

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

NEAREST & DEAREST, LLC d/b/a  
WALTER'S SOUTHERN KITCHEN,

Plaintiff,

v.

ERIE INSURANCE EXCHANGE,  
d/b/a ERIE INSURANCE,

Defendant.

) CIVIL DIVISION

) No.

) **COMPLAINT IN CIVIL ACTION**

) Code\_\_\_\_\_

) Filed on behalf of Plaintiff,

) NEAREST & DEAREST, LLC d/b/a

) WALTER'S SOUTHERN KITCHEN

) Counsel of Record for this Party:

) John E. Quinn, Esquire

) Pa. ID No. 23267

) Matthew T. Logue, Esquire

) Pa. ID No. 87416

) Tyler S. Setcavage, Esquire

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) QUINN LOGUE LLC

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) **ELECTRONICALLY FILED**

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

NEAREST & DEAREST, LLC d/b/a	)	CIVIL DIVISION
WALTER'S SOUTHERN KITCHEN	)	
	)	No.
Plaintiff,	)	
	)	
v.	)	
	)	
ERIE INSURANCE EXCHANGE,	)	
d/b/a ERIE INSURANCE,	)	
	)	
Defendant.	)	

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER GO TO OR TELEPHONE THE OFFICE SET FOR BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

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Telephone: (412) 261-5555

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NEAREST & DEAREST, LLC d/b/a	)	CIVIL DIVISION
WALTER'S SOUTHERN KITCHEN	)	
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ERIE INSURANCE EXCHANGE,	)	
d/b/a ERIE INSURANCE,	)	
	)	
Defendant.	)	

**COMPLAINT**

AND NOW, comes Plaintiff by and through its undersigned counsel and file the following averments in support of the Complaint in Civil Action against Defendant, Erie Insurance:

1. Plaintiff, Nearest & Dearest, LLC d/b/a Walters Southern Kitchen (hereinafter referred to as "Walters") is owner and operator of a bar and restaurant located at 4501 Butler Street, Allegheny County, Pittsburgh, Pennsylvania 15201.
2. Defendant, Erie Insurance Exchange d/b/a Erie Insurance, (herein referred to as "Erie Insurance") is a corporation with its principle place of business located at 100 Erie Insurance Place, Erie County, Erie, Pennsylvania 16530.
3. Venue and jurisdiction are proper in this Honorable Court as Erie Insurance conducts substantial business within Allegheny County, Pennsylvania and the applicable contract of insurance at issue was signed in Allegheny County, Pennsylvania.
4. Plaintiff incorporates the paragraphs not included within this section to have the same force and effect as though included herein.

5. Plaintiff paid valuable consideration to Erie Insurance and in exchange, received an “Ultrapack Plus” all-risk policy (herein identified as the “Policy”) Plaintiff’s Policy is attached to this Complaint as Exhibit “A.”<sup>1</sup>

6. Plaintiff’s “Covered Property” is a restaurant located in the Lawrenceville, neighborhood of Pittsburgh, Pennsylvania

7. Plaintiff’s Policy period began on December 29, 2019 and ends on December 29, 2020.

8. Plaintiff’s Policy is an “all-risk” policy that includes coverage for loss of use, damage to covered property and includes loss of income extra expense coverage and civil authority coverage.

***Insuring Policy Agreements: “named peril” & “all-risk”***

9. *Arguendo*, there are two types of insurance policies: “*named peril*” and “*all-risk*.”

10. Named peril policies cover only the specific perils listed within the policy.

11. Upon information and belief, a reasonable person is able to pick from specific perils that might effect his or her property such as flooding or fire.

12. An insured’s selection of a named peril policy allows an insured to pay only the policy premiums calculated to provide coverage for risks that the insured contemplates.

13. Selection of a named peril policy allows the insured to weigh the risks and determine for themselves which risk(s) are reasonable to insure through payment of policy premiums.

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<sup>1</sup> As cited, the Policy language used within this Complaint should be given the same meaning is if it was found within the Policy itself or in congruence with Pennsylvania law where required.



14. The obvious downside to named peril policies is the fact that insurance is only provided against specific types of risks; there is no presumption that “all-risk” is covered.

15. Like the name implies, *all-risk policies* cover all risks, with the exception of specified exclusions.

16. Contrary to a named-peril policy, all-risk policies designate specific *exclusions* rather than risks.

17. All-risk policies can contain a wide range of exclusions that differ policy to policy.

18. It is believed and therefore averred that all-risk policies present greater risk of loss to underwriting insurance companies due to risks being somewhat variable in nature.

19. Upon information and belief, insurance companies such as Defendant conduct rigorous research and bear significant cost attempting to quantify and calculate such risk because it is profitable.

20. Upon information and belief, insurance companies such as Defendant, collect policy premiums and obtain a profit based on its quantifications and calculations of risk.

21. The quantification and calculations of risk conducted by Defendant fall far beyond the capacity of a reasonable person.

22. Upon information and belief, typical “risk assessment” in the modern era is comprised of complex algorithms (most of which are patented) used to gauge risk patterns by using *inter alia*, various statistics and physical measurements of human behavior.

23. It is believed and therefore averred that as practiced by the insurers and Defendant alike, patented “risk assessments” are impossible for the reasonable person to conduct prior to purchasing insurance.

24. However, such patented risk assessment is not impossible for insurance companies such as Defendant and in fact, it is believed and therefore averred that a significant portion of Defendant's and other insurance companies' budgets is dedicated to this very practice.

***Insuring Policy Agreements: Calculated and Anticipated Risks***

25. Insurance companies like Defendant are well aware that loss of use due to threat of damage to a property can constitute a direct physical loss as defined in the policy *sub judice*.

26. Consistent court decisions have held that physical loss or damage does not require that the physical loss or damage be tangible, structural or even visible.

27. For instance, in *Motorists Mutual Insurance Company v. Hardinger*, the Court of Appeals for the Third Circuit ruled that presence of bacterium on property could constitute direct physical loss triggering payment under all-risk policies. 131 Fed. Appx. 823, 826-27 (3rd Cir. 2005), *see also Port Auth. of N.Y. & N.J. v. Affiliated FM Ins. Co.*, 311 F.3d 226 (3d Cir. 2002).

28. Similarly, in *Port Auth. of N.Y. & N.J. v. Affiliated FM Ins. Co.*, the Court of Appeals found that the release of asbestos that resulted in loss of function or utility of the building or made the building useless or uninhabitable constituted physical loss or damage to be persuasive. 311 F.3d 226 (3rd Cir. 2002).

29. Further, *Hardinger* was decided following the Severe Acute Respiratory Syndrome (SARS) pandemic in 2002-2004; following the Court of Appeals' decision, there is significant evidence that all-risk insurers, such as Defendant researched and drafted various

exclusionary policy language that sought to exclude all-risk coverage for viral and bacterial losses.

30. Indeed, on July 6, 2006, the Insurance Services Office (ISO) issued recommended endorsements for the industry to “address exclusion of loss due to virus or bacteria.” The ISO recommendations and endorsements are attached hereto as Exhibit “B.”

31. By 2007, insurance companies including Defendant Erie Insurance, were aware that viruses and bacteria could constitute “direct physical ‘loss’ or damage” under all-risk policies.

32. By 2007, insurance companies including Defendant Erie Insurance, were aware that viruses and bacteria needed to be specifically excluded from all-risk policies in order for coverage determinations to be made without ambiguity.

33. Ambiguity is another “risk” for insurers underwriting all-risk policies.

34. Courts have consistently held that ambiguity in all-risk insurance policies is interpreted against the insurer. *See e.g. Budtel Associates, LP v. Continental Cas. Co.*, 915 A.2d 640 (Pa. Super. 2006).

35. To avoid ambiguities being held against them, insurers have a duty to provide specific exclusions within all-risk policies should they seek to deny coverage for ‘loss’ or damage by and contemplated risk, such as a virus or bacteria.

36. Plaintiff believes the aforementioned is demonstrable evidence that Defendants, as well as other insurers, had fully contemplated the meaning of “direct physical ‘loss[es] or damage’” to include presence of a virus or dangerous bacteria and was aware of the availability of exclusionary language it could use to prevent coverage for such claims.

37. In addition to what Defendant Erie Insurance had already contemplated at the time of issuing the Policies, it claims handling is governed by the Pennsylvania Unfair Insurance Practices Act, 40 P.S. § 1171.1, *et seq.*

38. Pursuant to the Unfair Insurance Practices Act, insurers such as Defendant Erie Insurance, must forego the following claims practices:

(iv) Refus[al] to pay claims without conducting a reasonable investigation based upon all available information.

(xiv) Fail[ure] to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(xv) Refus[e] payment of a claim solely on the basis of an insured's request to do so unless:

- (a) The insured claims sovereign, eleemosynary, diplomatic, military service, or other immunity from suit or liability with respect to such claim;
- (b) The insured is granted the right under the policy of insurance to consent to settlement of claims; or
- (c) The refusal of payment is based upon the insurer's independent evaluation of the insured's liability based upon all available information.

40 P.S. § 1171.5(a)(10)(iv & xiv-xv) *et seq.*

***Insuring Policy Agreements: Plaintiff's all-risk policy***

39. Plaintiff's Policy is an all-risk policy. Therefore, it provides broad coverage for all risks that are not specifically excluded or limited within the policy.

40. Defendant's insuring agreement provides:

**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 a peril insured against.**

Exhibit "A" at p.12.

41. "Loss" is a defined term in the policy:

- **"Loss" means direct and accidental loss of or damage to covered property.**

Exhibit "A" at p.47.

42. In this case, Plaintiff sustained a "direct" physical loss; therefore the phrase "[A]nd accidental" can be removed from the sentence to simplify its meaning.

**"Loss" means direct and accidental loss of or damage to covered property.**

*See Id.*

43. In the remaining sentence: "'Loss' means direct loss of or damage to covered property," "of" and "damage to" both refer to the noun, "covered property."

44. Notwithstanding Plaintiff's losses, the policy covers both "loss of" and "damage to coverage property."

45. If Plaintiff's policy required physical damage to be present, it would read: "loss of" *and* "damage to covered property."

46. Instead, the sentence in the policy contains the word "or" instead of "and."

47. Therefore, Plaintiff's policy does not require physical damage to be present. Instead, it also covers "loss of...covered property:"

**"Loss" means direct [redacted] loss of ~~or~~ damage to covered property.**

*See Id.*

48. Because "loss of covered property is not defined further, the remaining sentence retains some ambiguity: "Loss' means direct loss of covered property."

49. Plaintiff posits that this vague and ambiguous sentence can only be interpreted to mean the Defendant Erie Insurance intended to also insure against loss of "use" of his property, rather than just physical damage alone.

50. As mentioned in Plaintiff's "Calculated and Anticipated Risks," Courts in Pennsylvania have traditionally held that loss of use constitutes physical damage and that bacteria and/or viruses constitute physical damage.

51. Notwithstanding the Courts' prior positions or definitions of physical damage and loss of use, Plaintiff believes and therefore aver that the Insuring Agreement as cited is ambiguous and thus, should interpreted in favor of the insured.

52. Plaintiff's Policy did not only cover the physical condition of the property, but also insured against loss of income.

53. In pertinent part, Defendant's loss of income protection policy states:

**INCOME PROTECTION - COVERAGE 3**

**A. Income Protection Coverage**

Income Protection means loss of "income" and/or "rental income" you sustain due to partial or total "interruption of business" resulting directly from "loss" or damage to property on the premises described in the "Declarations" from a peril insured against. "Loss" or damage also includes covered property in the open, or in a vehicle, on the premises described in the "Declarations" or within 1,500 feet thereof.

If you are a tenant, your premises are the portion of the building described in the "Declarations" which:

1. You rent, lease, or occupy;
2. All routes within the building that service or are used to gain access to the described premises; and
3. The area within 1,500 feet of the premises described in the "Declarations" (with respect to "loss" or damage to covered property in the open or in a vehicle).

You are required to resume normal business operations as promptly as possible and shall use all available means to eliminate any unnecessary delay.

*Id.* at 14.

54. Plaintiff's policy also covers "peril[s] insured against [that] caus[e] damage to property other than property at the premises...caused by action of civil authority that prohibits access to the premises..."<sup>2</sup> (hereinafter referred to as "civil authority" coverage):

**C. Additional Coverages**

**1. Civil Authority**

When a peril insured against causes damage to property other than property at the premises described in the "Declarations", we will pay for the actual loss of "income" and/or "rental income" you sustain and necessary "extra expense" caused by action of civil authority that prohibits access to the premises described in the "Declarations" provided that both of the following apply:

- a. Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the premises described in the "Declarations" are within that area but are not more than one mile from the damaged property; and
- b. The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the peril insured against that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

*Id.* at 15.

55. As an all risk policy, The Plaintiff's Policy contains specific endorsements and exclusions, but the policy does not exclude coverage from "loss' or damage" stemming from a virus, including Coronaviruses, "SARS-cov-2" or COVID-19.

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<sup>2</sup>Section I—Coverages, *Income Protection—Coverage 3*, C.1., "Civil Authority," Exhibits "A", p.4.]



56. Importantly, although it fails to address loss or damage stemming from a virus, Plaintiff's Policy does contain an exclusion specifically for fungi and bacteria.

***The Coronavirus Pandemic***

57. From the first reported case in the United States in January 2020 to the present, the impact of COVID-19 has been staggering on life and property.

58. As of February 26, 2020, the Centers for Disease Control and Prevention (the "CDC") warned that community transmission of the disease existed in the United States. COVID-19 was spreading with no ability to trace the origins of new infections.<sup>3</sup> Moreover, the nature of the novel coronavirus that causes COVID-19 has made its containment particularly challenging. Numerous scientific studies and articles have identified that the virus spreads when droplets from an infected person land on objects and surfaces and then, after contact with the infected object and surfaces, other individuals touch their eyes, nose or mouth.

59. Unlike many other viruses that are unable to survive for long periods of time outside the body, COVID-19 is remarkably resilient and can survive on surfaces for days and even weeks. For instance, the CDC reported that COVID-19 was identified on surfaces on the Diamond Princess cruise ship 17 days after cabins were vacated.<sup>4</sup>

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<sup>3</sup> CDC Confirms Possible Instance of Community Spread of COVID-19 in the U.S., CDC Newsroom, available at <https://www.cdc.gov/media/releases/2020/s0226-covid-19-spread.html>.

<sup>4</sup> Public Health Responses to COVID-19 Outbreaks on Cruise Ships—Worldwide, February—March 2020, CDC Morbidity and Mortality Weekly Report (March 27, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

60. COVID-19 is not only highly contagious, but also deadly. Even though testing has been severely limited, more than 7 million Americans have confirmed cases of COVID-19 and more than 200,000 have died according to the CDC.

61. Due to the COVID-19 pandemic, the Governor of Pennsylvania, Tom Wolf issued a “Proclamation of Disaster Emergency” on March 6, 2020, which stated in relevant part: “COVID-19 is a disease capable of causing severe symptoms or loss of life...[and] constitutes a threat of imminent disaster to the health of the citizens of the Commonwealth....”

62. On March 19, 2020, the Governor formally closed all non-life sustaining businesses.

63. On March 23, 2020, Governor Wolf issued a “stay at home” order directed to individuals within the Commonwealth.<sup>5</sup>

64. The aforementioned “closure orders” were the result of and directly followed the discovery of the COVID-19 virus within the Allegheny County and other counties in Pennsylvania.

65. The scientific community, as well as the Pennsylvania Supreme Court, Governor Wolf and the Pennsylvania Department of Health, recognized COVID-19 as a cause of physical loss and damage to property.

66. The Pennsylvania Supreme Court has concluded that the COVID-19 pandemic is a natural disaster resulting in substantial damage to property, hardship,

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<sup>5</sup> The orders referred to herein and signed by Governor Wolf are referred to herein as “closure orders.”

suffering, and/or possible loss of life. *See Friends of DeVito v. Wolf*, 2020 WL 1847100, at \*12 (Pa. April 13, 2020).

67. Our Supreme Court further concluded that any location where two or more people can congregate is a disaster area causing substantial damage to property as COVID-19 spreads “primarily through person-to-person contact, has an incubation period of up to fourteen days, one in four carriers of the virus are asymptomatic, and the virus can live on surfaces for up to four days. *Id.* at \*13.

***Plaintiff's Insurance Claim***

68. As a result of the closure orders and presence of the virus on the Plaintiff's covered property, the Plaintiff has been forced to halt ordinary operations, resulting in substantial lost revenues and forcing the Plaintiff to make tough financial decisions.

69. Following the March 19, 2020, closure order, in anticipation of the loss of the use of the property, the Plaintiff submitted a claim to the Defendant as required within the Policy.

70. Upon information and belief, at the time the claim was made, Plaintiff's business, as well as the surrounding homes and businesses within a one-mile radius, were contaminated with the COVID-19 virus.

71. In fact, at some time after March 19, 2020, Plaintiff was notified by “contact-tracers” that the covered property was contaminated by guests who tested positive for COVID-19.

72. The filing of a claim by Plaintiff not only triggered Defendant's contractual obligations under the Policies attached, but also Pennsylvania law as outlined herein.

73. At the time of the closure orders and submission of Plaintiff's claim, the actual number of COVID-19 cases within Allegheny County and elsewhere in the state and nation was relatively unknown due to the lack of testing abilities, symptoms, and other factors outside of the parties' control.

74. In addition to the notification received from contact tracers, it is believed and therefore averred that Plaintiff's owners were in contact with individual(s) and/or areas that were discovered thereafter to be contaminated with COVID-19.

75. After contact with the aforementioned cites and individuals, Plaintiff's owners returned to the covered property at issue.

76. Plaintiff believes and therefore avers that due to factors including the owners' own exposure to various contamination cites across the Commonwealth, Plaintiff's covered property was contaminated prior to notification from contact tracers.

77. It is believed and therefore averred that any "loss" conditions that existed upon closure of Plaintiff's business or subsequent to contact tracers' notification may now be untraceable.

***Defendant's Denial of Plaintiff's claim***

78. Notwithstanding the closure orders, applicable law and losses alleged herein, on March 23, 2020, Plaintiff received an immediate denial from the Defendant for the claim under its all-risk policy. The same denial letter was issued twice; a second time on April 1, 2020. The "denials" are attached hereto as Exhibits "C" & "D."<sup>6</sup>

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<sup>6</sup>Exhibit "C"—March 23, 2020 Denial Letter to Plaintiff;  
Exhibit "D"—April 1, 2020 Denial Letter to Plaintiff.

79. According to Defendant's letters "no direct physical loss" occurred on the property.

80. It is believed and therefore averred that due to the speed in which its denials were issued and failure of Defendant to physically test the covered property for presence of the virus, Defendants failed to complete a reasonable investigation in making its denials of coverage.

81. Instead, Defendant's idea of a reasonable investigation was a statement taken from owners shortly after the claim was initiated.

82. Oddly, Defendant's denials contained language preserving the Defendant's right to further investigation of the claims notwithstanding the apparent denial.<sup>7</sup>

83. The use of the language cited above (denying coverage but purporting to further investigate) was confusing to Plaintiff, as it appeared Defendant's coverage opinion was complete.

84. Defendant's apparent need to "continue" the coverage investigation as alleged has only the effect of allowing the Defendant to change its mind without consequence in the future, should Courts disagree with its all-risk policy interpretation to exclude coverage for viruses.

85. Defendant's denial explained that Defendant was going to ignore the express promises made within its policy to cover all-risks because it had reasoned that a "physical loss" had not occurred.<sup>8</sup>

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<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

86. In its denial of the claims described herein, Defendant alleged that Plaintiff had not provided enough information to Defendant for it to determine whether as a fact, the physical loss (i.e., physical contamination due to COVID-19) actually occurred.<sup>9</sup>

87. However, reasoning that a virus was not a “direct physical loss” directly contradicts Pennsylvania law and is inconsistent with the facts of this case.

88. It is believed and therefore averred that Defendant knew a virus could constitute a physical loss under an all-risk policy. And, therefore, Defendant concluded that the virus COVID-19, was not present on Plaintiff’s property or in fact *any property* asserting a claim for COVID-19 business interruption and/or civil authority coverage.

89. Defendant made the above assumptions and failed to conduct any additional investigation after contact tracing was performed and parties with COVID-19 were linked to Defendant’s covered property.

90. Due to the presence of COVID-19, Plaintiff sustained prolonged loss of use of the covered property.

91. Even if the virus were not initially present as claimed, “imminent loss” to property has been addressed by our Supreme Court in *401 Fourth Street, Inc. v. Investors Insurance Group*, 879 A.2d 166 (Pa. 2005).

92. In *401 Fourth Street*, the Court held that an imminent threat of a wall’s collapse was enough to trigger coverage for “direct physical loss.” *Id.* at 174.

93. Due to the presence of COVID-19, Plaintiff also sustained damage to the covered property.

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<sup>9</sup> See Exhibits “C” & “D”.

94. Nothing about the Defendant's denials suggested the denial was a result of viruses itself not qualifying as physical damage or "loss" but, instead Defendant's denial really suggested that Defendant knew the virus was not present on Plaintiff's property.

95. It is believed and therefore averred that Defendant did not conduct an independent investigation to determine whether Plaintiff's premises or any premises within 1 mile were in fact contaminated with COVID-19, instead they made the assumption that all of such were not contaminated, and summarily issued a refusals of payment to all COVID-19 claims, including but not limited to the Plaintiff's.

96. In addition to the failure to conduct any reasonable investigation into Plaintiff's claim, Defendant failed to offer or discuss any remediation solutions (such as professional cleaning) with the Plaintiff, prior to issuance of its denials.

97. Defendant's failure to conduct any investigation, its subsequent evaluation and refusal to release payment for Plaintiff's claim was in direct contravention of the language of the Pennsylvania Unfair Insurance Practices Act and served as a breach to the Policy agreements reached with the Plaintiff.

98. Upon information and belief, and just prior to the Plaintiff's claim, Defendant Erie Insurance circulated memorandums to its employees that provided the information contained in the aforementioned denials so that it could effectively deny all COVID-19 claims in a blanketed fashion.

99. The aforementioned denials were to be made with or the without the existence of an appropriate exclusion; if an exclusionary endorsement were present, it would be noted in the denial in addition to the attached policy.

100. In Plaintiff's Policy, no exclusion for virus or bacteria existed, even though such exclusions were contemplated by Defendant at the time the Policy began.

101. Defendant Erie Insurance is attempting to avoid payment for coverages that it knew its Policy vaguely included, but failed to issue any exclusionary endorsements to clarify the language to meet a reasonable business owner's understanding of the same.

102. In a blatant breach of its insurance obligations undertaken in exchange for Plaintiff's premium payments, Defendant Erie Insurance has denied Plaintiff's claim arising from the interruption of Plaintiff's business.

103. The denials as interpreted above, demonstrates Defendant's coordinated effort to exercise its policy obligations in bad faith.

104. As a result, Plaintiff now brings this action against Defendant Erie Insurance for its failure to honor its obligations under its contractual agreement and for its bad faith in exercise of its provisions, contrary to law.



**COUNT I—ANTICIPATORY BREACH OF CONTRACT**

105. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in all of the paragraphs within this Complaint.

106. Plaintiff provided prompt notice of its losses, performed all obligations required of them under the Policy and were ready, willing and able to perform its obligations under the Policy.

107. The anticipatory breach occurred when the Defendant Erie Insurance repudiated its contractual obligations by declaring an unconditional intent not to perform the Policy according to its terms.

108. Under the terms of the Policy, Defendant Erie Insurance must pay up to the Policy's limits of insurance for any loss covered under the Policy, subject only to sub-limits, time limits or deductibles for specific coverages.

109. Defendant Erie Insurance has not paid any or all amounts due to Plaintiff in connection with its claim; instead, Defendant has asserted various inapplicable bases in support of its wrongful denial of coverage.

110. As a direct and proximate result of the Defendant's anticipatory breach of contract, the Plaintiff has suffered and will continue to suffer damages in an amount to determined at trial, plus consequential damages, and interest to the extent permitted by law.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment in its favor and against Defendant in an amount in excess of the limits for compulsory arbitration, in addition to costs, interest and such other relief as this Honorable Court may deem appropriate.

## **COUNT II—BREACH OF CONTRACT**

111. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in all of the paragraphs within this Complaint.

112. The Policy is an insurance contract under which Defendant Erie Insurance was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy, such as business losses incurred as a result of the virus's presence and government orders forcing them to close their businesses.

113. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums in exchange for coverage and yet, Defendant Erie Insurance has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

114. To the extent and ambiguity does exist, the ambiguity should be resolved in the Plaintiff's favor.

115. By denying coverage for any business losses incurred by Plaintiff in connection with the closure orders and the COVID-19 pandemic, Defendant Erie Insurance has breached its coverage obligations under the Policy.

116. As a result of Defendant's breach of the Policy, Plaintiff has sustained substantial damages for which Defendant is liable, in an amount in excess of Allegheny County's arbitration limits.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment in its favor and against Defendant in an amount in excess of the limits for compulsory arbitration, in addition to costs, interest and such other relief as this Honorable Court may deem appropriate.

### **COUNT III—BAD FAITH**

117. Plaintiff incorporates by reference, as if fully set forth herein, all of the paragraphs within this Complaint.

118. Upon receipt of the receipt of the COVID-19 claims, Defendant immediately denied the claims without conducting any investigation, let alone a “reasonable investigation based on all available information” as required under Pennsylvania law. *See* 40 P.S. § 1171.5(a)(10)(iv).

119. Defendant’s denials were vexatious and unreasonable.

120. Defendant’s denials constitute “improper claims practices” under Pennsylvania law and more specifically those enumerated within 40 P.S. § 1171.5(a)(10)(iv & xiv-xv) *et seq.*

121. As a result of Defendant’s bad faith conduct, Plaintiff is entitled to:

- a. an award of interest on the amount of the claim from the date the claim was made by the Defendant in an amount equal to the prime rate of interest plus three percent;
- b. an award of punitive damages against defendant; and
- c. repayment of court costs and attorney’s fees.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter judgment in its favor and against Defendant in an amount in excess of the limits for compulsory arbitration, in addition to costs, interest and such other relief as this Honorable Court may deem appropriate.

Respectfully submitted,

QUINN LOGUE LLC

By:



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Pa ID No. 23267

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Pa ID No. 87416

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*Counsel for Plaintiff*

Date: September 24, 2020

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

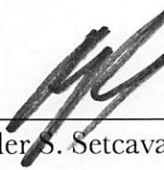
NEAREST & DEAREST, LLC d/b/a	)	CIVIL DIVISION
WALTER'S SOUTHERN KITCHEN	)	
	)	No.
Plaintiff,	)	
	)	
v.	)	
	)	
ERIE INSURANCE EXCHANGE,	)	
d/b/a ERIE INSURANCE,	)	
	)	
Defendant.	)	

**VERIFICATION**

I am an attorney of record for Plaintiff and am authorized to make this verification on their behalf; the facts set forth in the foregoing Complaint in Civil Action are true and correct to the best of my knowledge, information, and belief and Plaintiff will file their verification to the foregoing Complaint in Civil Action by way of a Praecipe to Substitute Verification. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

9-24-2020

Date

  
\_\_\_\_\_  
Tyler S. Setcavage, Esquire

## Ultrapack Plus Policy Declarations

### Renewal Certificate

**Mailing Name and Address for Insured:**

WALTERS  
NEAREST AND DEAREST LLC D/B/A  
4501 BUTLER ST  
PITTSBURGH PA 15201-3013



AA5545

**Other Interest:**

As Listed Below

**Named Insured's Full Name:**

WALTERS  
NEAREST AND DEAREST LLC D/B/A

**Agent:**

AA5559 WILSON & ASSOCIATES IPM

**Policy Period:**

08/31/2019 to 08/31/2020

**Policy Number:**

Q971915981

**Agent Address and Phone**

WILSON & ASSOCIATES IPM  
1079 GREENTREE RD STE 5  
PITTSBURGH PA 15220-3122  
412-306-7740

Policy begins at 12:01 A.M. standard time on the effective date and ends at 12:01 A.M. standard time on the expiration date. Standard time is determined at the stated address of the named insured.

The insurance applies to those premises described below. This is subject to all applicable terms of the policy and attached forms and endorsements.

## Premium Summary

**Total Annual Policy Premium:**

\$12,323.00

(This is not a bill. Your invoice will follow in a separate mailing.)

