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**COMMON PLEAS DIVISION**

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Clerk of Courts  
Hamilton County, Ohio  
CONFIRMATION 958908**

**JOHANSING FAMILY  
ENTERPRISES LLC DBA PLAY  
IT AGAIN**

**A 2002349**

**vs.  
CINCINNATI SPECIALTY  
UNDERWRITERS INSURANCE**

**FILING TYPE: INITIAL FILING (IN COUNTY) WITH JURY  
DEMAND**

**PAGES FILED: 100**



VERIFY RECORD

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OHIO COURT OF COMMON PLEAS  
HAMILTON COUNTY

Johansing Family Enterprises, LLC d/b/a Play It	)	
Again Sports,	)	
	)	Civil Action No:
Plaintiff,	)	
	)	Jury Trial Demanded
v.	)	
	)	
Cincinnati Specialty Underwriters Insurance	)	
Company,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

NOW COMES Johansing Family Enterprises, LLC d/b/a Play It Again Sports, for its  
Complaint against Defendant Cincinnati Specialty Underwriters Insurance Company  
("Defendant" or "CSU"), and alleges as follows:

**Introduction**

1. Plaintiff is a franchisee operating a Play It Again Sports store that sells sports equipment and apparel. Plaintiff's store operates in Springdale, Ohio.
2. In March 2020, the Ohio executive branch issued orders closing non-essential businesses such as Plaintiff's store. Plaintiff suffered a staggering loss of business as a result of these executive orders.
3. Plaintiff is insured under a commercial property insurance policy issued by Defendant. Plaintiff purchased the policy to protect its livelihood in the event of an unforeseen interruption of its business, and Plaintiff faithfully paid premiums over the years to obtain this protection.

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4. The COVID-19 pandemic and ensuing government-mandated shutdown of Plaintiff's business are precisely the sort of unforeseen, economically calamitous events Plaintiff sought to insure itself against when it purchased insurance from Defendant. But when Plaintiff made a claim for coverage as a result of these events, Defendant summarily denied Plaintiff's claim.

5. Specifically, Defendant denied Plaintiff's claim on the erroneous basis that there was no "direct physical loss of or damage" to Plaintiff's property or surrounding properties. Defendant also asserted that certain exclusions apply, including a virus exclusion and an "ordinance or law" exclusion. (A copy of CSU's denial letter is attached as Exhibit A.)

6. Defendant's denial of Plaintiff's claim was arbitrary, unreasonable, contrary to the language of Plaintiff's insurance policy, contrary to the undisputed facts, and contrary to law.

7. Due to Defendant's wrongful denial of coverage, Plaintiff brings this action for a declaratory judgment establishing that it is entitled to receive the benefit of the insurance coverage it purchased, for indemnification of the business losses it has sustained, for breach of contract, and for bad faith claims handling.

### **Parties**

8. Plaintiff Johansing Family Enterprises, LLC d/b/a Play It Again Sports is an Ohio limited liability company with its principal place of business in Springdale, Ohio.

9. Upon information and belief, Defendant Cincinnati Specialty Underwriters Insurance Company is a subsidiary of Cincinnati Financial Corp. and is incorporated in Delaware with its principal place of business in Fairfield, Ohio.

### **Factual Background**

10. In March 2020, officials in Ohio—as in many other states—ordered the closing of all non-essential businesses (including stores) due to the COVID-19 pandemic. On March 9,

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2020, Ohio Governor DeWine declared a state of emergency by Executive Order 2020-01D. Then, by Order dated March 22, 2020, the Ohio Director of Health directed that: “all individuals living within the State of Ohio are ordered to stay at home or at their place of residence except as allowed in this Order” and “[a]ll businesses and operations in the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations . . . .” (The Governor and Director of Health’s Orders are collectively referred to as the “Executive Orders.”)

11. Under the Executive Orders, Plaintiff was not permitted to open its store to customers for more than 5 weeks.

12. As a result of the Executive Orders, Plaintiff suffered severe interruption to its business and critical loss of income.

### **The Policy**

13. Plaintiff is insured by Cincinnati Specialty Underwriters Insurance Company Commercial Property Insurance Policy No. CSU0118346 for the period July 27, 2019 to July 27, 2020 (the “Policy,” is attached as Exhibit B). Plaintiff obtained the Policy to ensure that it would be reimbursed for lost income in the event that its business operations were interrupted.

14. Plaintiff has faithfully paid premium to Defendant on the Policy and similar policies since it purchased the store in 2018.

15. The Policy is an “all-risk” property insurance policy, meaning that it broadly covers risk of loss of or damage to Plaintiff’s property, unless a coverage exclusion applies.

16. Under the terms of the Policy, Defendant agreed to “pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.” (Ex. B, form CP 00 10 06 07, p. 1 of 15.) “Covered

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Cause of Loss” is defined as “Risks of Direct Physical Loss” that are not otherwise excluded or limited (*see* Ex. B, form CP 10 30 06 07, p. 1 of 10; form 00 10 06 07, p. 3 of 15.) “Direct physical loss” is not defined in the Policy.

17. As part of this coverage, Defendant agreed to “pay for the actual loss of Business Income” sustained by Plaintiff “due to the necessary suspension of [Plaintiff’s] ‘operations’” during the period Plaintiff’s business was interrupted. (Ex. A, form CP 00 30 06 07, p. 1 of 9.) The suspension must be due to “the direct physical loss of or damage to property at the [described] premises,” and “must be caused by or result from a Covered Cause of Loss.” (*Id.*)

18. “Suspension” is defined, in pertinent part, as “[t]he slowdown or cessation of [the insured’s] business activities.” (*Id.*, p. 9 of 9.)

19. “Business Income” is defined as (a) “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred” but for the loss; and (b) “[c]ontinuing normal operating expenses incurred, including payroll.” (*Id.*, p. 1 of 9.)

20. In summary, under the Policy, when a Covered Cause of Loss—such as a global health crisis and forced abrogation of Plaintiff’s business—causes Plaintiff’s business operations to be “suspended,” Defendant is obligated to pay for the loss and/or damage Plaintiff experiences as a result, including lost business income.

21. Additionally, the Policy contains a “Civil Authority” provision, which provides that Defendant will pay Plaintiff’s lost Business Income when a “civil authority” takes action that prohibits access to Plaintiff’s premises, where that action is taken as the result of a Covered Cause of Loss occurring somewhere other than Plaintiff’s premises. Specifically, the Policy provides as follows:

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of

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Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

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

(*Id.*, p. 2 of 9.)

**Plaintiff's Claim and Defendant's Denial**

22. On April 15, 2020, Plaintiff made a claim under the Policy for losses suffered as a result of the Executive Orders relating to the Covid-19 global pandemic (the "Claim"). (A copy of Plaintiff's Claim letter is attached as Exhibit C.)

23. On May 15, 2020, Defendant denied the claim. Without conducting an investigation, Defendant decided there was no coverage because there was no direct physical loss of or damage to Plaintiff's property and, if there were, coverage would be precluded by a virus exclusion or an ordinance or law exclusion. (Exhibit A.)

24. Notwithstanding the conclusion made by Defendant, Plaintiff has suffered both a "direct physical loss of" and "damage to" its property as a result of the Executive Orders.

25. The Policy does not define "damage" or "loss;" therefore, under well-recognized, undisputed rules of construction, these terms are to be given their generally understood meaning,

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and any ambiguity should be construed in favor of coverage for Plaintiff and against Defendant, who selected the language for inclusion in its adhesion contracts.

26. Common dictionary definitions of “loss” include “deprivation” and “the harm or privation resulting from loss or separation.” Common dictionary definitions of “damage” include the “harm caused to something in such a way as to impair its value, usefulness or normal function.”

27. The events described above have obviously deprived Plaintiff of the full use and value of its business. Additionally, these events have impaired the value and usefulness of the business and prevented it from serving its normal function. Therefore, under commonly accepted English usage, Plaintiff has suffered both “physical loss of” and “damage to” its insured premises.

28. Because Plaintiff has suffered both a direct physical loss of its property and damage to its property, it has experienced a “Covered Cause of Loss” and is entitled to reimbursement under the Business Income provision of the Policy.

29. For these same reasons, Defendant is obligated to provide coverage under the “Civil Authority” provision in the Policy. As set forth above, the COVID-19 pandemic and resulting Executive Orders are a Covered Cause of Loss. Moreover, there are a number of retail, hospitality, and other establishments in the vicinity of Plaintiff’s store that have been shuttered or otherwise impaired as the result of the COVID-19 pandemic and the resulting Executive Orders, each of which has experienced this Covered Cause of Loss such that the “Civil Authority” provision has been triggered.

30. In denying Plaintiff’s claim, Defendant cited an exclusion for any loss or damage caused by an “ordinance or law” regulating the use of any property. (Exhibit A, p. 3 of 7.) As

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with all exclusions, the insurer Defendant bears the burden to establish that the ordinance or law exclusion bars coverage.

31. The Executive Orders that closed Plaintiff's business are not an "ordinance or law." The terms "ordinance or law" are not defined in the Policy. However, under common usage of these terms, a law is enacted by the legislative branch of a nation or state, and an ordinance is a law enacted by a government smaller than a state or nation. In Ohio, the Executive Order requiring all citizens to stay at home was issued by the Director of the Department of Health, temporarily, and applied to the entire state. If CSU had intended for the exclusion to include loss or damage caused by executive orders or judicial determinations, then it could have written the policy to include them. *See Richland/Wilkin Joint Powers Authority v. United States Army Corps of Engineers*, 176 F. Supp. 3d 839, 847 (D. Minn. 2016) (noting difference between executive orders and laws).

