Building property, this percentage is excess of that Inflation Guard percentage for that Building property.

W. Brands and Labels

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

Brands and Labels

If branded or labeled merchandise that is Covered Property is damaged by a Covered Cause of Loss, we may take all or any part of the property at an agreed or appraised value. If so, you may:

- (1) Stamp "salvage" on the merchandise or its containers, if the stamp will not physically damage the merchandise; or
- (2) Remove the brands or labels, if doing so will not physically damage the merchandise. You must re-label the merchandise or its containers to comply with the law.

The most we will pay for loss in any one occurrence under this Brands and Labels Coverage Extension is \$25,000.

X. Blanket Coverage Limit

We will pay up to the Limit of Insurance stated in the Schedule of this endorsement in total in any one occurrence for the sum of all "loss" insured under coverages provided in this endorsement which are subject to the Blanket Coverage Limit. You may apportion this Limit among these coverages as you choose.

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**.

SECTION A. COVERAGE

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:

- a. "Business Income" including "Rental Value".
- b. "Business Income" other than "Rental Value".
- c. "Rental Value".

If option **a.** above is selected, the term "Business Income" will include "Rental Value". If option **c.** 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.

1. Business Income

- a. We will pay for the actual loss of "Business Income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" 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" must be caused by or result from a Covered Cause of Loss. With respect to "loss" to personal property in the open (or personal property in a vehicle or portable storage unit), the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.
- b. With respect to the requirements set forth in the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purposes of this Coverage Part only, your "premises" is the portion of the building which you rent, lease or occupy, including:
 - (1) Any area within the building or on the site at which the "premises" are lo-

cated if that area services or is used to gain access to the described "premises".

- (2) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

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 sustain (as described in Paragraphs **2.c.**, **d.** and **e.**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- c. If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **2.d.**) to:
 - (1) Avoid or minimize the "suspension" of business and to continue "operations" either:
 - (a) At the "premises"; or
 - (b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
 - (2) Minimize the "suspension" of business if you cannot continue "operations".
- d. We will also pay expenses to:
 - (1) Repair or replace property; or

- (2) Research, replace or restore the lost information on damaged "valuable papers and records";

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage Form will be reduced by the salvage value of that property.

- e. Extra Expense as described in Paragraphs 2.a. thru 2.d. does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

3. Covered Causes of Loss

See **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss**.

4. Limitation for Electronic Data

- 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" to "electronic data", except as provided under **SECTION A. COVERAGE, 5. Additional Coverages, d. 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" to "electronic data", except as provided under **SECTION A. COVERAGE, 5. Additional Coverages, d. Interruption of Computer Operations**.
- c. This Limitation does not apply when "loss" to "electronic data" involves only "electronic data" which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

5. Additional Coverages

The Additional Coverages in Paragraphs 5.a. through 5.e. are included within and not additional "Business Income" and Extra Expense Limits of Insurance.

a. Alterations and New Buildings

We will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain due to direct "loss" at the "premises" caused by or re-

sulting 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 1,000 feet of the "premises" and:
 - (a) Used in the construction, alterations or additions; or
 - (b) Incidental to the occupancy of new buildings.

If such direct "loss" 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 "loss" had not occurred.

b. Civil Authority

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the "premises", we will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "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
- (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 immediately after the time of the first action of civil authority that prohibits access to the "premises" and will apply for a period of up to 30 consecutive days 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 "premises" and will end 30 consecutive days after the date of that action; or when your Civil Authority coverage for "Business income" coverage ends, whichever is later.

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 Coverage Part, we will pay for the actual loss of "Business Income" you sustain 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 "loss" had occurred; or
 - (ii)** 60 consecutive days after the date determined in **c.(1)(a)** above.

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

Loss of "Business Income" must be caused by direct "loss" at the "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 Coverage Part, we will pay for the actual loss of "Rental Value" you sustain 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 "loss" had occurred; or

- (ii)** 60 consecutive days after the date determined in **c.(2)(a)** above.

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

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

d. Interruption of Computer Operations

- (1)** Subject to all provisions of this Additional Coverage - **Interruption of Computer Operations**, 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. This Additional Coverage - **Interruption of Computer Operations** does not apply when "loss" to "electronic data" only involves "loss" to "electronic data" which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.
- (2)** 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.
- (3)** The most we will pay under this Additional Coverage - **Interruption of Computer Operations** is \$2,500 for all "loss" sustained and expense sustained in any "coverage term", 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 as a result of subsequent interruptions in that "coverage term". A balance remaining at the end of a "coverage term" does not increase the amount of insurance in the next "coverage term". With respect to any interruption which begins in one "coverage term" and continues or results in additional "loss" or expense in that subsequent "coverage term", all "loss" and expense is deemed to be sustained in the "coverage term" in which the interruption began.

- (4) This Additional Coverage - **Interruption in Computer Operations** does not apply to "loss" sustained or expense sustained after the end of the "period of restoration", even if the amount of insurance stated in Paragraph **d.(3)** of this Additional Coverage has not been exhausted.

e. Ingress and Egress

We will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by the prevention of existing ingress or egress at a "premises" shown in the Declarations due to direct "loss" by a Covered Cause of Loss at a location contiguous to such "premises". However, coverage does not apply if ingress or egress from the "premises" is prohibited by civil authority.

Ingress and egress coverage for "Business Income" will begin immediately after the time of the direct "loss" and will continue for a period up to 30 consecutive days.

Ingress and egress coverage for Extra Expense will begin at time of the direct "loss" and will continue for 30 consecutive days or whenever your Ingress and Egress "business income" coverage ends, whichever occurs first.

6. Coverage Extension

The limit applicable to the Coverage Extension is in addition to the Limit of Insurance. **SECTION D. ADDITIONAL CONDITION, 1. Coinsurance** does not apply to this Coverage Extension.

Newly Purchased or Leased Locations

- a. You may extend your "Business Income" and Extra Expense coverages to apply to property located at:
- (1) New buildings or additions while being built on a "premises";

- (2) Buildings you newly purchase or become required to insure by written contract; or
- (3) Leased buildings or space therein that you are not required to insure. Such lease must be for a period of 12 consecutive months or longer.

This does not apply to property situated at trade shows, fairs or exhibitions.

- b. The most we will pay in total for "Business Income" and Extra Expense "loss" under this Coverage Extension is \$100,000 at each location described in Paragraph **6.a.**
- c. Insurance under this Coverage Extension will end when any of the following first occurs:
- (1) This policy expires;
- (2) 90 days pass from the date you begin construction on that part of the building that would qualify as Covered Property;
- (3) 90 days pass from the date you purchase, lease, or become contractually required to insure property described in Paragraphs **6.a.(2)** and **(3)**; or
- (4) You report values to us when you acquire your new building or business personal property.

We will charge you additional premium for values reported from the date you purchase or lease the property or begin construction on that part of the building that would qualify as Covered Property.

SECTION 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.

SECTION 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 "Business Income" or Extra Expense "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 separate-

ly the amount of "Business Income" or Extra Expense "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 you have a "Business Income" or Extra Expense "loss":

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct "loss". Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when, and where the direct "loss" 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" 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" 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 "loss" occurred;
- (2) The likely Net Income of the business if no direct "loss" 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 "loss"; 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 sustained by "operations" during the "period of restoration" if no direct "loss" 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 "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 insured "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.

SECTION D. ADDITIONAL CONDITION

1. Coinurance

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:

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

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

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

1. Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this Coverage Part by the Coinsurance percentage;
2. Divide the Limit of Insurance for the described "premises" by the figure determined in Step 1.; and
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 payroll expenses or the amount of payroll expense excluded (if Form **FA 465** 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 No. 1 (Underinsurance):

When: The Net Income and operating expenses for the 12 months follow-

ing the inception, or last previous anniversary date of this Coverage Part at "premises" would have been \$400,000.

The Coinsurance percentage is 50%
 The Limit of Insurance Is \$150,000
 "Business Income" "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 No. 2 (Adequate Insurance):

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

The Coinsurance percentage is 50%
 The Limit of Insurance Is \$200,000
 "Business Income" "loss" is \$80,000

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

This condition does not apply to Extra Expense.

SECTION 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. **SECTION D. ADDITIONAL CONDITIONS, 1. Coinsurance** does not apply to this Coverage Part at the "premises" to which this Optional Coverage applies.

b. The most we will pay in total for "Business Income" and Extra Expense "loss" is the lesser of:

- (1) The amount of "Business Income" and Extra Expense "loss" sustained 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. **SECTION D. ADDITIONAL CONDITIONS, 1. Coinsurance** does not apply to this Coverage Part at the "premises" to which this Optional Coverage applies.

b. The most we will pay for "Business Income" "loss" 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 "Business Income" 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: $120,000 \times 1/4 = \$30,000$.

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

Days	1-30	\$40,000
Days	31-60	20,000
Days	61-90	30,000
		<u>\$90,000</u>

We will pay:

Days	1-30	\$30,000
Days	31-60	20,000
Days	61-90	30,000
		<u>\$80,000</u>

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 on file with the Company 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. The "Business Income" Limit of Insurance indicated on the Declarations should

be at least equal to the Agreed Value, which is determined by:

- (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. Except as noted in c. below, the **ADDITIONAL CONDITION Coinsurance** is suspended until the expiration date of this Coverage Part.
- c. We will reinstate the **ADDITIONAL CONDITION Coinsurance** automatically if you do not submit a new Work Sheet and Agreed Value:
- (1) When you request a change in your "Business Income" Limit of Insurance; or
 - (2) When you request the coinsurance percentage be changed on the Work Sheet.
- 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

"Business Income" "loss" is \$80,000

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

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

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

4. Extended Period of Indemnity

In **SECTION A. COVERAGE, 5. Additional Coverages, c. Extended Business Income**, the number "60" in Subparagraphs (1)(b) and (2)(b) is replaced by the number shown in the Declarations for this Optional Coverage.

SECTION F. DEFINITIONS

1. "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 sustained, including payroll.

2. "Computer programs" 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.

3. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:

- a. The year commencing on the Effective Date of this Coverage Part at 12:01 A.M. standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 A.M. standard time at your mailing address shown in the Declarations on the earlier of:

- (1) The day the policy period shown in the Declarations ends; or

- (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.

- b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".

4. "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.

5. "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.

6. "Loss" means accidental physical loss or accidental physical damage.
7. "Operations" means:
 - a. Your business activities occurring at the "premises"; and
 - b. The tenantability of the "premises", if coverage for "Business Income" including "Rental Value" or "Rental Value" applies.
8. "Period of restoration" means the period of time that:
 - a. Begins at the time of direct "loss".
 - b. Ends on the earlier of:
 - (1) The date when the property at the "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.
 - c. "Period of restoration" does not include any increased period required due to the enforcement of or compliance with 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".
 - d. The expiration date of the Coverage Part will not cut short the "period of restoration".
9. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, asbestos, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property, or the environment regardless of whether injury or damage is caused directly or indirectly by the "pollutants" and whether:
 - a. You are regularly or otherwise engaged in activities which taint or degrade the environment; or
 - b. You use, generate or produce the "pollutant".
10. "Premises" means the Locations and Buildings described in the Declarations.
11. "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 "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.
12. "Suspension" means:
 - a. The slowdown or cessation of your business activities; and
 - b. That a part or all of the "premises" is rendered untenable if coverage for "Business Income" including "Rental Value" or "Rental Value" applies.
13. "Valuable papers and records" means inscribed, printed or written documents, manuscripts or records, including abstracts, books, card index systems, deeds, drawings, films, maps, mortgages, or proprietary information. But "valuable papers and records" does not mean "money" or "securities" or "electronic data", including the materials on which the "electronic data" is recorded.



PROCLAMATIONS

Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outb

Issued on: March 13, 2020



In December 2019, a novel (new) coronavirus known as SARS-CoV-2 (“the virus”) was first detected in Hubei Province, People’s Republic of China, causing outbreaks of the coronavirus disease COVID-19 that has spread globally. The Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. I have taken immediate action to control the spread of the virus in the United States, including by suspending entry of foreign nationals who had been physically present within the prior 14 days in certain jurisdictions where COVID-19 has occurred, including the People’s Republic of China, the Islamic Republic of Iran, and the Schengen Area. The Federal Government, along with State and local governments, has taken preventive and proactive measures to protect the public health of the United States.

spread of the virus and treat those affected, including by instituting Federal quarantines for individuals from foreign nations, issuing a declaration pursuant to section 319F-3 of the Public Health Service Act (42 U.S.C. 2639) and releasing policies to accelerate the acquisition of personal protective equipment and streamlining diagnostic capabilities to laboratories. On March 11, 2020, the World Health Organization announced that the COVID-19 outbreak can be characterized as a pandemic, as the rates of infection continue to rise in many localities around the world and across the United States.

The spread of COVID-19 within our Nation's communities threatens to strain our Nation's healthcare system. As of March 12, 2020, 1,645 people from 47 States have been infected with the virus that causes COVID-19. Federal, State, and local hospitals and medical facilities throughout the country to assess their preparedness posture and build up their capacity and capability. Additional measures, however, are needed to successfully contain and control the spread of the virus in the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 201 and 301 of the National Emergency Act (50 U.S.C. 1601 *et seq.*) and consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 405), I hereby find and proclaim that the COVID-19 outbreak in the United States constitutes a national emergency. I make this declaration on March 1, 2020. Pursuant to this declaration, I direct as follows:

Section 1. Emergency Authority. The Secretary of HHS may exercise the authority under section 1135 of the SSA to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the public health emergency declared in response to the COVID-19 outbreak.

Sec. 2. Certification and Notice. In exercising this authority, the Secretary of HHS shall provide certain written notice to the Congress as required by section 1135(d) of the SSA (42 U.S.C. 1320b-5(d)).

Sec. 3. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise

(i) the authority granted by law to an executive department or agency, or the head thereof; or

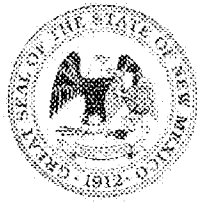
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of March, in the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP



State of New Mexico

Michelle Lujan Grisham
Governor

EXECUTIVE ORDER 2020-004

ORDER DECLARING A STATE OF PUBLIC HEALTH EMERGENCY AND INVOKING THE POWERS PROVIDED BY THE ALL HAZARD EMERGENCY MANAGEMENT ACT AND THE EMERGENCY LICENSING ACT

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China and reported to the World Health Organization. The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease named COVID-19.

Since it was first identified and reported, COVID-19 has spread globally. Over 100 countries have confirmed cases of COVID-19 and more than 100,000 people have been infected.

The incidence of COVID-19 within the United States has similarly increased. The first domestic report of COVID-19 occurred on January 21, 2020, in Washington State. To date, there have been more than 1,000 reported domestic cases of COVID-19 in 39 states.

Several public health organizations have implemented emergency measures intended to slow the spread of the disease. For example, on January 20, 2020, the United States Centers for Disease Control and Prevention activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO similarly declared a Public Health Emergency of International Concern shortly thereafter. At least twelve of our sister states, including California, Colorado, Florida, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon,

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Utah, and Washington, have also implemented emergency protocols intended to mitigate the transmission of COVID-19.

My administration has been proactive in its approach to the COVID-19 epidemic. Over the last several weeks, I have been in direct and frequent contact with officials overseeing the federal response to the COVID-19 outbreak. Further, my office has worked with the New Mexico Secretary of Health and other State emergency services to develop plans to provide a swift and effective response when the inevitability of COVID-19 in New Mexico ultimately materialized.

On March 11, 2020, the first confirmed cases of COVID-19 were reported in New Mexico. For this reason, it is necessary for all branches of State government to take immediate action to minimize the spread of COVID-19 and to minimize the attendant physical and economic harms.

THEREFORE, for the reasons addressed above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, do hereby ORDER and DIRECT:

1. I hereby invoke and exercise all powers vested in my office under the All Hazard Emergency Management Act, NMSA 1978, §§ 12-10-1 through 12-10-10. All branches of State government shall cooperate with federal authorities, other states, and private agencies to provide resources and services necessary to minimize physical and economic harm and assist in the provision of lodging, shelter, health care, food, transportation, or shipping necessary to protect lives or public property. Further, all political subdivisions within New Mexico shall adhere to Section 12-10-10, which mandates compliance with and enforcement of this Order.

2. I further proclaim a public health emergency in accordance with NMSA 1978, 12-10A-5 of the Public Health Emergency Response Act. This proclamation is necessary to minimize the spread and adverse impacts of the COVID-19 in our State. All political subdivisions and

geographic areas within the State of New Mexico are affected by the COVID-19 outbreak and, to the extent permitted by law, they are subject to the provisions of this Order. The temporal scope of this emergency is for a period of 30 days and shall remain in effect until further notice. If necessary, after consultation with the Department of Health Secretary, this Order will be renewed and extended. See NMSA 1978, § 12-10A-5 (2003). All public health officials, including those employed by the Department of Health, Human Services Department, and Aging and Long-Term Service Department, are required to assist in the implementation of this Order.

3. The Department of Health and the Department of Homeland Security and Emergency Management shall collaborate to provide an effective and coordinated response to this public health emergency and shall consult with my office regarding all matters germane to this Order.

4. All cabinets, departments, and agencies shall comply with the directives in this Order and any instruction given by the Department of Health.

5. Pursuant to NMSA 1978, § 13-1-127 (2019), I direct the General Services Department Secretary and the Department of Finance and Administration to assist in the emergency purchase of all goods and services necessary to contain, respond, and mitigate the spread of COVID-19 in New Mexico.

6. The Department of Health and the Department of Homeland Security and Emergency Management shall credential out-of-state professionals who can render aid and necessary services during the pendency of this Order. NMSA 1978, §§ 12-10-10.1 through 12-10-13. (2007).

7. The Office of the Superintendent of Insurance shall promulgate emergency regulations maximizing the available insurance coverage for New Mexicans suffering from

COVID-19, pneumonia, or influenza, while simultaneously ensuring that medical costs do not create barriers to testing and treatment.

8. The Secretary of the New Mexico Department of Workforce Solutions shall adopt such emergency rules, regulations, or declarations as necessary to ensure that individuals who are experiencing a temporary lay-off or furlough status due to forced absences from work because of COVID-19 are eligible to receive unemployment benefits. I direct the Department of Workforce Solutions Secretary to promulgate emergency rules allowing temporary waivers of claims requirements for affected individuals under NMSA 1978, Section 51-1-5(A)(2) & (3) and any other relevant provisions of law. The emergency waiver provisions should be similar to those already provided by 11.3.300.320(E) & (F) NMAC.

9. I direct the Adjutant General to order into service any elements of the New Mexico National Guard that may be needed to support to civil authorities in response to this public emergency. Such assistance shall be provided during the pendency of this Order at the discretion of the Governor. NMSA 1978, §§ 20-1-1 through 20-1-8; NMSA 1978, §§ 20-4-1- through 20-4-14.

10. In accordance with NMSA 1978, §§ 12-11-23 through 12-11-25 and § 12-10-4(B)(3), the Department of Finance and Administration shall make available emergency financial resources on a continuing basis as necessary to address this emergency to the Department of Health. NMSA 1978, § 12-11-25 (2005). The funds shall be expended to protect the public health, safety, and welfare; to provide those resources and services necessary to avoid or minimize economic or physical harm on a temporary, emergency basis. The funds shall be paid out only in an amount specified by warrants drawn by the Secretary of the Department of Finance and Administration upon vouchers approved by the Governor or the Department of Health.

11. This Order may be supplemented or amended.

THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until the Governor rescinds it.