## Property Protection - As Per Attached Supplemental Declarations

### Deductible (Property Protection Only) \$1,000

## Policy-Level Coverages

### Liability Protection

### Limits of Insurance

#### Commercial General Liability Limits of Insurance

Each Occurrence Limit	\$1,000,000
Damage to Premises Rented to You	\$1,000,000 Any One Premises
Medical Expense limit	\$5,000 Any One Person
Personal & Advertising Injury Limit	\$1,000,000 Any One Person or Organization
General Aggregate Limit	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000

Processed On: 08/01/2019 (See Reverse Side)



Insured Name: WALTERS  
Policy Number: Q971915981  
Policy Period: 08/31/2019 to 08/31/2020

Page 2 of 6

## Optional Coverages

## Deductible

## Amount of Insurance

### Policy-Level Optional Coverages:

#### Property and Inland Marine - Optional Coverages:

Terrorism

Included

#### General Liability - Optional Coverages:

Additional Insured-Managers or Lessors of Premises (CG2011)

#### Other Optional Coverages:

Enhancement Endorsement-Restaurants

## Supplemental Declarations

### Location 1 / Building 1

**Address:**

4501 BUTLER ST  
PITTSBURGH PA 15201-3013  
**County:** Allegheny

**Occupancy/Operations:**

Family Style - American Cuisine - Restaurant

**Interest of Named Insured In Such Premises:** Tenant/Entire

Coverage	Deductible	Amount of Insurance
<b>Property Protection</b>		
1. Buildings - Replacement Cost	Property Deductible	BLANKET
2. Business Personal Property and Personal Property of Others Replacement Cost Theft Exclusion Applies: No	Property Deductible	BLANKET
3. Income Protection & Extra Expense Blanket Coverage - Buildings and Contents - All Locations Protective Safeguard Condition: Central Station Fire Alarm System Protective Safeguard Condition: Central Station Burglar Alarm System Protective Safeguard Condition: Automatic Sprinkler System Protective Safeguard Condition: Automatic Extinguishing System  Automatic Adjustment of Building Coverage - 4%  Automatic Adjustment of Business Personal Property and Personal Property of Others Coverage - 2%		Actual Loss Sustained 12 Months \$926,000
<b>Property and Inland Marine - Optional Coverages:</b>		
Electronic Data Processing Endorsement	\$200	\$14,000
Liquor Liability Endorsement Liquor Receipts - \$510,000		\$1,000,000 Each Common Cause/ \$2,000,000 Aggregate

## Location/Building-Level Additional Interests

**Other Interest - First Mortgagee**

HUNTINGTON NATIONAL BANK  
PO BOX 341470  
COLUMBUS OH 43234  
Location-1 Building-1

## Policy-Level Additional Interests

**Additional Insured - Managers or Lessors of Premises**

MICHAEL ZAGAS  
2609 FOUNTAIN HILLS DR  
WEXFORD PA 15090-7815



## Schedule of Static Forms

Form Number	Edition Date	Description
	/	
UPP	01/10	ULTRAPACK PLUS POLICY
PK0001	09/18 *	ULTRAPACK PLUS COMMERCIAL PROPERTY COVERAGE PART
PKAO	01/10	ELECTRONIC DATA PROCESSING COVERAGE
PKAX	01/10	PRODUCTION OR PROCESS MACHINERY - DEDUCTIBLE
PKJK	09/18 *	RESTAURANTS ENHANCEMENT ENDORSEMENT
CL0209	11/10	IMPORTANT NOTICE - LEAD LIABILITY EXCLUSION
CL0212	11/10 *	IMPORTANT NOTICE - POLICY SERVICE FEES
CL0217	11/10 *	IMPORTANT NOTICE - NO FLOOD COVERAGE
PKGP	01/10	AMENDMENT OF MOBILE EQUIPMENT DEFINITION
PKGT	01/10	AMENDMENT OF OCCURENCE DEFINITION FOR SUBCONTRACTED WORK
PKRG	01/10	PENNSYLVANIA AMENDATORY ENDORSEMENT - LOSS PAYMENT CONDITION
PKRH	01/10	PENNSYLVANIA AMENDATORY ENDORSEMENT - CONDITIONS
PK0003	07/16	ULTRAPACK PLUS EXTRA LIABILITY COVERAGES
CG0001	04/13	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CG0033	04/13	LIQUOR LIABILITY COVERAGE FORM
CG0099	11/85	CHANGES IN GENERAL LIABILITY FORMS FOR COMMERCIAL PACKAGE POLICIES
CG2011	04/13	ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES
CG2147	12/07	EMPLOYMENT-RELATED PRACTICES EXCLUSION
CG2167	12/04	FUNGI OR BACTERIA EXCLUSION
UFB213	11/12 *	SUBSCRIBER'S AGREEMENT
CG2170	01/15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
CG2196	03/05	SILICA OR SILICA-RELATED DUST EXCLUSION
PKGL	12/14	PUNITIVE DAMAGES COVERAGE
CL0396	01/17	IMPORTANT NOTICE - DATA BREACH RESPONSE EXPENSES COVERAGE
CG2106	05/14	EXCL-ACCESS OR DISCLOSURE OF CONFIDENT OR PERS INFO AND DATA-RELATED LIAB - WITH LIMIT BOD INJ EXCEP
CG2109	06/15	EXCLUSION - UNMANNED AIRCRAFT
IL0017	11/98	COMMON POLICY CONDITIONS
IL0021	09/08	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)
IL0910	07/02	PENNSYLVANIA NOTICE
IL0952	01/15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
IL985F	01/15 *	DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT
IL0246	09/07	PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL
PKMJ	01/10	EXCLUSION - LEAD LIABILITY
PKMD	01/10	EXCLUSION - ASBESTOS
PKMQ	12/14	EXCLUSION - PROFESSIONAL LIABILITY
PKRO	01/10	AMENDMENT OF POLICY - TWO OR MORE COVERAGE PARTS

Home Office • Erie, PA 16530  
Your Agent:



CLAIMS DIRECTORY


-- FOLD --

**IN THE EVENT OF AN ACCIDENT OR LOSS**

- Help any injured. Get names, addresses, auto license plate numbers of involved, including all witnesses.
- Do not discuss an accident with anyone except the police or our representative.
- Protect your auto and any property from further damage.
- Promptly call the police if someone is injured, damage is extensive, or in case of theft. In case of "hit-and-run", you must report the accident to the police within 24 hours or as soon as possible.
- Notify your Agent or ERIE of the accident or loss.

The ERIE is Above All in SERVICE®.

If we fail to give you this promised service, please drop us a note or call us on our toll-free number and tell us about it.

  
President and  
Chief Executive Officer

CUT ON DOTTED LINE

ENTRAPPED AND NO

Home Office • Erie, PA 16530  
Your Agent:



CLAIMS DIRECTORY

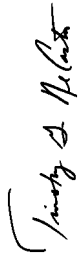
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President and  
Chief Executive Officer

**CLAIM SERVICE** -- For claim service anywhere in U.S. or Canada, call your Agent or, using the list below, call the Claim Office nearest your home.

State	Office	Call Toll Free	State	Office	Call Toll Free
DC	Silver Spring	1-800-492-2709	PA	Allentown/Beth	1-800-322-9026
IL	Peoria	1-888-335-3743		Erie	1-877-771-3743
IN	Fort Wayne	1-800-892-5655		Home Office (Erie)	1-800-458-0811
	Indianapolis	1-800-624-1620		Harrisburg	1-800-382-1304
KY	Lexington	1-877-589-3743		Johnstown	1-800-241-4209
MD	Silver Spring	1-800-492-2709		Murrysville	1-800-553-3367
	Hagerstown	1-800-533-5602		Philadelphia	1-800-821-2902
NC	Charlotte	1-800-473-3882		Pittsburgh	1-800-922-1824
	Raleigh	1-800-533-3982	TN	Knoxville	1-888-922-3743
NY	Rochester	1-800-333-0823	VA	Richmond	1-800-322-3743
OH	Canton	1-800-362-6541		Roanoke	1-800-533-3743
	Columbus	1-800-282-1702		Waynesboro	1-800-542-2250
			WI	Waukesha	1-877-740-3743
			WV	Parkersburg	1-800-642-1948

**Our phones answer 24/7!**

**To report a claim, call:**

- Your Agent
- ERIE Claims Service: **1-800-367-3743**
- ERIEGlass<sup>SM</sup> (Auto glass only): **1-800-552-ERIE**
- ERIERoad Service: **1-888-295-5060**
- FRAUD FINDERS<sup>®</sup> (To report fraud): **1-800-368-6696**

**CLAIM SERVICE** -- For claim service anywhere in U.S. or Canada, call your Agent or, using the list below, call the Claim Office nearest your home.

State	Office	Call Toll Free	State	Office	Call Toll Free
DC	Silver Spring	1-800-492-2709	PA	Allentown/Beth	1-800-322-9026
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			WI	Waukesha	1-877-740-3743
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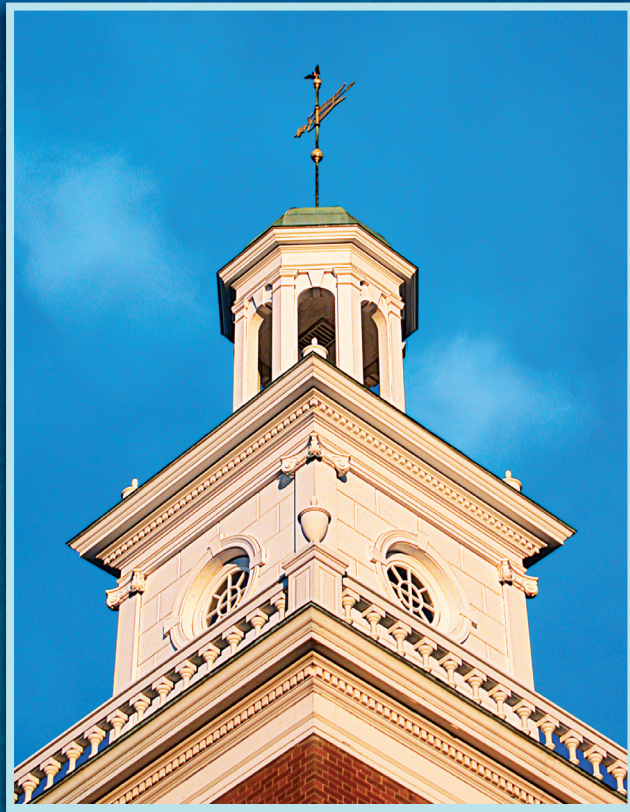
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CUT ON DOTTED LINE

CUT ON DOTTED LINE



# Ultrapack<sup>SM</sup> Plus Policy



Erie  
Insurance®

Member Companies

Erie Insurance Exchange • Erie Insurance Property & Casualty Company



## ULTRAPACK PLUS POLICY

ERIE INSURANCE GROUP is proud to present this policy. This important contract between YOU and The ERIE consists of this policy with coverage agreements, definitions, and conditions, a Declarations, plus any endorsements. We urge YOU to read it.

The protection given by this policy is in keeping with the single purpose of our Founders: "To provide YOU with as near PERFECT PROTECTION, as near PERFECT SERVICE, as is humanly possible, and to do so at the LOWEST POSSIBLE COST."

## AGREEMENT

### ERIE INSURANCE EXCHANGE

In return for your timely premium payment, your compliance with all of the provisions of this policy, and your signing of a "Subscriber's Agreement" with Erie Indemnity Company and other Subscribers, we agree to provide the coverages you have purchased. Your coverages and limits of protection are shown in the Declarations, which are part of this policy.

Your signing the "Subscriber's Agreement", which includes a limited power-of-attorney, permits Erie Indemnity Company, as Attorney-in-Fact, to make reciprocal insurance contracts between you and other Subscribers and otherwise manage the business of the Erie Insurance Exchange. This power-of-attorney applies only to your insurance business at the Exchange and is limited to the purposes described in the "Subscriber's Agreement".

Your responsibility as a "Subscriber" is determined by this policy and the "Subscriber's Agreement". You are liable for just the policy premiums charged and are not subject to any other premium liability under the policy.

This agreement is made in reliance on the information you have given us and is subject to all of the terms of this policy.

This policy, all endorsements to it, and the "Subscriber's Agreement" constitute the entire agreement between you and us.

### ERIE INSURANCE PROPERTY AND CASUALTY COMPANY

In return for your timely premium payment and your compliance with all of the provisions of this policy, we agree to provide the coverages you have purchased. Your coverages and limits of protection are shown in the Declarations, which are part of this policy.

This agreement is made in reliance on the information you have given us, and is subject to all of the terms of this policy.

This policy and all endorsements to it constitute the entire agreement between you and us.

## DEFINITIONS

### ADDITIONAL ERIE INSURANCE EXCHANGE DEFINITIONS

The following words have this special meaning in policies issued by *Erie Insurance Exchange* when they appear in quotes.

- "Subscriber" means the person who signed, or the partnership, firm or corporation that authorized the signing of, the application for this policy.

- "Subscriber's Agreement" means the agreement, including a limited power-of-attorney among the Subscribers and the Erie Indemnity Company, as Attorney-in-Fact.

## GENERAL POLICY CONDITIONS

### 1. AUTOMATIC RENEWAL POLICY

Your policy will be automatically renewed at the end of the policy period, unless terminated by you or us in accordance with the steps explained in the Cancellation Condition.

Each year, we will send you a Renewal Certificate which shows the premium due for the next policy period.

This is a service that we provide for you so that your insurance protection does not stop.

If you do not want the renewal policy, you must mail our Agent or us written notice in advance of the new policy period. If you do not notify us, your policy remains in effect. You must pay us the earned premium due us for this time.

## 2. CANCELLATION

### Your Right to Cancel or Refuse Renewal

You may cancel this policy or any coverage by mailing or delivering to our Agent or us written notice stating at what future date you want the cancellation to take effect. We may waive these requirements by confirming the date of cancellation to you in writing.

### Our Right to Cancel or Refuse to Renew

We may cancel or refuse to renew by mailing you written notice stating the effective date of our action. Our action will comply with the laws of the state in which your principal office is located. The cancellation will not take effect until at least 30 days (Maryland - 45 days, except for nonpayment of premium - 30 days) after we send it. For states that require a different number of days for notification of cancellation or non-renewal, or specify the reasons for cancellation or non-renewal, an Amendatory Endorsement is attached.

We reserve the right to cancel for your non-compliance with our premium payment plans. We do not waive our right to cancel, even if we have accepted prior late payments.

### Method of Giving Notice

Mailing notice to the address shown on the Declarations will be sufficient proof of notice. The policy period will end on the date and time stated in the notice.

### Return of Premium

If your policy is cancelled by you or us, we will return the pro rata unused share of your premium. Cancellation will be effective even if we have not given or offered the return premium.

## 3. CONCEALMENT, FRAUD OR MISREPRESENTATION

This entire policy is void if before or after a loss any insured has intentionally concealed or misrepresented any material fact or circumstance concerning this insurance.

In the event of a fraudulent claim, we will not make payment for the loss.

## 4. COOPERATION

You agree to cooperate with us by:

- a. truthfully completing and promptly returning questionnaires and audit forms about this insurance;
- b. permitting and helping with inspections and audits; and
- c. complying with specific recommendations to improve your risk.

## 5. HOW YOUR POLICY MAY BE CHANGED

This policy conforms to the laws of the state in which your principal office is located. If the laws of the state change, this policy will comply with these changes.

Your policy may be changed by asking us. Your request must contain enough information to identify you. Asking our Agent is the same as asking us. If we agree with your request, we will then issue an Amended Declarations.

We will give you the benefit of any change in coverage made by us, if it does not require additional premium. This change will be effective as of the date we implement the change for you in your state.

## 6. INCREASE IN HAZARD

Unless we agree beforehand, coverage is suspended if the hazard is substantially increased by any means within the control of the insured.

## 7. INSPECTION AND AUDIT

We have the right but are not obligated to:

- a. make inspections and surveys at any time;
- b. give you reports on the conditions we find; and
- c. recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to provide for the health or safety of workers or the public. We do not warrant that your property or operations are safe, healthful or in compliance with any law, regulation, code or standard. Inspections, surveys, reports or recommendations are for our benefit only.

This condition also applies to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

We may examine and audit your books and records at any time during or within three years after the policy period, as they relate to this insurance. No appeals or disputes regarding your premium will be permitted three years after your audit is completed.

## 8. OUR RIGHT TO RECOVER FROM OTHERS

After we make a payment under this policy, we will have the right to recover from anyone else held responsible. This right will not apply under Property Protection if you have waived it in writing prior to loss. Any insured is required to transfer this right to us, and do nothing to harm this right. Anyone receiving payment from us and from someone else for the same loss will reimburse us up to our payment.

## 9. POLICY ACCEPTANCE

By accepting this policy, you agree that the statements on the Declarations are accurate and complete and are based on the facts you have given us. This policy is issued in reliance on these facts.

## 10. PREMIUMS

The first Named Insured shown in the Declarations:

- a. is responsible for the payment of all premiums; and
- b. will be the payee for any return premiums we pay.

## 11. PRIORITY

At our option, this insurance will first protect you, and then others we protect.

## 12. TIME OF INCEPTION

If this policy replaces another policy ending at noon on the date of this policy, we will protect you as of that time.

## 13. 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 policy has been signed on our behalf at Erie, Pennsylvania by our President and Secretary. If required by law, it has been countersigned on the Declarations by our authorized Agent.

*Brian W. Bolash*

Secretary

*Timothy J. McCarty*

President

## ADDITIONAL ERIE INSURANCE EXCHANGE CONDITION

The following condition applies *only* to policies issued by *Erie Insurance Exchange*.

### 1. ACCOUNTING

Erie Indemnity Company may keep up to 25% of the premium written or assumed by Erie Insurance Exchange as compensation for:

- a. becoming and acting as Attorney-in-Fact;
- b. managing the business and affairs of Erie Insurance Exchange, its affiliates and subsidiaries; and
- c. paying general administrative expenses, including sales commissions, salaries, and other employment costs, the cost of supplies, and other administrative costs.

The rest of the premium will be placed on the books of the *Erie Insurance Exchange*. We will deposit or invest this amount as permitted by law. This amount will be used to pay losses, adjustment expenses, legal expenses, court costs, taxes, assessments, licenses, fees, and other governmental fines and charges, establishment of reserves and surplus, and reinsurance, and may be used for dividends and other purposes Erie Indemnity Company decides are to the advantage of the Subscribers.



Home Office • 100 Erie Insurance Place • Erie, PA 16530 • 814.870.2000  
Visit our website at [erieinsurance.com](http://erieinsurance.com)

UPP (Ed. 1/10) CL-0236

## ULTRAPACK PLUS COMMERCIAL PROPERTY COVERAGE PART

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 XI – Definitions** and **Section VIII – Extensions of Coverage**.

### SECTION I - COVERAGES

#### 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 a peril insured against.

#### BUILDING(S) - COVERAGE 1

##### A. Covered Property

Building(s) means buildings described in the "Declarations" and anything permanently attached. It also includes:

1. Building equipment and fixtures servicing the premises;
2. Personal property you have for the service and maintenance of the buildings and premises including, but not limited to the following:
  - a. Fire extinguishing equipment;
  - b. Outdoor furniture;
  - c. Floor coverings;
  - d. Appliances used for refrigerating, ventilating, cooking, dishwashing, or laundering; and
  - e. Flag poles and outdoor lights;
3. Vegetated roofs, including lawns, trees, shrubs, and plants which are part of a vegetated roof;
4. Glass which you own. The glass must be part of the building or in the building described in the "Declarations", including glass in wall cases.

Our payment for "loss" to glass will also include:

- a. Replacement of building glass with safety glazing materials when made necessary by an ordinance or building code;
  - b. Replacement of lettering, ornamentation, or burglar alarm foil;
  - c. Repair or replacement of frames;
  - d. Installation of temporary coverings; and
  - e. Removal of obstructions;
5. Exterior signs, lights, and clocks which you own. Exterior signs, lights, and clocks must be permanently

attached to buildings on the premises described in the "Declarations" or if unattached to the building, must be permanently mounted on the premises described in the "Declarations".

##### B. Property Not Covered

Building(s) does not apply to:

1. Fences, walks, and unattached outbuildings not described in the "Declarations", except as provided in Extensions of Coverage - **A.2.**;
2. Outdoor swimming pools and equipment pertaining thereto not described in the "Declarations", except as provided in Extensions of Coverage - **A.2.**;
3. Bulkheads, pilings, piers, wharves, or docks not described in the "Declarations";
4. Bridges, roadways, patios, or other paved surfaces;
5. Retaining walls that are not part of a building, or not described in the "Declarations";
6. The cost of excavations, grading, backfilling, or filling;
7. Trees, shrubs, lawns, and plants (other than trees, shrubs, lawns, and plants which are part of a vegetated roof), except as provided in Extensions of Coverage - **A.6.**;
8. Underground pipes, flues, or drains;
9. Land (including land on which covered property is located) or water; and
10. Property specifically insured in whole or in part by this or any other insurance.

##### C. Amount of Insurance

The most we will pay for "loss" or damage to any building described in the "Declarations" in any one occurrence is the applicable amount of insurance shown in the "Declarations" for that building subject to the applicable Automatic Adjustment of Coverage Amounts.

##### D. Automatic Adjustment of Coverage Amounts

This policy provides you with a guard against the effect of inflation on construction costs for Building(s) - Coverage 1.

We will keep track of costs and at the next policy period we will adjust the amount of your building coverage, if necessary. Your premium will be adjusted at each policy period to reflect any change in the amount of insurance.

During the policy period, if there is an increase in construction costs and a "loss" occurs, we will reflect the increase in the amount of insurance for Building(s) - Coverage 1 before making payment. The amount of increase in the amount of insurance will be:



1. The amount of insurance that applied to your covered building(s) on the most recent of: the policy inception date, the policy anniversary date, or any other policy change amending the amount 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 period or the effective date of the most recent policy change amending the amount of insurance to your covered building(s), divided by 365.

There will be no charge for this additional coverage.

If the amount of insurance shown in the "Declarations" for Building(s) - Coverage 1 is inadequate, these adjustments may not be sufficient to provide full recovery should a "loss" occur.

## **BUSINESS PERSONAL PROPERTY AND PERSONAL PROPERTY OF OTHERS - COVERAGE 2**

### **A. Covered Property**

Business Personal Property and Personal Property of Others means:

1. Personal property pertaining to your business, professional or institutional activities, including leased-property for which you are contractually responsible;
2. Personal property of others that is in your care, custody, or control;
3. Labor, materials, or services furnished or arranged by you on personal property of others;
4. Your use interest as a 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;
5. Exterior signs, lights, and clocks which you own or which are in your care, custody, or control and for which you are contractually responsible. Exterior signs, lights, and clocks must be permanently attached to the building on the premises described in the "Declarations" or if unattached to the building, must be permanently mounted on the premises described in the "Declarations";
6. Glass which is in your care, custody, or control and for which you are contractually responsible. The glass must be part of the building described in the "Declarations", including glass in wall cases.

Our payment for "loss" to glass will also include:

- a. Replacement of building glass with safety glazing materials when made necessary by an ordinance or building code;

- b. Replacement of lettering, ornamentation, or burglar alarm foil;
- c. Repair or replacement of frames;
- d. Installation of temporary coverings; and
- e. Removal of obstructions;

while in or on the described buildings, or in the open, or in a vehicle on the premises described in the "Declarations" or within 1,500 feet thereof.

Our payment for "loss" of or damage to personal property of others will only be made to the owner of the property.

### **B. Property Not Covered**

Business Personal Property and Personal Property of Others does not apply to:

1. "Automobiles" held for sale;
2. Vehicles or self-propelled machines (including "aircraft" or watercraft) that:
  - a. Can be licensed for use on public roads, except vehicles that are solely used to service the premises described in the "Declarations"; or
  - b. Are operated principally away from the premises described in the "Declarations".

This paragraph does not apply to:

- a. Vehicles or self-propelled machines or "automobiles" you manufacture, process, or warehouse;
- b. Vehicles or self-propelled machines, other than "automobiles", you hold for sale;
- c. Rowboats or canoes out of water at the premises described in the "Declarations"; or
- d. Trailers, but only to the extent provided for in the Extensions of Coverage - **B.21.**;
3. "Money" and "securities", except as provided in Extensions of Coverage - **B.4., B.6., B.9., and B.19.**;
4. Your property sold on installment or deferred payment plans after delivery to customers;
5. Household and personal articles of the insured, the insured's partners, members or managers of a limited liability company, the insured's officers, or the insured's employees, except as provided in Extensions of Coverage - **B.23.**;
6. Trees, shrubs, lawns, and plants, except as provided in Extensions of Coverage - **A.6.**;
7. Crops and growing crops while outside of buildings;
8. Contraband or property in the course of illegal transportation or trade;
9. "Electronic data" including the cost to research, replace, or restore the information on "electronic data" or magnetic media, except as provided in **Section IV - Additional Coverages - C.2.**;

We will cover "electronic data" which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning, or security systems.

10. The cost to research, replace, or restore the information on valuable papers and records, except as provided in Extensions of Coverage - **B.29**. Valuable papers and records include proprietary information; written, printed, or inscribed documents and records; including books, maps, films, abstracts, drawings, deeds, mortgages, card index systems, and manuscripts;
11. Fine arts, except as provided in Extensions of Coverage - **B.13**. Fine arts include paintings; etchings; pictures; tapestries; rare or art glass; art glass windows; valuable rugs; statuary; sculptures; antique furniture; antique jewelry; porcelains; and similar property of rarity, historic value, or artistic merit;
12. Animals, unless owned by others and boarded by you or if owned by you as stock while inside the building described in the "Declarations";
13. "Mobile equipment":
  - a. While being used or stored away from the premises described in the "Declarations"; or
  - b. While at or being transported to or from job sites away from the premises described in the "Declarations"; and
14. Property specifically insured in whole or in part by this or any other insurance.

#### **C. Amount of Insurance**

The most we will pay for "loss" or damage to business personal property and personal property of others on the premises described in the "Declarations" in any one occurrence is the applicable amount of insurance shown in the "Declarations" for Business Personal Property and Personal Property of Others on that premises.

#### **D. Automatic Adjustment of Coverage Amounts**

This policy provides you with a guard against the effect of inflation on costs for Business Personal Property and Personal Property of Others - Coverage 2.

We will keep track of costs and at the next policy period we will adjust the amount of your business personal property and personal property of others coverage, if necessary. Your premium will be adjusted at each policy period to reflect any change in the amount of insurance.

There will be no charge for this additional coverage.

If the amount of insurance shown in the "Declarations" for Business Personal Property and Personal Property of Others - Coverage 2 is inadequate, these adjustments may not be sufficient to provide full recovery should a "loss" occur.

### **INCOME PROTECTION - COVERAGE 3**

#### **A. Income Protection Coverage**

Income Protection means loss of "income" and/or "rental income" you sustain due to partial or total "interruption of business" resulting directly from "loss" or damage to property on the premises described in the "Declarations" from a peril insured against. "Loss" or damage also includes covered property in the open, or in a vehicle, on the premises described in the "Declarations" or within 1,500 feet thereof.

If you are a tenant, your premises are the portion of the building described in the "Declarations" which:

1. You rent, lease, or occupy;
2. All routes within the building that service or are used to gain access to the described premises; and
3. The area within 1,500 feet of the premises described in the "Declarations" (with respect to "loss" or damage to covered property in the open or in a vehicle).

You are required to resume normal business operations as promptly as possible and shall use all available means to eliminate any unnecessary delay.

#### **B. Extra Expense Coverage**

"Extra expense" coverage is provided at the premises described in the "Declarations".

"Extra expense" means necessary expenses you incur due to partial or total "interruption of business" resulting directly from "loss" or damage to property on the premises described in the "Declarations" from a peril insured against. "Loss" or damage also includes property in the open, or in a vehicle, on the premises described in the "Declarations" or within 1,500 feet thereof.

We will pay necessary actual and necessary "extra expenses" (other than the expense to repair or replace property) sustained by you to:

1. Avoid or minimize the "interruption of business" and to continue your business operations:
  - a. At the premises described in the "Declarations"; or
  - b. At replacement premises or at temporary locations, including:
    - 1) Relocation expenses; and
    - 2) Costs to equip and operate the replacement or temporary locations.
2. Minimize the "interruption of business" if you cannot continue your business operations to the extent it reduces the amount of loss that would have been payable under loss of "income" and/or "rental income".

We will not pay any "loss" or damage to your Building(s) or Business Personal Property and Personal Property of Others. We also will not pay the cost of research or any other expense to replace or restore your valuable papers and records or "electronic data". We will pay the cost to

repair or replace your covered property and the amount to research, replace, or restore the lost information on damaged valuable papers and records or "electronic data" to the extent it reduces the amount of loss that would have been payable under loss of "income" and/or "rental income".

### C. Additional Coverages

#### 1. Civil Authority

When a peril insured against causes damage to property other than property at the premises described in the "Declarations", we will pay for the actual loss of "income" and/or "rental income" you sustain and necessary "extra expense" caused by action of civil authority that prohibits access to the premises described in the "Declarations" provided that both of the following apply:

- a. Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the premises described in the "Declarations" are within that area but are not more than one mile from the damaged property; and
- b. The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the peril insured against 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 "income" and/or "rental income" will begin 72 hours after the time of the first action of civil authority that prohibits access to the premises described in the "Declarations" 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 premises described in the "Declarations" and will end:

- a. Four consecutive weeks after the date of that action; or
- b. When your Civil Authority coverage for "income" and/or "rental income" ends; whichever is later.

#### 2. Full Resumption of Operations

We will also pay your actual loss of "income" and/or "rental income" for an additional 60 days if your "income" and/or "rental income" after operations are resumed is less than your "income" and/or "rental income" before the loss. The additional amount we will pay will start after the later of the following times:

- a. The date on which the liability for **Income Protection - Coverage 3** would terminate if this clause had not been included; or

- b. The date on which repair, replacement, or rebuilding of such part of the damaged or destroyed property described in the "Declarations" is actually completed.

### D. Amount of Insurance

We will pay the actual loss of "income" and/or "rental income" sustained by you.

The "income" and/or "rental income" loss sustained by you shall not exceed:

1. The actual reduction of "income" and/or "rental income" during the "interruption of business"; and
2. The reduction in rents received less charges and expenses which do not necessarily continue during the "interruption of business" or during the period when the tenant cannot inhabit the premises.

We will pay up to \$100 a day, for seven days, after your business is suspended to cover loss of "income" and/or "rental income" sustained by you while you are determining your actual income protection loss. The amount paid will be subtracted from your actual loss of "income" and/or "rental income".

We will pay the actual income protection loss for only such length of time as would be required to resume normal business operations. We will limit the time period to the shorter of the following periods:

1. The time period required to rebuild, repair, or replace such part of the Building or Business Personal Property that has been damaged or destroyed as a direct result of an insured peril; or
2. Twelve (12) consecutive months from the date of loss.

Payment of loss of "income" and/or "rental income" is not limited by the end of the policy period.

## SECTION II - PERILS INSURED AGAINST

### BUILDING(S) - COVERAGE 1

### BUSINESS PERSONAL PROPERTY AND PERSONAL PROPERTY OF OTHERS - COVERAGE 2

### INCOME PROTECTION - COVERAGE 3

#### Covered Cause of Loss

This policy insures against direct physical "loss", except "loss" as excluded or limited in this policy.