32. In its denial, Defendant asserted that Plaintiff was not entitled to coverage under the Policy for the additional reason that Plaintiff's claim is excluded by the "Exclusion of Loss Due to Virus or Bacteria" endorsement to the Policy. (*See* Ex. A, pp. 4-5.) This exclusion states that Defendant "will not pay for loss or damage caused by or resulting from any virus, bacteria or other micro-organism that induces or is capable of inducing physical distress, illness or disease." (Ex. B, form CP 01 40 07 06, p. 1 of 1.)

33. Plaintiff is unaware of any loss or damage caused by or resulting from a virus, bacterium or other microorganism, and is unaware of the presence of any of these substances in its store or the surrounding businesses. To the contrary, Plaintiff's loss was "caused by" and "result[ed] from" the orders of civil authorities in Ohio closing numerous businesses, including Plaintiff's, and directing consumers to stay at home.



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34. It is the insurer's burden to prove that a claim is excluded from coverage, and that burden cannot be met here as Plaintiff is not claiming that its loss was caused by the COVID-19 virus itself.

**COUNT ONE**  
**BREACH OF CONTRACT: COVERAGE OF PROPERTY DAMAGE CLAIMS**

35. Plaintiff repeats and realleges the allegations of paragraphs 1 through 34 as if fully set forth herein.

36. The Policy is an insurance contract under which Defendant was paid premiums in exchange for its promise to pay Plaintiff's claims for losses covered by the Policy, such as business losses incurred as a result of executive orders impairing Plaintiff's business operations due to the COVID-19 pandemic.

37. The Policy requires Defendant to pay Plaintiff "for the actual loss of Business Income" suffered while Plaintiff's business was impaired as the result of the Executive Orders.

38. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy, and yet Defendant has failed to fulfill its insurance coverage obligations under the Policy's clear and unambiguous terms.

39. By denying coverage for any losses or damage incurred by Plaintiff in connection with the Executive Orders and the COVID-19 pandemic, Defendant has breached its coverage obligations under the Policy.

40. The damages sustained by Plaintiff are expected to exceed \$55,000.

WHEREFORE, Plaintiff seeks an award of compensatory damages in the amount of its Business Income losses, together with costs sustained herein and reasonable attorneys' fees.

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**COUNT TWO**  
**BREACH OF CONTRACT: COVERAGE OF CIVIL AUTHORITY CLAIMS**

41. Plaintiff repeats and realleges the allegations of paragraphs 1 through 40 as if fully set forth herein.

42. The Policy is an insurance contract under which Defendant was paid premiums in exchange for its promise to pay Plaintiff's claims for losses covered by the Policy, such as business losses incurred as a result of government orders impairing Plaintiff's business operations due to the COVID-19 pandemic.

43. The Policy requires Defendant to pay Plaintiff "for the actual loss of Business Income" caused by actions taken by a civil authority that prohibit access to Plaintiff's premises, where those actions were taken in response to a dangerous condition resulting from a Covered Cause of Loss occurring at property other than Plaintiff's property.

44. The Executive Orders constitute actions of civil authorities prohibiting access to Plaintiff's property due to the COVID-19 pandemic, and Plaintiff's Claim otherwise meets the requirements for coverage under the Civil Authority provision of the Policy.

45. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy, and yet Defendant has failed to fulfill its insurance coverage obligations under the Policy's clear and unambiguous terms.

46. By denying coverage for any losses or damage incurred by Plaintiff in connection with the Executive Orders and the COVID-19 pandemic, Defendant has breached its coverage obligations under the Policy.

47. The damages sustained by Plaintiff are expected to exceed \$55,000.

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WHEREFORE, Plaintiff seeks an award of compensatory damages in the amount of its Business Income losses, together with costs sustained herein and reasonable attorneys' fees.

**COUNT THREE**

**DECLARATORY JUDGMENT: THE POLICY HAS BEEN TRIGGERED BY DIRECT PHYSICAL LOSS OF AND/OR DAMAGE TO PLAINTIFF'S PROPERTY AND THE POLICY'S ORDINANCE OR LAW AND VIRUS EXCLUSIONS DO NOT APPLY**

48. Plaintiff repeats and realleges the allegations of paragraphs 1 through 47 as if fully set forth herein.

49. The Policy requires Defendant to pay Plaintiff "for the actual loss of Business Income" suffered while its business was impaired as the result of the Executive Orders.

50. Plaintiff has made a Claim for coverage for its lost business income under the terms of the Policy.

51. Defendant has asserted that Plaintiff is not entitled to its lost business income because it did not suffer direct physical loss of, or damage to, its covered property.

52. Plaintiff suffered both a direct physical loss of its property, and damage to its property, as it was deprived of the normal, full use and value of its property.

53. Similarly, properties surrounding Plaintiff's property experienced direct physical loss or damage.

54. In denying Plaintiff's Claim for coverage, Defendant asserted that Plaintiff's Claim is excluded under the Policy by an ordinance or law exclusion.

55. The ordinance or law exclusion does not apply to the Executive Orders that caused Plaintiff's Business Income losses here because the Executive Orders are not an ordinance or law. If Defendant had intended to exclude all orders by any civil authority then it would not have provided Civil Authority coverage or it would have clarified, in the adhesion

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contract, that the exclusion extends beyond actual laws and ordinances to temporary Executive Orders.

56. Defendant has also asserted that Plaintiff's Claim for coverage under the Policy is excluded by a virus exclusion endorsement in the Policy.

57. Plaintiff's Business Income losses were not caused by, and did not result from, an outbreak of the COVID-19 virus on Plaintiff's property and were not otherwise caused by the virus itself.

58. As set forth above, a true controversy exists between the parties concerning the parties' rights and obligations under the Policy.

WHEREFORE, Plaintiff seeks a declaratory ruling that the Business Income and Civil Authority provisions of the Policy have been triggered by direct physical loss of and damage to Plaintiff's property and the surrounding property, and that the ordinance or law and virus exclusions do not apply here because the Executive Orders are not ordinances or laws, and a virus did not cause Plaintiff's losses.

**COUNT FOUR**  
**BAD FAITH**

59. Plaintiff repeats and realleges the allegations of paragraphs 1 through 58 as if fully set forth herein.

60. The Policy is an insurance contract under which Defendant was paid premiums in exchange for its promise to pay Plaintiff's claims for losses covered by the Policy, such as business losses incurred as a result of government orders impairing Plaintiff's business operations due to the COVID-19 pandemic.

61. The Policy requires Defendant to pay Plaintiff "for the actual loss of Business Income" suffered while Plaintiff's business was impaired as the result of the Executive Orders.

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62. Plaintiff has made a claim for, and is entitled to, coverage for its lost business income under the terms of the Policy.

63. Defendant denied Plaintiff's Claim on the grounds that (1) there was no physical loss of or damage to Plaintiff's property, and (2) Plaintiff's Claim is excluded from coverage due to the ordinance or law and virus exclusions contained in the Policy.

64. In corresponding with Plaintiff's counsel, Defendant failed to appreciate or investigate the basis for the Claim.

65. Defendant owed a duty to Plaintiff to deal fairly and act in good faith.

66. In its handling of Plaintiff's claim for benefits under the Policy, and as a matter of routine practice in handling similar claims, Defendant breached its duty to deal fairly and in good faith toward Plaintiff in the following respects:

- a. Failing to fully pay Plaintiff the benefits to which Plaintiff was entitled under the Policy at a time when Defendant knew Plaintiff was entitled to those benefits;
- b. Withholding payment of benefits knowing that Plaintiff's claim for benefits was valid;
- c. Unreasonably delaying payment of benefits without a reasonable basis;
- d. Intentionally and recklessly misinterpreting and misapplying provisions of the Policy and looking for ways to avoid paying some or all of Plaintiff's Claim;
- e. Failing to adopt and implement reasonable standards for the prompt investigation, evaluation and handling of claims arising under its policies, including Plaintiff's; and
- f. Failing to attempt to act in good faith to effectuate a prompt and fair settlement of Plaintiff's claim.

67. The unreasonable conduct of the Defendant in the handling of Plaintiff's Claim was intentional, willful, wanton, and was committed with a reckless disregard for the rights of Plaintiff.

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68. Plaintiff has retained an attorney to prosecute this action and is thus entitled to reasonable attorneys fees as well as the costs expended in pursuit of this litigation.

WHEREFORE, Plaintiff seeks an award of compensatory and punitive damages, as well as costs and attorneys' fees to the full extent recoverable under Ohio law.