ATTEST:

Maggie Toulouse Oliver

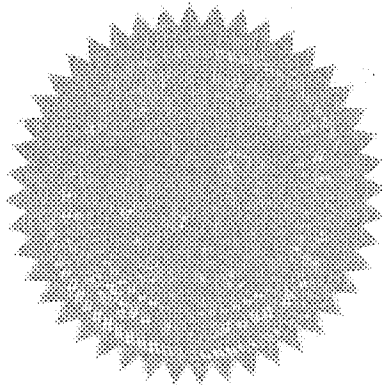
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 11TH DAY OF MARCH 2020

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

Michelle Lujan Grisham

MICHELLE LUJAN GRISHAM
GOVERNOR



**AMENDED PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
CABINET SECRETARY KATHYLEEN M. KUNKEL**

MARCH 16, 2020

**Public Health Emergency Order Limiting Mass Gatherings
and Implementing Other Restrictions Due to COVID-19**

WHEREAS, on January 30, 2020, the World Health Organization (WHO) announced the emergence of a novel Coronavirus Disease 2019 (referred to as “COVID-19”) that had not previously circulated in humans, but has been found to have adapted to humans such that it is contagious and easily spread from one person to another and one country to another;

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services (HHS) Secretary declared a public health emergency as a precautionary tool to facilitate preparation and availability of resources to assure that the federal government had appropriate resources to combat the spread of the COVID-19 virus in our nation through its support of state and community-led preparedness and response efforts;

WHEREAS, as of March 15, 2020, the New Mexico Department of Health has confirmed thirteen (13) cases of individuals infected with COVID-19 in New Mexico;

WHEREAS, on March 11, 2020, Michelle Lujan Grisham, the Governor of the State of New Mexico, declared in Executive Order 2020-004 (“EO 2020-004”) that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked the All Hazards Emergency Management Act by directing all cabinets, departments and agencies to comply with the directives of the declaration and the further instructions of the Department of Health;

WHEREAS, as of March 12, 2020, I issued a Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19, which limited certain public gatherings;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), and potential closures of schools or other places of public gathering; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, the authority granted in EO 2020-004, and in any inherent

EXHIBIT

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OFFICE OF THE SECRETARY

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constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

- (1) “Condition of public health importance” means an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community.
- (2) “Disease” means an illness, including those caused by infectious agents or their toxic products which may be transmitted to a susceptible host.
- (3) “Individuals” means natural persons.
- (4) “Gathering” means any grouping together of individuals in a single connected location.
- (5) “Mass gathering” means any public or private gathering that brings together one hundred (100) or more individuals in a single room or connected space in close proximity to one another, such as an auditorium, stadium, arena, large conference room, meeting hall, theaters, or any other confined indoor or outdoor space, but does not include normal operations at airports, or other spaces where 100 or more individuals may be in transit. “Mass gathering” also does not include family gatherings such as weddings or funerals, shelters, retail stores or grocery stores, typical office environments, courthouses, correctional and detention facilities, schools and educational institutions, hospitals, clinics, nursing homes, and other health care and congregate care facilities, and places of worship operating during “normal business hours”.
- (6) “Normal business hours” means the normal workday or typical time of operation for a “typical office environment”.
- (7) “Secretary” or “Secretary of Health” means the Cabinet Secretary of the Department of Health.
- (8) “Typical office environments” includes private entities, governmental organizations, political subdivisions, or other entities engaged in commercial, industrial, or professional activities. “Typical office environments” does not include restaurants, bars, breweries, eateries, and other similar service establishments.

I HEREBY DIRECT AS FOLLOWS:

- (1) All Mass Gatherings are hereby prohibited under the powers and authority set forth in the New Mexico Public Health Act, and all regulations promulgated pursuant thereto.
- (2) All restaurants, bars, breweries, eateries, and other food service establishments shall operate at no greater than fifty percent of maximum occupancy, and no greater than fifty percent of seating capacity. Individual tables and booths may not seat more than six people, and all occupied tables and booths must be separated by at least six feet. Patrons may not be seated at bars and standing patrons shall not be served.
- (3) All casinos and horse racing facilities, and attendant restaurant or bar operations shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands.

I FURTHER DIRECT as follows:

- (1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.
- (2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.
- (3) This Order shall remain in effect for the duration of Executive Order 2020-004. This Order may be renewed consistent with any direction from the Governor.

I FURTHER ADVISE the public to take the following preventive precautions:

- **New Mexico citizens are strongly advised to stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Avoid contact with people who are sick.
- Wash your hands often with soap and water for at least 20 seconds, especially after blowing your nose, coughing, or sneezing, or having been in a public place. If soap and water are not available, use a hand sanitizer that contains at least 60% alcohol.
- To the extent possible, avoid touching high-touch surfaces in public places – elevator buttons, door handles, handrails, handshaking with people, etc. Use a tissue or your sleeve to cover your hand or finger if you must touch something.
- Avoid touching your face, nose, eyes, etc.
- Clean and disinfect your home to remove germs: practice routine cleaning of frequently touched surfaces (for example: tables, doorknobs, light switches, handles, desks, toilets, faucets, sinks & cell phones).
- Avoid crowds, especially in poorly ventilated spaces. Your risk of exposure to respiratory viruses like COVID-19 may increase in crowded, closed-in settings with little air circulation if there are people in the crowd who are sick.
- Avoid all non-essential travel including plane trips and cruise ships.

THIS ORDER amends the Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19 issued on March 12, 2020, supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect until otherwise rescinded.

ATTEST:

DONE AT THE EXECUTIVE OFFICE
THIS 16TH DAY OF MARCH 2020

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

KATHYLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
CABINET SECRETARY KATHYLEEN M. KUNKEL**

MARCH 23, 2020

**Public Health Emergency Order Closing All Businesses and Non-Profit
Entities Except for those Deemed Essential and
Providing Additional Restrictions on Mass Gatherings Due to COVID-19**

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, COVID-19 infections in the United States have increased from 1,000 confirmed cases to over 30,000 confirmed cases;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering; and

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act as invoked through

Executive Order 2020-004, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Condition of public health importance” means an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community.

(2) “Disease” means an illness, including those caused by infectious agents or their toxic products which may be transmitted to a susceptible host.

(3) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

- a. Health care operations including hospitals, walk-in-care health facilities, emergency veterinary and livestock services, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, and medical supplies and equipment manufacturers and providers;
- b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;
- c. Childcare facilities necessary to provide services to those workers employed by essential businesses and essential non-profit entities;
- d. Grocery stores, all food and beverage stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;
- e. Farms, ranches, and other food cultivation, processing, or packaging operations;

- f. All facilities used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;
- g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;
- h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;
- i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, custodial services, plumbers, electricians, and other skilled trades;
- j. Media services including television, radio, and newspaper operations;
- k. Gas stations, automobile repair facilities, and retailers who generate the majority of their revenue from the sale of automobile repair products;
- l. Hardware stores;
- m. Laundromats and dry cleaner services;
- n. Utilities, including their contractors and suppliers, engaged in power generation, fuel supply and transmission, water and wastewater supply;
- o. Funeral homes, crematoriums and cemeteries;
- p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;
- q. Real estate services including brokers, title companies, and related services.
- r. Businesses providing mailing and shipping services, including post office boxes;

- s. Laboratories and defense and national security-related operations supporting the United States government or a contractor to the United States government;
- t. Restaurants, but only for delivery or carry out and local breweries or distillers but only for carry out;
- u. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and
- v. Logistics and businesses that store, ship or deliver groceries, food, goods or services directly to residences or retailers.

(4) “Individuals” means natural persons.

(5) “Gathering” means any grouping together of individuals in a single connected location.

(6) “Mass gathering” means any public or private gathering that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space where individuals are within six (6) feet of each other, but does not include the presence of five (5) or more individuals where those individuals regularly reside. “Mass gathering” does not include “individuals” congregated in a church, synagogue, mosque, or other place of worship.

I HEREBY DIRECT AS FOLLOWS:

- (1) All Mass Gatherings are hereby prohibited under the powers and authority set forth in the New Mexico Public Health Act, and all regulations promulgated pursuant thereto.
- (2) All businesses, except those entities identified as “essential businesses”, are hereby directed to reduce the in-person workforce at each business or business location by 100%. “Essential businesses” may remain open provided they minimize their operations and staff to the greatest extent possible. Further, all essential businesses shall, to the greatest extent possible, adhere to social distancing protocol and maintain at least six-foot social distancing from other individuals, avoid person-to-person contact, and direct employees to wash their hands frequently. Further, all essential businesses shall ensure that all surfaces are cleaned routinely.
- (3) This Order only requires the closure of physical office spaces, retail spaces, or other public spaces of a business and does not otherwise restrict the conduct of business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely.
- (4) All casinos and horse racing facilities shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands.
- (5) Hotels, motels, RV parks, and other places of lodging shall not operate at more than fifty percent of maximum occupancy. Health care workers who are engaged in the

provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays or as temporary housing shall not be counted for purposes of determining maximum occupancy.

- (6) All call centers situated in New Mexico are directed to reduce their in-person workforce by 100%.
- (7) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.
- (8) All public and private employers are required to comply with this Order and any instructions provided by State departments or agencies regarding COVID-19.
- (9) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6 (2012).

I FURTHER DIRECT as follows:

- (1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.
- (2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.
- (3) This Order shall remain in effect for the duration of Executive Order 2020-004. This Order may be renewed consistent with any direction from the Governor.

I FURTHER ADVISE the public to take the following preventive precautions:

- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.
- Avoid crowds.
- Avoid all non-essential travel including plane trips and cruise ships.

THIS ORDER amends the Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19 issued on March 19, 2020, supersedes any other previous orders, proclamations, or directives in conflict.