## SECTION III - EXCLUSIONS

### A. Coverages 1, 2, and 3

We do not cover under Building(s) - Coverage 1; Business Personal Property and Personal Property of Others - Coverage 2; and Income Protection - Coverage 3 "loss" or damage caused directly or indirectly by any of the following. Such "loss" or damage is excluded regardless of any cause or event that contributes concurrently or in any sequence to the "loss":

1. Deterioration or depreciation.
2. Intentional loss, meaning any "loss" arising from an act committed by or at the direction of the insured with the intent to cause a "loss".
3. "Loss" or damage caused by or resulting from any of the following:
  - a. By weather conditions, but only if weather conditions contribute in any way with a peril excluded in Part A. of **Section III - Exclusions** to produce the "loss";
  - b. By acts or decisions, including the failure to act or decide, of anyone;
  - c. By faulty, inadequate, or defective:
    - 1) Planning, zoning, development, surveying;
    - 2) Design, specifications, workmanship, repair, construction, renovating, remodeling, grading, or compaction;
    - 3) Materials used in repair, construction, renovation, remodeling; or
    - 4) Maintenance;

of property whether on or off the insured premises by anyone, but if "loss" by a peril insured against results, we will pay for the ensuing "loss".

4. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of "loss".
5. Earth Movement
  - a. Earthquake, including tremors and aftershocks, and any earth sinking, rising, or shifting related to such event;
  - b. Landslide, including any earth sinking, rising, or shifting related to such event;
  - c. Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased; or
  - d. Earth sinking (other than sinkhole collapse), rising, or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations, or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil, and the action of water under the ground surface.

This exclusion applies regardless of whether any of the above, in Paragraphs **5.a.** through **5.d.**, is caused by an act of nature or is otherwise caused.

But if Earth Movement, as described in **5.a.** through **5.d.** above, results in fire, explosion, sprinkler leakage, volcanic action, or building glass breakage, we will pay for the "loss" or damage caused by such perils.

Volcanic action means direct "loss" 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.

This does not include the cost to remove ash, dust, or particulate matter that does not cause direct "loss" to the covered property.

This exclusion does not apply to property being transported.

6. Water
  - a. Flood, surface water, waves (including tidal water and tsunami), tides, tidal wave, or overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
  - b. Mudslide or mudflow;
  - c. By water or sewage which backs up through sewers or drains or which enters into and overflows or is otherwise discharged from a sewer, drain, sump pump, sump pump well, or any other system designed to remove subsurface water which is drained from the foundation area;
  - d. Water under the ground surface pressing on, flowing, or seeping through:
    - 1) Foundations, walls, floors, or paved surfaces;
    - 2) Sidewalks or driveways;
    - 3) Basements, whether paved or not; or
    - 4) Doors, windows, or other openings.
  - e. Water from a broken water main. However, this exclusion does not apply to water flowing or seeping from a broken water main where the break occurs on the premises described in the "Declarations".
  - f. Waterborne material carried or otherwise moved by any of the water referred to in Paragraphs **6.a.**, **6.c.**, **6.d.**, or **6.e.** or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs **6.a.** through **6.f.**, is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam levee, seawall, or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if Water, as described in **6.a.** through **6.f.** results in fire, explosion, sprinkler leakage, volcanic action,

or building glass breakage, we will pay for the "loss" or damage caused by such perils.

If electrical "covered equipment" requires drying because of Paragraphs 6.a. through 6.c., we will pay for the direct expenses of such drying out subject to the applicable Amount of Insurance and deductible for Building(s) – Coverage 1 and Business Personal Property and Personal Property of Others – Coverage 2.

This exclusion does not apply to property being transported.

7. War

- a. War including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this War exclusion supersedes Paragraph A.9. of **Section III – Exclusions**, the nuclear hazard exclusion.

8. Seizure or destruction of covered property by order of governmental authority, except as provided in Extensions of Coverage - **B.3.** and **Income Protection – Coverage 3, C. Additional Coverages.**

We will also cover "loss" caused by acts of destruction ordered by governmental authority to prevent the spread of a fire.

9. Nuclear reaction or radiation or radioactive contamination unless fire ensues, and then only for ensuing "loss".
10. By the enforcement of or compliance with any law or ordinance regulating the construction, use, or repair of any property, or requiring the tearing down of any property, including the cost of removing its debris, except as provided in Extensions of Coverage - **B.3.**, **B.7.**, and **B.8.**
11. The failure of power, communication, water, or other utility service supplied to the insured premises, however caused, if the failure:
  - a. Originates away from the insured premises described in the "Declarations"; or
  - b. Originates at the premises described in the "Declarations", but only if such failure involves equipment used to supply the utility service to the premises described in the "Declarations" from a source away from the premises described in the "Declarations";

except as provided in **Section IV. Additional Coverages, D. Equipment Breakdown, 2.h.** and **2.i.** and Extensions of Coverage - **A.5.** and **A.7.**, unless a covered "loss" ensues, and then only for ensuing "loss".

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.

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

**Exclusions A.5.** through **A.11.** apply whether or not the loss event results in widespread damage or affects a substantial area.

**B. Coverages 1, 2, and 3**

We do not cover under Building(s) - Coverage 1, Business Personal Property and Personal Property of Others - Coverage 2, and Income Protection - Coverage 3 "loss" or damage caused:

1. By:

- a. Wear and tear, rust, or corrosion;
- b. Change in flavor, color, texture, or finish;
- c. Damp or dry air;
- d. Inherent vice;
- e. Smog;
- f. Latent or hidden defect;
- g. Marring or scratching;
- h. Smoke, vapor, or gases from agricultural or industrial operations;
- i. Settling, cracking, shrinking, bulging or expansion of pavements, foundations, walls, floors, roofs, or ceilings; or
- j. Termites, vermin, insects, rodents, birds (except glass breakage), skunks, raccoons, spiders, or reptiles;
- k. Mechanical breakdown, including rupture or bursting caused by centrifugal force (except as provided in Section IV – Additional Coverages, D. Equipment Breakdown Coverage).

unless a covered "loss" ensues, and then only for ensuing "loss".

2. By discharge, dispersal, seepage, migration, release, or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release, or escape is itself caused by a peril insured against. But if "loss" or damage by a peril insured against results from the discharge, dispersal, seepage, migration, release, or escape of "pollutants", we will pay for the resulting damage caused by the peril insured against.

3. By mysterious disappearance, unexplained loss, or inventory shortage. We will accept inventory records as a means of proving the amount of a covered "loss".
4. By the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot, or bacteria.

But, if "fungus", wet or dry rot, or bacteria results in a covered loss from a peril insured against, we will pay for the "loss" or damage caused by that peril insured against.

This exclusion does not apply:

- a. When "fungus", wet or dry rot, or bacteria results from fire or lightning; or
  - b. To the extent that coverage is provided in **Section IV - Additional Coverages - B. Limited Coverage For "Fungus", Wet Rot, Dry Rot, And Bacteria**, with respect to "loss" or damage caused by a peril insured against other than fire or lightning.
5. By 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.
  6. By freezing by temperature reduction to plumbing, heating, air conditioning or other equipment or appliances (except fire protective systems) or by water, other liquids, powder or molten material that leaks or flows from such items while the described building is vacant for more than 60 consecutive days, unless you have exercised reasonable care to:
    - a. Maintain heat in the building; or
    - b. Shut off the water supply and drain the system or appliance of water.

We will pay the cost to tear out and replace any part of the building described in the "Declarations" to repair damage to the system or appliance from which the water, other liquids, powder or molten material escapes.

We will not pay for the cost to repair or replace any defect in the system or appliance that caused the "loss" or damage.

7. By collapse, including any of the following conditions of property or any part of the property:
  - a. An abrupt falling down or caving in;
  - b. Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
  - c. Any cracking, bulging, sagging, bending, leaning, settling, shrinkage, or expansion as such condition relates to **a.** or **b.** above.

But if collapse results in a peril insured against at the premises described in the "Declarations", we will pay for the "loss" or damage caused by the peril insured against.

**Exclusion B.7.** does not apply:

- a. To the extent that coverage is provided in **Section IV - Additional Coverages, A. Collapse;** or
- b. To collapse caused by one or more of the following:
  - 1) Fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism or malicious mischief; breakage of building glass; falling objects; weight of snow, ice, or sleet; sinkhole collapse; or volcanic action.  
Sinkhole collapse means "loss" caused by sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite.  
This peril does not include:
    - a) The cost of filling sinkholes, except to the extent that coverage is provided in **Section IV - Additional Coverages, A. Collapse;** or
    - b) "Loss" or damage to property caused by or resulting from the sinking or collapse of land into man-made underground cavities.
  - 2) Water damage resulting from the accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of plumbing, heating, air conditioning, or other equipment or appliances, but does not include damage from a sump pump, sump pump well, or any other system designed to remove subsurface water which is drained from the foundation areas;
  - 3) Breakage of building glass;
  - 4) Weight of rain that collects on a roof; or
  - 5) Weight of people or personal property.
8. By explosion of, including resulting damage to, steam boilers, steam pipes, steam turbines, or steam engines if owned by, leased by, or operated under your control (except as provided in **Section IV. Additional Coverages, D. Equipment Breakdown Coverage**). We also do not cover damage to these caused by any condition or occurrence within the boilers, pipes, turbines, or engines (except as provided in **Section IV. Additional Coverages, D. Equipment Breakdown Coverage**). We will pay for "loss" from the explosion of gases or fuel within the combustion chamber, flues, or passages of any fired vessel. We will also pay for "loss" by ensuing fire or explosion not included in this paragraph.
9. To hot water boilers or other water heating equipment caused by a condition or occurrence within the boilers or equipment other than an explosion (except

as provided in **Section IV. Additional Coverages, D. Equipment Breakdown Coverage**).

10. By artificially generated electrical current including electric arcing (except as provided in **Section IV. Additional Coverages, D. Equipment Breakdown Coverage**), unless fire or explosion ensues, and then only for ensuing "loss".
11. To the interior of the building or the contents by rain, snow, sand, or dust, whether driven by wind or not, unless the exterior of the building first sustains damage to its roof or walls by a peril insured against. We will pay for "loss" caused by or resulting from the thawing of snow, sleet, or ice on the building.
12. To outdoor radio or television antennas (including satellite dishes) and its lead-in wiring, masts, or towers by windstorm or hail.
13. By dishonest or criminal acts (including theft) committed by you, or any of your members of a limited liability company, or any of your employees (including temporary or leased employees), directors, officers, trustees, or authorized representatives:
  - a. Acting alone or in collusion with other persons; or
  - b. While performing services for you or otherwise.We will cover acts of destruction by your employees (including temporary or leased employees) but only for ensuing "loss", but there is no coverage for "loss" or damage:
  - a. By theft by your employees (including temporary or leased employees) or any person to whom you entrust property for any purpose, whether acting alone or in collusion with any other party; or
  - b. Caused by or resulting from manipulation, including the introduction or enaction of any virus, harmful code or similar instruction, of a computer system (including "electronic data") by your employees.
14. From any defect, programming error, programming limitation, computer virus, malicious code, loss of "electronic data", loss of access, loss of use, loss of functionality, or other condition within or involving "electronic data" or "media" of any kind, except as provided in **Section IV - Additional Coverages - C.1., C.2., and C.3.**
15. To unattached exterior signs that will be permanently mounted caused by breakage during installation, repairing or dismantling, or by breakage during transportation, unless caused by fire, lightning, collision, derailment or overturn of vehicle.

#### **C. Coverage 1**

We do not cover under **Building(s) - Coverage 1** "loss" or damage caused:

1. To fences, pavements, outdoor swimming pools and related equipment, retaining walls, bulkheads, piers, wharves or docks, when covered under the policy, by freezing or thawing, impact of watercraft, or by the pressure or weight of ice or water whether driven by wind or not.
2. To building materials and supplies not attached as part of the building, unless held for sale by you, caused by or resulting from theft. We will cover "loss" to building materials and supplies located in the building described in the "Declarations" caused by a peril insured against including theft. We will pay up to 10% of the **Building(s) - Coverage 1** limit but not to exceed \$100,000 for any one "loss".
3. To vegetated roofs for "loss" caused by or resulting from:
  - a. Dampness or dryness of atmosphere or of soil supporting the vegetation;
  - b. Changes in or extremes of temperature;
  - c. Disease;
  - d. Frost or hail; or
  - e. Rain, snow, ice, or sleet.

#### **D. Coverage 2**

We do not cover under **Business Personal Property and Personal Property of Others - Coverage 2** "loss" or damage caused:

1. From your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title or possession of any property.
2. By breakage of glassware, statuary, marble, bric-a-brac, porcelains, and other articles of a fragile or brittle nature. We will cover such "loss" caused by fire; lightning; aircraft; explosion; sonic boom; riot; civil commotion; smoke; vehicles; windstorm; hail; vandalism or malicious mischief; falling objects (the exterior of the building must first sustain damage to roof or walls by falling objects); sinkhole collapse; volcanic action; weight of ice, snow, or sleet; sprinkler leakage; or water damage.
3. By rain, snow, or sleet to property in the open.
4. By any legal proceeding.
5. By actual work upon property being altered, repaired, installed, serviced, or faulty materials or workmanship, unless fire ensues, and then only for "loss" through ensuing fire.
6. By delay, loss of use, or loss of market.
7. To property that has been transferred to a person or to a place outside the premises described in the "Declarations" on the basis of unauthorized instructions.
8. By theft of furs and fur garments. We will pay for "loss" of furs and fur garments by "burglary" up to \$10,000 for any one "loss".

9. By theft of gold and other precious metals and alloys. We will pay for theft of any one article of jewelry up to \$500, but our payment will not exceed \$10,000 for any one "loss". Jewelry means jewelry, necklaces, bracelets, rings, earrings, gems, precious and semi-precious stones, articles containing one or more gems, and articles made of gold or other precious metals.

#### E. Coverage 3

We do not cover under **Income Protection - Coverage 3:**

1. Increase of loss resulting from ordinance or law regulating construction or repair of buildings.
2. Consequential damages resulting from the breach of contractual obligations.
3. Increase of loss caused by or from 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.
4. Loss due to delay or loss of market.
5. Increase of loss caused by or resulting from the suspension, lapse, or cancellation of any license, lease, or contract. We will pay for loss of "income" and/or "rental income" during the "interruption of business" and during the period of Full Resumption of Operations if the suspension, lapse, or cancellation is caused by the suspension of your business.
6. "Extra expense" caused by the suspension, lapse, or cancellation of any license, lease, or contract beyond the "interruption of business".
7. Increase of loss resulting from ordinance or law regulating the prevention, control, repair, clean-up, or restoration of environmental damage.
8. Income protection specifically insured in whole or in part by this or any other insurance.

### SECTION IV - ADDITIONAL COVERAGES

#### A. Collapse

The coverage provided under this **Additional Coverage - Collapse** applies only to an abrupt collapse as described and limited in **A.1.** through **A.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 Part or that contains Covered Property insured under this Coverage Part, if such collapse is caused by one or more of the following:

- a. Building 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 construction, remodeling, or renovation;
- d. Use of defective material or methods in construction, remodeling, or renovation if the abrupt collapse occurs after the course of 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.** and **2.b.** above;
- 2) Fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism or malicious mischief; breakage of building glass; falling objects; weight of snow, ice, or sleet; sinkhole collapse; or volcanic action.

Sinkhole collapse means "loss" caused by sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite.

This peril does not include:

- a) The cost of filling sinkholes, except as provided in Paragraph **3.** below; or
- b) "Loss" or damage to property caused by or resulting from the sinking or collapse of land into man-made underground cavities.
- 3) Water damage resulting from the accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of plumbing, heating, air conditioning, or other equipment or appliances, but does not include damage from a sump pump, sump pump well, or any other system designed to remove subsurface water which is drained from the foundation areas;
- 4) Breakage of building glass;
- 5) Weight of people or personal property; or
- 6) Weight of rain that collects on a roof.
3. We will pay up to \$20,000 for expenses involved in replacing, stabilizing, refilling, or rebuilding the land necessary to support the building described in the "Declarations" damaged by sinkhole collapse. This payment of \$20,000 is an additional amount of insurance and will increase the total amount of insurance available.



4. 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.
5. With respect to the following property:
  - a. Outdoor radio or television antennas (including satellite dishes) and its 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 listed in **5.a.** through **5.i.** only if:

  - a. Such "loss" or damage is a direct result of the abrupt collapse of a building insured under this Coverage Part; and
  - b. The property is Covered Property under this Coverage Part.
6. If business personal property and personal property of others falls down or caves in and such collapse is **not** the result of an abrupt collapse of a building, we will pay for "loss" or damage to insured property caused by such collapse of business personal property and personal property of others only if:
  - a. The collapse of business personal property and personal property of others was caused by a cause of loss listed in **2.a.** through **2.d.**;
  - b. The business personal property and personal property of others which collapses is inside a building; and
  - c. The property which collapses is not of a kind listed in **5.a.** through **5.i.**, regardless of whether that kind of property is considered to be business personal property or real property.

The coverage stated in this Paragraph **6.** does not apply to business personal property and personal property of others if marring and/or scratching is the only

damage to that business personal property and personal property of others caused by the collapse.

7. This **Additional Coverage - Collapse** does not apply to business personal property and personal property of others that has not abruptly fallen down or caved in, even if the business personal property and personal property of others shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, or expansion.
  8. This **Additional Coverage - Collapse** will not increase the Limits of Insurance provided in this Coverage Part, except as provided in **Section IV - Additional Coverage - Collapse**, paragraph **A. 3.**
  9. The term peril insured against includes the **Additional Coverage - Collapse** as described and limited in **A.1.** through **A.7.**
- B. Limited Coverage for "Fungus", Wet Rot, Dry Rot, And Bacteria**
1. The coverage described in Paragraphs **2.** through **6.** below only applies when the "fungus", wet or dry rot, or bacteria is the result of a peril insured against, other than fire and lightning, that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
  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 before, during, or 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 in Paragraph **2.** above of this Limited Coverage is limited to \$25,000. Regardless of the number of claims, this limit is the most we will pay for the total of all "loss" or damage arising out of all occurrences caused by a peril insured against, other than fire and lightning, which takes 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 \$25,000 even if the "fungus", wet or dry rot, or bacteria continues to be present, 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, our 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 **Exclusions B.4. Coverages 1, 2, and 3 in Section III - Exclusions** or under **Section IV - Additional Coverages - A. Collapse**.
6. The following Paragraphs **6. a.** or **6. b.** applies only if the "interruption of business" satisfies all terms and conditions of **Income Protection - Coverage 3**.
- a. If the covered loss which resulted in "fungus", wet or dry rot, or bacteria does not itself necessitate an "interruption of business", but such "interruption of business" is necessary due to "loss" or damage to covered property caused by "fungus", wet or dry rot, or bacteria, then we will pay the actual loss of "income" or "rental income" sustained by you in a period of not more than 30 days. The days need not be consecutive.
- b. If the "interruption of business" 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 "interruption of business", we will pay the actual loss of "income" or "rental income" sustained by you during the delay (regardless of when such a delay occurs during the "interruption of business") in a period of not more than 30 days. The days need not be consecutive.
7. The coverage described under Paragraph **6.a.** and **6.b.** of this Limited Coverage is limited to \$25,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss of "income" or "rental income" arising out of your "interruption of business" in a 12-month period (starting with the beginning of the present annual policy period). With respects 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 \$25,000 for loss of "income" or "rental income" even if the "fungus", wet or dry rot, or bacteria continues to be present, active, or recurs in a later policy period resulting in an "interruption of business".

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

#### **C. Electronic Data Processing Equipment and Electronic Data Coverage**

Payments under this Electronic Data Processing Equipment, Electronic Data Coverage, and Income Protection are an Additional Amount of Insurance and will increase the total amount of insurance available for the coverage involved.

##### **1. Electronic Data Processing Equipment - Computer Virus**

We will cover "loss" or damage to "electronic data processing equipment" caused by magnetic injury or computer virus. We will pay up to \$15,000 for any one "loss" to "electronic data processing equipment".

We do not cover:

- a. "Electronic data processing equipment" which the insured rents or leases to others while it is away from the premises described in the "Declarations".
- b. "Loss" caused by processing operations or "loss" that occurred while the insured property is being worked on unless fire or explosion ensue, and then only for "loss", damage, or expense caused by the ensuing fire or explosion.

"Electronic data processing equipment" means computers, terminals, teleprinters, readers, telephone systems, computerized cash registers, word processing equipment, and equipment and parts related to the processing unit.

"Electronic data processing equipment" does not include computer operated or controlled production or processing machinery or equipment or a separate computer or computerized control panels used to operate the production or processing machinery or equipment.

We will pay for "loss" to "electronic data processing equipment" which is in excess of the deductible amount shown in the "Declarations".

##### **2. Electronic Data – Expenses for Reproduction or Replacement**

We will cover the expenses incurred to reproduce or replace your "electronic data" when destruction or corruption is caused by a peril insured against including loss by theft. This includes your "electronic data" that is destroyed or corrupted by magnetic injury, 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 disrupts its normal operation.

Coverage is limited to "electronic data" which is owned by you, licensed or leased to you, originates

and resides in your computers, and is used in the e-commerce activity of your business.

This Additional Amount of Insurance does not apply to "electronic data" which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning, or security systems.

The business of e-commerce and e-commerce activity means commerce conducted by the Internet or other computer based interactive communication network. This includes business-to-business conducted in that manner.

"Loss" or damage to "electronic data" will be valued at the cost of reproduction or replacement including the cost of data entry, re-programming, and computer consultation services. But we will not pay the cost to duplicate research that led to the development of your "electronic data".

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

The most we will pay for the expenses incurred in the reproduction or replacement of your "electronic data" is \$25,000.

"Media" means materials on which "electronic data" are recorded, such as magnetic tapes, disc packs, paper tapes, and cards.

We will pay for the expenses incurred in the reproduction or replacement of your "electronic data" which is in excess of the deductible amount shown in the "Declarations".

### 3. **Income Protection – Computer Operations**

- a. **Income Protection – Coverage 3** is extended to cover your loss of "income" you sustain due to partial or total "interruption of business" resulting directly from an interruption in your computer operations due to your "electronic data" being destroyed or corrupted by a peril insured against including loss by theft. This includes your loss of "income" resulting from your "electronic data" that is destroyed or corrupted by magnetic injury, 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.
- b. The most we will pay for your loss of "income" due to "interruption of business" resulting from an interruption to your computer operations in any one policy year, regardless of the number of interruptions or the number of premises, loca-

tions, or computer systems involved is \$25,000. If the loss payment relating to the first interruption does not exhaust this amount of insurance, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions during that 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.

- c. This Income Protection coverage does not apply to loss sustained or expense incurred after the end of the period of restoration even if the \$25,000 amount of insurance has not been exhausted.
- d. Coverage for Income Protection does not apply when "interruption of business" is due to damage or corruption of "electronic data", or any "loss" to "electronic data", except as provided under Paragraphs **a.** through **c.** of this **Income Protection – Computer Operations**.

No deductible applies to **Income Protection – Coverage 3**.

### 4. **Exclusions – Electronic Data – Expenses for Reproduction or Replacement and Income Protection – Computer Operations**

We do not cover under Electronic Data – Expenses for Reproduction or Replacement and Income Protection – Computer Operations :

- a. "Media" and "electronic data" which cannot be replaced with the same kind or quality.
- b. Program support documentation such as flow charts, record formats, or narrative descriptions unless they are converted to "electronic data" form and then only in that form.
- c. "Loss" caused by errors or omissions or deficiency in design, specifications, materials, or workmanship, unless fire or explosion ensues, and then only for "loss", damage, or expense caused by the ensuing fire or explosion.
- d. "Loss" caused by errors or omissions in programming or processing operations or "loss" that occurred while the insured property is being worked on unless fire or explosion ensues, and then only for "loss", damage, or expense caused by the ensuing fire or explosion.
- e. "Loss" or damage caused by or resulting from manipulation, including the introduction or enactment of any virus, harmful code, or similar instruction 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, in-

stall, modify, maintain, repair, or replace that system.

#### **D. Equipment Breakdown Coverage**

The term Covered Cause of Loss in **Section II – Perils Insured Against** includes the **Additional Coverage - Equipment Breakdown Coverage** as described and limited below. Without an "accident" or "electronic circuitry impairment", there is no Equipment Breakdown Coverage. This **Additional Coverage – Equipment Breakdown Coverage** is subject to the policy deductible shown in the "Declarations".

1. We will pay for direct physical damage to Covered Property that is the direct result of an "accident" or "electronic circuitry impairment". We will consider "electronic circuitry impairment" to be physical damage to "covered equipment".
2. The following coverages also apply to the direct result of an "accident" or "electronic circuitry impairment". However, with respect to **Off-Premises Utility Properties Failure** below and **Section VIII - Extensions of Coverage – B. 5. Contingent Business Interruption** coverages provided in this Coverage Part, coverage will only apply to the direct result of an "accident" and will not apply to the direct result of an "electronic circuitry impairment". These coverages do not provide additional amounts of insurance.

##### **a. Ammonia Contamination**

If Covered Property is contaminated by ammonia as a result of an "accident" or "electronic circuitry impairment", we will pay up to \$25,000 including salvage expense for any one "loss".

##### **b. Electronic Data Restoration**

- 1) We will pay for your reasonable and necessary cost to research, replace, and restore lost "electronic data".
- 2) We will pay up to \$50,000 for loss or expense under this coverage, including actual loss of "income" and "rental income" you sustain due to partial or total "interruption of business" and necessary "extra expense" you incur.

##### **c. Expediting Expenses**

With respect to your damaged Covered Property we will pay up to \$25,000 for the reasonable extra cost to:

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

##### **d. Hazardous Substances**

- 1) We will pay your additional cost to repair or replace Covered Property because of contamination by a "hazardous substance".

This includes the additional expenses to clean up or dispose of such property.

- 2) This does not include contamination of Covered Property by refrigerant, including but not limited to ammonia, which is addressed in Paragraph 2.a. above. As used in this coverage, additional costs mean those beyond what would have been payable under this coverage had no "hazardous substance" been involved.
- 3) We will pay up to \$25,000 for "loss", damage or expense under this coverage, including actual loss of "income" and "rental income" you sustain due to partial or total "interruption of business" and necessary "extra expense" you incur.

##### **e. Off Premises Equipment Breakdown**

- 1) We will pay for physical damage to transportable "covered equipment" that, at the time of the "accident" or "electronic circuitry impairment", is not at a location you do not own, lease or operate. As respects to this Off Premises Equipment Breakdown coverage only, the "accident" or "electronic circuitry impairment" may occur in the United States, its territories and possessions, Puerto Rico, and Canada.

- 2) We will also pay for your reasonable and necessary cost to research, replace, and restore lost "electronic data" contained within "covered equipment" as described under Paragraph 1) above. This amount may not exceed the limit applicable to Electronic Data Restoration.

We will pay up to \$25,000 for "loss" or damage under this coverage as described in Paragraphs 1) and 2) above.

##### **f. Off-Premises Utility Properties Failure**

- 1) Any insurance provided for Income Protection, Extra Expense for Electronic Data Restoration as described in Paragraph 2.b. above or Refrigerated Property as described in Paragraph 2.h. below is extended to apply to your loss, damage, or expense resulting caused by a failure or disruption of service to the premises described in the "Declarations". The failure or disruption of service must be caused by an "accident" to equipment, including overhead transmission lines, that is owned by a utility, landlord, a landlord's utility or other supplier who provides you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, Internet access,

telecommunications services, "cloud computing services", wide area networks, or data transmission. The equipment must meet the definition of "covered equipment" Covered Property.

- 2) "Cloud computing services" must be provided by a professional provider with whom you have a contract.
  - 3) With respect to the Electronic Data Restoration portion of this Off-Premises Utility Properties Failure coverage, coverage will also apply to "electronic data" stored in the equipment of a provider of "cloud computing services".
  - 4) Any insurance provided for Income Protection or Electronic Data Restoration will not apply under this Off-Premises Utility Properties Failure coverage unless the failure or disruption of service exceeds 24 hours immediately following the "accident". If the interruption exceeds 24 hours, coverage will begin at the time of the disruption, and the applicable deductible will apply.
  - 5) The most we will pay in any "one equipment breakdown" for loss, damage, or expense under this coverage is the applicable limit for Electronic Data Restoration as described in Paragraph **2.b.** above or Refrigerated Property as described in Paragraph **2.h.** below. The most we will pay in any "one equipment breakdown" for loss of "income" you sustain and "extra expense" you incur under Income Protection – Coverage 3 is \$25,000.
- g. Public Relations
- 1) This coverage only applies if you have sustained an actual loss of "income" covered under this Additional Coverage - Equipment Breakdown Coverage.
  - 2) We will pay for your reasonable costs for professional services to create and disseminate communications, when the need for such communications arises directly from the interruption of your business. This communication must be directed to one or more of the following:
    - a) The "media";
    - b) The public; or
    - c) Your customers, clients or members.
  - 3) Such costs must be incurred during the period of restoration or up to 30 days after the period of restoration has ended.
  - 4) We will pay up to \$5,000 for loss or expense for this coverage.

h. Refrigerated Property

Business Personal Property and Personal Property of Others – Coverage 2 covers "loss" to the contents of refrigeration equipment on the insured premises.

i. Temperature Change

Business Personal Property and Personal Property of Others – Coverage 2 covers "loss" resulting from temperature or humidity change.

3. Equipment Breakdown Coverage Exclusions

The following exclusions are in addition to the exclusions in **Section III – Exclusions**.

- a. We will not pay for "loss", damage or expense caused directly or indirectly by any of the following whether or not caused by or resulting from an "accident" or "electronic circuitry impairment":
  - 1) Fire including smoke from a fire;
  - 2) Explosion of gas or unconsumed fuel within the furnace of any boiler or fired vessel or within the passages from that furnace to the atmosphere;
  - 3) Any other explosion, except as specifically covered under this Additional Coverage – Equipment Breakdown Coverage;
  - 4) Vandalism;
- b. Coverage under this Additional Equipment Breakdown Coverage does not apply to an "accident" or "electronic circuitry impairment" caused by or resulting from:
  - 1) Lightning;
  - 2) windstorm or hail. However, this exclusion does not apply when:
    - a. "Covered equipment located within a building or structure suffers an "accident" or "electronic circuitry impairment" that results from wind-blown rain, snow, sand, or dust; and
    - b. The building or structure did not first sustain wind or hail damage to its roof or walls through which the rain, snow, sand or dust entered.
  - 3) smoke; aircraft or vehicles; riot or civil commotion; sprinkler leakage; elevator collision;
  - 4) Breakage of glass; falling objects; weight of snow, ice, or sleet; freezing (caused by cold weather); collapse; or molten material;
  - 5) A hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel, or an elec-



more energy or water efficient than the equipment being replaced. However, we will not pay to increase the size or capacity of the equipment and we will not pay more than 150% of what the cost would have been to replace with like kind and quality. This provision does not apply to the replacement of component parts or to any property to which Actual Cash Value applies and does not increase any of the applicable limits.