**JURY DEMAND**

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

Dated: June 26, 2020

Respectfully Submitted,

By: /s/ Seth Corthell  
Seth Corthell  
Trial Attorney  
Attorney No. 92573  
JASZCZUK P.C.  
311 South Wacker Drive  
Suite 3200  
Chicago, Illinois 60606  
Tel: (312) 442-0509  
Fax: (312) 442-0519  
scorthell@jaszczuk.com

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# -EXHIBIT A-



The Cincinnati Insurance Company ■ The Cincinnati Indemnity Company  
The Cincinnati Casualty Company ■ The Cincinnati Specialty Underwriters Insurance Company  
The Cincinnati Life Insurance Company

**Sarah Dieringer**  
Adjuster

May 15, 2020

**VIA EMAIL AND U.S. MAIL**

Jaszczuk P.C.  
Attn: Daniel I. Schlessinger  
311 South Wacker Drive  
Suite 3200  
Chicago, IL 60606  
dschlessinger@jaszczuk.com

**Re: Insured: Johansing Family Enterprises LLC DBA Play It Again Sports**  
**Policy No.: 3537301**  
**Claim No.: 01CSU0118346**  
**Date of Loss: 4/15/2020**

Dear Mr. Schlessinger:

The Cincinnati Specialty Underwriters Insurance Company ("CSU") has received and reviewed your letter dated April 22, 2020. This letter presents CSU's coverage decision for the above-referenced claim made by your client, Johansing Family Enterprises LLC DBA Play It Again Sports ("Johansing"). As submitted, the claim involves the Novel Coronavirus known as SARS-CoV-2, which causes the viral infection known as COVID-19 ("Coronavirus"). The claim asserts loss of business income associated with reduced customer traffic and eventual closure of the Play It Again Sports location in compliance with orders of civil authorities. CSU has determined that coverage is unavailable for the claimed loss for the reasons discussed below.

**I. SUMMARY**

The CSU policy provides coverage for direct physical loss of or damage to Covered Property at the premises. This direct physical loss of or damage must be to property at the covered premises. CSU's investigation has found no evidence of direct physical loss of or damage at the premises. Similarly, there is no evidence of damage to property at other locations, precluding coverage for loss due to orders of civil authority. In addition, there are several exclusions that apply including the virus exclusion. Therefore, CSU is denying coverage for this claim.

Nothing in this letter is a waiver of any rights available to CSU under the policy or applicable law. CSU reserves the right to rely on additional rights and/or language in the policy whether or not discussed in this letter.



## **II. THE CSU POLICY**

CSU issued insurance coverage under policy number CSU0118346 to Johansing Family Enterprises LLC DBA Play It Again Sports (the "Policy"). The Policy's effective dates are from July 27, 2019 to July 27, 2020. The Commercial Property Coverage provides limits of insurance for Business Personal Property with Stock coverage in the amount of \$225,000 and Business Income w/ Extra Expense coverage in the amount of \$350,000. The Policy also has a \$1,000 deductible.

## **III. BACKGROUND**

By letter dated April 15, 2020, you presented a claim for "business interruption loss" on behalf of your client, Johansing. By letter dated April 17, 2020, CSU responded to that claim, informing you that CSU was investigating the claim under a reservation of rights. CSU's April 17, 2020 letter also requested information to aid our investigation. By letter dated April 22, 2020, you responded to CSU's reservation of rights and request for information. Johansing disputes the scope or meaning of "direct physical loss of or damage" but did not provide any documentation to establish "direct physical loss of or damage" at the premises or damage elsewhere. The only documents supplied were certain documents from the Ohio Department of Health and the U.S. Department of Homeland Security Cybersecurity & Infrastructure Security Agency, about COVID-19.

## **IV. EXPLANATION OF COVERAGE DENIAL<sup>1</sup>**

### **A. No Direct Physical Loss or Damage**

The Policy's Building and Personal Property Coverage Form at **Section A. Coverage** contains the following insuring agreement:

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

This claim does not satisfy the Policy's applicable insuring agreements. The claim does not involve direct physical loss of or damage to property at the premises caused by a Covered Cause of Loss. Accordingly, the Policy's insuring agreements are not met and coverage is unavailable under the Policy.

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<sup>1</sup> We cite to or quote provisions of the Policy in this letter. In some instances, in the interests of brevity, we quote or cite only portions of the language. Any terms in bold are in bold in the policy and do not denote additional emphasis unless so indicated. Please refer to the Policy for a full reading of all the terms, conditions or other language cited or referenced.

**B. No Covered Cause of Loss**

The Policy contains a Causes of Loss – Special Form. This form provides that the Policy covers Risks of Direct Physical Loss unless the loss is: **1.** Excluded in Section **B.**, Exclusions; or **2.** Limited in Section **C.**, Limitations that follow. Section **B.** includes the following exclusions:

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

**a. Ordinance Or Law**

The enforcement of any ordinance or law:

- (1)** Regulating the ... use ... of any property; ....

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

- (a)** An ordinance or law that is enforced even if the property has not been damaged....

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

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- b.** Delay, loss of use or loss of market.

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

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

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#### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

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

We will not pay for:

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- (5) Any other consequential loss.

The Policy also has an endorsement that modifies Section **B** to add an Exclusion of Loss Due to Virus or Bacteria ("Virus Exclusion"). The Virus Exclusion is as follows:

- A. The exclusion set forth in Paragraph **B**. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B. We will 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. However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.

- C. With respect to any loss or damage subject to the exclusion in Paragraph **B.**, such exclusion supersedes any exclusion relating to "pollutants".
- D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:
  - 1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
  - 2. Additional Coverage - Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.
- E. The terms of the exclusion in Paragraph **B.**, or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

The claimed loss is not caused by a Covered Cause of Loss because it fits within one or more of these exclusions. The claimed loss was "caused by or result[ed] from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." The claim is for business income lost due to the reduced and eventual closure of the Play It Again Sports location. The reduced customer traffic and eventual closure was caused by or related to COVID-19. This virus is capable of inducing physical distress, illness or disease. Accordingly, coverage is excluded by the Virus Exclusion. CSU denies coverage on this basis.

In addition, the reduction in customers is a claim for "loss of market" which is also an excluded cause of loss. CSU denies coverage on this basis.

As presented, the claimed business income loss was due to compliance with orders of government. That is also an excluded cause of loss. CSU denies coverage on this basis.

**C. The Business Income Coverage Does Not Apply**

The Policy's Business Income (and Extra Expense) Coverage Form at **Section A. Coverage** contains the following insuring agreement:

**1. Business Income**

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We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the

“period of restoration”. The “suspension” must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a covered cause of loss.

The Business Income coverage also requires direct physical loss of or damage at the premises caused by a Covered Cause of Loss. As discussed above, those requirements are not met. There is no direct physical loss of or damage at the premises and several exclusions apply.

#### **D. No Civil Authority Coverage**

The Policy’s Business Income (and Extra Expense) Coverage Form contains the following provision for Civil Authority coverage:

#### **5. Additional Coverages**

##### **a. Civil Authority**

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

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

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

Although Johansing closed its business in response to a governmental order, there is no evidence that the order was entered due to a Covered Cause of Loss causing damage to a property other than the insured property. Moreover, the order does not restrict access to the area immediately surrounding your premises. Because the

requisite elements of the Civil Authority coverage are not present here, coverage is unavailable under the Policy.

**V. CONCLUSION**

For the reasons discussed above, CSU has concluded that the Policy provides no coverage for this claim. CSU therefore cannot indemnify Johansing for any loss of business income from Coronavirus.

Please note that the U.S. Small Business Administration ("SBA") may be providing assistance for citizens in your circumstances. I understand that the SBA's contact information is:

Website: <https://www.sba.gov/funding-programs/disaster-assistance>

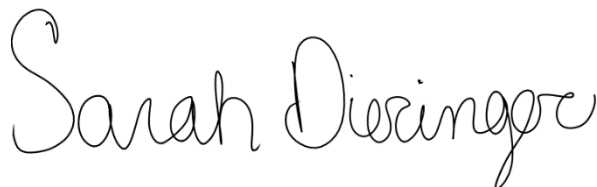
Phone: 1-800-659-2955

This letter is not a limitation or waiver of any rights available to CSU. CSU's position is based on the information available to date. CSU reserves all of its rights under the Policy and the applicable law. CSU reserves the right to rely on any and all provisions of the Policy whether or not addressed in this letter.

If you have any additional information or documentation that you believe may impact any of the issues raised in this letter, please forward it to us for review.

Please feel free to contact me if you have any questions or would like to discuss this matter.

Very truly yours,

A handwritten signature in black ink that reads "Sarah Dieringer". The signature is written in a cursive, flowing style.

Sarah Dieringer

cc: Huntington Insurance, Inc.  
37 W. Broad St. 7<sup>th</sup> Fl.  
Columbus, OH 43215-4132

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# - EXHIBIT B -



# The Cincinnati Specialty Underwriters Insurance 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](http://www.cinfin.com) ■ 513-870-2000

## COMMON POLICY DECLARATIONS

**POLICY NUMBER:** CSU0118346

**PREVIOUS POLICY NUMBER:** CSU0118346

**NAMED INSURED AND MAILING ADDRESS:**

Johansing Family Enterprises LLC  
DBA: Play It Again Sports

Refer to Named Insured Schedule CSIA409  
5040 Slintlock Drive  
Burlington KY 41005

**PRODUCER - Your contact for matters pertaining to this policy:** 34-752  
Huntington Insurance, Inc.  
37 W Broad St 7th Fl  
Columbus OH 43215-4132

Broker: 756487  
CSU Producer Resources, Inc.  
6200 South Gilmore Road  
Fairfield, OH 45014-5141  
Scott Hintze

**Policy Period:** From 07/27/2019 To 07/27/2020 AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

**Form of Business:**

☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture ☒ Limited Liability Company ☐ Other

**Business Description:** Used Sporting Goods

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

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

COVERAGE PARTS	PREMIUM
<b>DEPOSIT PREMIUM</b>	
Commercial Property	\$ 2,884.00
Terrorism Risk Insurance Extension Act	Excluded
Broker Fee	\$ 35.00
<b>TOTAL POLICY PREMIUM</b>	<b>\$ 2,919.00</b>
<b>CANCELLATION MINIMUM EARNED PREMIUM IS 25.0% OF TOTAL POLICY PREMIUM.</b>	
Surplus Lines Taxes	\$ 145.95
Stamping Fee	N/A
Other Taxes or Fees	N/A
<b>TOTAL</b>	<b>\$ 3,064.95</b>

Premium is subject to annual audit: ☐ Yes ☒ No

**NOTICE TO POLICYHOLDER:**

THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY AN APPROVED NON-LICENSED INSURER IN THE STATE OF OHIO AND IS NOT COVERED IN CASE OF INSOLVENCY BY THE OHIO INSURANCE GUARANTY ASSOCIATION.