ATTEST:

DONE AT THE EXECUTIVE OFFICE
THIS 24TH DAY OF MARCH 2020

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

KATHYLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
CABINET SECRETARY KATHYLEEN M. KUNKEL**

MARCH 24, 2020

**Public Health Emergency Order Imposing Temporary Restrictions on Non-Essential
Health Care Services, Procedures, and Surgeries; Providing Guidance on those
Restrictions; and Requiring a Report from Certain Health Care Providers**

WHEREAS, on January 30, 2020, the World Health Organization announced the emergence of a novel Coronavirus Disease 2019 ("COVID-19") that had not previously circulated in humans, but has been found to have adapted to humans such that it is contagious and easily spread from one person to another and one country to another;

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency as a precautionary tool to facilitate preparation and availability of resources to assure that the federal government had appropriate resources to combat the spread of the COVID-19 virus in our nation through its support of state and community-led preparedness and response efforts;

WHEREAS, on March 11, 2020, the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

WHEREAS, on March 11, 2020, Michelle Lujan Grisham, the Governor of the State of New Mexico, declared in Executive Order 2020-004 ("EO 2020-004") that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked the All Hazards Emergency Management Act by directing all cabinets, departments and agencies to comply with the directives of the declaration and the further instructions of the Department of Health;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from the COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), the potential for displacements of persons, and potential closures of schools or other places of public gathering;

WHEREAS, the United States Centers for Disease Control and Prevention ("CDC") recommends the use of personal protective equipment ("PPE")—including gloves, medical masks, goggles or a face shield, gowns, and in some cases respirators (N95 or FFP2 standard or equivalent) and aprons—for patients and health care workers as an essential part of treating and preventing the spread of COVID-19;

WHEREAS, due to delayed deliveries of PPE from the Strategic National Stockpile, the high demand for PPE throughout the United States and globally, and other supply chain interference related to the COVID-19 pandemic, there is both a statewide and national shortage of PPE and the PPE supplies of New Mexico's hospitals, health care facilities, and first responders are critically low;

WHEREAS, local, national, and global health experts predict that the expected continued rise in cases of COVID-19 will strain the capacity and resources of health care providers, including available space and equipment in health care facilities; and

WHEREAS, during a declared Public Health Emergency, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Emergency Response Act to "utilize, secure or evacuate health care facilities for public use." NMSA 1978, § 12-10A-6(A)(1). The Department of Health is also permitted to "regulate or ration health care supplies" if "a public health emergency results in a statewide or regional shortage of health care supplies." § 12-10A-6(A)(2), (B). This authority permits the Department of Health to "control, restrict and regulate the allocation, sale, dispensing or distribution of health care supplies." § 12-10A-6(B). The Department of Health also has authority to "control and abate the causes of disease, especially epidemics" and to "maintain and enforce rules for the control of conditions of public health importance." NMSA 1978, § 24-1-3(C) & (Q).

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and through the Public Health Emergency declared in EO 2020-004 and by virtue of the Governor's direction under her power to "provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized," NMSA 1978, § 12-10-4(B)(3), do hereby **ORDER** and **DIRECT** as follows:

1. All hospitals and other health care facilities, ambulatory surgical facilities, dental, orthodontic and endodontic offices in the State of New Mexico are prohibited from providing non-essential health care services, procedures, and surgeries.
2. For purposes of this Order, "non-essential health care services, procedures, and surgeries" include those which can be delayed for three (3) months without undue risk to the patient's health. Examples of criteria to consider in distinguishing between essential and non-essential actions include: (a) threat to a patient's life; (b) threat of permanent dysfunction of an extremity, including teeth, jaws, and eyes; (c) risk of metastasis or progression of staging; (d) prenatal and postnatal care; and (e) any other factors that will conserve medical resources without creating an undue risk of permanent harm to patients.
3. This Order's prohibition on non-essential health care services, procedures, and surgeries is not meant to apply to: (a) the provision of emergency medical care or any actions necessary to provide treatment to patients with emergency or urgent medical needs; (b) any surgery or treatment that if not performed would result in a serious condition of a patient worsening (e.g.,

removing a cancerous tumor or a surgery intended to manage an infection); and (c) the full suite of family planning services.

4. The prohibition on non-essential health care services, procedures, and surgeries will take effect on March 27, 2020.

5. Within three (3) days of the date of this Order, each health care provider or facility that is subject to the prohibition on non-essential health care services, procedures, and surgeries shall submit to the New Mexico Department of Health a policy addressing how it will comply with this Order and identifying those procedures that will generally be deemed essential and non-essential.

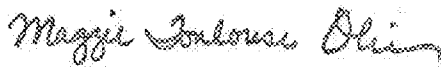
6. A person who willfully violates this Order may be subject to civil administrative penalties, including fines up to \$5,000 per violation, in addition to other civil or criminal penalties that may be available at law.

I FURTHER DIRECT as follows:

- (1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.
- (2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.
- (3) This Order shall remain in effect for the duration of Executive Order 2020-004. This Order may be renewed consistent with any direction from the Governor.

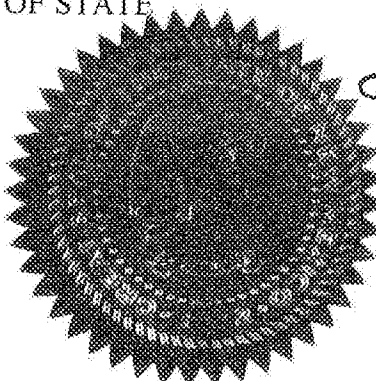
THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect for the duration indicated in the Order unless otherwise rescinded.


ATTEST:

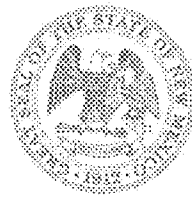

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 24TH DAY OF MARCH 2020

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO




KATHYLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH



State of New Mexico

Michelle Lujan Grisham
Governor

EXECUTIVE ORDER 2020-027

GRANTING CITY OF GALLUP'S REQUEST FOR DECLARATION OF EMERGENCY; IMPOSING BUSINESS CLOSURES; CLOSING CERTAIN ROADWAYS; LIMITING GATHERINGS

On April 30, 2020, the Mayor of Gallup requested that I declare a state of emergency in the City of Gallup pursuant to NMSA 1978, §§ 12-10-16 through 12-10-21 ("Riot Control Act"). In that request, the Mayor noted that the City was in the throes of an unprecedented health crisis and that available medical resources had been stretched thin. See Press Release -- Letter to the Governor -- April 30th, 2020 available at <https://www.gallupnm.gov/CivicAlerts.aspx?AID=843>. Further, the Mayor indicated that the community would be unable to adequately address the COVID-19 outbreak without the imposition of restrictions necessary to regulate social distancing, public gatherings, sales of goods, and use of public streets. Id.

The Mayor's concerns are consistent with New Mexico Department of Health data. Over the last several weeks, there has been a significant spike in the number of COVID-19 cases within the City of Gallup and the surrounding areas; since April 17, 2020, the number of confirmed cases in McKinley County has increased from 265 to 762 and deaths have increased from 3 to 19. These numbers, standing alone, are disturbing but when viewed in the context of increasingly scarce medical resources, they are alarming. This dire factual predicate suggests that additional measures are necessary to begin the process of reducing infection rates in Gallup and the surrounding communities.

EXHIBIT
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Invocation of powers emergency powers under the Riot Control Act is a drastic measure and this authority should be utilized sparingly. However, given the pending health emergency and the particular exigencies at issue, extreme action is warranted.

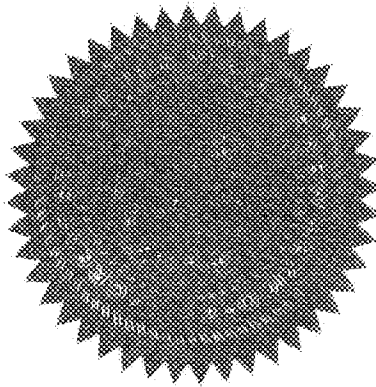
Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, hereby ORDER and DIRECT:

1. All businesses and nonprofits must close between 5:00 P.M. and 8:00 A.M. This directive excludes hospitals, urgent care centers, residential treatment facilities, stepdown care services, and related healthcare operations;
2. All roadways providing access to the City of Gallup shall be closed and only Gallup residents, those who work in Gallup, and members of the media shall be permitted entry into the municipality;
3. No more than two (2) people shall be allowed in any vehicle during the pendency of this declaration; and
4. Gallup residents should shelter in place and stay in their homes unless travel is absolutely necessary for reasons attendant to health, safety, or welfare,
5. Local government employees, acting within the course and scope of their employment, are excluded from this Order. Also excluded from this Order are those hotels serving as designated COVID-19 sheltering facilities.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect at noon on Friday, May 1, 2020, and shall remain in effect until noon on May 4, 2020, unless renewed or until the Governor rescinds it.

ATTEST:

Maggie Toulouse Oliver
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE



DONE AT THE EXECUTIVE OFFICE
THIS 1ST DAY OF MAY 2020

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

Michelle Lujan Grisham
MICHELLE LUJAN GRISHAM
GOVERNOR

2020 WL 6281508 (N.C.Super.) (Trial Order)
Superior Court of North Carolina.
Durham County

NORTH STATE DELI, LLC d/b/a Lucky's Delicatessen, Mothers & Sons, LLC d/b/a Mothers & Sons Trattoria, Mateo Tapas, L.L.C. d/b/a Mateo Bar De Tapas, Saint James Shellfish LLC d/b/a Saint James Seafood, Calamari Enterprises, Inc. d/b/a Parizade, Bin 54, LLC d/b/a Bin 54, Arya, Inc. d/b/a City Kitchen and Village Burger, Grasshopper LLC d/b/a Nasher Cafe, Verde Cafe Incorporated d/b/a Local 22, Floga, Inc. d/b/a Kipos Greek Taverna, Kuzlna, LLC d/b/a Golden Fleece, Vin Rouge, Inc. d/b/a Vin Rouge, Kipos Rose Garden Club LLC d/b/a Rosewater, and Gira Sole, Inc. d/b/a Farm Table and Gatehouse Tavern, Plaintiffs,

v.

THE CINCINNATI INSURANCE COMPANY; The Cincinnati Casualty Company;
Morris Insurance Agency Inc.; and Does 1 Through 20, Inclusive, Defendants.

No. 20-CVS-02569.
October 9, 2020.

**Order Denying the Rule 12(b)(6) Motion to Dismiss the Second Amended Complaint Filed
by Defendants the Cincinnati Insurance Company and the Cincinnati Casualty Company**

Stuart M. Paynter, Gagan Gupta, 106 S. Churton Street, Suite 200, Hillsborough, NC 27278, for plaintiffs.