- 5) The following property will be valued on an Actual Cash Value basis:
  1. Any property that does not currently serve a useful or necessary function for you; and
  2. Any Covered Property that you do not repair or replace within 24 months after the date of the "accident" or "electronic circuitry impairment".
- 6) If any one of the following conditions is met, property held for sale by you will be valued at the sales price as if no loss or damage had occurred, less any discounts and expenses that otherwise would have applied:
  1. The property was manufactured by you;
  2. The sales price of the property is less than the replacement cost of the property; or
  3. You are unable to replace the property before its anticipated sale.
- 7) Except as specifically provided for under Electronic Data Restoration coverage, "electronic data" and "media" will be valued on the following basis:
  1. For mass-produced and commercially available software, at the replacement cost.
  2. For all other "electronic data" and "media", at the cost of blank "media" for reproducing the records. We will not pay for "electronic data" representing financial records based on the face value of such records.

The most we will pay for loss, damage, or expense under this **Additional Coverage – Equipment Breakdown Coverage** arising from any "one equipment breakdown" is the applicable Limit of Insurance shown in the Declarations for Buildings – Coverage 1, Business Personal Property and Personal Property of Others – Coverage 2, and Additional Income Protection – Coverage 3. Coverage provided under this Additional Coverage – Equipment Breakdown Coverage does not provide an additional amount of insurance.

## SECTION V - DEDUCTIBLES

1. Building(s) - Coverage 1, Business Personal Property and Personal Property of Others - Coverage 2 and Extensions of Coverage - We will pay the amount of "loss" to property in any one occurrence which is in excess of the deductible amount shown in the "Declarations," unless otherwise stated in the Extensions of Coverage.
2. Glass covered under Building(s) - Coverage 1 or Business Personal Property and Personal Property of Others - Coverage 2 - \$200 deductible applies.
3. Signs covered under Building(s) - Coverage 1 or Business Personal Property and Personal Property of Others - Coverage 2 - \$200 deductible applies.
4. Theft - We will pay the amount of "loss" to property caused by theft in any one occurrence which is in excess of either \$200 or the deductible amount applying to Building(s) - Coverage 1 and Business Personal Property and Personal Property of Others - Coverage 2 shown in the "Declarations," whichever is the greater amount.
5. When the occurrence involves "loss" to more than one building (or building and business personal property) and separate limits of insurance apply or blanket limits of insurance apply, the losses will not be combined in determining the application of the deductible. The deductible will be applied only once per occurrence.
6. Income Protection - Coverage 3 - No deductible applies.

## SECTION VI - SPECIAL LOSS PAYMENTS - COVERAGE 1

Improvements and Betterments Made By Others is subject to special treatment when damaged by a peril insured against:

1. If you pay for repair or replacement, we will pay you the expenses involved not exceeding the replacement cost of damaged property.
2. If repaired or replaced at the expense of others, there is no loss payable to you.
3. If the damaged property is not repaired or replaced by you or at the expense of others, there is no loss payable to you.

## SECTION VII - SPECIAL LOSS PAYMENTS - COVERAGE 2

The following property is subject to special treatment when damaged by a peril insured against:

1. Accounting Books, Records, Tapes, and Recording Media. We will pay you the cost of blank items (books, film, or other written documents). Extensions of Coverage - **B.29.** - Valuable Papers and Records provides for reproduction of these items.
2. Improvements and Betterments:

- a. If you pay for repair or replacement, we will pay you the expenses involved not exceeding the replacement cost of damaged property.
  - b. If not repaired or replaced, we will pay you a proportion of your original cost. We will determine the proportionate value as follows:
    - 1) Multiply the original cost by the number of days from the "loss" or damage to the expiration of the lease; and
    - 2) Divide the amount determined in 1) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
  - c. If repaired or replaced at the expense of others, there is no loss payable to you.
3. **Sold Property.** If you have sold property but not delivered it, we will pay you the net selling price.

## SECTION VIII - EXTENSIONS OF COVERAGE

### A. Extensions of Coverage

We will pay the following "losses" at your option. Payments under these Extensions are not an additional amount of insurance and will not increase the total amount of insurance available for the coverage involved.

1. **Fences, Walks, Unattached Outbuildings, Tennis Courts, and Inground Swimming Pools - Coverage 1.**

We will cover "loss" to fences, walks, unattached outbuildings, tennis courts, and inground swimming pools caused by a peril insured against on the premises described in the "Declarations." We will pay up to 10% of the Building(s) - Coverage 1 limit but not to exceed \$25,000 for any one "loss". If you are a tenant and no limit is shown for Building(s) - Coverage 1, we will pay up to 10% of the Business Personal Property and Personal Property of Others - Coverage 2 limit (minimum of \$1,000) but not to exceed \$25,000 for any one "loss".

Unattached outbuildings include garages, storage areas, and tool sheds but do not include those buildings used for dwelling purposes or in connection with manufacturing, servicing, or farming operations.

If specific insurance is carried on any item covered by this extension, then this extension does not apply to that item.

This extension of coverage applies to each building described in the "Declarations".

2. **Merchandise in Shipment.** Business Personal Property and Personal Property of Others - Coverage 2 includes protection for "loss" by a peril insured against to merchandise which you have sold but for which you have not received payment, while in the custody

of a common carrier. This extension of coverage only applies when the "loss" is not recoverable from the purchaser, transporter, or any other insurance.

3. **Moving Clause.** When you move, coverage for "loss" to business personal property and personal property of others will apply for 60 days while in transit and at each location. The amount of insurance applying at each location will be the proportion that the value in each such location bears to the total value of Business Personal Property and Personal Property of Others - Coverage 2 covered at the original location. After the completion of your move, the coverage will apply at the new location only.
4. **Refrigerated Property.** Business Personal Property and Personal Property of Others - Coverage 2 covers "loss" to the contents of refrigeration equipment on the premises described in the "Declarations" from power failure. "Loss" caused by or resulting from an "accident" or "electronic circuitry impairment" is not covered.

This extension of coverage applies to each building described in the "Declarations".

5. **Temperature Change.** Business Personal Property and Personal Property of Others - Coverage 2 covers "loss" resulting from temperature or humidity change. There must first be damage from a peril insured against to the premises described in the "Declarations". "Loss" resulting from riot and civil commotion is not covered. "Loss" caused by or resulting from an "accident" or "electronic circuitry impairment" is also not covered.

This extension of coverage applies to each building described in the "Declarations".

6. **Trees, Shrubs, Lawns, and Plants - Coverages 1 & 2.**

We will cover "loss" to trees, shrubs, lawns, and plants (except vegetated roofs) on the premises described in the "Declarations" caused by fire; lightning; explosion; riot or civil commotion; vehicles; aircraft; smoke; falling objects; sonic boom; sinkhole collapse; volcanic action; or collapse caused by any of the perils specified in this paragraph.

If trees, shrubs, and plants are inside buildings, on the premises described in the "Declarations", we will also cover "loss" caused by windstorm; hail; weight of snow, ice, or sleet; vandalism or malicious mischief; or temperature change. There must first be damage from a peril insured against to the premises described in the "Declarations".

We will not be liable for more than \$1,000 for any one tree, shrub, or plant, including expenses for removing debris, or \$10,000 for any one "loss", unless trees, shrubs, or plants are held for sale inside buildings, or trees, shrubs, or plants are used for decorative purpose inside the building, in which case the



Business Personal Property and Personal Property of Others - Coverage 2 limit applies. We will not be liable for more than \$2,500 for any one "loss" to lawns.

This extension includes expenses for the removal of debris of trees, shrubs, and plants from the premises described in the "Declarations" caused by a peril insured against which are the property of others. If you are a tenant, we will not cover removing debris of trees, shrubs, and plants owned by the landlord at the premises described in the "Declarations."

There is no coverage under this policy for trees, shrubs, lawns, and plants grown outside of buildings held for sale.

This extension of coverage applies to each building described in the "Declarations".

## **B. Extensions of Coverage**

Payments under these Extensions of Coverage are an ADDITIONAL AMOUNT of insurance and will increase the total amount of insurance available for the coverage involved.

1. **Accounts Receivable.** This policy covers damage to records of accounts receivable up to \$25,000 for any one "loss" caused by a peril insured against at the premises described in the "Declarations", while being conveyed outside the premises or while temporarily within other premises for any purpose except storage. It covers:

- a. All sums due the insured from customers, provided the insured is unable to collect such sums as the direct result of "loss" to records of accounts receivable;
- b. Interest charges on any loan to offset impaired collections pending repayments of such sums made uncollectible by such "loss";
- c. Collection expense in excess of normal collection cost which is made necessary because of such "loss"; and
- d. Other expenses, when reasonably incurred by the insured in re-establishing records of accounts receivable following such "loss".

Coverage will also apply while the records of accounts receivable are being moved to and while at a place of safety because of imminent danger of "loss", and while being returned from such place.

This extension of coverage applies to each building described in the "Declarations".

The deductible does not apply to this extension.

2. **Arson and Theft Reward.** We will pay up to \$10,000 as a reward to any individual or group for information which results in the arrest and conviction of any person committing an act of arson resulting in damage to covered property or in the arrest and con-

viction of any person who commits theft of covered property.

The deductible does not apply to this extension.

## **3. Building Ordinance or Law Coverage.**

### **A. Application of Coverage**

The building ordinance or law coverage applies to **B. Coverage for the Value of the Undamaged Part of the Building** and **C. Coverage for the Increased Cost of Construction** for any building covered by this policy at the premises described in the "Declarations" or for tenant's improvements and betterments as described under business personal property and personal property of others only if Paragraphs **A. 1.** and **A.2.** below are satisfied and an amount of insurance is shown on the "Declarations" for Buildings or for tenant's improvements and betterments an amount of insurance is shown in the "Declarations" for Business Personal Property and Personal Property of Others:

1. The ordinance or law:
  - a. Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the premises described in the "Declarations"; and
  - b. Is in force at the time of "loss"; or the ordinance or law is promulgated or revised after the loss but prior to commencement of reconstruction or repair and provided that such ordinance or law requires compliance as a condition precedent to obtaining a building permit or certificate of occupancy.

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

2. The building sustains:
  - a. Direct physical damage caused by a peril insured against under this policy and such damage results in enforcement of or compliance with the ordinance or law; or
  - b. Both direct physical damage that is covered under this policy and direct physical damage that is not caused by a peril insured against under this policy, and the building damage in its entirety results in enforcement of or compliance with the ordinance or law.

but if the building sustains direct physical damage that is not caused by a peril insured

against under this policy and such damage is the subject of the ordinance or law, then there is no coverage even if the building has also sustained direct physical damage caused by a peril insured against.

This extension of coverage applies to each building described in the "Declarations".

## **B. Coverage for the Value of the Undamaged Part of the Building**

### **1. Coverage Agreement**

If the building sustains direct damage caused by a peril insured against, we will pay for the value of the undamaged part of the building caused by enforcement of or compliance with any ordinance or law regulating the construction or repair of building(s) that:

- a. Requires the demolition of the undamaged parts of the building;
- b. Regulates the construction or repair of the building, or establishes zoning or land use requirements at the premises described in the "Declarations"; and
- c. Is in force at the time of "loss" or damage.

Coverage for the Value of the Undamaged Part of the Building is not an additional amount of insurance. Payment is included within the amount of insurance for the covered building described in the "Declarations".

### **2. Loss Payment - Value of the Undamaged Part of the Building**

We will pay for the value of the undamaged portion of the building as a result of any ordinance or law regulating the construction, use, or repair of building(s) as follows:

- a. We will pay the smallest of the following if the covered building is not repaired or rebuilt:
  - 1) The actual cash value of the undamaged part of the building;
  - 2) The amount of insurance shown in the "Declarations" for the building described in the "Declarations";
  - 3) If this policy is endorsed to cover Earthquake and/or Flood as a Covered Cause of Loss, the Amount of Insurance applicable to the building in the event of damage by such Covered Cause of Loss may be lower than the Amount of Insurance that otherwise would apply; or
  - 4) The difference between the amount of insurance on the insured build-

ing at the time of "loss" or damage and the amount paid for "loss" to the damaged or destroyed portion of the insured building.

- b. We will pay the smallest of the following if the covered building is being repaired or replaced on the same premises or another premises:
  - 1) The actual cash value for the undamaged part of the building, if the insured building is covered on an actual cash value basis;
  - 2) The replacement cost for the undamaged part of the building if the insured building is covered on a replacement cost basis;
  - 3) The amount of insurance shown in the "Declarations" for the building described in the "Declarations";
  - 4) If this policy is endorsed to cover Earthquake and/or Flood as a Covered Cause of Loss, the Amount of Insurance applicable to the building in the event of damage by such Covered Cause of Loss may be lower than the Amount of Insurance that otherwise would apply; or
  - 5) The difference between the amount of insurance on the insured building at the time of "loss" or damage and the amount paid for "loss" to the damaged or destroyed portion of the insured building.

## **C. Coverage for Increased Cost of Construction**

### **1. Coverage Agreement**

If the building or tenant's improvements and betterments sustain direct physical damage caused by a peril insured against, we will pay up to \$25,000 for the increased cost to:

- a. Repair, replace, or construct the damaged portions of the building or tenant's improvements and betterments; or
- b. Reconstruct or remodel undamaged portions of the building or tenant's improvements and betterments whether or not demolition is required.

caused by enforcement of or compliance with any ordinance or law regulating the construction, use, or repair of buildings. If the building is repaired or replaced, it must be intended for the same use as the current building, unless otherwise required by an ordinance or law. We will not pay for the increased cost of construction if

the building is not repaired, replaced, or remodeled.

When a building described in the "Declarations" is damaged or destroyed and increased cost of construction applies to that building in accordance with **C.1.a.** above, coverage for the increased cost of construction also applies to repairs or reconstruction of the following, subject to the same conditions stated in **C.1.a.**:

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

**2. Loss Payment - Increased Cost of Construction**

The most we will pay is \$25,000 for the increased cost of construction that results from any building ordinance or law. Payment for the increased cost of construction is an additional amount of insurance.

**D. Building Ordinance or Law - No Coverage**

We will not pay for "loss" due to any ordinance or law that:

1. You were required to comply with before the "loss", even if the building was undamaged; and
2. You failed to comply with the ordinance or law.

We will not pay any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants", "fungus", wet or dry rot, or bacteria.

Also, we will not pay any costs associated with the enforcement of or compliance with an ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling, or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread, or any activity of "fungus", wet or dry rot, or bacteria.

We will not pay under this endorsement for any loss in value or any cost incurred due to an ordinance or law that you were required to comply with before the time of the current loss, even in the absence of building damage, if you failed to comply.

4. **Check, Credit, Debit or Charge Card Forgery or Alteration.** We will pay up to \$5,000 for any one "loss" resulting directly from:

- a. Forgery or alteration of credit, debit, or charge cards; and
- b. Forgery or alteration of any checks, drafts, promissory notes, or similar written promises, orders, or directions to pay a sum certain in money that are:
  - 1) Made or drawn by or drawn upon you;
  - 2) Made or drawn by one acting as your Agent; or that are purported to have been so made or drawn.

We will not pay for "loss" caused by dishonest or criminal acts committed by you, any of your members of a limited liability company, or any of your employees, directors, trustees, or authorized representatives:

- a. Acting alone or in collusion with other persons; or
- b. While performing services for you or otherwise.

We will not pay for any "loss" arising from forgery or alteration of a credit, debit, or charge card if you have not complied fully with the provisions, conditions, or other terms under which the card was issued.

All "losses" committed by any person, whether acting alone or in collusion with others, are considered one occurrence which is subject to the \$5,000 limit.

If you are sued for refusing to pay any covered instrument on the basis that it has been forged or altered and you have our written consent to defend against the suit, we will also pay for any reasonable legal expense that you incur and pay in that defense. The amount we will pay is in addition to the amount of insurance applicable to this extension. The deductible does not apply to legal expenses.

You must include with your proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss.

**Electrical and Mechanical Signatures.** We will treat signatures that are produced or reproduced electronically, mechanically, or by other means same as handwritten signatures.

"Covered instruments" includes checks, drafts, promissory notes, or similar written promises.

"Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own named signed with or without authority, in any capacity or for any purpose.

"Occurrence" means for this coverage only, all loss caused by any person or in which that person is involved, whether the loss involves one or more instruments.

This extension applies anywhere in the world.

A \$200 deductible applies to this extension.

5. **Contingent Business Interruption.** We will pay up to \$25,000 for your contingent income meaning loss of "income" or "rental income" you sustain due to partial or total "interruption of business" resulting directly from "loss" or damage to Building(s) or Business Personal Property of "dependent properties" from a peril insured against.

However, coverage for contingent income does not apply when the only loss to "dependent properties" is "loss" or damage to "electronic data", including destruction or corruption of "electronic data". If the "dependent property" sustains "loss" or damage to "electronic data" and other property, this coverage will not continue once the other property is repaired, rebuilt, or replaced.

We will reduce the amount of your "income" or "rental income" loss, other than "extra expense", to the extent you can resume normal operations by using an available:

- a. Source of materials; or
- b. Outlet for your products.

"Dependent property" means premises operated by others whom you depend on in any way for continuation of your normal business operations. The "dependent properties" are:

- a. Contributing Locations which mean those premises you depend on as a source of materials or services that you need for your operations. Services does not include water, communication, power supply, or waste water removal properties;
- b. Recipient Locations which mean those premises you depend on as a customer for your products or services;
- c. Manufacturing Locations which mean those premises you depend on to manufacture products for your customers under contract or sale; or
- d. Leader Locations which mean those premises you depend on to attract customers to your business.

"Dependent properties" do not include roads, bridges, tunnels, waterways, airfields, pipelines, or any other similar areas or structures.

"Interruption of business" for contingent business interruption means the period of time that your business is suspended and it:

- a. Begins with the date of direct "loss" or damage to the "dependent property" caused by a peril insured against; and
- b. Ends on the date when the "dependent property" should be repaired, rebuilt, or replaced with reasonable speed and similar quality.

"Interruption of business" for contingent business interruption does not include any increased period required due to the enforcement of any ordinance or law that:

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

The deductible does not apply to this extension.

6. **Counterfeit Money.** We will pay up to \$1,000 per workday for loss from the acceptance in good faith of counterfeit money. "Workday" means a day on which your operations are usually performed.

The deductible for this extension is \$50.

7. **Debris Removal.** We will pay the cost of removal of debris to covered property on the premises described in the "Declarations" caused by a peril insured against. This does not apply to any increase of "loss" resulting from ordinances or laws regulating construction or repair of buildings. We will pay up to 5% of the total limits for Coverages 1 and 2 plus \$25,000 for debris removal expense.

This extension does not cover the cost to:

- a. Remove debris of your property that is not insured under this policy, or property in your possession that is not covered property under Building(s) – Coverage 1 or Business Personal Property and Personal Property of Others – Coverage 2;
- b. Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
- c. Remove any property that is property not covered under Building(s) – Coverage 1 or Business Personal Property and Personal Property of Others – Coverage 2;
- d. Remove property of others of a type that would not be covered property under Building(s) – Coverage 1 or Business Personal Property and Personal Property of Others – Coverage 2; or
- e. Extract "pollutants" from land or water, or to remove, restore, or replace polluted land or water.

This extension of coverage applies to each building described in the "Declarations".

8. **Demolition Cost.** This policy covers the cost, not to exceed \$25,000, of demolishing and removing any undamaged portion of the building after a covered "loss". The demolition must be required by enforcement of any ordinance or law regulating the construction, use of, or repair of buildings.

This extension of coverage applies to each building described in the "Declarations".

The deductible does not apply to this extension.

9. **Employee Dishonesty.** We will pay for loss of "money", "securities", and Business Personal Property and Personal Property of Others - Coverage 2 up to \$10,000 per occurrence resulting from dishonest acts committed by any of your "employees", whether identified or not, acting alone or in collusion with other persons (except you or your partner(s)) with the intent to:

- a. Cause you to sustain loss; and
- b. Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions, or other employee benefits earned in the normal course of employment) for:
  - 1) Any "employee"; or
  - 2) Any other person or organization.

This extension is subject to the following:

- a. For any loss, our payment shall not exceed the replacement cost of business personal property and personal property of others at the time of loss, except the cost of "securities" may be determined by the market value at the time of settlement;
- b. All loss caused by, or involving, one or more "employees", whether the result of a single act or a series of acts, is considered one occurrence;
- c. We will pay for loss you sustain through acts committed or events occurring during the policy period and if loss is discovered during the policy period or is discovered within one year from the end of the policy period;
- d. Our payment is not increased regardless of the number of people we protect;
- e. Regardless of the number of years our policy is in force, the amount of insurance shall not be cumulative from year to year;
- f. If you sustained a loss during the policy period shown in the "Declarations" resulting directly from an "occurrence" taking place:
  - 1) Partly during the policy period shown in the "Declarations"; and
  - 2) Partly during the policy period(s) of any prior renewals;

we will first settle the amount of loss that you sustained during this policy period. We will then settle the remaining amount of loss that you sustained during the policy period(s) of the prior renewals.

- g. If you sustained a loss during the period of any prior insurance that you could have recovered

under your prior insurance, except that the time to discover the loss had expired, we will pay the loss under this Extension of Coverage, provided:

- 1) This policy became effective at the time of cancellation or termination of your prior insurance; and
- 2) The loss would have been covered by this insurance had it been in effect when the act or events causing the loss were committed or occurred.

We will pay up to \$10,000 or the amount of insurance under your prior insurance, whichever is less.

The loss under this part **g.** is not an additional amount of insurance and will not increase the total amount of insurance for Employee Dishonesty.

We do not cover:

- a. Loss caused by any dishonest or criminal act committed by you, or any of your members of a limited liability company, or any of your partners, whether acting alone or in collusion with other persons;
- b. Loss or that part of any loss, the proof of which as to its existence or amount is dependent upon:
  - 1) An inventory computation; or
  - 2) A profit and loss computation.
- c. Loss that is an indirect result of any act or occurrence covered by this policy including, but not limited to, loss caused by:
  - 1) Your inability to realize income that you would have realized had there been no loss of, or loss from damage to covered property;
  - 2) Payment of damages of any type for which you are legally liable. We will pay compensatory damages arising directly from a loss covered by this policy;
  - 3) Payment of costs, fees, or other expenses you incur in establishing either the existence or the amount of loss under this policy; or
  - 4) Payment of expenses related to any legal action.
- d. Any "employee" immediately upon discovery by:
  - 1) You; or
  - 2) Any of your partners, officers, directors, or members of a limited liability company not in collusion with the "employee";

of any dishonest act committed by that "employee" before or after being hired by you.

- e. Loss caused by any "employee" for whom similar prior insurance has been cancelled and not reinstated since the last such cancellation;
- f. Loss resulting directly or indirectly from trading whether in your name or in a genuine or fictitious account; or
- g. Loss resulting from fraudulent or dishonest signing, issuing, cancelling, or failing to cancel a warehouse receipt or any papers connected with it.

"Employee" means for this coverage only:

- a. Any natural person:
  - 1) While in your service (and for 30 days after termination of service);
  - 2) Whom you compensate directly by salary, wages, or commissions; and
  - 3) Whom you have the right to direct and control while performing services for you.
- b. Any natural person employed by an employment contractor while that person is subject to your direction and control and performing services for you excluding, however, any such person while having care, custody, and control of property outside the premises described in the "Declarations".
- c. Any natural person who is leased to you under a written agreement between you and a labor leasing firm to perform duties related to the conduct of your business.
- d. Any natural person who is a former "employee", director, partner, member of a limited liability company, representative, or trustee retained as a consultant while performing services for you.
- e. Any natural person who is a guest student or intern pursuing studies or duties, excluding however, any such person while having care, custody, or control of covered property outside the premises described in the "Declarations".
- f. Any natural person who is a property manager of properties owned by you.
- g. Any natural person who is acquired as an "employee" through consolidation or merger.

"Employee" does not mean any:

- a. Agent, broker, factor, commission merchant, consignee, independent contractor, or representative of the same general character; or
- b. Manager of a limited liability company, director, or trustee except while performing acts coming within the scope of the usual duties of an "employee".

"Occurrence" means for this coverage only:

- a. An individual act;

- b. The combined total of all separate acts whether or not related; or
- c. A series of acts whether or not related;

committed by an "employee" acting alone or in collusion with other persons, during the policy period shown in the "Declarations", except as provided under Paragraphs **f.** and **g.** of This extension subject to the following under **Employee Dishonesty – Section VIII Extensions of Coverage.**

The deductible for this extension is \$200.

- 10. **Expenses for Loss Adjustment.** We will pay up to \$5,000 for expenses involved in the preparation of loss data, inventories, and appraisals. This does not include expenses incurred in using a public adjuster.

This extension of coverage applies to each building described in the "Declarations".

The deductible does not apply to this extension.

- 11. **Expenses for Security.** We will pay up to \$2,500 for expenses incurred for security after a covered "loss" to protect the covered property from further damage.

This extension of coverage applies to each building described in the "Declarations".

The deductible does not apply to this extension.

- 12. **Exterior Signs, Lights, and Clocks.** We will pay up to \$5,000 for "loss" caused by a peril insured against to lights, clocks, and permanently mounted unattached exterior signs which you own or which are in your care, custody, or control and for which you are contractually responsible. We will cover all lights, clocks, and permanently mounted unattached signs on the premises described in the "Declarations".

We will not pay for "loss" caused by:

- a. Wear and tear, gradual deterioration, faulty manufacture or installation, inherent vice, extremes of temperature, dampness of atmosphere, or mechanical breakdown;
- b. Damaged to electrical apparatus which is part of covered property caused by electricity other than lightning, except for ensuing fire damage; or
- c. Breakage during installation, repairing or dismantling, or breakage during transportation, unless caused by fire, lightning, collision, derailment, or overturn of vehicle.

- 13. **Fine Arts.** We will pay up to \$25,000 for a "loss" caused by a peril insured against, to your fine arts on the premises described in the "Declarations". Fine arts mean property that is rare or has historical value, such as paintings, etchings, drawings, rare books, tapestries, or stained glass.

We will not cover fine arts that are on display at fairgrounds or at a national or international exposition.

We do not cover "loss" caused by a process to repair, retouch, restore, adjust, service, or maintain your fine arts. If a fire or explosion results, we do cover the "loss" caused by the fire or explosion.

This extension of coverage applies to each building described in the "Declarations".

14. **Fire Department Service Charges.** We will pay reasonable charges made by a fire department for services rendered as a result of an insured "loss".

This extension of coverage applies to each building described in the "Declarations".

The deductible does not apply to this extension.

15. **Fire Extinguisher Recharge.** We will pay expenses incurred to recharge portable fire extinguishers after they are used to fight a fire.

This extension of coverage applies to each building described in the "Declarations".

The deductible does not apply to this extension.

16. **Income Protection - Off-Premises Utility Properties Failure.** We will pay up to \$25,000 for your loss of "income", "rental income", and "extra expense" you sustain due to partial or total "interruption of business" resulting from the interruption of service to the premises described in the "Declarations".

The "interruption of business" must result directly from "loss" to the following property, not on the premises described in the "Declarations" from a peril insured against:

- A. Communication Supply Property, meaning property supplying communication services, including telephone, radio, microwave, or television services, to the premises described in the "Declarations", such as:
- 1) Communication transmission lines (including fiber optic transmission lines);
  - 2) Coaxial cables; and
  - 3) Microwave radio relay except satellites.
- B. Power Supply Property, meaning the following types of property supplying electricity, steam, or gas to the premises described in the "Declarations":
- 1) Utility generating plants;
  - 2) Switching stations;
  - 3) Substations;
  - 4) Transformers; and
  - 5) Transmission lines.
- C. Water Supply Property, meaning the following types of property supplying water to the premises described in the "Declarations":
- 1) Pumping stations; and

- 2) Water mains.

- D. Wastewater Removal Property, meaning a utility system for removing wastewater and sewage from the premises described in the "Declarations", other than a system designed primarily for draining storm water. The wastewater removal property includes sewer mains, pumping stations, and similar equipment for moving the effluent to a holding treatment or disposal facility, and includes such facilities.

Coverage under this policy does not apply to interruption in service caused by or resulting from a discharge of water or sewage due to heavy rainfall or flooding.

We will only pay for loss of "income", "rental income", and "extra expense" sustained by you after the first 24 hours following "loss" to off-premises communication supply property, power supply property, water supply property, or waste water removal property.

Transmission lines include all lines which serve to transmit communication service or power, including links which may be identified as distribution lines.

This extension of coverage applies to each building described in the "Declarations".

The deductible does not apply to this extension.

17. **Key Replacement.** If keys to your building(s) are stolen during a theft loss, we will pay, at your request, up to \$5,000 to replace the keys and locks to the doors of your premises.

This extension of coverage applies to each building described in the "Declarations".

18. **Leasehold Interest.** We will pay for leasehold interest you sustain due to the cancellation of your lease resulting directly from "loss" or damage to building(s) or business personal property at the premises described in the "Declarations" from a peril insured against.

We will not pay any "loss" you sustain caused by your cancelling the lease.

This extension of coverage applies to each building described in the "Declarations".

Leasehold interest means the following:

- A. Tenant's Lease Interest, meaning the difference between the:
- 1) Rent you pay at the premises described in the "Declarations"; and
  - 2) Rental value of the premises described in the "Declarations".
- B. Bonus payments, meaning the unamortized portion of the cash bonus that will not be refunded

to you. A cash bonus is money you paid to acquire your lease. It does not include:

- 1) Rent, whether or not prepaid; or
  - 2) Security.
- C. Improvements and Betterments, meaning the unamortized portion of payments made by you for improvements and betterments. It does not include the value of improvements and betterments recoverable under any other insurance, but only to the extent such other insurance is valid.
- Improvements and betterments are fixtures, alterations, installations, or additions:
- 1) Made a part of the building or structure you occupy but do not own; and
  - 2) You acquire or made at your expense but cannot legally remove.
- D. Prepaid Rent, meaning the unamortized portion of any amount of advance rent you paid that will not be refunded to you. This does not include the customary rent due at:
- 1) The beginning of each month; or
  - 2) Any other rental period.