**THIS IS NOT A BILL.** You will receive a separate invoice if a premium charge or return is due.



**FORMS AND ENDORSEMENTS ATTACHED TO THIS POLICY AT TIME OF ISSUE:**

Refer to Forms and Endorsements Schedule CSIA406

THIS COMMON POLICY DECLARATIONS AND THE SUPPLEMENTAL DECLARATION(S) TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART(S), COVERAGE FORM(S) AND FORM(S) AND ENDORSEMENT(S), IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Signed by: \_\_\_\_\_ Date \_\_\_\_\_  
(Authorized representative or countersignature, where applicable)

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POLICY NUMBER CSU0118346

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

## **NAMED INSURED SCHEDULE**

This Schedule supplements the Declarations.

### **SCHEDULE**

Named Insured: **Johansing Family Enterprises LLC**  
**DBA: Play It Again Sports**

## Forms and Endorsements Schedule

**POLICY NUMBER:** CSU0118346

**POLICY EFFECTIVE DATE:** 07/27/2019

**NAMED INSURED:** Johansing Family Enterprises LLC

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### FORMS APPLICABLE

#### Forms Applicable - Common Forms

CSIA501 (07/14) Common Policy Declarations  
CSIA409 (01/08) Named Insured Schedule  
CSIA448 (01/15) Policyholder Notice Terrorism Insurance Coverage  
CSIA403 (11/17) Special Provisions - Premium  
CSIA404 (08/07) Service of Suit  
CSIA410 (03/08) Notice to Policyholders  
CSIA300 (01/15) Exclusion Of Certified Acts And Other Acts Of Terrorism

#### Forms Applicable - Commercial Property

CSFA501 (01/11) Commercial Property Coverage Part Declarations  
CSFA410 (01/09) Commercial Property Premises Schedule  
CSFA414 (07/09) Commercial Property Coverages Schedule  
CSFA405 (05/08) Commercial Property Optional Coverages Schedule  
CSFA406 (06/08) Total or Constructive Loss Earned Premium  
CSFA402 (09/11) Custom Commercial Property Form - Commercial Property Loss Payee Schedule  
CP1218 (06/07) Loss Payable Provisions  
CP1030 (06/07) Causes of Loss-Special Form  
CP1032 (08/08) Water Exclusion Endorsement  
CP0123 (04/08) Ohio Changes  
CP0010 (06/07) Building and Personal Property Coverage Form  
CSFA426 (10/10) Expanded Property Coverage Endorsement  
CP0030 (06/07) Business Income And Extra Expenses Coverage Form  
CP0090TOC (07/88) Commercial Property Conditions Table Of Contents

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## Forms and Endorsements Schedule

**POLICY NUMBER:** CSU0118346

**POLICY EFFECTIVE DATE:** 07/27/2019

**NAMED INSURED:** Johansing Family Enterprises LLC

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### FORMS APPLICABLE

#### Forms Applicable - Commercial Property

CP0090 (07/88)	Commercial Property Conditions
IL0003 (09/08)	Calculation of Premium
IL0017 (11/98)	Common Policy Conditions
IL0935 (07/02)	Exclusion Of Certain Computer-related Losses
CP0140 (07/06)	Exclusion of Loss Due to Virus Or Bacteria
CSIA405(08/09)-A-	Amended Valuation

# 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.

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

## **SPECIAL PROVISIONS - PREMIUM**

This endorsement modifies the policy to add the following special provisions:

### **SCHEDULE**

#### **Deposit Premium and Minimum Premium**

The minimum premium is equal to 100% of the deposit premium.

#### **Cancellation Minimum Earned Premium**

Cancellation minimum earned premium is equal to 25 % of the total policy premium.

We will compute all premiums for coverage in accordance with our rules and rates.

The deposit premium is subject to audit when indicated as such on the declarations. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the due date on the bill.

If the earned premium is less than the deposit premium paid for the policy period, we will return the excess to the first Named Insured, subject to the minimum premium as defined below. If the earned premium is greater than the deposit premium paid for the policy period the additional premium shall become due and payable to the company.

Deposit premium is the premium stated in the Declarations payable in full at the inception of the policy.

Earned premium is computed by applying the policy rates to the actual premium basis for the audit period.

Minimum premium is the lowest amount to be retained as premium for the policy period. The minimum premium is equal to 100% of the deposit premium shown in the Declarations unless otherwise indicated in the Schedule above.

Cancellation minimum earned premium is the minimum amount to be retained as premium if you request cancellation of this policy. Cancellation minimum earned premium is equal to 25% of the total policy premium shown in the Declarations unless otherwise indicated in the Schedule above.

Any premium shown as flat charge is fully earned and is not subject to the cancellation minimum earned premium.

The first Named Insured must keep records of the information we need for premium computations, and send us copies at such times as we may request.

**Failure to pay any premium(s) due, including any additional audit premium(s) will subject this policy, and/or any additional or subsequent policies, to cancellation for non-payment of premium.**

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

## **SERVICE OF SUIT**

This endorsement modifies insurance provided under the following:

**ALL COVERAGE PARTS**

### **Schedule**

Service of Process will be accepted by:

Cincinnati Specialty Underwriters  
c/o Richard Hill  
6200 South Gilmore Road  
Fairfield, OH 45014

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon the party shown in the Schedule above and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The party named in the Schedule above is authorized and directed to accept service of process on behalf of the Company in any such suit or upon request of the Insured to give a written undertaking to the Insured that it or they will enter a general appearance upon the Company's behalf in the event such a suit shall be instituted.

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

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**THE CINCINNATI SPECIALTY UNDERWRITERS INSURANCE COMPANY**

**NOTICE TO POLICYHOLDERS**

Please be advised that in your application for insurance you disclosed information to The Cincinnati Specialty Underwriters Insurance Company, a subsidiary of The Cincinnati Insurance Company. The information disclosed in the application and all information collected by this company or The Cincinnati Insurance Company, The Cincinnati Casualty Company or The Cincinnati Indemnity Company may be shared among all four companies.



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

## **EXCLUSION OF CERTIFIED ACTS AND OTHER ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

**All Commercial Lines Coverage Parts, Coverage Forms, Policies and Endorsements except Medical Professional Liability (professional liability forms insuring dentists, optometrists, nurses, and nursing homes, among others)**

**A.** The following definitions are added with respect to the provisions of this endorsement:

**1.** "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:

- a.** 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
- b.** 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.

**2.** "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce the civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not a "certified act of terrorism".

**B.** The following exclusion is added:

### **EXCLUSION OF CERTIFIED ACTS AND OTHER ACTS OF TERRORISM**

We will not pay for any loss, injury or damage caused directly or indirectly by a "certified act of terrorism" or an "other act of terrorism". Such loss or damage is excluded regardless

of any other cause or event that contributes concurrently or in any sequence to the loss.

But with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:

- 1.** The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials;
- 2.** Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials;
- 3.** The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of "other acts of terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident;
- 4.** Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
  - a.** Physical injury that involves a substantial risk of death;

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of Insurance Services, Inc., with its permission.

- b. Protracted and obvious physical disfigurement; or
  - c. Protracted loss of or impairment of the function of a bodily member or organ; or
5. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination.

Paragraphs **B.3.** and **B.4.** immediately preceding, describe the threshold used to measure the magnitude of an "other act of terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an "other act of terrorism", there is no coverage under this Coverage Part, Coverage Form, Policy or Endorsement, except as provided in this Endorsement.

However, Paragraph **B.4.** immediately preceding, is not to be used as a threshold to measure the magnitude of an "other act of terrorism" for the purposes of determining if this exclusion applies to a Commercial Property Coverage Part, Commercial Inland Marine Coverage Part, Machinery and Equipment Coverage Part, Commercial Crime Coverage Form, Commercial Crime Policy, Employee Theft and Forgery Policy, Farm Property Coverage Part, Government Crime Coverage Form, Government Crime Policy, Standard Property Policy, or Section **I** of the Businessowners Package Policy.

### **C. Exception Covering Certain Fire Losses**

The following modifies insurance provided under the following: Commercial Inland Marine Coverage Part, Commercial Property Coverage Part, Farm Coverage Part and Standard Property Policy.

If a "certified act of terrorism" or an "other act of terrorism" causes fire damage to property that is subject to the Standard Fire Policy in a state that utilizes the Standard Fire Policy as its minimum fire coverage standard, we will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverages, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

With respect to fire resulting from any one or more "certified acts of terrorism" under the federal Terrorism Risk Insurance Act, we will not pay any amounts for which we are not responsible under the terms of that Act (including

subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

This Section **C.** does not apply to:

- 1. A Coverage Part for a "certified act of terrorism" or "other act of terrorism" that occurs in a state that allows an exception for fire resulting from terrorism; or
- 2. An Inland Marine Coverage Part for a "certified act of terrorism" or "other act of terrorism" that occurs in a state that allows a commercial inland marine exception,

to its Standard Fire Policy minimum fire coverage regulations.