Andrew A. Vanore III, Post Office Box 1729, Raleigh, NC 27602-1729, for defendant, The Cincinnati Insurance Company.

Kendra Stark, Justin M. Puleo, 421 Fayetteville Street, Suite 330, Raleigh, NC 27601, for defendant Morris Insurance Agency, Inc.

Orlando F. Hudson, Jr.

***1** THIS MATTER was heard on September 23, 2020, before Senior Resident Superior Court Judge Orlando F. Hudson, Jr., with Gagan Gupta appearing for the plaintiff-restaurants (including North State Deli, LLC d/b/a Lucky's Delicatessen; Mothers & Sons, LLC d/b/a Mothers & Sons Trattoria; Mateo Tapas, L.L.C. d/b/a Mateo Bar de Tapas; Saint James Shellfish LLC d/b/a Saint James Seafood; Calamari Enterprises, Inc. d/b/a Parizade; Bin 54, LLC d/b/a Bin 54; Arya, Inc. d/b/a City Kitchen and Village Burger; Grasshopper LLC d/b/a Nasher Cafe; Verde Cafe Incorporated d/b/a Local 22; Floga, Inc. d/b/a Kipos Greek Taverna; Kuzina, LLC d/b/a Golden Fleece; Vin Rouge, Inc. d/b/a Vin Rouge; Kipos Rose Garden Club LLC d/b/a Rosewater; and Gira Sole, Inc. d/b/a Farm Table and Gatehouse Tavern (collectively, "Plaintiffs")), and Brian Reid and Drew Vanore appearing for defendant-insurers The Cincinnati Insurance Company and The Cincinnati Casualty Company (collectively, "Defendants"). Defendants brought a Rule 12(b)(6) Motion to Dismiss in Lieu of Answer to Plaintiffs' Complaint ("Motion") with respect to Count I (Declaratory Judgment), Count II (Declaratory Judgment), and Count III (Breach of Contract).¹

THE COURT, having considered the pleadings, the Motion, the briefs filed in support of and in opposition to the Motion, the oral arguments of counsel at the hearing on the Motion, the applicable law, and other appropriate matters of record, DENIES Defendants' Motion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- (1) Plaintiffs state a viable claim for relief under Count I of the Second Amended Complaint, seeking a declaratory judgment against Defendants pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, ascertaining entitlement to coverage under insurance policy contracts entered into between Plaintiffs and Defendants.

EXHIBIT

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(2) Plaintiffs state a viable claim for relief under Count II of the Second Amended Complaint, seeking a declaratory judgment against Defendants pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, ascertaining entitlement to coverage under insurance policy contracts entered into between Plaintiffs and Defendants.

*2 (3) Plaintiffs state a viable claim for relief under Count III of the Second Amended Complaint, seeking damages and other relief for breach of contract against Defendants pursuant to their failure to provide benefits due under the insurance policy contracts as described in Counts I and II.

This the 7th day of October, 2020.

<<signature>>

ORLANDO F. HUDSON, JR.

SENIOR RESIDENT SUPERIOR COURT JUDGE

Footnotes

- 1 The operative pleading to which this Order applies is the Second Amended Complaint. For background, the Motion was filed by defendant The Cincinnati Insurance Company on August 7, 2020. After Plaintiffs and The Cincinnati Insurance Company exchanged full briefing on the Motion, the Court granted a Consent Motion for Leave to File Second Amended Complaint, consented to by all the parties captioned herein. The sole amendment made by the Second Amended Complaint was the addition of another defendant-insurer, The Cincinnati Casualty Company. Because Plaintiffs and Defendants jointly stipulated that the Second Amended Complaint resulted in no substantive changes to the Motion or the related briefings and arguments, and that the Motion and related briefings and arguments applied with equal force to the newly-added defendant entity, this Order is entered with respect to Counts I-III as those counts are alleged against both The Cincinnati Insurance Company and The Cincinnati Casualty Company in the Second Amended Complaint.



KeyCite Yellow Flag - Negative Treatment

Declined to Follow by T & E Chicago LLC v. Cincinnati Insurance Company, N.D.Ill., November 19, 2020

2020 WL 4692385

Only the Westlaw citation is currently available.

United States District Court, W.D.
Missouri, Southern Division.

STUDIO 417, INC., et al., Plaintiffs,

v.

The CINCINNATI INSURANCE
COMPANY, Defendant.

Case No. 20-cv-03127-SRB

|
Signed 08/12/2020

Synopsis

Background: Insureds, businesses which had purchased all-risk property insurance policies, brought action against property insurer, seeking declaratory judgment and class certification and alleging breach of contract arising from insurer's denial of coverage for losses resulting from COVID-19 pandemic. Property insurer moved to dismiss.

Holdings: The District Court, Stephen R. Bough, J., held that:

[1] insureds adequately alleged that they incurred direct physical loss;

[2] insureds plausibly stated claim for civil authority coverage;

[3] insureds plausibly stated claim for ingress and egress coverage;

[4] insureds plausibly stated claim for dependent property coverage; and

[5] insureds plausibly stated claim for sue and labor coverage.

Motion denied.

Procedural Posture(s): Motion to Dismiss for Failure to State a Claim.

West Headnotes (15)

[1] **Federal Civil Procedure** ⇌ Construction of pleadings

Federal Civil Procedure ⇌ Matters deemed admitted; acceptance as true of allegations in complaint

When deciding a motion to dismiss complaint for failure to state a claim, the factual allegations of a complaint are assumed true and construed in favor of the plaintiff, even if it strikes a savvy judge that actual proof of those facts is improbable. Fed. R. Civ. P. 12(b)(6).

[2] **Federal Courts** ⇌ Insurers and insurance

State law controls the construction of insurance policies where case is based on diversity jurisdiction.

[3] **Insurance** ⇌ Questions of law or fact

Under Missouri law, the interpretation of an insurance policy is a question of law to be determined by the court.

2 Cases that cite this headnote

[4] **Insurance** ⇌ Construction or enforcement as written

Insurance ⇌ Entire contract

Missouri courts read insurance contracts as a whole and determine the intent of the parties, giving effect to that intent by enforcing the contract as written.

[5] **Insurance** ⇌ Reasonableness

Insurance ⇌ Favoring coverage or indemnity; disfavoring forfeiture

In Missouri, insurance policies are to be given a reasonable construction and interpreted so as to afford coverage rather than defeat coverage.

EXHIBIT

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[6] Insurance ⇌ Understanding of Ordinary or Average Persons

Under Missouri law, insurance policy terms are given the meaning which would be attached by an ordinary person of average understanding if purchasing insurance.

[7] Insurance ⇌ Ambiguity in general

Under Missouri law, when interpreting insurance policy terms, the central issue is determining whether any ambiguity exists, which occurs where there is duplicity, indistinctness, or uncertainty in the meaning of the words used in the contract.

[8] Insurance ⇌ Construction or enforcement as written

Under Missouri law, if insurance policies are unambiguous, they will be enforced as written absent a statute or public policy requiring coverage.

[9] Insurance ⇌ Ambiguity, Uncertainty or Conflict

Under Missouri law, if language in insurance policies is ambiguous, it will be construed against the insurer.

[10] Insurance ⇌ Risks or Losses Covered and Exclusions

Insurance ⇌ Acts of government or governmental actors

Insureds, businesses which had purchased all-risk insurance policies, adequately alleged that they incurred direct physical loss during COVID-19 pandemic, as necessary to obtain coverage under property insurance policies; insureds alleged causal relationship between COVID-19 and their alleged losses, in that COVID-19 resulted in government orders requiring closure of businesses, and also alleged that COVID-19 was physical substance that

lived on and was active on inert physical surfaces, that it was emitted into air, and that COVID-19 attached to and deprived insureds of their property and made it unsafe and unusable.

10 Cases that cite this headnote

[11] Insurance ⇌ Construction as a whole

Insurance ⇌ Entire contract

Court, in interpreting insurance policy, must give meaning to all policy terms and, where possible, harmonize those terms in order to accomplish the intention of the parties.

[12] Insurance ⇌ Acts of government or governmental actors

Insureds, restaurants and salon which had purchased all-risk insurance policies, plausibly stated claim for civil authority coverage under policy during COVID-19 pandemic; insureds alleged that they suffered physical loss, which was applicable to other property, and that civil authorities issued closure and stay-at-home orders throughout two states, which included property other than insureds' premises, and while insureds admitted that closure orders allowed restaurant premises to remain open for food preparation, take-out, and delivery and that they did not prohibit access to salon premises, they alleged that closure order required businesses that provided personal services to suspend operations and prohibited inside seating at restaurants.

1 Cases that cite this headnote

[13] Insurance ⇌ Business Interruption; Lost Profits

Insureds, businesses which had purchased all-risk insurance policies, plausibly stated claim for ingress and egress coverage under policy during COVID-19 pandemic; insureds alleged that they suffered physical loss, in that COVID-19 was physical substance that lived on inert physical surfaces and had attached to and deprived insureds of their property, and also alleged that both COVID-19 and resulting closure orders

that government issued to businesses rendered premises unsafe for ingress and egress.

12 Cases that cite this headnote

[14] **Insurance** ⇌ Business Interruption; Lost Profits

Insureds, businesses which had purchased all-risk insurance policies, plausibly stated claim for dependent property coverage under policy during COVID-19 pandemic; insureds alleged that they suffered physical loss, in that COVID-19 was physical substance that lived on inert physical surfaces and had attached to and deprived insureds of their property, and also alleged that they suffered loss of materials, services, and customers because of COVID-19 and resulting closure orders issued by government to businesses.

13 Cases that cite this headnote

[15] **Insurance** ⇌ Minimizing loss

Insureds, businesses which had purchased all-risk insurance policies, plausibly stated claim for sue and labor coverage under policy during COVID-19 pandemic; insureds alleged that, in complying with closure orders issued by government to businesses and by suspending operations, they incurred expenses in connection with reasonable steps to protect covered property.