#### **Amount of Insurance**

We will pay your "net leasehold interest" at the time of loss up to \$15,000 for loss you sustain because of the cancellation of any one lease. This applies to:

- a. Tenant's Lease Interest
  - 1) But, if your lease is cancelled and your landlord lets you continue to use your premises under a new lease or other arrangement, the most we will pay for loss because of the cancellation of any one lease is the lesser of:
    - a) The difference between the rent you now pay and the rent you will pay under the new lease or other arrangement; or
    - b) Your "net leasehold interest" at the time of loss.
  - 2) Your "net leasehold interest" decreases automatically each month. The amount of "net leasehold interest" at any time is your "gross leasehold interest" times the leasehold interest factor for the remaining months of your lease. A proportionate share applies for any one period of time less than a month.
- b. Bonus Payments, Improvements and Betterments, and Prepaid Rent
  - 1) If your lease is cancelled and your landlord lets you continue to use your premises under a new lease or other arrangement, the most we will pay for loss because of the cancellation of any one lease is the lesser of:
    - a) The loss sustained by you; or

- b) Your "net leasehold interest" at the time of loss.

- 2) Your "net leasehold interest" decreases automatically each month. The amount of each decrease is your "monthly leasehold interest". A proportionate share applies for any period of time less than a month.

#### **Definitions**

"Gross leasehold interest" means the difference between the:

- a. Monthly rental value of the premises you lease; and
- b. Actual monthly rent you pay including taxes, insurance, janitorial, or other services that you pay as part of the rent.

This amount is not changed:

- a. Whether you occupy all or part of the premises; or
- b. If you sublet the premises.

"Monthly leasehold interest" means the monthly portion of covered Bonus Payments, Improvements and Betterments, and Prepaid Rent. To find your "monthly leasehold interest", divide your original costs of Bonus Payments, Improvements and Betterments, and Prepaid Rent by the number of months left in your lease at the time of the expenditure.

"Net Leasehold Interest":

- a. Applicable to Tenant's Lease Interest

"Net leasehold interest" means the present value of your "gross leasehold interest" for each remaining month of the term of the lease at the rate of interest.

The "net leasehold interest" is the amount that, equivalent to your receiving the "Gross Leasehold Interest" for each separate month of the unexpired term of the lease.

- b. Applicable to Bonus Payments, Improvements and Betterments, or Prepaid Rent.

"Net leasehold interest" means your "monthly leasehold interest" times the number of months left in your lease.

19. **Money and Securities.** We will pay up to \$10,000 for any one "loss" caused by a peril insured against to "money" or "securities" while in or on the premises described in the "Declarations" or within a bank or savings institution.

We will pay for "money" and "securities" while being conveyed by the insured or by an authorized employee up to \$10,000 for any one "loss" caused by a peril insured against.

We will pay up to \$10,000 for "loss" if the "loss" occurs inside the home of the insured or an authorized employee.



We will pay for "money" and "securities" destruction up to \$10,000 for any one "loss" caused by a peril insured against. "Money" and "securities" destruction means "loss" by destruction of "money" and "securities" within the premises described in the "Declarations".

This does not include "loss" caused by unexplained or mysterious disappearance or abstraction.

This extension of coverage applies to each building described in the "Declarations".

**20. Newly Acquired or Constructed Property.**

A. If this policy covers Building(s), you may extend that insurance to apply up to 50% of the limit for Coverage 1 or \$500,000, whichever is less, on:

- 1) Newly acquired buildings at other than the location(s) described in the "Declarations"; or
- 2) New additions, new buildings, and new structures when constructed on the insured premises, including materials, equipment, and supplies on or within 1,500 feet of the insured premises;

provided there is no other insurance applicable.

B. If this policy covers your Business Personal Property and Personal Property of Others, you may extend that insurance to apply up to 25% of the limit for Coverage 2 or \$250,000, whichever is less, on newly acquired Business Personal Property and Personal Property of Others in a newly acquired or leased building other than the location(s) described in the "Declarations";

provided there is no other insurance applicable.

C. You may apply up to one month's actual business income loss or \$250,000, whichever is less on:

- 1) Newly acquired Building(s) or Business Personal Property and Personal Property of Others in a newly leased building at other than the location(s) described in the "Declarations"; or
- 2) New additions, new buildings, and new structures when constructed on the described premises, including materials, equipment, and supplies on or within 1,500 feet of the described premises, if "loss" to the new additions, new buildings, and new structures delays the start of your business. The "interruption of business" will start on the day your business would have started if the "loss" had not occurred;

provided there is no other insurance applicable.

This extension shall apply for 90 days after the acquisition or start of construction, provided the policy remains in force or is renewed.

You shall report values involved and pay any additional premium.

This extension does not apply to property while in transit.

**21. Non-Owned Detached Trailers.** Business Personal Property and Personal Property of Others - Coverage 2 is extended to cover non-owned detached 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 insured premises described in the "Declarations"; and
- C. You have a contractual responsibility to pay for "loss" or damage to the trailer.

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; or
- b. During hitching or unhitching operations or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.

We will pay up to \$5,000 for any one "loss" caused by a peril insured against to non-owned detached trailers.

This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

This extension of coverage applies to each building described in the "Declarations".

**22. Peak Season Coverage - Business Personal Property and Personal Property of Others - Coverage 2.** We will pay up to 25% of the limit for Business Personal Property and Personal Property of Others - Coverage 2 to cover "loss" to business personal property during a peak season. We will only provide this increase if you have insured business personal property to 100% of full replacement cost of your average monthly values during the 12 months immediately preceding the date when the "loss" or damage occurs.

**23. Personal Articles.** Business Personal Property and Personal Property of Others - Coverage 2 is extended to cover household and personal articles of the insured, the insured's partners, members or managers of a limited liability company, the insured's officers, or the insured's employees for loss caused by a peril insured against. We will pay up to \$10,000 for any one "loss" at the premises described in the "Declarations".

This extension of coverage applies to each building described in the "Declarations".

**24. Pollutants Clean Up and Removal.** We will cover the cost to extract "pollutants" from land or water on

the premises described in the "Declarations" if the release, discharge, or dispersal of "pollutants" is caused by a peril insured against during the policy period. We will pay up to \$25,000 for all "losses" throughout the year. The "loss" must be reported to us within 180 days after the "loss" or the end of the policy period, whichever is the later date.

25. **Property in Danger.** This policy covers up to 45 days for any "loss" to covered property removed from the premises described in the "Declarations" or at a temporary location because of danger of damage by a peril insured against or to repair damage to the covered property.

This extension of coverage applies to each building described in the "Declarations".

26. **Temporarily Off-Premises - Business Personal Property and Personal Property of Others - Coverage 2.** This extension includes coverage for business personal property and personal property of others up to \$25,000, and coverage for salesmen's samples up to \$5,000 for "loss" caused by a peril insured against except while in transit and other than "equipment breakdown" to transportable "covered equipment" as provided in **Section IV – Additional Coverages – D. Equipment Breakdown Coverage**. This extension applies only to business personal property and personal property of others at a location you do not own, lease, or operate and for not more than 60 days.

We will cover business personal property and personal property of others and salesmen's samples at exhibitions or trade shows for not more than 60 days.

This extension shall not apply to property rented to others and property sold on installment or deferred payment plans after delivery to customers.

27. **Transportation - Airborne Property.** We will pay up to \$25,000 for "loss" to Business Personal Property and Personal Property of Others - Coverage 2 in or on an "aircraft" owned, leased, or operated by or for you or in or on an "aircraft" of a common or contract carrier. The "loss" must be caused by fire; lightning; flood; earthquake; landslide; windstorm; theft; robbery; or crashing of the "aircraft".

This extension applies anywhere in the world.

28. **Transportation.** We will pay up to \$25,000 for "loss" to Business Personal Property and Personal Property of Others - Coverage 2 in or on a vehicle owned, leased, or operated by or for you; in or on a vehicle of a common or contract carrier; or on a dock, pier, bulkhead, platform, or station while in the custody of a common or contract carrier. The "loss" must be caused by fire; lightning; flood; earthquake; landslide; windstorm; collapse of bridge, dock, or culvert; theft; "robbery"; or collision (excluding roadbed collision), upset, or overturn of transporting vehicle.

This extension includes \$1,000 of coverage for tools and equipment.

This extension applies away from premises only while in the United States of America, its territories or possession, Puerto Rico, or Canada.

29. **Valuable Papers and Records.** Business Personal Property and Personal Property of Others - Coverage 2 is extended to cover the "extra expense" incurred in the reproduction of your valuable papers and records and your interest in the valuable papers of others when destroyed by a peril insured against at the premises described in the "Declarations", while being conveyed outside the premises, or temporarily within other premises for any purpose except storage.

Coverage will also apply while your valuable papers and records and your interest in the valuable papers of others are being moved to and while at a place of safety because of imminent danger of "loss" and while being returned from such place.

"Loss" or damage to valuable papers and records will be valued at the cost of restoration or replacement of the lost or damaged information. To the extent that the contents of the valuable papers and records are not restored, the valuable papers and records will be valued at the cost of replacement with blank materials of substantially identical type.

Valuable papers and records means inscribed, printed, or written:

- a. Documents;
- b. Manuscripts; and
- c. Records;

including: abstracts, books, deeds, drawings, films, maps, or mortgages. But valuable papers and records does not mean "money" or "securities".

This extension is limited to \$25,000 for any one "loss".

This extension of coverage applies to each building described in the "Declarations".

The deductible does not apply to this extension.

30. **Heating and Air Conditioning Equipment.** Business Personal Property and Personal Property of Others – Coverage 2 is extended to cover heating or air conditioning equipment which is in your care, custody, or control and for which you are contractually responsible. The heating and air conditioning equipment must be permanently attached to the building on the premises described in the "Declarations".

We will pay up to \$20,000 for any one "loss" caused by a peril insured against to heating and air conditioning equipment.

This extension of coverage applies to each building described in the "Declarations".

31. **Laptop Computers Off-Premises.** We will pay up to \$10,000 for laptops, notebooks, and other handheld computers for "loss" caused by a peril insured against, other than an "accident" or "electronic circuitry impairment" to "covered property" as provided in Section IV – Additional Coverages – D. Equipment Breakdown Coverage while in transit, temporarily at your home, or at a premise you do not own, lease, or occupy. We will only cover laptops, notebooks, and handheld computers while in the United States of America, its territories or possessions, Puerto Rico, or Canada.
32. **Data Breach Response Expenses.** We will pay up to \$10,000 for Data Breach Response Expenses if you have a "personal data breach" that is:
- First discovered by you during the policy period;
  - Reported to us within 30 days from the date it is first discovered by you; and
  - The "personal data breach" takes place in the "coverage territory".

This \$10,000 limit of insurance is the most we will pay for the sum of all costs covered by Data Breach Response Expenses under Paragraph **A. Data Breach Response Expenses - What is Covered**, because of all "personal data breaches" occurring during the policy period.

We will pay up to \$5,000 for the sum of all costs covered under Paragraph **A.1) Legal Services and Forensic Information Technology Services** because of all "personal data breaches" occurring during the policy period. This sublimit is part of, and not in addition to, the \$10,000 limit of insurance for Data Breach Response Expenses.

These limits apply regardless of the number of "personal data breaches" occurring during the policy period.

A "personal data breach" may first be discovered by you in one policy period, but it may result in cause covered costs in one or more subsequent policy periods. If so, the most we will pay for covered costs arising from such "personal data breach" is \$10,000.

Coverage for Services to Affected Individuals provided under Paragraph **A.3)**, is limited to costs to provide such services for a period of up to one year from the date of the notification to the "affected individuals". Notwithstanding, coverage for Identity Restoration Case Management Services initiated within such one year period may continue for a period of up to one year from the date such Identity Restoration Case Management Services are initiated.

The deductible does not apply to this extension.

#### **A. Data Breach Response Expenses -What is Covered**

- 1) Legal and Forensic Information Technology Services – We will pay your necessary and reasonable costs for the following outside professional services:
  - a) Legal Services - Professional legal counsel review of the "personal data breach" and how you should best respond to it.
  - b) Forensic Information Technology Services - Professional information technologies review, if needed, to determine the nature and extent of the "personal data breach", and the number and identities of the "affected individuals".
- 2) Notification to Affected Individuals - We will pay your necessary and reasonable costs to provide notification of the "personal data breach" to "affected individuals".
- 3) Services to Affected Individuals - We will pay your necessary and reasonable costs to provide the following services to "affected individuals":
  - a) Informational Materials – A packet of loss prevention and customer support information is available.
  - b) Help Line – A toll-free telephone line for "affected individuals" with questions about the "personal data breach" or wanting to request additional services as listed in Paragraphs **c)** and **d)** below.
  - c) Monitoring Services – An electronic service automatically monitoring for activities affecting an individual's credit files, public records, and/or criminal records. Monitoring Services are subject to the type of data released and to the "affected individuals" enrolled for this service with the designated service provider.
  - d) Identity Restoration Case Management – This covers the services of an identity restoration professional. This professional will help the "affected individual" to recover control over their personal identity. This includes, with the permission and cooperation of the "affected individual", contacting authorities, credit bureaus, creditors, and businesses for the process of correcting credit, other records, and accounts, within the constraints of what is possible and reasonable, to restore control over their personal identity

#### **B. Exclusions**

We do not cover any costs for a "personal data breach" arising from the following:

- 1) Your intentional or willful complicity in a "personal data breach".

- 2) Any criminal; fraudulent; dishonest act, error, or omission; or any intentional or knowing violation of the law by you.
- 3) Any "personal data breach" occurring prior to the time when Data Breach Response Expenses coverage was added to the Ultrapack Plus Commercial Property Coverage Part regardless of when the first "personal data breach" was discovered by you.
- 4) Any third party liability or defense costs.
- 5) Costs to research any deficiency, except as specifically provided under Paragraph A. 1)b) Forensic Information Technology Services. This includes, but is not limited to, any deficiency in your systems, procedures, or physical security that may have contributed to a "personal data breach".
- 6) Costs to correct any deficiency in your systems, procedures, or physical security that may have contributed to a "personal data breach".
- 7) Any fines or penalties including, but not limited to, fees or surcharges from affected financial institutions.
- 8) Any costs arising out of criminal investigations or proceedings.
- 9) Any threat, extortion, or blackmail including, but not limited to, ransom payments and private security assistance.
- 10) Any virus or other "malicious code" that is or becomes named and recognized by the CERT Coordination Center, McAfee, Secunia, Symantec, or other comparable third party monitors of malicious code activity.
- 11) Your reckless disregard for the security of "personally identifying information" in your care, custody, or control.
- 12) Your purposeful off-shoring of the processing, storage, or other use of data containing "personally identifying information" to a jurisdiction outside of the "coverage territory".

#### **C. Additional Conditions**

- 1) Bankruptcy or Insolvency - Bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Data Breach Response Expenses coverage.
- 2) Due Diligence - You agree to use due diligence to prevent and mitigate costs covered under this Data Breach Response Expenses coverage. This includes, but is not limited to, complying with reasonable and industry-accepted protocols for the following:
  - a) Providing and maintaining appropriate physical security for your premises, computer

- systems, and hard copy files, electronic media, handheld devices, and storage devices;
- b) Providing and maintaining appropriate computer, network, and Internet security;
- c) Maintaining and updating at appropriate intervals back-ups of computer data;
- d) Protecting transactions, such as using encryption when processing credit card, debit card, and check payments;
- e) Appropriate disposal of files containing "personally identifying information", including shredding hard copy files and destroying physical media used to store "electronic data"; and
- f) Providing appropriate security awareness training on your physical, electronic, and procedural security measures.

3) Legal Advice - The services provided under this Data Breach Response Expenses coverage are not legal recommendations for action. Our determination of what is, or is not covered under this coverage does not represent legal advice or counsel from us about what action you should, or should not do.

4) Pre-Notification Consultation - You agree to consult with us prior to issuing any notification to "affected individuals". We assume no responsibility under this Data Breach Response Expenses coverage for any services promised to "affected individuals" without our prior agreement. If possible, this pre-notification consultation will also include the designated service provider(s) as agreed to under the Service Providers Condition. You must provide the following at our pre-notification consultation with you:

- a) Information about the "personal data breach" that may appropriately be communicated with "affected individuals"; and
- b) The scope of services that you desire for the "affected individuals". For example, coverage may be structured to provide fewer services in order to make those services available to more "affected individuals" without exceeding the available Data Breach Response Expenses coverage limit.

#### **5) Service Providers**

- a) We will only pay under this Data Breach Response Expenses coverage for services that are provided by service providers approved by us. Approval of an alternate ven-

- dor must be obtained prior to the consultation process. We will only pay reasonable and customary charges associated with services covered under this Data Breach Response Expenses coverage provided by an alternate vendor.
- b) Prior to the pre-notification consultation described in the Pre-Notification Consultation Condition, you must come to an agreement with us regarding the service provider(s) to be used for the Notification to Affected Individuals and Services to Affected Individuals as described in Paragraph **A. Data Breach Response Expenses - What is Covered**, Paragraphs 2) and 3). We will suggest a service provider. If you prefer to use an alternate service provider, our coverage is subject to the following limitations:
    - i. Such alternate service provider(s) must be approved by us prior to the consultation process;
    - ii. Our payment for services provided by any alternate service provider will not exceed the amount that we would have paid using the service provider we had suggested; and
    - iii. Such alternate service provider must provide services that are reasonably equivalent or superior in both kind and quality to the services that would have been provided by the service provider we had suggested.
  - c) We will only pay for Legal Services under this Data Breach Response Expenses coverage from licensed legal counsel.
- 6) Services - The following conditions apply regarding any services provided to you or any "affected individual" by us, our designees, or any service firm paid for in whole or in part under this Data Breach Response Expenses coverage:
- a) The effectiveness of such services depends on your cooperation and assistance;
  - b) All services may not be available or applicable to all "affected individuals". For example, "affected individuals" who are minors or foreign nationals may not have credit records that can be provided or monitored. Service in Canada will be different from service in the United States and Puerto Rico in accordance with local conditions;
  - c) We cannot guarantee, after our vendor has provided the applicable services, that the problems associated with the covered "personal data breach" will be eliminated; and
  - d) You will have a direct relationship with the professional service firms paid for in whole or in part under this coverage. Those firms work for you.
- 7) Time Limits
- a) You must report a "personal data breach" to us within 30 days of your discovery of the "personal data breach".
  - b) You have up to one year from the date of reporting a "personal data breach" to initiate the services provided for you.
  - c) An "affected individual" has up to one year from the date the notification is received of a "personal data breach" to initiate the credit report monitoring services provided.  
  
Once initiated the credit monitoring services will continue to be provided to that person for two years.
  - d) Credit Report Monitoring and Identity Restoration Case Management Services will be provided by our Designated Service Provider for a period of 12 consecutive months from the inception of the Credit Report Monitoring and Identity Restoration Case Management Services.
- 8) Additional Duties After a Personal Data Breach - In case of a covered "personal data breach", you must perform the following duties:
- a) Give us prompt notice of the "personal data breach". As stated in the Time Limits condition, you must report the "personal data breach" to us within 60 days of "your" discovery.
  - b) Take all reasonable steps to protect "personally identifying information" remaining in your care, custody, or control.
  - c) Preserve all evidence of the "personal data breach".
  - d) Permit us to inspect the property and records proving the "personal data breach".
  - e) Send us, within 60 days after the "personal data breach", your signed and sworn proof of loss statement which includes:
    - i. Time and cause of the "personal data breach";
    - ii. Other policies which may cover the "personal data breach";
    - iii. The method of the "personal data breach";
    - iv. The approximate number of "affected individuals" as a result of the "personal data breach";

- v. A detailed description of the type and nature of the information that was compromised;
- vi. Whether or not the information was encrypted and if so, the level of encryption;
- vii. Whether or not law enforcement has been notified;
- viii. If available, the states in which the "affected individuals" are domiciled; and
- ix. If available who received the "personally identifying information" as a result of the "personal data breach".

#### **D. Additional Data Breach Definitions**

- "Affected Individual" means any person who is your current, former, or prospective customer, client, member, director, or employee and whose "personally identifying information" is lost, stolen, accidentally released, or accidentally published by a "personal data breach" covered under this Extension of Coverage. This definition is subject to the following provisions:
  1. "Affected individual" does not include any business or organization. Only an individual person may be an "affected individual".
  2. An "affected individual" must have a direct relationship with your interests as an insured under this policy. The following are examples of individuals who would not meet this requirement:
    - a. If you aggregate or sell information about individuals as part of your business, the individuals about whom you keep such information do not qualify as "affected individuals". However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of yours.
    - b. If you store, process, transmit, or transport records, the individual whose "personally identifying information" you are storing, processing, transmitting, or transporting for another entity do not qualify as "affected individuals". However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of yours.
    - c. You may have operations, interests, or properties that are not insured under this policy. Individuals who have a relationship with you through such other operations, interests, or properties do not qualify as "affected individuals". However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of yours.
  3. An "affected individual" may reside anywhere in the world but must be a citizen or legal alien of the United States (its territories and possessions), Puerto Ri-

co, or Canada with a valid Social Security Number (SSN) or Social Insurance Number (SIN).

- "Malicious code" means any loss of data that results from a worm, virus, Trojan, BOT, or other piece of computer code, software, spyware, or malware that is used to collect, destroy, alter, retrieve, or affect computer software and/or data on a computer system, network, storage device, Smartphone, or other peripheral device; and on the date the "personal data breach" occurred is named and recognized by the CERT Coordination Center or any other industry acceptable third party antivirus, antimalware, or other solution that monitors malicious code activity.
- "Personal data breach" means the loss, theft, accidental release, or accidental publication of "personally identifying information" regarding one or more "affected individual(s)", if such loss, theft, accidental release, or accidental publication has or could reasonably result in the fraudulent use of such information. This definition is subject to the following provisions:

1. At the time of the loss, theft, accidental release, or accidental publication, the "personally identifying information" must be in your direct care, custody, or control.
2. "Personal data breach" includes disposal or abandonment of "personally identifying information" without appropriate safeguards such as shredding or destruction, subject to the following provisions:
  - a. Your failure to use appropriate safeguards must be accidental and not reckless or deliberate; and
  - b. Such disposal or abandonment must take place during the time period for which this Data Breach Response Expenses coverage is effective.
3. "Personal data breach" includes situations where there is a reasonable cause to suspect that such "personally identifying information" has been lost, stolen, accidentally released, or accidentally published, even if there is no firm proof.

All "personal data breach" that are discovered at the same time or arise from the same cause will be considered one "personal data breach".

- "Personally identifying information" means information that could be used to commit fraud or other illegal activity involving the credit or identity of an "affected individual". This includes but is not limited to, social security numbers, drivers' license numbers, credit card numbers, bank account information, or any other account numbers correlated with names and addresses.

## **SECTION IX - WHEN AND WHERE THIS POLICY APPLIES**

### **1. When**

This policy applies to losses that occur during the policy period. Unless otherwise specified in the "Declarations", "Renewal Certificate", "Amended Declarations", "Revised Declarations", or endorsement, the policy period begins and ends at 12:01 AM Standard Time at the stated address of the Named Insured. An "Amended Declarations" or endorsement tells you that the policy has been changed. A "Renewal Certificate" tells you that the policy is being renewed for another policy period.

### **2. Where**

The United States, its territories and possessions, Puerto Rico, and Canada.

## **SECTION X - COMMERCIAL PROPERTY CONDITIONS**

### **1. ABANDONMENT OF PROPERTY**

We will not accept abandoned property.

### **2. APPRAISAL**

If you and we fail to agree on the amount of "loss", either party may make written demand for an appraisal. Each party will select an appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire within 15 days after both appraisers have been identified, you or we can ask a judge of a court of record in the state where your principal office is located to select an umpire.

The appraisers shall then set the amount of "loss". If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of "loss". If they cannot agree, they will submit their differences to the umpire. A written award by two will determine the amount of "loss".

Each party will pay the appraiser it chooses and equally bear expenses of the appraisal. However, if the written demand for appraisal is made by us, we will pay for the reasonable cost of your appraiser and your share of the cost of the umpire.

We will not be held to have waived any rights by any act relating to appraisal.

### **3. DIVISIBLE CONTRACT**

The breach of a policy condition in one building or location will have no effect on the coverage on another where no breach exists.

### **4. LIMITATION – ELECTRONIC MEDIA AND RECORDS**

We will not pay for any loss of "income" or "rental income" caused by direct physical damage to electronic media and records after the longer of:

- a. Sixty (60) consecutive days after the date of the physical "loss" or damage; or
- b. The period beginning with the date of direct physical "loss" or damage to repair, rebuild, or replace, with reasonable speed and similar quality, other property at the insured premises due to "loss" caused by the same occurrence.

Electronic media and records mean:

- a. Electronic data processing, recording, or storage media such as films, tapes, discs, drums, or cells;
- b. Data stored on such media; or
- c. Programming records used for electronic data processing or electronically controlled equipment.

This condition does not apply to "extra expense".

## **5. LOSS PAYMENT**

We will adjust all "losses" with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. We will not pay you more than your financial interest in the covered property.

"Loss" will be payable 30 days after we receive your proof of "loss" if you have complied with all the terms of this coverage part and one of the following has been done:

- a. We have reached an agreement with you;
- b. There is an entry of final judgment; or
- c. There is a filing of an appraisal award on your behalf.

We have the option to:

- a. Pay the value of that part of the damaged property;
- b. Pay the cost to repair or replace that part of the damaged property, but this does not include the increased cost of construction due to enforcement of or compliance with any ordinance or law regulating the construction or repair of the damaged building;
- c. Take all or part of the damaged property at an agreed or appraised value; or
- d. Repair or replace that part of the damaged property with material of like kind and quality, but this does not include the increased cost of construction due to any ordinance or law regulating the construction or repair of the damaged building.

We will not pay more than the amount of insurance shown in the "Declarations" applicable to the damaged or destroyed property.

#### **Pennsylvania only:**

We must give the insured notice of our intent to repair or replace within 15 working days after we receive your sworn proof of loss.

## **6. MORTGAGEE**

"Loss" shall be payable to mortgagees named in the "Declarations", to the extent of their interest and in the order of precedence.

#### **Our Duties**

We will:

- a. Protect the mortgagee's interest in an insured building. This protection will not be invalidated by any act or neglect of the insured, any breach of warranty, increase in hazard, change of ownership, or foreclosure if the mortgagee has no knowledge of these conditions; or
- b. Give the mortgagee 30 days notice before cancellation or refusal to renew this policy.

#### **Mortgagee's Duties**

The mortgagee will:

- a. Furnish proof of "loss" within 60 days if you fail to do so;
- b. Pay upon demand any premium due if you fail to do so;
- c. Notify us of any change in ownership or occupancy or any increase in hazard of which the mortgagee has knowledge;
- d. Give us his or her right of recovery against any party liable for "loss". This shall not impair the right of the mortgagee to recover the full amount of the mortgage debt; and
- e. After a "loss", permit us to satisfy the mortgage requirements and receive full transfer of the mortgage and all "securities" held as collateral to the mortgage debt.

Policy conditions relating to **APPRAISAL, LOSS PAYMENT, and SUITS AGAINST US** apply to the mortgagee.

This mortgagee interest provision shall apply to any trustee or loss payee named in the "Declarations".

#### **7. NO BENEFIT TO BAILEE**

No bailee shall benefit, directly or indirectly, from this insurance.

#### **8. OTHER INSURANCE**

You may have other insurance subject to the same plan, terms, conditions, and provisions as 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 covered on the same basis.

If there is other insurance covering the same loss or damage, other than that described in the paragraph above, we will pay only for the amount of covered loss or damage in excess of the amount due from the other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

#### **9. PROPERTY OF OTHERS**

If we are called upon to pay a "loss" for property of others, we reserve the right to adjust the "loss" with the owner. If we pay the owner, such payments will satisfy your claims against us for the owner's property.

In case of disagreement with the property owner, we will conduct the defense on your behalf at our expense.

#### **10. PROTECTIVE SAFEGUARDS**

You must maintain, as far as is within your control, any protective safeguards shown in the "Declarations". Failure to do so will suspend the coverage of this policy at the affected location. Coverage will not be suspended if you notify us immediately when the system is not in operation because of repairs or maintenance and you comply with our requests and directions at that time.

#### **11. RECORDS**

You must keep proper records so that we can accurately determine the amount of "loss".

#### **12. RECOVERIES**

If either you or we recover any property after settlement, that party must notify the other. Expenses of recovery will be deducted from the value of the property. The balance of the proceeds will be divided according to your and our interests.

At your option, the recovered property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay the expenses of the recovery and the expenses to repair the recovered property, up to the Limit of Insurance.

#### **13. REPLACEMENT COST COVERAGE**

After a covered "loss" to your Building(s) - Coverage 1 or Business Personal Property or Personal Property of Others - Coverage 2, our payment will be on a replacement cost basis, instead of an actual cash value basis, thereby eliminating deduction for depreciation. Payment will not exceed the Limit of Insurance shown in the "Declarations".

We will not pay replacement cost until the damaged or destroyed property is actually repaired or replaced. Repairs or replacement must be made as soon as practicable.

We will pay the smaller of the following:

- a. The amount of insurance applicable to the damaged or destroyed property;
- b. The cost of replacement on the same premises with material of like kind and quality and intended for the same use; or
- c. The amount actually spent in repairing or replacing the property.

In order to obtain replacement cost on Business Personal Property or Personal Property of Others - Coverage 2, the amount of insurance shown in the "Declarations" for Business Personal Property or Personal Property of Others - Coverage 2 must be 100% or more of your average monthly values for the last 12 months preceding the date of "loss". In the event you have been in business for less than 12 months, the average monthly value will be based on the shorter period of time.