### **D. Exception Covering Minimum Financial Responsibility**

The following applies to the Business Auto Coverage Form, Business Auto Physical Damage Coverage Form, Garage Coverage Form, Motor Carrier Coverage Form, Single Interest Automobile Physical Damage Insurance Policy and Truckers Coverage Form if they are included in, or are part of, this Policy and if the "certified act of terrorism" or "other act of terrorism" causes loss in a state that requires compulsory or financial responsibility minimum limits apply to excluded acts of terrorism:

The exclusion stated in Section **B.** of this endorsement does not apply to:

- 1. Liability or Personal Injury Protection Coverage, but only up to the state compulsory or financial responsibility law minimum limits of insurance for each coverage; and
- 2. Uninsured and/or Underinsured Motorists Coverage, if applicable, but only up to the minimum statutory permitted limits of insurance for each coverage.

### **E. Application of Other Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part, 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;

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2. Exclusions that address pollutants, contamination, deterioration, fungi or bacteria; or

3. Any other exclusion,

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

**F. Conformity With Statute**

If any terms or conditions of this endorsement are in conflict with the laws of the jurisdiction under which this policy is construed, then such terms and conditions will be deemed changed to conform with such laws, but only to the ex-

tent that such terms and conditions are otherwise covered by the Coverage Part, Coverage Form, Policy or Endorsement to which this endorsement applies.

**G. Supersession**

The exclusions for acts of terrorism in this endorsement supersede any offers of terrorism coverage.

**H. 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 except "other acts of terrorism" that takes place after the expiration or repeal of the Act.

**THE CINCINNATI SPECIALTY UNDERWRITERS INSURANCE COMPANY**

**COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS**

Attached to and forming part of POLICY NUMBER: <u>CSU0118346</u>				Effective date: <u>07/27/2019</u>			
Named Insured: <u>Johansing Family Enterprises LLC</u>							
<b>DESCRIPTION OF PREMISES</b>							
<b>Prem. No.</b>	<b>Bldg. No.</b>	<b>Location, Construction And Occupancy</b>					
Refer to Commercial Property Premises Schedule CSFA 410							
<b>COVERAGES PROVIDED</b>		<b>Insurance At The Described Premises Applies Only For Coverages For Which A Limit Of Insurance Is Shown</b>					
<b>Prem No.</b>	<b>Bldg. No.</b>	<b>Coverage</b>	<b>Limit Of Insurance</b>	<b>Covered Causes Of Loss</b>	<b>Coinsurance*</b>	<b>Rates</b>	
Refer to Commercial Property Coverages Schedule CSFA 414							
*If Extra Expense Coverage, Limits On Loss Payment							
<b>OPTIONAL COVERAGES</b>		<b>Applicable Only When Entries Are Made In The Schedule Below</b>					
<b>Prem. No.</b>	<b>Bldg. No.</b>	<b>Expiration Date</b>	<b>Agreed Value Cov.</b>	<b>Amount</b>	<b>Replacement Cost Building</b>	<b>Pers. Prop.</b>	<b>Including "Stock"</b>
Refer to Commercial Property Optional Coverages Schedule CSFA 405							
<b>Inflation Guard % Bldg. Pers. Prop.</b>		<b>*Monthly Limit Of Indemnity</b>		<b>Maximum Period Of Indemnity</b>		<b>*Extended Period Of Indemnity (Days)</b>	
*Applies to Business Income Only							
<b>MORTGAGEHOLDERS</b>							
<b>Prem. No.</b>	<b>Bldg. No.</b>	<b>Mortgageholder Name And Mailing Address</b>					
Refer to Commercial Property Mortgageholder Schedule CSFA 401							
<b>DEDUCTIBLE</b>							
Refer to Commercial Property Coverages Schedule CSFA 414							
<b>FORMS APPLICABLE</b>							
To All Coverages:							
To Specific Premises/Coverages:							
<b>Prem. No.</b>	<b>Bldg. No.</b>	<b>Coverages</b>	<b>Form Number</b>				
Refer to Forms and Endorsements Schedule CSIA 406							

## COMMERCIAL PROPERTY PREMISES SCHEDULE

POLICY NUMBER: CSU0118346

EFFECTIVE DATE: 07/27/2019

NAMED INSURED: Johansing Family Enterprises LLC

### DESCRIPTION OF PREMISES

Prem. Bldg.

No. No. Location

1 1 11749 PRINCETON PIKE,  
SPRINGDALE, OH 45246

Construction

Joisted Masonry

Occupancy

Sporting Goods or Athletic Equipment -  
Stores

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## COMMERCIAL PROPERTY COVERAGE SCHEDULE

POLICY NUMBER: CSU0118346

EFFECTIVE DATE: 07/27/2019

NAMED INSURED: Johansing Family Enterprises LLC

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### DESCRIPTION OF COVERAGES

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Prem. No.	Bldg. No.	Coverage	Limit Of Insurance	Deductible	Covered Causes of Loss	Coinsurance %
1	1	BPP w/ Stock	225,000	1,000	SPECIAL	100%
1	1	Business Income w/ EE	350,000		SPECIAL	100%

## COMMERCIAL PROPERTY OPTIONAL COVERAGES SCHEDULE

POLICY NUMBER: CSU0118346

EFFECTIVE DATE: 07/27/2019

NAMED INSURED: Johansing Family Enterprises LLC

AgVal = Agreed Value; Bldg = Building; BPP = Business Personal Property; BI = Business Income; EE = Extra Expense; PPO = Personal Property of Others;  
RV = Rental Value; Stk = Stock

Prem. No.	Bldg. No.	Coverage	Amount	AgVal	Replacement Cost				Inflation Guard % Bldg.	Pers. Prop.	Monthly Limit Of Indemnity	Maximum Period Of Indemnity	Extended Period Of Indemnity (Days)
					BLDG	PP	STOCK	PPO					
1	1	BPP, Stk	225,000										
1	1	BI w/ EE	350,000										

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

## **TOTAL OR CONSTRUCTIVE LOSS EARNED PREMIUM**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

**A.** For the purposes of this endorsement, **Section E. Loss Conditions** is amended to include the following:

**8. Total or Constructive Loss Earned Premium**

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In the event of a total loss or a "constructive total loss" to Covered Property by a Covered Cause of Loss, the minimum premium is equal to 100 percent of the deposit premium and is fully earned, and no return premium will be due.

**B.** For the purposes of this endorsement, **Section H. Definitions** is amended to include the following:

- 4.** "Constructive total loss" means the Covered Property damaged by a Covered Cause of Loss is treated as a total loss because the cost of repairing or restoring the damaged Covered Property exceeds the actual cash value of the Covered Property at the time of the loss.



## COMMERCIAL PROPERTY LOSS PAYEE SCHEDULE

POLICY NUMBER: CSU0118346

EFFECTIVE DATE: 07/27/2019

NAMED INSURED: Johansing Family Enterprises LLC

### DESCRIPTION OF LOSS PAYEE

Prem. No.	Bldg. No.	Description of Property	Loss Payee (Name & Address)	Provisions Clause			
				Loss Payable	Lender's Loss Payable	Contract of Sale	Building Owners Loss Payable
1	1	Lender	The Huntington National Bank ISAOA/ATIMA PO BOX 341470 COLUMBUS, OH, 43234		X		

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****LOSS PAYABLE PROVISIONS**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
 BUILDERS' RISK COVERAGE FORM  
 CONDOMINIUM ASSOCIATION COVERAGE FORM  
 CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
 STANDARD PROPERTY POLICY

**SCHEDULE**

<b>Premises Number:</b>		<b>Building Number:</b>		<b>Applicable Clause (Enter C., D., E., or F.):</b>	
<b>Description Of Property:</b> Refer to Commercial Property Loss Payee Schedule, CSFA402  <b>Loss Payee Name:</b>  <b>Loss Payee Address:</b>					
<b>Premises Number:</b>		<b>Building Number:</b>		<b>Applicable Clause (Enter C., D., E., or F.):</b>	
<b>Description Of Property:</b> Refer to Commercial Property Loss Payee Schedule, CSFA402  <b>Loss Payee Name:</b>  <b>Loss Payee Address:</b>					
<b>Premises Number:</b>		<b>Building Number:</b>		<b>Applicable Clause (Enter C., D., E., or F.):</b>	
<b>Description Of Property:</b> Refer to Commercial Property Loss Payee Schedule, CSFA402  <b>Loss Payee Name:</b>  <b>Loss Payee Address:</b>					
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.					

**A.** When this endorsement is attached to the Standard Property Policy **CP 00 99**, the term Cover-

age Part in this endorsement is replaced by the term Policy.

- B.** 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.

The following is added to the **Loss Payment** Loss Condition, as indicated in the Declarations or in the Schedule:

**C. Loss Payable Clause**

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

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

**D. Lender's Loss Payable Clause**

1. The Loss Payee shown in the Schedule or in the Declarations 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 or damage 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 or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The 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.

**E. Contract Of Sale Clause**

1. The Loss Payee shown in the Schedule or in the Declarations 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 or damage jointly to you and the Loss Payee, as interests may appear:

3. The following is added to the **Other Insurance** Condition:

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For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

**F. Building Owner Loss Payable Clause**

1. The Loss Payee shown in the Schedule or in the Declarations is the owner of the described building, in which you are a tenant.
2. We will adjust losses to the described 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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## CAUSES OF LOSS - SPECIAL FORM

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

### A. Covered Causes Of Loss

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

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

that follow.