Attorneys and Law Firms

Jack Thomas Hyde, Thomas A. Rottinghaus, Tyler Hudson, Wagstaff & Cartmell, Jeremy M. Sulir, Brandon J.B. Boulware, Boulware Law LLC, Todd M. Johnson, Votava Nantz & Johnson LLC, Kansas City, MO, for Plaintiffs.

Daniel G. Litchfield, Pro Hac Vice, Litchfield Cavo LLP, Chicago, IL, Ericka Hammett, Pro Hac Vice, Litchfield Cavo LLP, Milwaukee, WI, Kelvin J. Fisher, Michael Lloyd Brown, Wallace Saunders, Overland Park, KS, for Defendant.

ORDER

STEPHEN R. BOUGH, UNITED STATES DISTRICT JUDGE

*1 Before the Court is Defendant The Cincinnati Insurance Company's ("Defendant") Motion to Dismiss. (Doc. #20.) For the reasons set forth below, the motion is DENIED.

I. BACKGROUND

Because this matter comes before the Court on a motion to dismiss, the following allegations in Plaintiffs' First Amended Class Action Complaint (the "Amended Complaint") are taken as true. (Doc. #16); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (internal citations and quotation marks omitted) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)); *Zink v. Lombardi*, 783 F.3d 1089, 1098 (8th Cir. 2015).¹

The named Plaintiffs in this case are Studio 417, Inc. ("Studio 417"), Grand Street Dining, LLC ("Grand Street"), GSD Lenexa, LLC ("GSD"), Trezomare Operating Company, LLC ("Trezomare"), and V's Restaurant, Inc. ("V's Restaurant") (collectively, the "Plaintiffs"). Studio 417 operates hair salons in the Springfield, Missouri, metropolitan area. Grand Street, GSD, Trezomare, and V's Restaurant own and operate full-service dining restaurants in the Kansas City metropolitan area.

Plaintiffs purchased "all-risk" property insurance policies (the "Policies") from Defendant for their hair salons and restaurants. (Doc. #1-1, ¶ 26.) All-risk policies cover all risks of loss except for risks that are expressly and specifically excluded. The Policies include a Building and Personal Property Coverage Form and Business Income (and Extra Expense) Coverage Form. Defendant issued each Plaintiff a separate policy, and all were in effect during the applicable time period. The parties agree that the Policies contain the same relevant language.

The Policies provide that Defendant would pay for "direct 'loss' unless the 'loss' is excluded or limited" therein. (Doc. #16, ¶ 27.) A "Covered Cause of Loss" "is defined to mean accidental [direct] physical loss *or* accidental [direct] physical

damage.” (Doc. #16, ¶ 31) (emphasis supplied); (Doc. #1-1, pp. 24, 57.)² The Policies do not define “physical loss” or “physical damage.” The Policies also “do not include, and are not subject to, any exclusion for losses caused by viruses or communicable diseases.” (Doc. #16, ¶ 13.) A loss, as defined above, is a prerequisite to invoke the different types of coverage sought in this lawsuit. (See Doc. #21, p. 15.) These coverages are set forth below.

First, the Policies provide for Business Income coverage. Under this coverage, Defendant agreed to:

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 ‘loss’ to property at a ‘premises’ caused by or resulting from any Covered Cause of Loss.

(Doc. #1-1, pp. 37-38.)

Second, the Policies provide “Civil Authority” coverage. This coverage applies to:

*2 the actual loss of ‘Business Income’ sustained ‘and necessary Extra Expense’ sustained ‘caused by action of civil authority that prohibits access to’ the Covered Property when a Covered Cause of Loss causes direct damage to property other than the Covered Property, the civil authority prohibits access to the area immediately surrounding the damaged property, and ‘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[.]’

(Doc. #16, ¶ 42.)

Third, the Policies provide “Ingress and Egress” coverage. This coverage is specified as follows:

We will pay for the actual loss of ‘Business Income’ you sustain and necessary Extra Expense you sustain caused by the prevention of existing

ingress or egress at a ‘premises’ shown in the Declarations due to direct ‘loss’ by a Covered Cause of Loss at a location contiguous to such ‘premises.’ However, coverage does not apply if ingress or egress from the ‘premises’ is prohibited by civil authority.

(Doc. #1-1, p. 95.)

Fourth, the Policies provide “Dependent Property” coverage. This coverage applies if the insured suffers a loss of Business Income because of a suspension of its business “caused by direct ‘loss’ to ‘dependent property.’ ” (Doc. #1-1, pp. 63-64.) “Dependent property means property operated by others whom [the insured] depend[s] on to ... deliver materials or services to [the insured] ... [a]ccept [the insured's] products or services ... [and] [a]ttract customers to [the insured's] business.” (Doc. #1-1, p. 64.)

Finally, the Policies provide what is commonly known as “Sue and Labor” coverage. In relevant part, the Policies require the insured to “take all reasonable steps to protect the Covered Property from further damage,” and to keep a record of expenses incurred to protect the Covered Property for consideration in the settlement of the claim. (Doc. #1-1, pp. 49-50.) The Policies do not exclude or limit losses from viruses, pandemics, or communicable diseases. (Doc. #16, ¶ 28.)

Plaintiffs seek coverage under the Policies for losses caused by the Coronavirus (“COVID-19”) pandemic. Plaintiffs allege that over the last several months, it is likely that customers, employees, and/or other visitors to the insured properties were infected with COVID-19 and thereby infected the insured properties with the virus. (Doc. #1-1, ¶ 60.) Plaintiffs allege that COVID-19 “is a physical substance,” that it “live[s] on” and is “active on inert physical surfaces,” and is “emitted into the air.” (Doc. #16, ¶¶ 47, 49-60.) Plaintiffs further allege that the presence of COVID-19 “renders physical property in their vicinity unsafe and unusable,” and that they “were forced to suspend or reduce business at their covered premises.” (Doc. #1-1, ¶¶ 14, 58, 102.)

In response to the COVID-19 pandemic, civil authorities in Missouri and Kansas issued orders requiring the suspension

of business at various establishments, including Plaintiffs' businesses (the "Closure Orders"). The Closure Orders "have required and continue to require Plaintiffs to cease and/or significantly reduce operations at, and ... have prohibited and continue to prohibit access to, the[ir] premises." (Doc. #16, ¶¶ 106-107.) Plaintiffs allege that the presence of COVID-19 and the Closure Orders caused a direct physical loss or direct physical damage to their premises "by denying use of and damaging the covered property, and by causing a necessary suspension of operations during a period of restoration." (Doc. #16, ¶¶ 102.) Plaintiffs allege that their losses are covered by the Business Income, Civil Authority, Ingress and Egress, Dependent Property, and Sue and Labor coverages discussed above. (Doc. #16, ¶¶ 103-108.) Plaintiffs provided Defendant notice of their losses, but Defendant denied the claims. (Doc. #16, ¶¶ 110-115.)

*3 On April 27, 2020, Plaintiffs filed this lawsuit against Defendant. The Amended Complaint asserts claims for a declaratory judgment and for breach of contract based on Business Income coverage (Counts I, II), Extra Expense coverage (Counts III, IV), Dependent Property coverage (Counts V, VI), Civil Authority coverage (Counts VII, VIII), Extended Business Income coverage (Counts IX, X), Ingress and Egress coverage (Counts XI, XII), and Sue and Labor coverage (Counts XIII, XIV). The Amended Complaint also seeks class certification for 14 nationwide classes (one for each cause of action) and a Missouri Subclass that consists of "all policyholders who purchased one of Defendant's policies in Missouri and were denied coverage due to COVID-19." (Doc. #16, ¶¶ 117-125; *see also* Doc. #21, pp. 12-13.)

Defendant responded to the Amended Complaint by filing the pending motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Defendant's overarching argument is that the Policies provide coverage "only for income losses tied to physical damage to property, not for economic loss caused by governmental or other efforts to protect the public from disease ... the same direct physical loss requirement applies to all the coverages for which Plaintiffs sue." (Doc. #21, p. 8.) Even if a loss is adequately alleged, Defendant argues that the Amended Complaint fails to state a claim as to each type of coverage at issue. Plaintiffs oppose the motion, and the parties' arguments are addressed below.

II. LEGAL STANDARD

[1] Rule 12(b)(6) provides that a defendant may move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to

dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937 (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ash v. Anderson Merchs., LLC*, 799 F.3d 957, 960 (8th Cir. 2015) (quoting *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937). When deciding a motion to dismiss, "[t]he factual allegations of a complaint are assumed true and construed in favor of the plaintiff, even if it strikes a savvy judge that actual proof of those facts is improbable." *Data Mfg., Inc. v. United Parcel Serv., Inc.*, 557 F.3d 849, 851 (8th Cir. 2009) (citations and quotations omitted).

[2] [3] [4] [5] Because this case is based on diversity jurisdiction, "state law controls the construction of [the] insurance policies[.]" *J.E. Jones Const. Co. v. Chubb & Sons, Inc.*, 486 F.3d 337, 340 (8th Cir. 2007). Under Missouri law, "[t]he interpretation of an insurance policy is a question of law to be determined by the Court." *Lafollette v. Liberty Mut. Fire Ins. Co.*, 139 F. Supp. 3d 1017, 1021 (W.D. Mo. 2015) (quoting *Mendota Ins. Co. v. Lawson*, 456 S.W.3d 898, 903 (Mo. App. W.D. 2015)).³ "Missouri courts read insurance contracts 'as a whole and determine the intent of the parties, giving effect to that intent by enforcing the contract as written.'" *Id.* (citing *Thiemann v. Columbia Pub. Sch. Dist.*, 338 S.W.3d 835, 840 (Mo. App. W.D. 2011)). "Insurance policies are to be given a reasonable construction and interpreted so as to afford coverage rather than to defeat coverage." *Cincinnati Ins. Co. v. German St. Vincent Orphan Ass'n, Inc.*, 54 S.W.3d 661, 667 (Mo. App. E.D. 2001).