We will not pay for "loss" on a replacement cost basis:

- a. Due to any ordinance or law regulating the construction or repair of buildings;
- b. To stock (raw, in process, or finished) or merchandise including materials and supplies in connection therewith;
- c. To household furniture or apartment and dwelling contents;
- d. To manuscripts;
- e. To paintings, etchings, pictures, tapestries, statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glassware, bric-a-brac, or other articles of art, rarity, or antiquity; or
- f. To obsolete property.

You may choose to accept payment on an actual cash value basis. If you do choose an actual cash value basis, you can still select a replacement cost basis if the building(s) or business personal property or personal property of others is repaired or replaced within six months of "loss".

As respects "covered equipment" that sustains a "loss" resulting from an "accident" or "electronic circuitry impairment":

- a. The amount of our payment will be based on the most cost-effective means to replace the function, capacity, and remaining useful life of the damaged property. This may include the use of generic, used, or reconditioned parts, equipment, or property.
- b. Except as described in **Section X Commercial Property Conditions – 4. Environmental, Safety and Efficiency Improvements**, you must pay the extra cost of replacing damaged property with property of a better kind or quality or of a different size or capacity.
- c. The most we will pay in any "one equipment breakdown" for "loss", damage, or expense is the applicable limit of protection as set forth in the "Declarations".

#### 14. RESUMPTION OF YOUR BUSINESS

We will reduce the amount of your:

- a. Income protection loss, other than "extra expense", to the extent that you can resume your business, in whole or in part, by using damaged or undamaged property (including business personal property) at the premises described in the "Declarations" or elsewhere.
- b. "Extra expense" loss to the extent you can return your business to normal and discontinue such "extra expense".

#### 15. SUITS AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy. Suit must be brought within 2 years (Maryland and North Carolina - 3 years) after the "loss" occurs.

#### 16. VACANCY AND UNOCCUPANCY

Property may be unoccupied without limit of time. If the building at which the "loss" occurs is vacant for more than 60 consecutive days before the "loss", then we will:

- a. Not pay for any "loss" caused by:
  - 1) Vandalism or malicious mischief, water damage, glass breakage, or theft; or
  - 2) Sprinkler leakage unless you have exercised reasonable care to protect the system against freezing.
- b. Pay for other covered "losses", but we will reduce the amount of payment by 15%.

For a tenant operated business, the 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.

For the owner of the building, the building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

- a. Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
- b. Used by the building owner to conduct customary operations.

Buildings under construction or renovation are not considered vacant or unoccupied.

#### 17. VALUATION

We will determine the value of covered property in the event of "loss" to stock you have sold but not delivered. It will be valued at the selling price less any discounts and expenses you otherwise would have had.

#### 18. YOUR DUTIES AFTER A LOSS

In case of a covered "loss", you must perform the following duties:

- a. Give us or our Agent immediate notice. If a crime "loss", also notify the police (except Virginia);
- b. Protect the property from further damage. If necessary for property protection, make reasonable repairs and keep a record of all repair costs;
- c. Furnish a complete inventory of damaged property stating its original cost. At our request, furnish a complete inventory of undamaged property stating its original cost. If a "loss" is both less than \$10,000 and less than 5% of the amount of insurance, no special inventory and appraisal of the undamaged property shall be required;

- d. Produce for examination, with permission to copy, all books of accounts, bills, invoices, receipts, and other vouchers as we may reasonably require;
- e. Show us or our representative the damaged property, as often as may be reasonably required;
- f. Cooperate with us in our investigation of a "loss" and any suits;
- g. Separately submit to examinations under oath and sign a transcript of the same;
- h. Send us, within 90 days after the "loss", your signed and sworn proof of loss statement which includes:
  - 1) Time and cause of "loss";
  - 2) Your interest in the property and the interest of all others involved;
  - 3) Any encumbrances on the property;
  - 4) Other policies which may cover the "loss";
  - 5) Any changes in title, use, occupancy, or possession of the property which occurred during the policy term;
  - 6) When required by us any plans, specifications, and estimates for the repair of the damaged building; and
  - 7) The inventory of damaged property as prepared in c. above;
- i. In addition to the other conditions under **Income Protection - Coverage 3**, make necessary replacements or repairs and use all available means to eliminate any unnecessary delay in order to resume operations as soon as possible;
- j. Agree to help us enforce any right of recovery against any party liable for "loss" under this policy. This will not apply if you have waived recovery rights in writing prior to a "loss".

## SECTION XI - DEFINITIONS

- "Accident" means a fortuitous event that causes direct physical damage to "covered equipment". The event must be one of the following:
  - 1. Mechanical breakdown, including rupture or bursting caused by centrifugal force;
  - 2. Artificially generated electrical current, including electrical arcing, that disturbs electrical devices, appliances, or wires;
  - 3. Explosion of steam boilers, steam piping, steam engines, or steam turbines owned or leased by you or operated under your control;
  - 4. "Loss" or damage to steam boilers, steam pipes, steam engines, or steam turbines caused by or resulting from any condition or event inside such equipment;
  - 5. "Loss" or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

None of the following is an "accident"

1. Defect, programming error, programming limitation, computer virus, malicious code, loss of "data", loss of electronic data, access, loss of use, loss of functionality or other condition within or involving "data" or "media" of any kind; or
2. Misalignment, miscalibration, tripping off-line, or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance.

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

- "Aircraft" means any machine or device capable of atmospheric flight except model airplanes.
- "Automobile" means a land motor vehicle, trailer, or semi-trailer designed for travel on public roads (including any attached machinery or equipment), but does not include "mobile equipment".
- "Burglary" means the taking of business personal property and personal property of others from inside the premises described in the "Declarations" by a person unlawfully entering or exiting the premises as evidenced by visible marks of forcible entry or exit. It includes "loss" to the building and its equipment resulting from "burglary" or attempted "burglary".
- "Buried vessels or piping" means any piping or vessel buried or encased in the earth, concrete, or other material, whether above or below grade, or in an enclosure which does not allow access for inspection and repair.
- "Cloud computing services" means professional, on-demand, self-service data storage or data processing services provided through the Internet or over telecommunications lines. This includes services known as IaaS (infrastructure as a service), PaaS (platform as a service), SaaS (software as a service) and NaaS (network as a service). This includes business models known as public clouds, community clouds, and hybrid clouds. "Cloud computing services" include private clouds if such services are owned and operated by a third party.
- "Covered equipment" means covered property:
  1. That generates, transmits, or utilizes energy;; or
  2. Which, during normal usage, operates under vacuum or pressure, other than weight of its contents.

"Covered equipment" may utilize conventional design and technology or new or newly commercialized design and technology.

None of the following is "covered equipment":

  1. Insulating or refractory material;
  2. Buried vessel or piping, sewer piping, or piping forming a part of a fire protection system;

3. Water piping that is not part of a closed loop used to conduct heat or cooling from a boiler or a refrigeration or air conditioning system;
4. Structure, foundation, cabinet, or compartment
5. Dragline, excavation, or construction equipment;
6. "Vehicle" or any equipment mounted on a "vehicle" as respects **Section IV – Additional Coverages – D. Equipment Breakdown Coverage** means any machine or apparatus that is used for transportation or moves under its own power. "Vehicle" includes, but is not limited to: car, truck, bus, trailer, train, "aircraft", watercraft, forklift, bulldozer, tractor, or harvester.

However, any property that is stationary, permanently installed at a covered location, and that receives electrical power from an external power source will not be considered a "vehicle";

7. Satellite, spacecraft, or any equipment mounted on a satellite or spacecraft; or
  8. Equipment manufactured by you for sale.
- "Declarations", "Amended Declarations", "Revised Declarations", and "Renewal Certificate" means the form which shows your coverages, limits of protection, premium charges, and other information. This form is part of your policy.
  - "Electronic circuitry" means microelectronic components, including but not limited to circuit boards, integrated circuits, computer chips, and disk drives.
  - "Electronic circuitry impairment" means a fortuitous event involving "electronic circuitry" within "covered equipment" that causes the "covered equipment" to suddenly lose its ability to function as it had been functioning immediately before such event. This definition is subject to the conditions specified in **1., 2., and 3.** Below.
1. We shall determine that the reasonable and appropriate remedy to restore such "covered equipment's" ability to function is the replacement of one or more "electronic circuitry" components of the "covered equipment".
  2. The "covered equipment" must be owned or leased by you, or operated under your control.
  3. None of the following is an "electronic circuitry impairment":
    - a. Any condition that can be reasonably remedied by:
      - 1) Normal maintenance, including but not limited to replacing expendable parts, recharging batteries, or cleaning;
      - 2) Rebooting, reloading, or updating software or firmware; or
      - 3) Providing necessary power or supply.
    - b. Any condition caused by or related to:
      - 1) Incompatibility of the "covered equipment" with any software or equipment installed, in-

troduced, or networked within the prior 30 days; or

- 2) Insufficient size, capability, or capacity of the "covered equipment".
  - c. Exposure to adverse environmental conditions, including but not limited to change in temperature or humidity, unless such conditions result in an observable loss of functionality. Loss of warranty shall not be considered an observable loss of functionality.
- "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, DVDs, 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 does not apply to your stock of prepackaged software.
  - "Extra expense" means the necessary expenses incurred by you during the "interruption of business" that would not have been incurred if there had been no direct "loss" to covered property caused by a peril insured against.
  - "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".
  - "Hazardous substance" means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.
  - "Income" means the sum of net income (net profit or loss before income taxes) that would have been earned or incurred and necessary continuing operating expenses incurred by the business such as payroll expenses, taxes, interests, and rents.
  - "Interruption of business" means the period of time that your business is partially or totally suspended and it:
    1. Begins with the date of direct "loss" to covered property caused by a peril insured against; and
    2. Ends on the date when the covered property should be repaired, rebuilt, or replaced with reasonable speed and similar quality.
  - "Loss" means direct and accidental loss of or damage to covered property.
  - "Media" means material on which "data" is recorded such as solid state drives, hard disks, optical disks, flash drives, magnetic tapes, or floppy disks.
  - "Mobile equipment" means any of the following types of land vehicles (including any attached machinery or equipment):

1. Bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
  2. Vehicles maintained for use solely on or next to premises you own or rent;
  3. Vehicles that travel on crawler treads;
  4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - a. Power cranes, shovels, loaders, diggers, or drills; or
    - b. Road construction or resurfacing equipment such as graders, scrapers, or rollers;
  5. Vehicles not described in **1.**, **2.**, **3.**, or **4.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - a. Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment; or
    - b. Cherry pickers and similar devices used to raise or lower workers;
  6. Vehicles not described in **1.**, **2.**, **3.**, or **4.** above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but are considered "automobiles":
    - a. Equipment designed primarily for:
      - 1) Snow removal;
      - 2) Road maintenance, but not construction or resurfacing; or
      - 3) Street cleaning;
    - b. Cherry pickers and similar devices mounted on an "automobile" or truck chassis and used to raise or lower workers; and
    - c. Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment.
- "Money" means:
    1. Currency, coins, and bank notes in current use and having a face value; and
    2. Travelers checks, register checks, credit card slips, and money orders held for sale.
- "Money" does not include crypto-currencies such as Bitcoin.
- "One equipment breakdown" means if an initial "accident" or "electrical circuitry impairment" causes other "accidents" or "electronic circuitry impairments", all will be considered "one equipment breakdown". All "accidents" or "electronic circuitry impairments" that are the result of the same "accident" or "electronic circuitry impairment" will be considered "one equipment breakdown".
  - "Pollutants" mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.
  - "Rental income" means:
    1. The rents from the tenant occupancy of the premises described in the "Declarations";
    2. Continuing operating expenses incurred by the business such as:
      - a. Payroll; and
      - b. All expenses for which the tenant is legally responsible and for which you would otherwise be responsible;
    3. Rental value of the property described in the "Declarations" and occupied by you; or
    4. Incidental income received from coin-operated laundries, hall rentals, or other facilities on the premises described in the "Declarations".
  - "Robbery" means the taking of business personal property and personal property of others from the care, custody, and control of a person by one who has:
    1. Caused or threatened to cause that person bodily harm; or
    2. Committed an obviously unlawful act witnessed by that person.
  - "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:
    1. Tokens, tickets including lottery tickets, food stamps, revenue, and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
    2. Evidences of debt issued in connection with credit or charge cards not issued by you.
- "Securities" does not include "money".

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

## **ELECTRONIC DATA PROCESSING COVERAGE**

This endorsement modifies insurance provided under the following:

### **ULTRAPACK PLUS COMMERCIAL PROPERTY COVERAGE PART**

**A. The following is added to Paragraph A. Covered Property of Section I - Business Personal Property and Personal Property of Others - Coverage 2:**

We will cover "electronic data processing equipment", "electronic data" and "media" owned by, leased or rented to the insured or for which the insured is legally liable. The "electronic data processing equipment", "electronic data" and "media" must be located on the premises described in the "Declarations", unless otherwise specified in this endorsement under Extensions of Coverage.

**B. The following is added to Paragraph B. Property Not Covered of Section II - Business Personal Property and Personal Property of Others - Coverage 2:**

Business Personal Property and Personal Property of Others does not apply to:

1. "Electronic data processing equipment" which the insured rents or leases to others while it is away from the premises described in the "Declarations".
2. "Electronic data" and "media" which cannot be replaced with other of the same kind or quality.
3. Program support documentation such as flow charts, record formats or narrative descriptions unless they are converted to "electronic data" form and then only in that form.
4. Accounts, evidences of debt, bills, valuable papers, records, abstracts, deeds, manuscripts or other documents, unless they are converted to "electronic data" form and then only in that form.

**C. The following is added to Paragraph A. Covered Cause of Loss of Section II - Perils Insured Against - Business Personal Property and Personal Property of Others - Coverage 2:**

This coverage insures against risk of "loss" for "electronic data processing equipment", "electronic data" and "media", except as specifically excluded in this endorsement.

**D. The following exclusions are added to Paragraph A., of Section III - Exclusions:**

We do not cover under "electronic data processing equipment", "electronic data" and "media" for "loss" or damage caused:

1. Directly or indirectly regardless of any cause or event that contributes concurrently or in any sequence to the "loss" or damage, to "electronic data processing equipment", computer networks, computer hardware (including microprocessors either as part of a computer system or operating outside of a system), computer programs, software, "electronic data" or "media", caused by the inability to correctly process, recognize, distinguish, interpret, or accept any date or time.

We will not pay for any repair, restoration, replacement, or modification to correct any deficiencies or change any features or functions.

However, we will pay for an ensuing loss which would be covered under this coverage.

2. By error or omission or deficiency in design, specifications, materials or workmanship, unless fire or explosion ensue, and then only for "loss", damage or expense caused by the ensuing fire or explosion.
3. By the suspension, lapse or cancellation of any lease, license, contract or order for any "extra expense".
4. By delay, loss of market or by the obsolescence of "electronic data processing equipment", "electronic data" and "media" for any loss of "income" or "rental income".
5. By processing operations or "loss" that occurs while property covered under this endorsement is being worked on unless fire or explosion ensue, and then only for "loss", damage or expense caused by the ensuing fire or explosion.
6. By programming errors or incorrectly instructing the machine.
7. By a change in the electrical power supply such as interruption, power surge, or brown-out (unless caused by lightning) that originates more than 1,500 feet

away from the premises described in the "Declarations".

8. By dishonest or criminal acts committed by you, or any of your members of a limited liability company, or any of your employees, directors, trustees, or authorized representatives:
  - a. Acting alone or in collusion with other persons; or
  - b. While performing services for you or otherwise.
9. By:
  - a. Wear and tear, rust or corrosion, mold or rotting;
  - b. Gradual deterioration and depreciation;
  - c. Damp or dry air (except as provided in this coverage under **Extensions of Coverage - Changes in Environment**);
  - d. Inherent vice;
  - e. Latent or hidden defect;
  - f. Marring or scratching;
  - g. Termites, vermin, insects, rodents, birds, skunks, raccoons, spiders, or reptiles.
10. By strikers or anyone else at the site of your business who interferes with your efforts to repair any damage or resume your normal business operations for any business "income" or "extra expense".
11. By war:
  - a. War including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this war exclusion supercedes Paragraph 13. – Exclusions of the nuclear hazard exclusion.

12. By order of civil authority.
13. By nuclear reaction or radiation, or radioactive contamination however caused, but if "loss" or damage by fire results, we will pay for that resulting loss or damage.
14. By any intentional "loss", meaning any "loss" from an act committed by, or at the direction of, the insured with the intent to cause a "loss."

15. By the neglect of the insured to use all reasonable means to save and preserve from further damage at and after the time of "loss."

**E. The following is added to Section V – Deductibles:**

**DEDUCTIBLE**

We will pay the amount of "loss" to covered property in this endorsement in any one occurrence which is in excess of the deductible amount shown in the "Declarations."

**F. The following is added to Section VIII – Extensions of Coverage:**

**EXTENSIONS OF COVERAGE**

Payment under these Extensions of Coverage are an ADDITIONAL AMOUNT of insurance and will increase the total amount of insurance available for the coverage involved.

**1. MECHANICAL AND ELECTRICAL BREAK-DOWN - EDP EQUIPMENT**

We will cover "electronic data processing equipment" for "loss" or damage caused by mechanical breakdown, malfunction, short circuit, blow-out, electrical injury, magnetic injury, or disturbance to "electronic data processing equipment".

We will not cover "loss" caused by any change in electrical power supply, such as interruption, power surge, or brown-out (unless caused by lightning) that originates more than 1,500 feet away from the premises described in the "Declarations".

**2. MECHANICAL AND ELECTRICAL BREAK-DOWN - ELECTRONIC DATA & MEDIA**

We will cover "electronic data" and "media" for "loss" or damage caused by mechanical breakdown, malfunction, short circuit, blow-out, electrical injury, magnetic injury, or disturbance to "electronic data" and "media".

Coverage includes any accidental erasure of "electronic data" caused by electrical or magnetic injury, or operator or programmer error caused by the electrical damage. The cause of the electrical damage must occur in your building or within 1,500 feet of it.

We will not cover "loss" caused by any change in electrical power supply, such as interruption, power surge, or brown-out (unless caused by lightning) that originates more than 1,500 feet away from the premises described in the "Declarations".

**3. CHANGES IN ENVIRONMENT**

We will cover direct "loss" to your "electronic data processing equipment", "electronic data" and "media" caused by dryness or dampness of atmosphere, extremes of temperature, corrosion or rust which directly results from physical damage to the data processing system's air conditioning facilities caused by a peril insured against.

**4. COMPUTER VIRUSES**

We will cover "loss" or damage to your "electronic data processing equipment", "electronic data" and "media" caused by computer virus.

**5. OFF-PREMISES COVERAGE**

We will cover your "electronic data processing equipment", "electronic data" and "media" for "loss" by a peril insured against while temporarily located off the premises described in the "Declarations".

We will cover portable "electronic data processing equipment" (such as laptops, notebooks, and handheld computers) and related "electronic data" and "media" for "loss" by a peril insured against while either temporarily or permanently off the premises described in the "Declarations". Coverage applies to portable "electronic data processing equipment" (such as laptops, notebooks, and handheld computers) and related "electronic data" and "media" located anywhere in the world.

**6. NEWLY ACQUIRED EQUIPMENT**

We will cover additional equipment you acquire while your policy is in force for up to 25% of the amount of insurance for this endorsement up to \$100,000.

This extension shall apply for 90 days after the acquisition, provided the policy remains in force or is renewed.

You shall report values involved and pay any additional premium.

**7. DUPLICATE ELECTRONIC DATA, MEDIA, AND RECORDS – OFF-PREMISES**

We will cover up to \$50,000 for any "loss" caused by a peril insured against to your duplicate "electronic data" and "media" stored off-premises.

This coverage includes the cost of the blank "media" and the cost to duplicate your original "electronic data" and "media".

This Extension of Coverage does not cover the cost to research and recreate "electronic data" and "media".

If duplicate "electronic data" and "media" is not stored off-premises, no coverage applies.

**8. FIRE SUPPRESSION EQUIPMENT RE-CHARGE**

We will cover the cost to recharge your automatic fire suppression systems which protect your data processing operations when they discharge as intended to control a "loss" covered by this endorsement.

We will also cover the cost to recharge these systems should they accidentally discharge.

You must keep the automatic fire suppression systems under your control in good working order while this endorsement is in force. If you do not, coverage will be suspended at the affected area until protection is restored.

We will not cover any "loss" that happens at the time of installation, repair, or recharge of the automatic fire suppression systems.

**9. TRANSPORTATION**

We will pay for "loss" to your "electronic data processing equipment", "electronic data" and "media" while in or on a vehicle owned, leased or operated by or for you; in or on a vehicle of a common or contract carrier, or on a dock, pier, bulkhead, platform, or station while in the custody of a common or contract carrier caused by: fire; lightning; flood; earthquake; landslide; windstorm; collapse of bridge, dock or culvert; theft; robbery; collision (excluding roadbed collision); upset or overturn of the transporting vehicle.

**10. NEW LOCATIONS**

We will cover your "electronic data processing equipment", "electronic data", and "media" when you move to a new location. Coverage for "loss" will apply for 60 days while in transit and at each location. The amount of insurance applying at each location will be the proportion that the value in each location bears to the total value of "electronic data processing equipment", "electronic data" and "media" at the original location. After the completion of your move, the coverage will apply at the new location only. Your premium may be adjusted if the rate at the new location is different than the rate at the old location.

**11. VALUABLE PAPERS AND RECORDS**

We will cover the "extra expense" incurred in the reproduction of your valuable papers and records, which are in "electronic data" form, when destroyed by a peril insured against.

Valuable papers and records covered under this extension must be located at the premises described in the "Declarations".

We cover "loss" or damage to valuable papers or records you own or have an interest in. We will also cover "losses" to valuable papers and records of others which are in your care, custody, or control if you are held responsible for such property.

If duplicate records exist, we will pay for the cost of the blank "media" and the cost to copy the duplicate records.

We will pay up to 100% of the total amount of insurance for this endorsement under this Extension of Coverage.

## 12. DEBRIS REMOVAL

We will cover expenses incurred by you to remove debris of property covered under this endorsement that is destroyed or damaged by "loss" covered under this endorsement.

We will pay up to 10% of the total amount of insurance for this endorsement plus \$5,000 for debris removal expense.

## 13. TRANSFER TO PLACES OF SAFETY

We will cover reasonable expenses incurred by you to move and store property covered under this endorsement at a safe, temporary location in order to avoid imminent loss. You must notify us in writing within 30 days after you move the property, or your coverage for these expenses will end at that time.

## 14. BUSINESS INTERRUPTION

If you sustain a loss of income due to "interruption of business" resulting directly from "loss" to your "electronic data processing equipment", "electronic data" and "media" from a peril insured against under this endorsement, the coverage provided in the Commercial Property Coverage Part under **Income Protection - Coverage 3** will apply to this endorsement.

## G. The following conditions are added to **Section X - Commercial Property Conditions**:

### 1. AMOUNTS OF INSURANCE

Our total payment for any one "loss" to your covered property will not exceed the amount shown in the "Declarations" for the insured property, unless otherwise specified in this coverage under the Extensions of Coverage.

Our total payment for all "loss" or damage resulting from one "loss" to your covered property will not exceed the amount shown in the "Declarations" (unless otherwise specified in this coverage under the Extensions of Coverage) regardless of the number of items of insured property involved, either in the case of partial or total "loss", salvage charges or any other charges, or all combined.

## 2. VALUATION

- a. **Electronic Data Processing Equipment** - We will not pay for more than the actual retail replacement cost of the property at the time "loss" occurs. The "loss" to the property will be adjusted based on the actual retail replacement cost of property of like kind and quality as the damaged or destroyed property insured, and payment will not exceed the amount of insurance stated in the "Declarations". We will pay actual cash value if the property is not repaired or replaced with material of like kind and quality.
- b. **Electronic Data** - We will pay for the actual cost of reproducing the "electronic data".
- c. **Media** - We will pay for the actual cost of repairing or replacing the "media" with material of like kind and quality.

## H. The following definitions are added to **Section XI - Definitions**:

"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, DVD's, 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 does not apply to your stock of prepackaged software.

"Electronic data processing equipment" means computers, including portable computers (such as laptop computers, notebook computers and handheld computers), terminals, teleprinters, readers, telephone systems, computerized cash registers, word processing equipment, and equipment and parts related to the processing unit.

"Electronic data processing equipment" does not include computer operated or controlled production or processing machinery or equipment or a separate computer or computerized control panels used to operate the production or processing machinery or equipment.

"Media" means materials on which "electronic data" are recorded, such as magnetic tapes, disc packs, paper tapes and cards.



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

## **PRODUCTION OR PROCESS MACHINERY - DEDUCTIBLE**

This endorsement modifies insurance provided under the following:

### **ULTRAPACK PLUS COMMERCIAL PROPERTY COVERAGE PART**

**A. The following is added to **Section V - Deductibles**:**

We will pay the amount of "loss" to "production or process machinery" caused by "mechanical, electrical, or pressure systems breakdown" in any one occurrence which is in excess of either \$1,000 or the deductible amount applying to Building(s) (Coverage 1) and Business Personal Property and Personal Property of Others (Coverage 2) shown in the "Declarations", whichever is the greater amount.

For Income Protection Coverage, if the loss to "production or process machinery" is caused by "mechanical, electrical, or pressure systems breakdown", we will pay the amount of "income" loss which is in excess of one day multiplied by the "average daily value".

Should the policy deductible apply to the same "loss", only the deductibles for "production or process machinery" plus income protection or the policy deductible, whichever is the greater amount, shall be used.

**B. The following definitions are added to **Section XI - Definitions**:**

"Average daily value" means the loss of "income" for that location that you would have earned had no "mechanical, electrical, or pressure systems breakdown" occurred during the "interruption of business" divided by the number of days in that period.

We will make no reduction for loss of "income" not being earned, or the number of working days, because the "mechanical, electrical, or pressure systems breakdown" occurred, or any other scheduled or unscheduled shutdowns during the "interruption of business". If the Business Income and Extra Expense dollar deductible is expressed as a number times the "average daily value", that amount will be calculated as follows:

The "average daily value" will be the "income" for the entire location that would have been earned had no "mechanical, electrical, or pressure system breakdown" occurred during the period of "interruption of business" divided by the number of working days in that period. No reduction shall be made for the "income" not being earned or in the number of working days, because of the "mechanical, electrical, or pressure systems breakdown" or any other scheduled or unscheduled shutdowns during the period of interruption. The "average daily value" applies to all locations included in the valuation of the loss.

The number indicated in the "Declarations" will be multiplied by the "average daily value" as determined above. The result will be used for the Business Income and Extra Expense dollar deductible.

The "average daily value" applies to all locations included in the valuation of the loss.

**Example:**

Business is interrupted partially or completely for 10 days. If there had been no "mechanical, electrical, or pressure systems breakdown", the average daily value would have been \$500. The Income Protection Deductible is 1 times the "average daily value".

$\$500 \text{ Average Daily Value} \times 10 \text{ Days} = \$5,000 \text{ Loss of Income}$

$1 \text{ times } \$500 = \$500 \text{ Loss of Income Protection Deductible.}$

"Production or process machinery" means any machine or apparatus that processes or produces a product intended for eventual sale. This includes all component parts of such machine or apparatus and any other equipment used exclusively with such machine or apparatus.

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

## **RESTAURANTS ENHANCEMENT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **ULTRAPACK PLUS COMMERCIAL PROPERTY COVERAGE PART**

#### **ULTRAPACK PLUS COMMERCIAL PROPERTY COVERAGE PART**

**A.** The amount of insurance is increased for these coverages under **Section VIII – B. Extensions of Coverage**:

1. **Check, Credit, Debit or Charge Card Forgery or Alteration** is increased from \$5,000 to \$15,000 for any one "loss".
2. **Counterfeit Money** is increased from \$1,000 to \$11,000 for any one "loss".
3. **Employee Dishonesty** is increased from \$10,000 to \$25,000 for any one "loss".
4. **Income Protection – Off-Premises Utility Properties Failure** is increased from \$25,000 to \$50,000 for any one "loss".
5. The percentage for **Peak Season Coverage - Business Personal Property and Personal Property of Others – Coverage 2** is increased from 25% to 50% to cover "loss" during a peak season.

**B.** We will pay up to \$250,000 as a Blanket Amount of Insurance which may be applied to any of the following coverages or combination of the following coverages:

1. Under **Section IV – Additional Coverages - Electronic Data Processing Equipment and Electronic Data Coverage**:
  - a. Electronic Data – Expenses for Reproduction or Replacement; or
  - b. Electronic Data Processing Equipment – Computer Virus.
2. Under **Section VIII – B. Extensions of Coverage**:
  - a. Accounts Receivable;
  - b. Business Personal Property and Personal Property of Others - Temporarily Off-Premises;
  - c. Debris Removal;
  - d. Fine Arts;
  - e. Transportation; or
  - f. Valuable Papers and Records.

The Blanket Amount of Insurance is in addition to the amount of insurance provided for these coverages in

#### **Section IV – Additional Coverages and Section VIII – B. Extensions of Coverage.**

This Blanket Amount of Insurance may be applied to any one coverage or combination of coverages shown in 1.a. and 1. b. and 2. a. through 2. f.. However, the most we will pay under this endorsement for "loss" or damage resulting from any one occurrence at any premises described in the "Declarations" is \$250,000. The Blanket Amount of Insurance applies separately to each premises described in the "Declarations".

**C. Business Personal Property – Food Trucks or Trailers**

**Paragraph A. Covered Property under Business Personal Property and Personal Property of Others – Coverage 2** is deleted and replaced by the following:

Business Personal Property and Personal Property of Others means:

1. Personal property pertaining to your business, professional or institutional activities, including leased property for which you are contractually responsible;
2. Personal property of others that is in your care, custody, or control;
3. Labor, materials, or services furnished or arranged by you on personal property of others;
4. Your use interest as a 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;
5. Exterior signs, lights, and clocks which you own or which are in your care, custody, or control and for which you are contractually responsible. Exterior signs, lights, and clocks must be permanently attached to the building on the premises described in the "Declarations" or if unattached to the building, must be permanently mounted on the premises described in the "Declarations";
6. Glass which is in your care, custody, or control and for which you are contractually responsible. The

glass must be part of the building described in the "Declarations", including glass in wall cases.