### B. Exclusions

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

#### a. Ordinance Or Law

The enforcement of any ordinance or law:

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

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

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

#### b. Earth Movement

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

- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sink-hole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

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

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

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

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

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

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

**c. Governmental Action**

Seizure or destruction of property by order of governmental authority.

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

**d. Nuclear Hazard**

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

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

**e. Utility Services**

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

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

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

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

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

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

**f. War And Military Action**

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

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

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

**g. Water**

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

- (2) Mudslide or mudflow;

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

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

- (a) Foundations, walls, floors or paved surfaces;

- (b) Basements, whether paved or not; or

- (c) Doors, windows or other openings.

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

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

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

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

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage - Limited Coverage For

"Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

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

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

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

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

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

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

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

- b.** Delay, loss of use or loss of market.
- c.** Smoke, vapor or gas from agricultural smudging or industrial operations.
- d.**
  - (1)** Wear and tear;
  - (2)** Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
  - (3)** Smog;
  - (4)** Settling, cracking, shrinking or expansion;
  - (5)** Nesting or infestation, or discharge or release of waste products or secretions, by in-

sects, birds, rodents or other animals.

**(6)** Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

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

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

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

- e.** Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f.** Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g.** Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
  - (1)** You do your best to maintain heat in the building or structure; or
  - (2)** You drain the equipment and shut off the supply if the heat is not maintained.



- h.** Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

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

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

- i.** Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j.** Rain, snow, ice or sleet to personal property in the open.
- k.** Collapse, including any of the following conditions of property or any part of the property:

- (1)** An abrupt falling down or caving in;
- (2)** Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
- (3)** Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to **(1)** or **(2)** above.

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

This exclusion, **k.**, does not apply:

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

**(iii)** Weight of rain that collects on a roof; or

**(iv)** Weight of people or personal property.

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

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

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

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

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

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

**c.** Faulty, inadequate or defective:

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

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

#### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

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

We will not pay for:

- (1) Any loss caused by or resulting from:

- (a) Damage or destruction of "finished stock"; or
- (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.

- (3) Any increase of loss caused by or resulting from:

- (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

- (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

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

- (5) Any other consequential loss.

#### b. Leasehold Interest Coverage Form

- (1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.

- (2) We will not pay for any loss caused by:

- (a) Your cancelling the lease;
- (b) The suspension, lapse or cancellation of any license; or
- (c) Any other consequential loss.

#### c. Legal Liability Coverage Form

- (1) The following exclusions do not apply to insurance under this Coverage Form:

- (a) Paragraph **B.1.a.**, Ordinance Or Law;
- (b) Paragraph **B.1.c.**, Governmental Action;
- (c) Paragraph **B.1.d.**, Nuclear Hazard;
- (d) Paragraph **B.1.e.**, Utility Services; and
- (e) Paragraph **B.1.f.**, War And Military Action.

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

**(a) Contractual Liability**

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

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

## **(b) Nuclear Hazard**

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

## **5. Additional Exclusion**

The following provisions apply only to the specified property.

### **LOSS OR DAMAGE TO PRODUCTS**

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

## **C. Limitations**

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

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

resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

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

However, this limitation does not apply to:

- (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
- (2) Business Income Coverage or Extra Expense Coverage.

- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

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

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

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

(1) Glass; or

(2) Containers of property held for sale.

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

However, this limitation does not apply:

- (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
  - (2) To Business Income Coverage or to Extra Expense Coverage.
3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
  - a.** \$2,500 for furs, fur garments and garments trimmed with fur.
  - b.** \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - c.** \$2,500 for patterns, dies, molds and forms.
  - d.** \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

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

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

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:
  - a.** Results in discharge of any substance from an automatic fire protection system; or
  - b.** Is directly caused by freezing.

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

#### **D. Additional Coverage - Collapse**

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

1. For the purpose of this Additional Coverage - Collapse, abrupt collapse means an

abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:
  - a.** Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
  - b.** Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
  - c.** Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
  - d.** Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
    - (1) A cause of loss listed in **2.a.** or **2.b.**;
    - (2) One or more of the "specified causes of loss";
    - (3) Breakage of building glass;
    - (4) Weight of people or personal property; or
    - (5) Weight of rain that collects on a roof.

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

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

4. With respect to the following property:

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

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

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

- 5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
  - a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
  - b. The personal property which collapses is inside a building; and
  - c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

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

- 6. This Additional Coverage - Collapse does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- 7. This Additional Coverage - Collapse will not increase the Limits of Insurance provided in this Coverage Part.

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

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

- 1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
  - a. A "specified cause of loss" other than fire or lightning; or
  - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
- 2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
  - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
  - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
  - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.
- 3. The coverage described under **E.2.** of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

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

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

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph **F.2.** (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage - Collapse.
6. The following, **6.a.** or **6.b.**, applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form.
- a.** If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b.** If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

## **F. Additional Coverage Extensions**

### **1. Property In Transit**

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

- a.** You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b.** Loss or damage must be caused by or result from one of the following causes of loss:
- (1)** Fire, lightning, explosion, wind-storm or hail, riot or civil commotion, or vandalism.
- (2)** Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
- (3)** Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c.** The most we will pay for loss or damage under this Extension is \$5,000.

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

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

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

### **3. Glass**

- a.** We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.

- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

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

#### **G. Definitions**

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Specified causes of loss" means the following: fire; lightning; explosion; wind-storm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or

dolomite. This cause of loss does not include:

- (1) The cost of filling sinkholes; or
  - (2) Sinking or collapse of land into man-made underground cavities.
- b. Falling objects does not include loss or damage to:
    - (1) Personal property in the open; or
    - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
  - c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

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

## **WATER EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY

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

**B. Water**

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

**c.** Doors, windows or other openings;  
or

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

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

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



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

**OHIO CHANGES**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY**

- A.** Paragraphs **c.** and **g.** of the **Loss Payment** Loss Condition are replaced by the following, except as provided in Paragraph **B.**:

- c.** We will give you notice, within 21 days after we receive a properly executed proof of loss, that we:

- (1) Accept your claim;
- (2) Deny your claim; or
- (3) Need more time to investigate your claim.

If we need more time to investigate your claim, we will provide an explanation for our need for more time. We will continue to notify you again in writing, at least every 45 days, of the status of the investigation and of the continued time needed for the investigation.

- g.** Provided you have complied with all the terms of this Coverage Part, we will pay for covered loss or damage within:

- (1) 10 days after we accept your claim if such acceptance occurs within the first 21 days after we receive a properly executed proof of loss, unless the claim involves an action by a probate court or other extraordinary circumstances as documented in the claim file; or
- (2) Five days after we accept your claim if such acceptance occurs more than 21 days after we receive a properly executed proof of loss, and
  - (a) An appraisal award has been made; or
  - (b) We have reached an agreement with you on the amount of loss that was in dispute.

- B.** Paragraph **A.** does not apply to the **Loss Payment** Loss Condition in the following forms:

1. Business Income (And Extra Expense) Coverage Form;
2. Business Income (Without Extra Expense) Coverage Form;

3. Extra Expense Coverage Form;
4. Leasehold Interest Coverage Form; and
5. Mortgageholders Errors and Omissions Coverage Form.

In the forms listed above, the **Loss Payment** Loss Condition is replaced by the following:

**LOSS PAYMENT**

- a.** We will give you notice, within 21 days after we receive a properly executed proof of loss, that we:

- (1) Accept your claim;
- (2) Deny your claim; or
- (3) Need more time to investigate your claim.

If we need more time to investigate your claim, we will provide an explanation for our need for more time. We will continue to notify you again in writing, at least every 45 days, of the status of the investigation and of the continued time needed for the investigation.

- b.** Provided you have complied with all the terms of this Coverage Part, we will pay for covered loss or damage within:

- (1) 10 days after we accept your claim if such acceptance occurs within the first 21 days after we receive a properly executed proof of loss, unless the claim involves an action by probate court or other extraordinary circumstances as documented in the claim file; or
- (2) Five days after we accept your claim if such acceptance occurs more than 21 days after we receive a properly executed proof of loss, and

- (a) An appraisal award has been made; or

- (b) We have reached an agreement with you on the amount of loss that was in dispute.

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## BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

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

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

### A. Coverage

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

#### 1. Covered Property

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

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

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

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

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

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

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

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

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

**2. Property Not Covered**

Covered Property does not include:

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

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

- m. Underground pipes, flues or drains;
  - n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, **n.**, does not apply to your "stock" of prepackaged software;
  - o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
  - p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
    - (1) Are licensed for use on public roads; or
    - (2) Are operated principally away from the described premises.
- This paragraph does not apply to:
- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
  - (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
  - (c) Rowboats or canoes out of water at the described premises; or
  - (d) Trailers, but only to the extent provided for in the Coverage

Extension for Non-owned Detached Trailers;

q. The following property while outside of buildings:

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

### 3. Covered Causes Of Loss

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

### 4. Additional Coverages

#### a. Debris Removal

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

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

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

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

#### (5) Examples

The following examples assume that there is no Coinsurance penalty.

#### EXAMPLE #1

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

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

## EXAMPLE #2

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

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

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

### b. Preservation Of Property

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

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

### c. Fire Department Service Charge

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

- (1) Assumed by contract or agreement prior to loss; or

- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

### d. Pollutant Clean-up And Removal

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

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

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

### e. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.

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

- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.

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

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

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



Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.