*4 [6] [7] [8] [9] "Policy terms are given the meaning which would be attached by an ordinary person of average understanding if purchasing insurance." *Vogt v. State Farm Life Ins. Co.*, 963 F.3d 753, 763 (8th Cir. 2020) (applying Missouri law) (quotations omitted). When interpreting policy terms, "the central issue ... is determining whether any ambiguity exists, which occurs where there is duplicity, indistinctness, or uncertainty in the meaning of the words used in the contract." *Id.* (quotations omitted). If the "insurance policies are unambiguous, they will be enforced as written absent a statute or public policy requiring coverage. If the

language is ambiguous, it will be construed against the insurer.” *Id.* (quotations omitted).

III. DISCUSSION

A. Plaintiffs Have Adequately Alleged a Direct “Physical Loss” Under the Policies.

Defendant’s first argument is that Plaintiffs have not adequately pled a “physical loss” as required by the Policies. (Doc. # 21, pp. 7-8, 15-16, 19-25; Doc. #37, pp. 2-10.) Defendant argues that “direct physical loss requires actual, tangible, permanent, physical alteration of property.” (Doc. #21, p. 19) (citing cases). Defendant claims that the Policies provide property insurance coverage, and “are designed to indemnify loss or damage to property, such as in the case of a fire or storm. [COVID-19] does not damage property; it hurts people.” (Doc. #21, p. 7.) According to Defendant, the requirement of a tangible physical loss applies to—and precludes—each type of coverage sought in this case.

In response, Plaintiffs agree that “physical loss” and “physical damage” are “the key phrases” in the Policies. (Doc. #31, p. 7.) However, Plaintiffs emphasize that the Policies expressly cover “physical loss *or* physical damage.” (Doc. #31, p. 11) (emphasis supplied). This “necessarily means that either a ‘loss’ or ‘damage’ is required, and that ‘loss’ is distinct from ‘damage.’ ” (Doc. #31, p. 11.) As such, Plaintiffs argue that Defendant’s focus on an actual physical alteration ignores the coverage for a “physical loss.” Plaintiffs further argue that Defendant could have defined “physical loss” and “physical damage,” but failed to do so. Plaintiffs argue this case should not be disposed of on a motion to dismiss because “even if [Defendant’s] interpretation of the policy language is reasonable ... Plaintiffs’ interpretation is also reasonable[.]” (Doc. #31, p. 11.)

Upon review of the record, the Court finds that Plaintiffs have adequately stated a claim for direct physical loss. First, because the Policies do not define a direct “physical loss” the Court must “rely on the plain and ordinary meaning of the phrase.” *Vogt*, 963 F.3d at 763; *Mansion Hills Condo. Ass’n v. Am. Family Mut. Ins. Co.*, 62 S.W.3d 633, 638 (Mo. App. E.D. 2001) (recognizing that standard dictionaries should be consulted for determining ordinary meaning). The Merriam-Webster dictionary defines “direct” in part as “characterized by close logical, causal, or consequential relationship.” Merriam-Webster, www.merriam-webster.com/dictionary/direct (last visited August 12, 2020). “Physical” is defined as “having

material existence: perceptible especially through the senses and subject to the laws of nature.” Merriam-Webster, www.merriam-webster.com/dictionary/physical (last visited August 12, 2020). “Loss” is “the act of losing possession” and “deprivation.” Merriam-Webster, www.merriam-webster.com/dictionary/loss (last visited August 12, 2020).

[10] Applying these definitions, Plaintiffs have adequately alleged a direct physical loss. Plaintiffs allege a causal relationship between COVID-19 and their alleged losses. Plaintiffs further allege that COVID-19 “is a physical substance,” that it “live[s] on” and is “active on inert physical surfaces,” and is also “emitted into the air.” (Doc. #16, ¶¶ 47, 49-60.) COVID-19 allegedly attached to and deprived Plaintiffs of their property, making it “unsafe and unusable, resulting in direct physical loss to the premises and property.” (Doc. #16, ¶ 58.) Based on these allegations, the Amended Complaint plausibly alleges a “direct physical loss” based on “the plain and ordinary meaning of the phrase.” *Vogt*, 963 F.3d at 763.

*5 [11] Second, the Court “must give meaning to all [policy] terms and, where possible, harmonize those terms in order to accomplish the intention of the parties.” *Machecca Transp. v. Philadelphia Indem. Ins. Co.*, 649 F.3d 661, 669 (8th Cir. 2011) (applying Missouri law). Here, the Policies provide coverage for “accidental physical loss *or* accidental physical damage.” (Doc. #1-1, p. 57) (emphasis supplied). Defendant conflates “loss” and “damage” in support of its argument that the Policies require a tangible, physical alteration. However, the Court must give meaning to both terms. See *Nautilus Grp., Inc. v. Allianz Global Risks US*, No. C11-5281BHS, 2012 WL 760940, at * 7 (W.D. Wash. Mar. 8, 2012) (stating that “if ‘physical loss’ was interpreted to mean ‘damage,’ then one or the other would be superfluous”).

The Court’s finding that Plaintiffs have adequately stated a claim is supported by case law. In *Hampton Foods, Inc. v. Aetna Cas. & Sur. Co.*, 787 F.2d 349 (8th Cir. 1986), the relevant provision provided that “[t]his policy insures against loss of or damage to the property insured ... resulting from all risks of direct physical loss[.]” *Id.* at 351. Applying Missouri law, the Eighth Circuit found this provision was ambiguous and affirmed the district court’s decision that it covered “any loss or damage due to the *danger* of direct physical loss[.]” *Id.* at 352 (emphasis in original).

In *Mehl v. The Travelers Home & Marine Ins. Co.*, Case No. 16-CV-1325-CDP (E.D. Mo. May 2, 2018), the plaintiff discovered brown recluse spiders in his home. *Id.* at p. 1. The plaintiff unsuccessfully attempted to eliminate the spiders, and then left the home. *Id.* The plaintiff considered the property uninhabitable and filed a claim under his homeowners insurance policy for loss of use of the property. *Id.* After his insurance company denied the claim, the plaintiff filed suit for breach of contract. The insurance company moved for summary judgment and argued that the policy only covered “direct physical loss” which required “actual physical damage.” *Id.* at p. 2.

Mehl rejected this argument. As in this case, the *Mehl* policy did not define “physical loss” and the insurance company “point[ed] to no language in the policy that would lead a reasonable insured to believe that actual physical damage is required for coverage.” *Id.* Although the policy in *Mehl* provided coverage for “loss of use,” *Mehl* supports the conclusion that “physical loss” is not synonymous with physical damage. *Id.*

Other courts have similarly recognized that even absent a physical alteration, a physical loss may occur when the property is uninhabitable or unusable for its intended purpose.

See *Port Auth. of New York and New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 236 (3d Cir. 2002) (affirming denial of coverage but recognizing that “[w]hen the presence of large quantities of asbestos in the air of a building is such as to make the structure uninhabitable and unusable, then there has been a distinct [physical] loss to its owner”);

Prudential Prop. & Cas. Ins. Co. v. Lillard-Roberts, CV–01–1362–ST, 2002 WL 31495830, at * 9 (D. Or. June 18, 2002) (citing case law for the proposition that “the inability to inhabit a building [is] a ‘direct, physical loss’ covered by insurance”); *General Mills, Inc. v. Gold Medal Ins. Co.*, 622 N.W.2d 147, 152 (Minn. Ct. App. 2001) (“We have previously held that direct physical loss can exist without actual destruction of property or structural damage to property; it is sufficient to show that insured property is injured in some way.”).

To be sure, and as argued by Defendant, there is case law in support of its position that physical tangible alteration is required to show a “physical loss.” (Doc. #21, pp. 19-25; Doc. #37, pp. 3-10.)⁴ However, Plaintiffs correctly respond that these cases were decided at the summary judgment stage, are factually dissimilar, and/or are not binding. For example,

Defendant argues that “[a] seminal case concerning the direct physical loss requirement is *Source Food Tech., Inc. v. U.S. Fid. & Guar. Co.*, 465 F.3d 834 (8th Cir. 2006).” (Doc. #21, pp. 19-20.) However, *Source Food* was decided in the summary judgment context and under Minnesota law. *Source Food*, 465 F.3d at 834-36. Moreover, the facts of *Source Foods* are distinguishable. In that case, the insured's beef was not allowed to cross from Canada into the United States because of an embargo related to mad cow disease. *Id.* at 835. Because of the embargo, the insured was unable to fill orders and had to find a new supplier. Importantly, there was no evidence that the beef was actually contaminated. *Id.*

*6 The insured sought coverage based on a provision requiring “direct physical loss to property.” The district court denied coverage, and the Eighth Circuit affirmed, explaining that:

[a]lthough Source Food's beef product in the truck could not be transported to the United States due to the closing of the border to Canadian beef products, the beef product on the truck was not—as Source Foods concedes—physically contaminated or damaged in any manner. To characterize Source Food's inability to transport its truckload of beef product across the border and sell the beef product in the United States as direct physical loss to property would render the word ‘physical’ meaningless.

Id. at 838.

The facts alleged in this case do not involve the transportation of uncontaminated physical products. Instead, Plaintiffs allege that COVID-19 is a highly contagious virus that is physically “present ... in viral fluid particles,” and is “deposited on surfaces or objects.” (Doc. #16, ¶¶ 47, 50.) Plaintiffs further allege that this physical substance is likely on their premises and caused them to cease or suspend

operations. Unlike *Source Foods*, the Plaintiffs expressly allege physical contamination. Finally, *Source Foods* recognized (under Minnesota law) that physical loss could be found without structure damage. *Source Foods*, 465 F.3d at 837 (stating that property could be “physically contaminated ... by the release of asbestos fibers”). Neither *Source Foods* nor the other cases cited by Defendant warrant dismissal under Rule 12(b)(6).

Defendant's reply brief cites recent out-of-circuit decisions which found that COVID-19 does not cause direct physical loss. (Doc. #37, pp. 5-6.) For example, Defendant relies on *Social Life Magazine, Inc. v. Sentinel Ins. Co., Ltd.*, 1:20-cv-03311-VEC (S.D.N.Y. 2020). Defendant argues that “*Social Life* famously states that the virus damages lungs, not printing presses.” (Doc. #37, p. 6.) But the present case is not about whether COVID-19 damages lungs, and the presence of COVID-19 on premises, as is alleged here, is not a benign condition. Regardless of the allegations in *Social Life* or other cases, Plaintiffs here have plausibly alleged that COVID-19 particles attached to and damaged their property, which made their premises unsafe and unusable.⁵ This is enough to survive a motion to dismiss.