Our payment for "loss" to glass will also include:

- a. Replacement of building glass with safety glazing materials when made necessary by an ordinance or building code;
- b. Replacement of lettering, ornamentation, or burglar alarm foil;
- c. Repair or replacement of frames;
- d. Installation of temporary coverings; and
- e. Removal of obstructions;

while in or on the described buildings, or in the open, or in a vehicle on the premises described in the "Declarations" or within 1,500 feet thereof, or on your food truck or trailer when anywhere in the coverage territory.

Our payment for "loss" of or damage to personal property of others will only be made to the owner of the property.

**D. Merchandise – Deferred Payment is added to Section I – Coverages under Business Personal Property and Personal Property of Others - Coverage 2:**

We will pay up to \$5,000 to merchandise which you have sold under a conditional sale, trust agreement, or any installment or deferred payment plan after delivery to buyers provided "loss" or damage is caused by a peril insured against.

When a total "loss" to covered property occurs, deferred payments are valued on the amount shown on your books as due from the buyer.

When partial "loss" to covered property occurs and the buyer refuses to continue payment, forcing you to repossess, deferred payments are valued as follows:

1. If the realized value of the repossessed property is greater than or equal to the amount shown on your books, as due from the buyer, we will make no payment; but
2. If the realized value of the repossessed property is less than the amount shown on your books as due from the buyer, we will pay the difference.

When a total or partial "loss" occurs and the buyer continues to pay you, we will make no loss payment.

**E. Income Protection – Food Trucks or Trailers**

**Income Protection – Coverage 3 of Section I – Coverages** is deleted and replaced by the following:

**A. Income Protection Coverage**

Income Protection means loss of "income" and/or "rental income" you sustain due to partial or total "interruption of business" resulting directly from "loss" or dam-

age to property on the premises described in the "Declarations" or to your food truck or trailer when anywhere in the coverage territory from a peril insured against. "Loss" or damage also includes covered property in the open, or in a vehicle, on the premises described in the "Declarations" or within 1,500 feet thereof, or to your food truck or trailer when anywhere in the coverage territory.

If you are a tenant, your premises are the portion of the building described in the "Declarations" which:

1. You rent, lease, or occupy;
2. All routes within the building that service or are used to gain access to the described premises; and
3. The area within 1,500 feet of the premises described in the "Declarations" (with respect to "loss" or damage to covered property in the open or in a vehicle).

You are required to resume normal business operations as promptly as possible and shall use all available means to eliminate any unnecessary delay.

**B. Extra Expense Coverage**

"Extra expense" coverage is provided at the premises described in the "Declarations" or to your food truck or trailer anywhere in the coverage territory.

"Extra expense" means necessary expenses you incur due to partial or total "interruption of business" resulting directly from "loss" or damage to property on the premises described in the "Declarations" or to your food truck or trailer anywhere in the coverage territory from a peril insured against. "Loss" or damage also includes property in the open, or in a vehicle, on the premises described in the "Declarations" or within 1,500 feet thereof, or to your food truck or trailer when anywhere in the coverage territory.

We will pay necessary actual and necessary "extra expenses" (other than the expense to repair or replace property) sustained by you to:

1. Avoid or minimize the "interruption of business" and to continue your business operations:
  - a. At the premises described in the "Declarations"; or
  - b. At replacement premises or at temporary locations, including:
    - 1) Relocation expenses; and
    - 2) Costs to equip and operate the replacement of temporary locations; or
  - c. Anywhere in the coverage territory for your food truck or trailer.

2. Minimize the "interruption of business" if you cannot continue your business operations to the extent it reduces the amount of loss that would have been payable under loss of "income" and/or "rental income".

We will not pay any "loss" or damage to your Building(s), Business Personal Property and Personal Property of Others, or food truck or trailer. We also will not pay the cost of research or any other expense to replace or restore your valuable papers and records or "electronic data". We will pay the cost to repair or replace your covered property and the amount to research, replace, or restore the lost information on damaged valuable papers and records or "electronic data" to the extent it reduces the amount of loss that would have been payable under loss of "income" and/or "rental income".

### C. Additional Coverages

#### 1. Civil Authority

When a peril insured against causes damage to property other than property at the premises described in the "Declarations", we will pay for the actual loss of "income" and/or "rental income" you sustain and necessary "extra expense" caused by action of civil authority that prohibits access to the premises described in the "Declarations" or access to your food truck or trailer anywhere in the coverage territory provided that both of the following apply:

- a. Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the premises described in the "Declarations" or your food truck or trailer are within that area but are not more than one mile from the damaged property; and
- b. The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the peril insured against 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 "income" and/or "rental income" will begin 72 hours after the time of the first action of civil authority that prohibits access to the premises described in the "Declarations" or to your food truck or trailer anywhere in the coverage territory 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 premises described in the "Declarations" or to your food truck or trailer anywhere in the coverage territory and will end:

- a. Four consecutive weeks after the date of that action; or
- b. When your Civil Authority coverage for "income" and/or "rental income" ends;

whichever is later.

#### 2. Full Resumption of Operations

We will also pay your actual loss of "income" and/or "rental income" for an additional 60 days if your "income" and/or "rental income" after operations are resumed is less than your "income" and/or "rental income" before the loss. The additional amount we will pay will start after the later of the following times:

- a. The date on which the liability for **Income Protection - Coverage 3** would terminate if this clause had not been included; or
- b. The date on which repair, replacement, or rebuilding of such part of the damaged or destroyed property described in the "Declarations" or to your food truck or trailer is actually completed.

### D. Amount of Insurance

We will pay the actual loss of "income" and/or "rental income" sustained by you.

The "income" and/or "rental income" loss sustained by you shall not exceed:

1. The actual reduction of "income" and/or "rental income" during the "interruption of business"; and
2. The reduction in rents received less charges and expenses which do not necessarily continue during the "interruption of business" or during the period when the tenant cannot inhabit the premises.

We will pay up to \$100 a day, for seven days, after your business is suspended to cover loss of "income" and/or "rental income" sustained by you while you are determining your actual income protection loss. The amount paid will be subtracted from your actual loss of "income" and/or "rental income".

We will pay the actual income protection loss for only such length of time as would be required to resume normal business operations. We will limit the time period to the shorter of the following periods:

1. The time period required to rebuild, repair, or replace such part of the Building or Business Personal Property or food truck or trailer that has been damaged or destroyed as a direct result of an insured peril; or
2. Twelve (12) consecutive months from the date of loss.

Payment of loss of "income" and/or "rental income" is not limited by the end of the policy period.

**F. Income Protection – 18 Month Period of Indemnity** is added to **Section I – Income Protection – Coverage 3**:

Paragraph **D. Amount of Insurance** under **Income Protection – Coverage 3** of **Section I – Coverages** is deleted and replaced by the following, but only for this coverage:

**Amount of Insurance**

We will pay the actual loss of "income" or "rental income" sustained by you.

The "income" or "rental income" loss sustained by you shall not exceed:

1. The actual reduction of "income" or "rental income" during the "interruption of business"; and
2. The reduction in rents received less charges and expenses which do not necessarily continue during the "interruption of business" or during the policy when the tenant cannot inhabit the premises.

We will pay up to \$100 a day, for seven days, after your business is suspended to cover loss of "income" or "rental income" sustained by you while you are determining your actual income protection loss. The amount paid will be subtracted from your actual loss of "income" or "rental income".

We will pay the actual income protection loss for only such length of time as would be required to resume normal business operations. We will limit the time period to the shorter of the following periods:

1. The time period required to rebuild, repair, or replace such part of the building or business personal property that has been damaged or destroyed as a direct result of a peril insured against; or
2. Eighteen (18) consecutive months from the date of loss.

Payment of loss of "income" or "rental income" is not limited by the end of the policy period.

**G. Tips Is Included As Income** under **Section I – Income Protection – Coverage 3**

"Income" of **Section XI – Definitions** is deleted and replaced by the following, but only for this coverage:

"Income" means the sum of net profit or loss before income taxes and necessary continuing operating expenses incurred by the business such as payroll expenses (including tips), taxes, interests, and rents.

**H. Fire Extinguisher Recharge – Food Trucks or Trailers**

Paragraph **15. Fire Extinguisher Recharge** of **Section VIII – B. Extensions of Coverage** is deleted and replaced by the following:

We will pay expenses incurred to recharge portable fire extinguishers after they are used to fight a fire.

This extension of coverage applies to each building described in the "Declarations" and to each food truck or trailer when extinguisher discharge was made in the coverage territory.

The deductible does not apply to this extension.

**I. Computer Fraud Coverage** is added to **Section VIII – B. Extensions of Coverage**:

1. We will pay up to \$10,000 for "loss" to "money", "securities", and Business Personal Property and Personal Property of Others resulting directly from any one "occurrence" caused by "computer fraud".
2. Paragraph **B.3. under Property Not Covered** of **Section I – Business Personal Property and Personal Property of Others - Coverage 2** does not apply to this coverage.
3. Under Computer Fraud Coverage, we do not cover "loss":
  - a. Caused by any "loss" or that part of any "loss", where the proof of its existence or amount is dependent upon:
    - 1) An inventory computation; or
    - 2) A profit and loss computation;
  - b. Caused by seizure or destruction of property by order of governmental authority;
  - c. Resulting indirectly from any act or "occurrence" covered by "computer fraud" including, but not limited to, "loss" caused by:
    - 1) Your inability to realize income that you would have realized had there been no "loss" of, or "loss" from damage to, covered property;
    - 2) Payment of damages of any type for which you are legally liable. We will pay compensatory damages arising from a "loss" covered by this policy; or
    - 3) Payment of costs, fees, or other expenses you incur in establishing either the existence or the amount of "loss" under this endorsement; or
  - d. Caused by expenses related to any legal action.

4. **Deductible**

Computer Fraud Coverage - We will pay the amount of "loss" resulting directly from any one "occurrence" in excess of a \$500 deductible.

5. The following is added to **Section X – Commercial Property Conditions**, but only for this coverage:

**Discovery Period For Loss**

We will pay for a covered "loss" discovered no later than one year from the end of the policy period.

6. The following are added to **Section XI – Definitions**, but only for Computer Fraud Coverage:

"Banking premises" means the interior of that portion of any building occupied by a banking institution or similar safe depository.

"Computer fraud" means theft of property following and directly related to the use of any computer to fraudulently cause a transfer of that property from inside the premises described in the "Declarations" or "banking premises" to a place outside those premises or to a person (other than a messenger) outside those premises.

"Occurrence" means an:

- a. Act or series of related acts involving one or more persons; or
- b. Act, event, or a series of related acts or events not involving any person.

**J. Contract Penalty Coverage** is added to **Section VIII – B. Extensions of Coverage**:

We will pay up to \$5,000 for contractual penalties that you are required to pay your customers. These contractual penalties must be a result of any clause in your contract that imposes a penalty for failure to timely deliver your products according to the contract terms. These contractual penalties must result from "loss" or damage to your covered property at the premises described in the "Declarations" by a peril insured against.

**K. Cooking Protection Equipment Accidental Leakage Coverage** is added to **Section VIII – B. Extensions of Coverage**:

1. We will pay for "loss" caused by cooking protection equipment leakage. Cooking Protection Equipment Accidental Leakage means "loss" caused by accidental leakage or discharge of an "automatic cooking protection system" protecting cooking equipment or the cooking exhaust system.
2. The **Exclusions** in **Section III** do not apply to Cooking Protection Equipment Accidental Leakage

Coverage. The following Exclusions apply only to **Cooking Protection Equipment Accidental Leakage Coverage**:

- a. We do not cover "loss" caused by or resulting from leakage, collapse, or fall of a tank caused by: fire; lightning; windstorm; earthquake; blasting; explosion; rupture or bursting of steam boilers or flywheels; riot or civil commotion; water, except water from within an automatic sprinkler system; or order of any civil authority.
  - b. We also do not cover "loss" by leakage:
    - 1) Occurring and resulting from the making of repairs, alterations, or extensions involving a wall or support(s) of a floor or roof, or the installation of or change in an "automatic cooking protection system" at the premises described in the "Declarations" or testing of such system(s); or
    - 2) While the building at the premises described in the "Declarations" is vacant for more than sixty (60) consecutive days.
3. The following is added to **Section XI – Definitions**, but only for Cooking Protection Equipment Accidental Leakage Coverage:
- "Automatic cooking protection system" means any automatic fire extinguishing system including sprinklers, discharge nozzles and ducts, pipes, valves, fittings, tanks, pumps, and private fire protection mains, all connected with and forming a part of the system designed and installed for protecting only cooking equipment and cooking exhaust systems.

**L. Dishware and Glasses** is added to **Section VIII – B. Extensions of Coverage**:

1. We will cover the breakage of dishware and glasses.
2. Paragraph **D. 2. Coverage 2** of **Exclusions** in **Section III** is deleted and replaced by the following but only for Dishes and Glasses Coverage:

By breakage of statuary, marble, bric-a-brac, porcelains and other articles of a fragile or brittle nature, except dishware and glasses. We will cover such "loss" caused by fire; lightning; aircraft; explosion; sonic boom; riot; civil commotion; smoke; vehicles; windstorm; hail; vandalism or malicious mischief; falling objects (the exterior of the building must first sustain damage to roof or walls by falling

objects); sinkhole collapse; volcanic action; weight of ice, snow, or sleet; sprinkler leakage; or water damage.

**M. Food Contamination – Business Income and Expense Coverage** is added to **Section VIII – B. Extensions of Coverage**:

1. We will pay for your loss or costs incurred, as described below, if the Board of Health or other governmental body requires that your operations be suspended due to discovery of, suspicion of, or exposure to "food contamination" at the premises described in the "Declarations" or on any of your food trucks or trailers when in the coverage territory.
  - a. **Income Protection.** We will pay your actual loss of "income" you sustain due to total "interruption of business" until the "interruption of business" is lifted by the Board of Health or other governmental body.
  - b. **Extra Expense.** We will pay your costs to clean and sanitize your machinery and equipment as directed by the Board of Health or other governmental body.
  - c. **Restoration Expenses.** We will pay your costs to replace your food and goods declared contaminated by the Board of Health or other governmental body.
  - d. **Additional Advertising Expenses.** We will pay your extra costs of advertising incurred to restore your reputation including, but not limited to, telephone, radio, television, newspaper, and other media announcements.
  - e. **Inoculation Expenses.** We will reimburse your reasonable expenses for inoculation or other medical expenses incurred by you for infected patrons. We will also pay your expenses to provide necessary medical tests and vaccines for infected "employees".
2. The following additional exclusion is added to **Section III – Exclusions**, but only for this coverage:

We do not cover loss caused by fines or penalties of any kind.
3. Paragraph **B.1.b.** of **Exclusions** in **Section III** does not apply to Food Contamination Coverage.
4. Paragraph **B.2.** of **Exclusions** in **Section III** does not apply to Food Contamination Coverage.
5. **Amount of Insurance**

The most we will pay for your loss or costs incurred as a result of "food contamination" for all occurrences is \$25,000 for all coverages described

in paragraphs **J.1.a.** thru **J.1.e.** above of the Food Contamination – Business Income and Expense Coverage. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or costs arising out of all occurrences caused by "food contamination" which takes place in a twelve (12) month period (starting with the beginning of the present annual policy period).

We will only pay up to \$5,000 for your extra costs of advertising covered under paragraph **J.1.d.** above of the Additional Advertising Expenses as a result of a "food contamination" occurrence. This sublimit is part of, and not in addition to, the \$25,000 amount of insurance for Food Contamination – Business Income and Expense Coverage.

6. The following is added to **Section XI – Definitions**, but only for Food Contamination Coverage:

"Food contamination" means a condition in your food which has caused, or is suspected of causing, food poisoning to one or more of your patrons. Such "food contamination" must result from:

- a. Tainted food you purchased;
- b. Food which has been improperly stored, handled, or prepared by you; or
- c. A communicable disease transmitted through one or more of your "employees".

**N. Boil Water Order – Business Income and Expense Coverage** is added to **Section VIII – B. Extensions of Coverage**:

1. We will pay for your loss or costs incurred due to partial or total "interruption of business", as described below, as a result of a "boil-water order" issued by the Board of Health, water authority, or any other governmental body.
  - a. **Income Protection.** We will pay your actual loss of "income" you sustain due to a partial or total "interruption of business" until the "boil water order" is lifted by the Board of Health, water authority or other governmental body.
  - b. **Extra Expense.** We will pay your costs to clean and sanitize your machinery and equipment as directed by the Board of Health, water authority or other governmental body.
  - c. **Restoration Expenses.** We will pay your costs to replace your food and goods declared contaminated by the Board of Health, water authority or other governmental body.
  - d. **Additional Advertising Expenses.** We will pay your extra costs of advertising incurred to restore your reputation including, but not lim-

ited to, telephone, radio, television, newspaper, and other media announcements.

- e. **Inoculation Expenses.** We will reimburse your reasonable expenses for inoculation or other medical expenses incurred by you for infected patrons. We will also pay your expenses to provide necessary medical tests and vaccines for infected "employees".

- 2. The following additional exclusion is added to **Section III – Exclusions**, but only for this coverage:

We do not cover loss caused by fines or penalties of any kind.

- 3. Paragraph **B.1.b.** of **Exclusions** in **Section III** does not apply to Boil Water Order Coverage.
- 4. Paragraph **B.2.** of **Exclusions** in **Section III** does not apply to Boil Water Order Coverage.

5. **Amount of Insurance**

The most we will pay for your loss or costs incurred as a result of a "boil-water order" for all occurrences is \$25,000 for all coverages described in paragraphs **J.1.a.** thru **J.1.e.** above of the Boil Water Order – Business Income and Expense Coverage. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or costs arising out of all occurrences caused by "boil-water order" which takes place in a twelve (12) month period (starting with the beginning of the present annual policy period).

We will only pay up to \$5,000 for your extra costs of advertising covered under paragraph **J.1.d.** above of the Additional Advertising Expenses as a result of a "boil-water order" occurrence. This sub-limit is part of, and not in addition to, the \$25,000 amount of insurance for Boil Water Order – Business Income and Expense Coverage.

- 6. The following is added to **Section XI – Definitions**, but only for Boil-Water Order Coverage:

"Boil-water order" means an advisory, notice, order or other communication issued by the Board of Health, water authority, or other governmental body indicating that water at the premises or water that supplies water to your food truck or trailer should be boiled before consumption or use due to contamination or potential contamination.

**O. Outdoor Radio, Television Antennas, and Satellite Dishes** is added to **Section VIII – B. Extensions of Coverage**:

- 1. We will pay up to \$2,500 for "loss" or damage to outdoor radio and television antennas, satellite dishes, and its lead-in wiring, masts, or towers

caused by windstorm or hail at the premises described in the "Declarations".

- 2. Paragraph **B. 9.** of **Exclusions** in **Section III** is not applicable, but only to the extent coverage is provided in this Extension of Coverage.

**P. Sewer And Drain Back-Up Coverage** is added to **Section VIII – B. Extensions of Coverage**:

- 1. We will pay up to \$5,000 for any one "loss" to covered property caused by water and sewage that backs up through sewers and drains or which enters into and overflows or is otherwise discharged from a sewer, drain, sump pump, sump pump well, or any other system designed to remove subsurface water which is drained from the foundation area.

- 2. Paragraph **A.6.c.** of **Exclusions** in **Section III** is not applicable but only to the extent coverage is provided in this Extension of Coverage.

3. **Deductible**

We will pay the amount of "loss" to your covered property in any one occurrence which is in excess of \$500 but only for this coverage.

**Q. Utility Services - Direct Damage Coverage** is added to **Section VIII – B. Extensions of Coverage**:

We will pay up to \$25,000 for "loss" or damage you sustain to covered property on the premises described in the "Declarations" due to an interruption in utility service to the premises described in the "Declarations".

The interruption in utility services must result directly from "loss" to the following property, not on the premises described in the "Declarations", from a peril insured against:

- 1. Communication Supply Service, meaning property supplying communication services, including telephone, radio, microwave, or television services, to the premises described in the "Declarations", such as:
  - a. Communication transmission lines (including fiber optic transmission lines);
  - b. Coaxial cables; and
  - c. Microwave radio relay except satellites.
- 2. Power Supply Services, meaning the following types of property supplying electricity, steam, or gas to the premises described in the "Declarations":
  - a. Utility generating plants;
  - b. Switching stations;
  - c. Substations;
  - d. Transformers; and



- e. Transmission lines.
- 3. Water Supply Services, meaning the following types of property supplying water to the premises described in the "Declarations":
  - a. Pumping stations; and
  - b. Water mains.

**Excluded Property:** We will not pay for "loss" or damage to "electronic data" including destruction or corruption of "electronic data".

#### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Paragraph 7. under **Section III - Limits of Insurance** of the **Commercial General Liability Coverage Form** is replaced by the following:

Subject to 5. above, the Medical Expense Limit is increased from \$5,000 to \$10,000. This limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

## IMPORTANT NOTICE – LEAD LIABILITY EXCLUSION

Your policy contains Lead Liability Exclusion Endorsement PK-MJ, an exclusion involving lead contamination.

Any claims of **bodily injury, personal injury or property damage** from lead contamination occurring during this policy period and future policy periods will not be covered. Your liability insurance does not cover any loss, cost or expense arising from any requests or claims made by a governmental authority that you test for, remove or in any way respond to the effects of lead.

It has become increasingly apparent in recent years that lead poisoning poses a serious threat to children. Studies have shown that even small doses of lead can cause severe poisoning, slowed development, altered behavior, and loss of intelligence. The lead hazard can be reduced by removing the lead from the premises using approved abatement methods.

Again, this policy contains a complete exclusion for liability resulting from lead. Therefore, we recommend you take action to identify and remove any lead hazards that may exist on your premises to protect yourself.

ERIE INSURANCE GROUP  
ULTRAPACK PLUS  
CL-0212 (Ed. 11/10)

## IMPORTANT NOTICE - POLICY SERVICE FEES

Dear Policyholder:

**SERVICE FEES** - The following service fees will be applicable to all payment plans.

- **Returned Payment Fee** - A **\$25.00** charge will be applied to your account if your check or other payment is returned unpaid by your financial institution.
- **Late Fee** - A **\$10.00** charge will be applied to your account when a cancellation notice is issued on your policy because of non-payment of premium.
- **Reinstatement Fee** - A **\$25.00** charge will be applied to your account when your policy is reinstated with a lapse in coverage following cancellation of your policy because of non-payment of premium.

If you have any questions concerning this Important Notice, please contact your ERIE Agent.

ERIE INSURANCE GROUP  
ULTRAPACK PLUS  
CL-0217 (Ed. 11/10)

## **IMPORTANT NOTICE - NO FLOOD COVERAGE**

Your basic policy covers losses from many perils. However, it **DOES NOT** provide coverage for flood loss.

Insurance covering flood loss is generally available through the National Flood Insurance Program.

In an effort to serve you, information about flood insurance and the National Flood Insurance Program can be provided by your ERIE Agent.

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

## **AMENDMENT OF MOBILE EQUIPMENT DEFINITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

**A. Exclusion 2.g. under Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

**g. Aircraft, Auto Or Watercraft**

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

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

This exclusion does not apply to:

- 1) A watercraft while ashore on premises you own or rent;
- 2) A watercraft you do not own that is:
  - a) Less than 26 feet long; and
  - b) Not being used to carry persons or property for a charge.
- 3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- 4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- 5) "Bodily injury" or "property damage" arising out of the operation of any equipment listed in Paragraph **f.2)** or **f.3)** of the definition of "mobile equipment"; or

- 6) "Bodily injury" or "property damage" arising out of the operation of machinery or equipment that is attached to or part of a land motor vehicle that would qualify under the definition of "mobile equipment" if it were not described on the Declarations of a motor vehicle liability policy for liability coverage.

**B. Paragraph 12. of Section V - Definitions** is replaced by the following:

"Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - 1) Power cranes, shovels, loaders, diggers or drills; or
  - 2) Road construction or resurfacing equipment such as graders, scrapers or rollers.
- e. Vehicles not described in Paragraph **a., b., c. or d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - 1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - 2) Cherry pickers and similar devices used to raise or lower workers.

- f. Vehicles not described in Paragraph **a., b., c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- 1) Equipment designed primarily for:
  - a) Snow removal;
  - b) Road maintenance, but not construction or resurfacing; or
  - c) Street cleaning.

- 2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- 3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicle that is described on the Declarations of a motor vehicle liability policy for liability coverage. "Mobile equipment" that is described on the Declarations of a motor vehicle liability policy for liability coverage is considered an "auto".

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

## **AMENDMENT OF OCCURRENCE DEFINITION FOR SUBCONTRACTED WORK**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The definition of “occurrence” in **Section V – Definitions** is deleted and replaced by the following:

“Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. “Property damage” to “your work” will constitute an “occurrence” if all of the following conditions are met:

1. The “property damage” to “your work” is included in the “products-completed operations hazard”;
2. The damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor; and
3. The “property damage” is not expected or intended by you or anyone for whom you are legally responsible.

The following is added to “property damage” in **Section V – Definitions**:

- c. “Property damage” does not include any loss, cost or expense to correct any defective, faulty or incorrect work performed by you or by any contractors or subcontractors working directly or indirectly on your behalf.

ALL OTHER PROVISIONS OF THE POLICY APPLY.

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PK-RG (Ed. 1/10) CL-0185

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

## **PENNSYLVANIA AMENDATORY ENDORSEMENT – LOSS PAYMENT CONDITION**

This endorsement modifies insurance provided under the following:

ULTRAPACK PLUS COMMERCIAL PROPERTY COVERAGE PART

The following is added to **Loss Payment** of **Section X - Commercial Property Conditions**:

We must give the insured notice of our intent to repair or replace within 15 working days after we receive your sworn proof of loss.



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

## **PENNSYLVANIA AMENDATORY ENDORSEMENT - CONDITIONS**

This endorsement modifies insurance provided under the following:

### **ULTRAPACK PLUS POLICY**

- A. CONCEALMENT, FRAUD OR MISREPRESENTATION** of the **GENERAL POLICY CONDITIONS** is replaced by the following:

#### **CONCEALMENT, FRAUD OR MISREPRESENTATION**

This policy may be canceled, if before or after a loss, the insured has intentionally concealed or misrepresented any material fact or circumstance which affects the insurability of the risk.

In the event of a fraudulent claim, we will not make payments for the loss.

- B. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY** of the **GENERAL POLICY CONDITIONS** is replaced by the following:

#### **TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

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

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

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

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

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

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

**ULTRAPACK PLUS EXTRA LIABILITY COVERAGES**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**A. Damage To Premises Rented To You - Fire Legal Liability**

1. The following is added to Paragraph 1., **Insuring Agreement of Section I – Coverages, Coverage A - Bodily Injury And Property Damage Liability**:

**Insuring Agreement**

We will pay those sums that the insured becomes legally obligated to pay as damages because of "property damage" to buildings rented to you or occupied by you.

The damage must be caused by fire, lightning, windstorm, hail, explosion, riot, civil commotion, vehicles, aircraft, smoke, vandalism, malicious mischief, water damage, or elevator collision.

2. Exclusions 2. c. through 2. n. of **Section I - Coverages, Coverage A - Bodily Injury And Property Damage Liability** do not apply to this coverage. A separate limit of insurance applies to this coverage as described in **Section III - Limits of Insurance**.

We do not cover liability assumed by the insured except in an "insured contract".

3. Paragraph 9. a. of "insured contract" of **Section V - Definitions** is replaced by the following:

9. a. A contract for lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, vehicles, aircraft, smoke, vandalism, malicious mischief, water damage, or elevator collision to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".

**B. Host Liquor Liability Coverage**

The following is added to Paragraph 2. c. **Exclusions of Section I – Coverages, Coverage A - Bodily Injury And Property Damage Liability**:

This exclusion does not apply to liability of the insured or the indemnitee of the insured arising out of the giving or serving of alcoholic beverages at functions incidental to your business, provided you are not engaged in the business of manufacturing, distributing, selling, or serving of alcoholic beverages.

**C. Non-Owned Watercraft**

Paragraph 2. g. 2) a) **Exclusions of Section I - Coverages, Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

This exclusion does not apply to a watercraft that you do not own that is less than 51 feet long.

**D. Incidental Medical Malpractice**

1. The following is added to Paragraph 1., **Insuring Agreement of Section I – Coverages, Coverage A - Bodily Injury And Property Damage Liability**:

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" arising from "incidental medical malpractice injury".

2. The following is added to Paragraph 2. **Exclusions of Section I – Coverages, Coverage A - Bodily Injury And Property Damage**:

This insurance does not apply to:

- a. Expenses incurred by the insured for first aid to others at the time of an accident.
- b. "Bodily injury" arising from any insured if the insured is engaged in the business or occupation of providing the following services:
  - 1) Diagnostic, medical, surgical, dental, x-ray, or nursing service or treatment, or the furnishing of food or beverages in connection with the service or treatment;
  - 2) Ambulance, paramedical, rescue squad, or other service or treatment conducive to health;
  - 3) The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances; or
  - 4) Health or therapeutic service, treatment, advice, or instruction.

- c. "Bodily injury" arising from any indemnitee if the indemnitee is engaged in the business or occupation of providing the following services:

- 1) Diagnostic, medical, surgical, dental, x-ray, or nursing service or treatment, or the furnishing of food or beverages in connection with the service or treatment;
- 2) Ambulance, paramedical, rescue squad, or other service or treatment conducive to health;
- 3) The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances; or
- 4) Health or therapeutic service, treatment, advice, or instruction.

3. The following is added to **Section V - Definitions:**

"Incidental medical malpractice injury" means injury arising out of the rendering of or failure to render, during the policy period, the following services:

- a. Diagnostic, medical, surgical, dental, x-ray, or nursing service or treatment, or the furnishing of food or beverages in connection with the service or treatment; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

**E. Volunteer Workers - Medical Payments**

The following is added to Paragraph **1. Insuring Agreement of Section I – Coverages, Coverage C - Medical Payments:**

We will pay medical expenses for "bodily injury" sustained by your volunteer workers caused by an accident while engaged in any of your insured activities.