**(3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:**

**(a)** If the Causes Of Loss - Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.

**(b)** If the Causes Of Loss - Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.

**(c)** If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.

**(d)** The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

**(4)** The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 for all loss or

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

**5. Coverage Extensions**

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

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

**a. Newly Acquired Or Constructed Property**

**(1) Buildings**

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

**(a)** Your new buildings while being built on the described premises; and

**(b)** Buildings you acquire at locations, other than the described premises, intended for:

**(i)** Similar use as the building described in the Declarations; or

**(ii)** Use as a warehouse.

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

**(2) Your Business Personal Property**

**(a)** If this policy covers Your Business Personal Prop-

erty, you may extend that insurance to apply to:

- (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
- (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
- (iii) Business personal property that you newly acquire, located at the described premises.

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

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

### (3) Period Of Coverage

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

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

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

### b. Personal Effects And Property Of Others

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

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

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

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

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

is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

**d. Property Off-premises**

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

**e. Outdoor Property**

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

- (1) Fire;
- (2) Lightning;
- (3) Explosion;

(4) Riot or Civil Commotion; or

(5) Aircraft.

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

**f. Non-owned Detached Trailers**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
  - (a) The trailer is used in your business;
  - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
  - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
  - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
  - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

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

**B. Exclusions And Limitations**

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

### C. Limits Of Insurance

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

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

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

1. Fire Department Service Charge;
2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

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

### D. Deductible

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

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

#### EXAMPLE #1

(This example assumes there is no Coinsurance penalty.)

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

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

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

$$\begin{array}{r} \$ 60,100 \\ - \quad 250 \\ \hline \end{array}$$

\$ 59,850 Loss Payable - Building #1

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

Total amount of loss payable:

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

#### EXAMPLE #2

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

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

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

### E. Loss Conditions

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

#### 1. Abandonment

There can be no abandonment of any property to us.

#### 2. Appraisal

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

- a. Pay its chosen appraiser; and

- b. Bear the other expenses of the appraisal and umpire equally.

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

### **3. Duties In The Event Of Loss Or Damage**

- a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

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

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

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

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

### **4. Loss Payment**

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

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

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

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

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

## 5. Recovered Property

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

## 6. Vacancy

### a. Description Of Terms

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:

- (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
- (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:
  - (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
  - (ii) Used by the building owner to conduct customary operations.
- (2) Buildings under construction or renovation are not considered vacant.

### b. Vacancy Provisions

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

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
  - (a) Vandalism;
  - (b) Sprinkler leakage, unless you have protected the system against freezing;
  - (c) Building glass breakage;
  - (d) Water damage;
  - (e) Theft; or
  - (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

## 7. Valuation

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

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

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

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

- (1) Awnings or floor coverings;
  - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
  - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
  - d. Glass at the cost of replacement with safety-glazing material if required by law.
  - e. Tenants' Improvements and Betterments at:

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

If your lease contains a renewal option, the expiration of the re-

newal option period will replace the expiration of the lease in this procedure.

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

## F. Additional Conditions

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

### 1. Coinsurance

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

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

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

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

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

### EXAMPLE #1 (UNDERINSURANCE)

When: The value of the property is: \$ 250,000  
The Coinsurance percentage for it is 80%  
The Limit of Insurance for it is: \$ 100,000  
The Deductible is: \$ 250  
The amount of loss is: \$ 40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$   
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$100,000 \div \$200,000 = .50$

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

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

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

#### EXAMPLE #2 (ADEQUATE INSURANCE)

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

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

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

#### EXAMPLE #3

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

Step (1):  $\$250,000 \times 90\% = \$225,000$

(the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2):  $\$180,000 \div \$225,000 = .80$

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

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

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

#### 2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the

Declarations in their order of precedence, as interests may appear.

- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.

- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:

- (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

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

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

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

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



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

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

## G. Optional Coverages

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

### 1. Agreed Value

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

### 2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
- (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times

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

## EXAMPLE

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

### 3. Replacement Cost

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

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

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
- (1) Until the lost or damaged property is actually repaired or replaced; and
  - (2) Unless the repairs or replacement are made as soon as rea-

sonably possible after the loss or damage.

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

- (3) If the conditions in **d.(1)** and **d.(2)** above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
  - (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e.** We will not pay more for loss or damage on a replacement cost basis than the least of **(1)**, **(2)** or **(3)**, subject to **f.** below:
- (1) The Limit of Insurance applicable to the lost or damaged property;
  - (2) The cost to replace the lost or damaged property with other property:
    - (a) Of comparable material and quality; and
    - (b) Used for the same purpose; or
  - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

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

- f.** The cost of repair or replacement does not include the increased cost attributable to enforcement of any

ordinance or law regulating the construction, use or repair of any property.

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

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

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

#### **H. Definitions**

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

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

## **EXPANDED PROPERTY COVERAGE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

### **SUMMARY OF COVERAGE**

Description of Coverage	Coverage Limit
Accounts Receivable	\$10,000
Electronic Data Processing Property (EDP)	\$10,000
Duplicate and Backup Electronic Data	\$2,000 (in addition to EDP Coverage Limit)
Newly Acquired EDP	\$2,000 (in addition to EDP Coverage Limit)
In Transit or Away From Premises	\$2,000 (included in EDP Coverage Limit)
Worldwide Laptop Coverage	\$5,000 Aggregate (included in EDP Coverage Limit)
Peak Season	\$10,000
Valuable Papers and Records	\$10,000

**A.** The following is added to Paragraph 5. **Coverage Extensions of Section A. Coverage:**

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

**g. Accounts Receivable**

- (1)** When you sustain accidental loss or damage 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 described 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 accidental loss or damage from a Covered Cause of Loss, we will pay for accidental loss or damage while they are:

- 1) At a safe place away from your described 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.

#### (4) Exclusions

- (a) For **g. Accounts Receivable** Extension, the Covered Causes of Loss applicable to Your Business Personal Property apply to this coverage extension.

- (5) In addition to Paragraph (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 (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 (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

- 1) Currency, coins and bank notes whether or not in current use;

- 2) Travelers checks, registered checks and money orders held for sale to the public; or
- 3) Negotiable and non-negotiable instruments or contracts representing either money or other property and includes:

- i. Tokens, tickets, revenue and other stamps whether or not in current use; and
- ii. Evidences of debt issued in connection with credit or charge cards, which are not of your own issue.

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 described 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 described 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 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 loss occurs; and
  - 2)** Adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the 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 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 accidental loss or damages under **g. Accounts Receivable** Coverage Extension is \$10,000 in any one occurrence.

- (7) Deductible:** Under this coverage extension, a deductible of \$1,000 shall apply to each occurrence.

**h. Electronic Data Processing Property**

**(1) Covered Property**

Under this Coverage Extension, electronic data has the meaning as described under Property Not Covered-Electronic Data. You may extend the Coverage provided by this Coverage Part to apply to accidental loss or damage 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, 4. Additional Coverages, 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 described premises.
- (d)** Any machine or apparatus that is used for research, medical, diagnostic, surgical, dental or pathological purposes.
- (e)** 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.

**(3) Exclusions**

- (a)** For **h. Electronic Data Processing Property Coverage** Extension, the Covered Causes of Loss applicable to Your Busi-

ness Personal Property apply to this coverage extension.

**(4) Duplicate and Backup Electronic Data**

We will pay for accidental loss or damage resulting from any of the Covered Causes of Loss to duplicate and backup electronic data that you store at premises not described in the Declarations providing such electronic data is not covered by another policy. The most we will pay for such loss in any one occurrence is \$2,000. This Limit of Insurance for Duplicate and Backup Electronic Data is in addition to the other limits provided by this Coverage Extension.

**(5) Newly Acquired Electronic Data Processing Property**

For this Coverage Extension only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, a. Newly Acquired or Constructed Property** is deleted in its entirety and replaced by the following:

- (a)** We will pay for accidental loss or damage from a Covered Cause of Loss to newly acquired Covered Property described in Paragraph **h.(1)** of this Coverage Extension while at:
- 1)** Any newly acquired location;
  - 2)** Any newly constructed or acquired buildings at a described 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)** 30 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 \$2,000. This Limit of Insurance for **Newly Acquired Electronic Data Processing Property** is in addition to the other limits provided by this Coverage Extension.

**(6) In Transit or Away From Premises**

For this Coverage Extension only, **SECTION A. COVERAGE, 5. Coverage Extensions, d. Property Off Premises** is 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 **h.(1)**:
- 1)** While in or on a vehicle, including loading and unloading; or
  - 2)** While at a location that is not your described premises.
- (b)** This **In Transit or Away From Premises** Coverage Extension does not apply per location.

The most we will pay for loss in any one occurrence is \$2,000. This Limit of Insurance for **In Transit or Away From Premises** coverage 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.

The most we will pay for accidental loss or damage under this Coverage Extension is \$5,000 for the sum of all covered claims arising out of Covered Cause of Loss occurring during each separate 12 month period of this policy. This Limit of Insurance for **Worldwide Laptop Coverage** is not in addition to the other limits provided by this Coverage Extension.

**(8) Electronic Data Processing Property Valuation**

For **h. Electronic Data Processing Property** Coverage Extension only, **SECTION E. 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 accident loss or damage, 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 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 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 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 **h.(1)(e)** of this Coverage Extension.

- (9) Deductible:** Under this coverage extension, a deductible of \$1,000 shall apply to each occurrence.