Defendant also contends that if Plaintiffs’ interpretation is accepted, physical loss would be found “whenever a business suffers economic harm.” (Doc. #21, p. 22; Doc. #37, p. 2.) That is not what the Court holds here. Although Plaintiffs allege economic harm, that harm is tethered to their alleged physical loss caused by COVID-19 and the Closure Orders. (Doc. #1-1, ¶¶ 106-107) (alleging that the COVID-19 pandemic and Closure Orders required Plaintiffs to “cease and/or significantly reduce operations at, and ... have prohibited and continue to prohibit access to, the premises.”)⁶ For all these reasons, the Court finds that Plaintiffs have adequately alleged a direct physical loss under the Policies.⁷

B. Plaintiffs Have Plausibly Stated a Claim for Civil Authority Coverage.

*7 [12] Defendant next argues that Plaintiffs’ claim for civil authority coverage should be dismissed for failure to state a claim. Defendant presents two arguments in support of dismissal. Defendant first contends that civil authority coverage requires “direct physical loss to property other than the Plaintiffs’ property,” and that “[j]ust as the Coronavirus

is not causing direct physical loss to Plaintiffs’ premises, it is not causing direct physical loss to other property.” (Doc. #21, p. 27.)

This argument is rejected for substantially the same reasons as discussed above. Plaintiffs adequately allege that they suffered a physical loss, and such loss is applicable to other property. Additionally, Plaintiffs allege that civil authorities issued closure and stay at home orders throughout Missouri and Kansas, which includes property other than Plaintiffs’ premises.

Defendant's second argument is that civil authority coverage “requires that access to Plaintiffs’ premises be prohibited by an order of Civil Authority. But, none of the orders Plaintiffs allege prohibit access to their premises. To the contrary, the Plaintiffs admit ... that the Closure Orders allowed restaurant premises to remain open for food preparation, take-out and delivery. Likewise, Plaintiffs concede that the Closure Orders did not prohibit access to salon premises.” (Doc. #21, pp. 28-29) (citations omitted).

Upon review of the record, the Court finds that Plaintiffs have adequately alleged that their access was prohibited. With respect to Studio 417's hair salons, the Amended Complaint alleges that a Closure Order “required hair salons and all other businesses that provide personal services to suspend operations.” (Doc. #16, ¶ 67.) With respect to Plaintiffs’ restaurants, the Closure Orders mandated “that all inside seating is prohibited in restaurants,” and that “every person in the State of Missouri shall avoid eating or drinking at restaurants,” with limited exceptions for “drive-thru, pickup, or delivery options.” (Doc. #16, ¶¶ 71-80.)

At the motion to dismiss stage, these allegations plausibly allege that access was prohibited to such a degree as to trigger the civil authority coverage. Compare *TMC Stores, Inc. v. Federated Mut. Ins. Co.*, No. A04-1963, 2005 WL 1331700, at * 4 (Minn. Ct. App. June 7, 2005) (“Because access remained and the level of business was not dramatically decreased, the civil authority section of the insurance policy is inapplicable and the district court did not err in granting summary judgment.”). This is particularly true insofar as the Policies require that the “civil authority prohibits access,” but does not specify “all access” or “any access” to the premises. For these reasons, Plaintiffs have adequately stated a claim for civil authority coverage.

C. Plaintiffs Have Plausibly Stated a Claim for Ingress and Egress Coverage.

[13] Defendant argues that Plaintiffs' claim for ingress and egress coverage should be dismissed for two reasons. First, Defendant argues that such coverage "requires both a direct physical loss at a location contiguous to the insured's property and the prevention of access to the insured's property as a result of that direct physical loss," and that Plaintiffs fail to allege a direct physical loss to any location. (Doc. #21, p. 30.) For substantially the same reasons discussed above, this argument is rejected.

Second, Defendant argues that this "coverage does not apply if ingress or egress from the 'premises' is prohibited by civil authority." (Doc. #21, p. 24; Doc. #1-1, p. 95.) Defendant contends that "[h]ere, the Closure Orders issued by civil authorities are the only identified causes of Plaintiffs' alleged losses." (Doc. #21, p. 30.) However, Plaintiffs have alleged that both COVID-19 and the Closure Orders rendered the premises unsafe for ingress and egress. (Doc. #1-1, p. 3, ¶ 14 ("Plaintiffs were forced to suspend or reduce business at their covered premises due to COVID-19 and the ensuing orders issued by civil authorities[.]"). The Court finds that Plaintiffs have adequately stated a claim for ingress and egress coverage.

D. Plaintiffs Have Plausibly Stated a Claim for Dependent Property Coverage.

*8 [14] Defendant argues that Plaintiffs' claim for dependent property coverage should be dismissed for two reasons. First, Defendant argues that this coverage "requires both a direct physical loss to dependent property and a necessary suspension of the insured's business as a result of that direct physical loss." (Doc. #21, p. 30.) Defendant contends that "[h]ere, again, the [Amended] Complaint does not allege any facts that show direct physical loss at any location, let alone a dependent property." (Doc. #21, pp. 30-31.) For substantially the same reasons discussed above, this argument is rejected.

Second, Defendant argues that Plaintiffs have failed to adequately allege a suspension of their businesses because of the lack of material or services from a "dependent property." (Doc. #21, pp. 30-31.) As stated above, dependent property is defined as "property operated by others whom [the insured] depend[s] on to ... deliver materials or services to [the insured] ... [a]ccept [the insured's] products or services ... [or] [a]ttract customers to [the insured's] business." (Doc.

#1-1, p. 64.) The Amended Complaint adequately alleges that Plaintiffs suffered a loss of materials, services, and lack of customers as a result of COVID-19 and the Closure Orders. The Court therefore finds that Plaintiffs have adequately stated a claim for dependent property coverage.

E. Plaintiffs Have Plausibly Stated a Claim for Sue and Labor Coverage.

[15] Finally, Defendant moves to dismiss Plaintiffs' claim for sue and labor coverage. Defendant argues that this is not an additional coverage, but instead imposes a duty on the insured to prevent further damage and to keep a record of expenses incurred in the event of a covered loss. Defendant argues that because Plaintiffs have failed to adequately allege a covered loss, a claim has not been stated for this coverage.

However, regardless of the title of this claim, Defendant acknowledges that in the event of a covered loss, "the insured can recover these expenses[.]" (Doc. #21, p. 31.) As discussed above, the Court finds that Plaintiffs have adequately stated a claim for a covered loss. Moreover, Plaintiffs allege that in complying with the Closure Orders and by suspending operations, they "incurred expenses in connection with reasonable steps to protect Covered Property." (Doc. #16, ¶ 250.) Consequently, the Court finds that Plaintiffs have adequately stated a claim for sue and labor coverage.

In sum, Defendant's motion to dismiss will be denied in its entirety. The Court emphasizes that Plaintiffs have merely pled enough facts to proceed with discovery. Discovery will shed light on the merits of Plaintiffs' allegations, including the nature and extent of COVID-19 on their premises. In addition, the Court emphasizes that all rulings herein are subject to further review following discovery. Subsequent case law in the COVID-19 context, construing similar insurance provisions, and under similar facts, may be persuasive. If warranted, Defendant may reassert its arguments at the summary judgment stage.

IV. CONCLUSION


Accordingly, Defendant The Cincinnati Insurance Company's Motion to Dismiss (Doc. #20) is DENIED.

IT IS SO ORDERED.

All Citations

--- F.Supp.3d ----, 2020 WL 4692385

Footnotes

- 1 The Amended Complaint is 54 pages long and contains 253 separate allegations. This Order only discusses those allegations and issues necessary to resolve the pending motion.
- 2 All page numbers refer to the pagination automatically generated by CM/ECF.
- 3 Defendant notes that Kansas law may apply to one policy, but contends that Missouri and Kansas law are indistinguishable for purposes of the pending motion. (Doc. #21, p. 13 n.10.) Plaintiffs do not challenge this assertion. For purposes of this Order, the Court assumes that Missouri law applies.
- 4 See also Scott G. Johnson, "What Constitutes Physical Loss or Damage in a Property Insurance Policy?" 54 Tort Trial & Ins. Prac. L.J. 95, 96 (2019) ("[W]hen the insured property's structure is unaltered, at least to the naked eye ... [c]ourts have not uniformly interpreted the physical loss or damage requirement[.]")
- 5 Defendant also relies on *Gavrilides Mgmt. Co., LLC v. Michigan Ins. Co.*, Case No. 20-258-CB (Ingham County, Mich. July 1, 2020) (transcript regarding defendant's motion for summary disposition). (Doc. #37-2.) *Gavrilides* is distinguishable, in part, because the court recognized that "the complaint also states a[t] no time has Covid-19 entered the Soup Shop of the Bistro ... and in fact, states that it has never been present in either location." (Doc. #37-2, p. 21.)
- 6 Defendant argues that COVID-19 does not present a physical loss because "the virus either dies naturally in days, or it can be wiped away." (Doc. #21, pp. 24-25.) However, as stated, a physical loss has been adequately alleged insofar as the presence of COVID-19 and the Closure Orders prohibited or significantly restricted access to Plaintiffs' premises. See  *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of Am.*, 2014 WL 6675934, at * 6 (D.N.J. Nov. 25, 2014) (recognizing that "courts considering non-structural property damage claims have found that buildings rendered uninhabitable by dangerous gases or bacteria suffered direct physical loss or damage"). Defendant also argues that Plaintiffs have failed to adequately allege that COVID-19 was actually present on their premises. Based on Plaintiffs' allegations, and because of COVID-19's wide-spread, this argument is also rejected.
- 7 Although it appears to be persuasive, the Court need not address Defendant's additional argument that the Amended Complaint fails to allege "physical damage."