**i. 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, this Extension will provide an additional limit of insurance for your inventory. The most we will pay for accidental loss or damage under this Extension is \$10,000. This amount is in addition to the limit of insurance stated in the

Declarations for Business Personal Property.

- (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.

**B. Valuable Papers and Records**

In **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, c. Valuable Papers and Records**, Paragraph (4) is de-

leted in its entirety and replaced by the following:

- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$10,000 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.



**BUSINESS INCOME (AND EXTRA EXPENSE)  
COVERAGE FORM  
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## BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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

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

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

### A. Coverage

#### 1. Business Income

Business Income means the:

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

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

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

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

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

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

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

Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

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

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

#### 2. Extra Expense

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

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

- (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation ex-

penses and costs to equip and operate the replacement location or temporary location.

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

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

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

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

### **4. Additional Limitation - Interruption Of Computer Operations**

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

### **5. Additional Coverages**

#### **a. Civil Authority**

In this Additional Coverage - Civil Authority, the described premises

are premises to which this Coverage Form applies, as shown in the Declarations.

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

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

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

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

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

whichever is later.

#### **b. Alterations And New Buildings**

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

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

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

**c. Extended Business Income**

**(1) Business Income Other Than "Rental Value"**

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

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
  - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 30 consecutive days after the date determined in (1)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in

the area where the described premises are located.

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

**(2) "Rental Value"**

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

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

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

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

**d. Interruption Of Computer Operations**

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation - Interruption Of Computer Operations.
- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and

Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss.

(3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:

(a) If the Causes Of Loss - Special Form applies, coverage under this Additional Coverage - Interruption Of Computer Operations is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.

(b) If the Causes Of Loss - Broad Form applies, coverage under this Additional Coverage - Interruption Of Computer Operations includes Collapse as set forth in that form.

(c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage - Interruption Of Computer Operations.

(d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.

(4) The most we will pay under this Additional Coverage - Interrup-

tion of Computer Operations is \$2,500 for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.

(5) This Additional Coverage - Interruption in Computer Operations does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

## 6. Coverage Extension

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

### NEWLY ACQUIRED LOCATIONS

a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.

b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$100,000 at each location.

c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:

(1) This policy expires;

(2) 30 days expire after you acquire or begin to construct the property; or

(3) You report values to us.

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

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

## **B. Limits Of Insurance**

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

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

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

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

## **C. Loss Conditions**

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

### **1. Appraisal**

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

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

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

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

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

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

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when, and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

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

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

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (7) Cooperate with us in the investigation or settlement of the claim.
- (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.

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

### 3. Loss Determination

- a. The amount of Business Income loss will be determined based on:
- (1) The Net Income of the business before the direct physical loss or damage occurred;
  - (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
  - (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
  - (4) Other relevant sources of information, including:
    - (a) Your financial records and accounting procedures;
    - (b) Bills, invoices and other vouchers; and
    - (c) Deeds, liens or contracts.
- b. The amount of Extra Expense will be determined based on:
- (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
    - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
    - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
  - (2) Necessary expenses that reduce the Business Income loss

that otherwise would have been incurred.

### c. Resumption Of Operations

We will reduce the amount of your:

- (1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
  - (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

### 4. Loss Payment

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

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

### D. Additional Condition

#### COINSURANCE

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

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

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

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

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

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

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

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

- (1) Prepaid freight - outgoing;
- (2) Returns and allowances;
- (3) Discounts;
- (4) Bad debts;
- (5) Collection expenses;
- (6) Cost of raw stock and factory supplies consumed (including transportation charges);
- (7) Cost of merchandise sold (including transportation charges);
- (8) Cost of other supplies consumed (including transportation charges);
- (9) Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
- (10) Power, heat and refrigeration expenses that do not continue under contract (if Form CP 15 11 is attached);
- (11) All ordinary payroll expenses or the amount of payroll expense excluded (if Form CP 15 10 is attached); and
- (12) Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion - not percentage depletion; welfare and retirement fund

charges based on tonnage; hired trucks).

#### EXAMPLE #1 (UNDERINSURANCE)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000  
The Coinsurance percentage is: 50%  
The Limit of Insurance is: \$ 150,000  
The amount of loss is: \$ 80,000

Step (1):  $\$400,000 \times 50\% = \$200,000$   
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$150,000 \div \$200,000 = .75$

Step (3):  $\$80,000 \times .75 = \$60,000$

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

#### EXAMPLE #2 (ADEQUATE INSURANCE)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000  
The Coinsurance percentage is: 50%  
The Limit of Insurance is: \$ 200,000  
The amount of loss is: \$ 80,000

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

This condition does not apply to Extra Expense Coverage.

#### E. Optional Coverages

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

##### 1. Maximum Period Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:

- (1) The amount of loss sustained and expenses incurred during the 120 days immediately fol-



lowing the beginning of the "period of restoration"; or

- (2) The Limit of Insurance shown in the Declarations.

## 2. Monthly Limit Of Indemnity

a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.

b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:

(1) The Limit of Insurance, multiplied by

(2) The fraction shown in the Declarations for this Optional Coverage.

inception of this Optional Coverage.

(2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:

(a) The Coinsurance percentage shown in the Declarations; multiplied by

(b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.

b. The Additional Condition, Coinsurance, is suspended until:

(1) 12 months after the effective date of this Optional Coverage; or

(2) The expiration date of this policy;

whichever occurs first.

c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:

(1) Within 12 months of the effective date of this Optional Coverage; or

(2) When you request a change in your Business Income Limit of Insurance.

d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:

(1) The Business Income Limit of Insurance; divided by

(2) The Agreed Value.

## EXAMPLE

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

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

The most we will pay for loss in each period of 30 consecutive days is: \$ 30,000

(\$120,000 x 1/4 = \$30,000)

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

Days 1-30: \$ 40,000

Days 31-60: \$ 20,000

Days 61-90: \$ 30,000

\$ 90,000

We will pay:

Days 1-30: \$ 30,000

Days 31-60: \$ 20,000

Days 61-90: \$ 30,000

\$ 80,000

The remaining \$10,000 is not covered.

## 3. Business Income Agreed Value

a. To activate this Optional Coverage:

(1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":

(a) During the 12 months prior to the date of the Work Sheet; and

(b) Estimated for the 12 months immediately following the

## EXAMPLE

When: The Limit of Insurance is: \$ 100,000

The Agreed Value is: \$ 200,000

The amount of loss is: \$ 80,000

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

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

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

#### 4. Extended Period Of Indemnity

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

#### F. Definitions

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

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

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

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

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

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

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

4. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
5. "Rental Value" means Business Income that consists of:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
  - b. Continuing normal operating expenses incurred in connection with that premises, including:
    - (1) Payroll; and
    - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
6. "Suspension" means:
  - a. The slowdown or cessation of your business activities; or
  - b. That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

## COMMERCIAL PROPERTY CONDITIONS TABLE OF CONTENTS

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# COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

## A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

## B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

## C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

## D. LEGAL ACTION AGAINST US

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

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

## E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

## F. NO BENEFIT TO BAILEE

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

## G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

## H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

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## **I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.

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

## **CALCULATION OF PREMIUM**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

The following is added:

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

# COMMON POLICY CONDITIONS

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

## A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for 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.

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

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

This endorsement modifies insurance provided under the following:

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

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

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

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



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

## **EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY**

- A.** The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B.** We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.  
However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
- C.** With respect to any loss or damage subject to the exclusion in Paragraph **B.**, such exclusion supersedes any exclusion relating to "pollutants".
- D.** The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:
  - 1.** Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
  - 2.** Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.
- E.** The terms of the exclusion in Paragraph **B.**, or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

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

## **AMENDED LOSS VALUATION "STOCK"**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL PROPERTY COVERAGE PART**

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION E LOSS CONDITIONS, 7. Valuation, c.** is deleted in its entirety and replaced with the following:

**c. "Stock"**

**(1)** You have sold but not delivered at the selling price less discounts and expenses you otherwise would have had

**(2)** You have not sold at the lesser of:

**(a)** Your original acquisition cost plus the cost of any labor, materials, or services furnished or arranged by you on that property, or

**(b)** The cost to repair or replace the lost or damaged property with property that is of comparable material and quality and is used for the same purpose as the lost or damaged property

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# -EXHIBIT C-



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Chicago, IL 60606  
Telephone: 312-442-0509  
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www.jaszczuk.com

Daniel I. Schlessinger  
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April 15, 2020

**E-MAIL**

Cincinnati Specialty Underwriters Insurance Company  
P.O. Box 145496  
Cincinnati, OH 45250  
claimsmaindesk@cinfin.com

Re: Claimant: Johansing Family Enterprises, LLC  
DBA, Play It Again Sports  
Policy Number CSU0118346  
Excess Policy Number CSU0118355

Dear Claims Personnel:

We represent Johansing Family Enterprises, dba Play It Again Sports ("Johansing") in connection with its claim under the captioned policies for a business interruption loss. In particular, as a consequence of recent developments, customer traffic for the insured Play It Again Sports store diminished significantly until eventually the store was forced to close entirely. These actions have caused Johansing to sustain significant losses of income for which it is entitled to indemnification under the policies. In addition, Johansing seeks reimbursement of extra expenses it incurred as provided under the policy.

Please have the appropriate person contact us using the contact information above as soon as possible regarding whatever proof of loss you may require in order to process this claim. As you might imagine, given the major financial blow to your insured, time is of the essence here.

Very truly yours,

Daniel I. Schlessinger

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cc: Joshua Johansing  
Anita Williams, Huntington Insurance