**F. Attorney's Fees**

The following is added to **Section I - Coverages, Supplementary Payments - Coverages A and B:**

All reasonable attorney's fees up to \$100 which the insured incurs because of arrest resulting from an accident involving "mobile equipment" covered by this policy.

**G. The following is added to the definition of "Products-completed operations hazard" of Section V - Definitions:**

Includes all "bodily injury" and "property damage" arising out of "your product" if your business includes the handling or distribution of "your product" for consumption on premises you own or rent.

**H. Non-Owned Automobile and/or Hired Automobile Liability Insurance Coverage**

**1. Insuring Agreement - Non-Owned Auto Liability Insurance Coverage**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" resulting from an accident covered by this endorsement.

The accident must arise out of the use of any "non-owned auto" in your business by any person other than you.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- 1) The "bodily injury" or "property damage" is caused by an accident that takes place in the "covered territory"; and
- 2) The "bodily injury" or "property damage" is caused by an accident during the policy period.

**2. Insuring Agreement - Hired Auto Liability Insurance Coverage**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" resulting from an accident covered by this endorsement.

The accident must arise out of the maintenance or use of "hired autos" by you or your "employees" in the course of your business.

- b. This insurance applies to "bodily injury" or "property damage" only if:

- 1) The "bodily injury" or "property damage" is caused by an accident that takes place in the "covered territory"; and
- 2) This "bodily injury" or "property damage" is caused by an accident during the policy period.

**3. Exclusions**

This **Non-Owned Autos and/or Hired Auto Liability Insurance Coverage** does not apply to:

**a. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- 1) That the insured would have in the absence of the contract or agreement; or

- 2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.
- b. **Damage To Your Product**  
 "Bodily injury" or "property damage" that results from "your product" arising out of it or any part of it.
- c. **Damage To Property**  
 "Property damage" to:
  - 1) Property owned or transported by you; or
  - 2) Personal property in the care, custody, or control of the insured.
- d. **Damage To Your Work**  
 "Bodily injury" or "property damage" that results from "your work" arising out of it or any part of it and included in the "products-completed operations hazard".
- e. **Employers' Liability**  
 "Bodily injury" to:
  - 1) An "employee" of the insured arising out of and in the course of:
    - a) Employment by the insured; or
    - b) Performing duties related to the conduct of the insured's business; or
  - 2) The spouse, child, parent, brother, or sister of that "employee" as a consequence of Paragraph 1) above.

This exclusion applies:

- 1) Whether the insured may be liable as an employer or in any other capacity; and
- 2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. **Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

g. **Handling of Property**

"Bodily injury" or "property damage" that results from the handling of property:

- 1) Before it is moved from the place where it is accepted by the insured for loading into or onto a "non-owned auto" or "hired auto"; or
- 2) After it is unloaded from a "non-owned auto" or "hired auto" to the place it is finally delivered by the insured.

h. **Fellow Employee**

"Bodily injury" to any fellow "employee" of the insured arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

i. **Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- 1) The ownership, maintenance, use, or entrustment to others of any "mobile equipment" owned or operated by or rented or loaned to any insured;
- 2) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- 3) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

j. **Pollution**

- 1) "Bodily injury" or "property damage" arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of "pollutants".
    - a) At or from any premises, site, or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
      - i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor, or soot from equipment used to heat that building;
      - ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site, or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site, or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
      - iii) "Bodily injury" or "property damage" arising out of heat, smoke, or fumes from a "hostile fire".
    - b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing, or treatment of waste;
    - c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
    - d) At or from any premises, site, or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site, or location in connection with such operations by such insured, contractor, or subcontractor. However, this subparagraph does not apply to:
      - i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants, or other operating fluids which are needed to perform the normal electrical, hydraulic, or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants, or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal, or release of the fuels, lubricants, or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
      - ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
      - iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
  - e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- 2) Any loss, cost or expense arising out of any:
    - a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

- b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

k. **Racing**

Any "auto" while being used in any prearranged or organized racing, speed or demolition contest, stunting activity or similar activities, or in practice for any such activities.

l. **War**

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incidental to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

m. **Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

4. **Section II - Who Is An Insured**

For **Non-Owned Automobile and/or Hired Automobile Liability Insurance Coverage Who Is An Insured** includes the following:

- a. You;
- b. Any other person using a "hired auto" with your permission;
- c. With respect to a "non-owned auto", any partner, member of a limited liability company, or executive officer, but only while such "auto" is being used in your business; or
- d. Any other person or organization, but only with respect to liability because of acts or omissions of the insured under a., b., or c. above.

5. The following are not included under **Section II - Who Is An Insured**:

- a. Any person, member of a limited liability company, or executive officer with respect to an "auto" owned by such partner, member of a limited liability company, or executive officer or a member of their household;

- b. Any person engaged in the business of their employer, with respect to "bodily injury" to any fellow co-"employee" of such person injured in the cause of their employment;
- c. Any person while employed in or otherwise engaged in duties in connection with an "auto business" other than an "auto business" you operate;
- d. The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or employer of such owner or lessee; or
- e. Any person or organization with respect to the conduct of any current or past partnership, joint venture, or limited liability company shown as a named Insured in the Declarations.

6. The following are added to **Section V - Definitions**:

"Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos".

"Covered territory" means the United States of America (including its territories and possessions), Puerto Rico and Canada.

"Hired auto" means any auto you lease, hire, or borrow.

This does not include any "auto" you lease, hire, or borrow from any of your "employees", any members of a limited liability company, any partner, "executive officer", or members of their households.

"Non-owned auto" means any "auto" you do not own, lease, hire, or borrow which is used in connection with your business. This includes any "auto" owned by or registered in the name of:

- a. Your "employees" including members of their households;
- b. Partners including members of their households if you are a partnership; or
- c. Members of a limited liability company including members of their households;

but only while such "auto" is being used in connection with your business.

**I. Additional Insured – Managers or Owners of Buildings**

The following is added to **Section II - Who Is An Insured**:

The person or organization who owns, maintains, or uses that part of the premises leased to you, but only with respect to their liability arising out of the premises leased to you.

The following is added to Paragraph 2. **Exclusions of Section I – Coverages, Coverage A - Bodily Injury And Property Damage:**

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant of the premises;
2. Structural alterations, new construction, or demolition operations performed by or on behalf of the person or organization who is the additional insured; or
3. "Bodily injury" to "employees" of the person or organization arising out of and in the course of construction.

**J. Additional Insured – Mortgagee, Assignee, or Receiver**

The following is added to **Section II - Who Is An Insured:**

The person or organization but only with respect to their liability as a mortgagee, assignee, or receiver arising out of the ownership, maintenance, or use of the premises by you.

The following is added to Paragraph 2. **Exclusions of Section I – Coverages, Coverage A - Bodily Injury And Property Damage:**

This insurance does not apply to:

Structural alterations, new construction and demolition operations performed by or for that person or organization.

**K. Additional Insured – Lessor of Leased Equipment**

The following is added to **Section II - Who Is An Insured:**

The person or organization but only with respect to liability for "bodily injury", "property damage" or "personal or advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

The following is added to Paragraph 2. **Exclusions of**

**Section I – Coverages, Coverage A - Bodily Injury And Property Damage:**

This insurance does not apply to:

Any "occurrence" which takes place after the equipment lease expires.

The following is added to Paragraph 2. **Exclusions of Section I – Coverages, Coverage B – Personal and Advertising Injury:**

This insurance does not apply to:

Any "occurrence" which takes place after the equipment lease expires.

**L. Auto-Keepers' Liability Coverage**

1. The following is added to Paragraph 1., **Insuring Agreement of Section I – Coverages, Coverage A – Bodily Injury and Property Damage Liability:**

**Insuring Agreement – Auto-Keepers' Liability**

**Coverage**

We will pay those sums that the insured becomes legally obligated to pay as damages because of "property damage" to customers' "autos" and "mobile equipment" parked or stored on the "premises" described in the "Declarations" caused by:

Coverage I – fire, explosion, riot, civil commotion, theft of an entire "auto" or piece of "mobile equipment", vandalism and malicious mischief.

Coverage II – collision or upset.

Coverage also applies while a customer's "auto" or "mobile equipment" is temporarily away from "premises" (in connection with the insured's business) or while any insured has control of such "auto" or "mobile equipment".

2. This **Auto-Keepers' Liability Coverage** does not apply to:

a. **Owned, Rented, or Demo Autos**

This insurance does not apply to "property damage" to "autos" or "mobile equipment" owned, rented, or held for demonstration or sale by any insured under the policy.

b. **Employee Dishonesty**

This insurance does not apply to "property damage" arising out of theft by you or your "employees", directors, trustees, authorized representatives, or any insured under the policy.

c. **Use of Auto Elevators or Hoists**

This insurance does not apply to "property damage" arising out of the use of any auto elevator or hoist.

d. **Defective Parts or Faulty Work**

This insurance does not apply to "property damage" as a result of defective parts, accessories, or materials furnished for an "auto" or piece of "mobile equipment". This insurance also does not apply to "property damage" as a result of faulty work performed on an "auto" or piece of "mobile equipment".

e. **Racing, Speed, or Demolition Contests**

This insurance does not apply to "property damage" to an "auto" or piece of "mobile equipment" while operated or being prepared for any prearranged racing, speed or demolition contest, or stunting activity.

3. For **Auto-Keepers' Liability Coverage**, the following is added to **Section IV – Commercial General Liability Conditions**:

**Deductible**

We will only pay those sums in excess of \$200 for all damages sustained by any one person because of "property damage" as a result of any one "occurrence". We may pay all or part of the \$200 deductible in order to settle any claim or "suit". If we do so, you must repay us the deductible amount we paid.

4. For **Auto-Keepers' Liability Coverage**, the following definition is added to **Section V - Definitions**:

"Premises" means the place where you conduct your operations, including the ways immediately adjoining. It does not include any portion of such premises where any other person or organization conducts operations.

**M. Waiver of Subrogation**

**Transfer of Right of Recovery Against Others to Us - Section IV – Commercial General Liability Conditions** is replaced by the following:

We waive any right of recovery we may have against the additional insured because of payments we have made under this Coverage Part. However, our rights may only be waived prior to the "bodily injury" or "property damage" caused by the "occurrence" which we have made payments under this Coverage Part.

The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce these rights.

- N. The following is added to **Paragraph 4. Other Insurance of Section IV – Commercial General Liability Conditions** in the Commercial General Liability Coverage Form:

**Primary and Non-Contributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

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

### SECTION I – COVERAGES

#### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- 1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - 2) The "bodily injury" or "property damage" occurs during the policy period; and

- 3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- 1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - 2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - 3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

##### 2. Exclusions

This insurance does not apply to:

###### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

**b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- 1) That the insured would have in the absence of the contract or agreement; or
- 2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- 1) Causing or contributing to the intoxication of any person;
- 2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- 3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

- a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

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

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- 1) An "employee" of the insured arising out of and in the course of:
  - a) Employment by the insured; or
  - b) Performing duties related to the conduct of the insured's business; or
- 2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph 1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- 1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
  - iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - i) Any insured; or
    - ii) Any person or organization for whom you may be legally responsible; or
  - d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
  - e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- 2) Any loss, cost or expense arising out of any:
- a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.
- g. Aircraft, Auto Or Watercraft**
- "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- 1) A watercraft while ashore on premises you own or rent;
- 2) A watercraft you do not own that is:
  - a) Less than 26 feet long; and
  - b) Not being used to carry persons or property for a charge;
- 3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- 4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- 5) "Bodily injury" or "property damage" arising out of:
  - a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
  - b) The operation of any of the machinery or equipment listed in Paragraph **f.2)** or **f.3)** of the definition of "mobile equipment".

#### **h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- 1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- 2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### **i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- 1) War, including undeclared or civil war;
- 2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- 3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### **j. Damage To Property**

"Property damage" to:

- 1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- 2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- 3) Property loaned to you;
- 4) Personal property in the care, custody or control of the insured;
- 5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- 6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs **1), 3)** and **4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section **III** – Limits Of Insurance.

Paragraph **2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs **3), 4), 5)** and **6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

#### **k. Damage To Your Product**

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

#### **l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- 1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- 2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- 1) "Your product";
- 2) "Your work"; or
- 3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**q. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- 1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

- 2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

- 3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

- 4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III – Limits Of Insurance.**

**COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in Section **III – Limits Of Insurance**; and
- 2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

## 2. Exclusions

This insurance does not apply to:

### a. **Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

### b. **Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

### c. **Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

### d. **Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

### e. **Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

### f. **Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

### g. **Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

### h. **Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

### i. **Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

### j. **Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- 1) Advertising, broadcasting, publishing or telecasting;
- 2) Designing or determining content of web sites for others; or
- 3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a., b. and c.** of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

### k. **Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

### l. **Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

### m. **Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

### n. **Pollution-related**

Any loss, cost or expense arising out of any:

- 1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- 2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**o. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- 1) War, including undeclared or civil war;
- 2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- 3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**p. Recording And Distribution Of Material Or Information In Violation Of Law**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- 1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- 2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- 3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- 4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**COVERAGE C – MEDICAL PAYMENTS**

**1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- 1) On premises you own or rent;
- 2) On ways next to premises you own or rent; or
- 3) Because of your operations;

provided that:

- a) The accident takes place in the "coverage territory" and during the policy period;
- b) The expenses are incurred and reported to us within one year of the date of the accident; and
- c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- 1) First aid administered at the time of an accident;
- 2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
- 3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

**c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers' Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - 1) Agrees in writing to:
      - a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - c) Notify any other insurer whose coverage is available to the indemnitee; and

- d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

2) Provides us with written authorization to:

- a) Obtain records and other information related to the "suit"; and
- b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.2)** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

## SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.



2. Each of the following is also an insured:
  - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
    - 1) "Bodily injury" or "personal and advertising injury":
      - a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
      - b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph 1)a) above;
      - c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph 1)a) or b) above; or
      - d) Arising out of his or her providing or failing to provide professional health care services.
    - 2) "Property damage" to property:
      - a) Owned, occupied or used by;
      - b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
  - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - 1) With respect to liability arising out of the maintenance or use of that property; and
    - 2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage **C**;
  - b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage **B**.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage **A**; and
  - b. Medical expenses under Coverage **C**

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

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

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- 1) How, when and where the "occurrence" or offense took place;
- 2) The names and addresses of any injured persons and witnesses; and
- 3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against any insured, you must:

- 1) Immediately record the specifics of the claim or "suit" and the date received; and
- 2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- 1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- 2) Authorize us to obtain records and other information;

- 3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

- 4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### **3. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

##### **4. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

###### **a. Primary Insurance**

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

###### **b. Excess Insurance**

- 1) This insurance is excess over:

- a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

- iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability.**

- b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

- 2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- 3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

- b) The total of all deductible and self-insured amounts under all that other insurance.

- 4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

#### **c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### **5. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

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

#### **6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

#### **7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

#### **8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

#### **9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

### **SECTION V – DEFINITIONS**

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:
- A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
  - Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
- The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
  - All other parts of the world if the injury or damage arises out of:
    - Goods or products made or sold by you in the territory described in Paragraph a. above;
    - The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
    - "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- A sidetrack agreement;
- Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- An elevator maintenance agreement;
- That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in 2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - 1) Power cranes, shovels, loaders, diggers or drills; or
  - 2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph **a., b., c. or d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - 1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - 2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph **a., b., c. or d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- 1) Equipment designed primarily for:
  - a) Snow removal;
  - b) Road maintenance, but not construction or resurfacing; or

c) Street cleaning;

2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

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

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - 1) Products that are still in your physical possession; or
  - 2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- a) When all of the work called for in your contract has been completed.
- b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
- c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
  - 1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - 2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - 3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

- a. Means:
  - 1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - a) You;
    - b) Others trading under your name; or
    - c) A person or organization whose business or assets you have acquired; and
  - 2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes:
  - 1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
  - 2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

- a. Means:
  - 1) Work or operations performed by you or on your behalf; and
  - 2) Materials, parts or equipment furnished in connection with such work or operations.
- b. Includes:
  - 1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
  - 2) The providing of or failure to provide warnings or instructions.

## LIQUOR LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

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

### SECTION I – LIQUOR LIABILITY COVERAGE

#### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

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

b. This insurance applies to "injury" only if:

- 1) The "injury" occurs during the policy period in the "coverage territory"; and
- 2) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "injury" or claim, knew that the "injury" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "injury" occurred, then any continuation, change or resumption of such "injury" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Injury" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim, includes any continuation, change or resumption of that "injury" after the end of the policy period.

d. "Injury" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim:

- 1) Reports all, or any part, of the "injury" to us or any other insurer;
- 2) Receives a written or verbal demand or claim for damages because of the "injury"; or
- 3) Becomes aware by any other means that "injury" has occurred or has begun to occur.

#### 2. Exclusions

This insurance does not apply to:

##### a. Expected Or Intended Injury

"Injury" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

##### b. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

##### c. Employer's Liability

"Bodily injury" to:

- 1) An "employee" of the insured arising out of and in the course of:
  - a) Employment by the insured; or
  - b) Performing duties related to the conduct of the insured's business; or
- 2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph 1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the "injury".

**d. Liquor License Not In Effect**

"Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is not in effect.

**e. Your Product**

"Injury" arising out of "your product". This exclusion does not apply to "injury" for which the insured or the insured's indemnitees may be held liable by reason of:

- 1) Causing or contributing to the intoxication of any person;
- 2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- 3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

**f. Other Insurance**

Any "injury" with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the limits of insurance.

This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

**g. War**

"Injury", however caused, arising, directly or indirectly, out of:

- 1) War, including undeclared or civil war;
- 2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- 3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**SUPPLEMENTARY PAYMENTS**

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

1. All expenses we incur.
2. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
3. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.

4. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
5. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
7. Expenses incurred by the insured for first aid administered to others at the time of an event to which this insurance applies.

These payments will not reduce the limits of insurance.

**SECTION II – WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
  - a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:
    - 1) "Injury":



- a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
  - b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph **a)** above; or
  - c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph **a)** or **b)** above.
- 2) "Property damage" to property:
- a) Owned or occupied by; or
  - b) Rented or loaned;
- to that "employee", any of your other "employees", by any of your partners or members (if you are a partnership or joint venture), or by any of your members (if you are a limited liability company).
- b. Any person or organization having proper temporary custody of your property if you die, but only:
    - 1) With respect to liability arising out of the maintenance or use of that property; and
    - 2) Until your legal representative has been appointed.
  - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- b. Coverage does not apply to "injury" that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;

- b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
- 2. The Aggregate Limit is the most we will pay for all "injury" as the result of the selling, serving or furnishing of alcoholic beverages.
  - 3. Subject to the Aggregate Limit, the Each Common Cause Limit is the most we will pay for all "injury" sustained by one or more persons or organizations as the result of the selling, serving or furnishing of any alcoholic beverage to any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – LIQUOR LIABILITY CONDITIONS

#### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

#### 2. Duties In The Event Of Injury, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "injury" which may result in a claim. To the extent possible, notice should include:

- 1) How, when and where the "injury" took place;
- 2) The names and addresses of any injured persons and witnesses; and
- 3) The nature and location of any "injury".

- b. If a claim is made or "suit" is brought against any insured, you must:

- 1) Immediately record the specifics of the claim or "suit" and the date received; and
- 2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- 1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- 2) Authorize us to obtain records and other information;
- 3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

- 4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury" to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **b.** below.

#### b. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### 5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

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

### 6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

### 7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

### 8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

### 9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## SECTION V – DEFINITIONS

1. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

- b. International waters or airspace, but only if the "injury" occurs in the course of travel or transportation between any places included in Paragraph **a.** above; or
- c. All other parts of the world if the "injury" arises out of:
  - 1) Goods or products made or sold by you in the territory described in Paragraph **a.** above; or
  - 2) The activities of a person whose home is in the territory described in Paragraph **a.** above, but is away for a short time on your business;

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph **a.** above or in a settlement we agree to.
- 3. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 4. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
- 5. "Injury" means damages because of "bodily injury" and "property damage", including damages for care, loss of services or loss of support.
- 6. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- 7. "Property damage" means:
  - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it.
- 8. "Suit" means a civil proceeding in which damages because of "injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 9. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 10. "Your product":
  - a. Means:
    - 1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - a) You;
      - b) Others trading under your name; or
      - c) A person or organization whose business or assets you have acquired; and
    - 2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - 1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
    - 2) The providing of or failure to provide warnings or instructions.
  - c. Does not include vending machines or other property rented to or located for the use of others but not sold.

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

**CHANGES IN GENERAL LIABILITY FORMS FOR COMMERCIAL  
PACKAGE POLICIES**

This endorsement modifies insurances provided under the following:

COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE  
COMPREHENSIVE GENERAL LIABILITY INSURANCE  
CONTRACTUAL LIABILITY INSURANCE  
DRUGGISTS LIABILITY INSURANCE  
ELEVATOR COLLISION INSURANCE  
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE  
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE  
PREMISES MEDICAL PAYMENTS INSURANCE  
SPECIAL MULTI-PERIL POLICY LIABILITY INSURANCE  
STOREKEEPERS INSURANCE

- A. Whenever the term "policy" is used in any form listed above or in the declarations or any related endorsement, it is changed to "coverage part."
- B. The Common Policy Declarations (other than any references to premiums) and the Common Policy Conditions do not apply).
- C. With respect to the Special Multi-Peril Policy Conditions and Definitions Form attached to this policy:
  - 1. The General Conditions, Conditions Applicable to Section II and Definitions Applicable to Section II apply only to the Commercial General Liability Coverage Part;
  - 2. The Conditions Applicable to Section I do not apply to any part of this policy; and
  - 3. The Cancellation condition is replaced by the following:

Cancellation. This policy may be cancelled by the "named insured" by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the "named insured" at the address shown in this policy, written notice stating when not less than thirty days thereafter such cancellation shall be effective; provided that in the event of nonpayment of premium, such notice shall state when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the "named insured" or by the company shall be equivalent to mailing.

If the "named insured" cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

POLICY NUMBER:

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

## **ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Designation Of Premises (Part Leased To You):</b>
<b>Name Of Person(s) Or Organization(s) (Additional Insured):</b>
<b>Additional Premium:</b> \$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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



ERIE INSURANCE GROUP

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**EMPLOYMENT-RELATED PRACTICES EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury and Property damage Liability:**

This insurance does not apply to;

"Bodily injury" to:

1. A person arising out of any:
  - a. Refusal to employ that person;
  - b. Termination of that person's employment; or
  - c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
2. The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs 1., 2. or 3. above is directed.

This exclusion applies:

1. Whether the injury-causing event described in Paragraphs a., b., or c. above occurs before employment, during employment or after employment of that person;
2. Whether the insured may be liable as an employer or in any other capacity; and
3. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**B. The following exclusion is added to paragraph 2., Exclusions of Section I - Coverage B - Personal Injury and Advertising Injury Liability:**

This insurance does not apply to:

"Personal and advertising injury" to:

1. A person arising out of any:
  - a. Refusal to employ that person;
  - b. Termination of that person's employment; or
  - c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination or malicious prosecution directed at that person; or
2. The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs 1., 2. or 3. above is directed.

This exclusion applies:

1. Whether the injury-causing event described in Paragraphs a., b., or c. above occurs before employment, during employment or after employment of that person;
2. Whether the insured may be liable as an employer or in any other capacity; and
3. To any obligation to share damages with or repay someone else who must pay damages because of the injury.



ERIE INSURANCE GROUP

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**  
**FUNGI OR BACTERIA EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:**

**2. Exclusions**

This insurance does not apply to:

**Fungi or Bacteria**

- a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

**B. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**Fungi or Bacteria**

- a. "Personal and advertising injury" which would not have taken place in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.
- b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

**C. The following definition is added to Section V - Definitions:**

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

**THIS IS AN ENDORSEMENT TO YOUR POLICY. PLEASE READ IT CAREFULLY.**

## **SUBSCRIBER'S AGREEMENT**

*The following is the language of the Subscriber's Agreement that applies to policies issued by ERIE INSURANCE EXCHANGE. Definitions included in this Agreement apply only to the Subscriber's Agreement.*

The Subscriber ("you" or "your") agrees with the other Subscribers at ERIE INSURANCE EXCHANGE ("ERIE"), a Reciprocal/Inter-Insurance Exchange, and with their Attorney-in-Fact, the Erie Indemnity Company ("we" or "us"), a Pennsylvania corporation with its Home Office in Erie, Pennsylvania, to the following:

1. You agree to pay your policy premiums and to exchange with other ERIE Subscribers policies providing insurance for any insured loss as stated in those policies.
2. You appoint us as Attorney-in-Fact with the power to: a) exchange policies with other ERIE Subscribers; b) take any action necessary for the exchange of such policies; c) issue, change, nonrenew or cancel policies; d) obtain reinsurance; e) collect premiums; f) invest and reinvest funds; g) receive notices and proofs of loss; h) appear for, compromise, prosecute, defend, adjust and settle losses and claims under your policies; i) accept service of process on behalf of ERIE as insurer; and j) manage and conduct the business and affairs of ERIE, its affiliates and subsidiaries. This power of attorney is limited to the purposes described in this Agreement.
3. You agree that as compensation for us: a) becoming and acting as Attorney-in-Fact; b) managing the business and affairs of ERIE; and c) paying general administrative expenses, including sales commissions, salaries and employee benefits, taxes, rent, depreciation, supplies and data processing, we may retain up to 25% of all premiums written or assumed by ERIE. The rest of the premiums will be used for losses, loss adjustment expenses, investment expenses, damages, legal expenses, court costs, taxes, assessments, licenses, fees, and any other governmental fines and charges, establishment of reserves and surplus, and reinsurance, and may be used for dividends and other purposes we decide are to the advantage of Subscribers.
4. You agree that this Agreement, including the power of attorney, shall have application to all insurance policies for which you apply at ERIE, including changes in any of your coverages.
5. You agree to sign and deliver to us all papers required to carry out this Agreement.
6. This Agreement, including the power of attorney, shall not be affected by your subsequent disability or incapacity.
7. This Agreement is and shall be binding upon you, us, and all executors, administrators, successors and assigns.

*(Subscriber's Agreement language updated 1996.)*



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

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

This endorsement modifies insurance provided under the following:

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

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

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

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
  2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- B.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.



ERIE INSURANCE GROUP

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**SILICA OR SILICA-RELATED DUST EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:**

**2. Exclusions**

This insurance does not apply to:

**Silica or Silica-Related Dust**

- a. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silica-related dust".
- b. Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- c. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by an insured or by any other person or entity.

**B. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**Silica or Silica-Related Dust**

- a. "Personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
- b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

**C. The following definitions are added to the Definitions Section:**

1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
2. "Silica-related dust" means a mixture or combination of "silica" and other dust or particles.

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

## **PUNITIVE DAMAGES COVERAGE**

### **INDIANA, PENNSYLVANIA**

This endorsement modifies insurance provided under the following:

#### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**A. Insuring Agreement of Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages, including vicarious liability for punitive or exemplary damages to the extent allowed by law, because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in Section **III** - Limits of Insurance; and
- 2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages **A** and **B**.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- 1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - 2) The "bodily injury" or "property damage" occurs during the policy period; and
  - 3) Prior to the policy period, no insured listed under Paragraph **1**. of Section **II** – Who Is An Insured and no "employee" authorized

by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1**. of Section **II** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end to the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1**. of Section **II** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
  - 1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - 2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - 3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

**B. Insuring Agreement of Section I - Coverage B - Personal And Advertising Injury Liability** is replaced by the following:

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages, including vicarious liability for punitive or exemplary damages to the extent allowed by law, because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in Section **III** - Limits Of Insurance; and

- 2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages **A** and **B**.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

## IMPORTANT NOTICE – DATA BREACH RESPONSE EXPENSES COVERAGE

Dear Ultrapack Plus Customer:

Your Ultrapack Plus Commercial Property Coverage Part includes up to \$10,000 for Data Breach Response Expenses Coverage under Section VIII, Extensions of Coverage.

In addition to this enhancement, we are pleased to offer the following optional endorsements for additional Data Breach and Identity Recovery Coverage protection for a premium. Contact your ERIE Agent to discuss these additional coverage options.

- Data Breach Response Expenses – Increased Coverage
- Data Breach Liability Coverage
- Identity Recovery Coverage – Owners
- Identity Recovery Coverage – Owners and Employees

ERIE Insurance has partnered with CyberScout, a leading provider of data risk management solutions, to support us in providing business owners like you with Data Breach coverages.\* As an educational resource, a data security website is available to you. This website provides tips and best practices that will help you protect sensitive information. It also includes information regarding notification laws and regulations, an Incidence Response Plan template, and other resources.

To access the website, visit [www.erie.breachresponse.com](http://www.erie.breachresponse.com).

- Click *Sign in now*
- User Name: **Erie1** and Password: **Erie1**  
(Note: The User Name and Password are case sensitive).
- Complete the online registration process by creating your own Username & Password

If ever you suspect a loss, theft, accidental release or publication of non-public personal information regarding individuals that have a direct relationship with your business, such as customers, clients or employees, call the ERIE Claims Office nearest you. See the reverse side of this notice for a listing of all ERIE Claims Offices and their phone numbers. We're your first line of response when you discover a data breach involving non-public personal information of others.

Thank you again for becoming an ERIE customer. We hope you find our services valuable in helping to protect you and your business.

\* Coverage is subject to the terms and limitations of the endorsements you purchased.

## Toll-Free Numbers for Field/Claims Offices

Contact an Erie Insurance office in your area:

State	Field Office	Call Toll Free
Illinois	Peoria	(888) 335-3743
Indiana	Fort Wayne	(800) 892-5655
	Indianapolis	(800) 624-1620
District of Columbia / Maryland	District of Columbia	(800) 492-2709
	Silver Spring	(800) 492-2709
	Hagerstown	(800) 533-5602
Kentucky	Lexington	(877) 589-3743
North Carolina	Charlotte	(800) 473-3882
	Raleigh	(800) 533-3982
New York	Rochester	(800) 333-0823
Ohio	Canton	(800) 362-6541
	Columbus	(800) 282-1702
Pennsylvania	Allentown/Bethlehem	(800) 322-9026
	Erie	(877) 771-3743
	Harrisburg	(800) 382-1304
	Johnstown	(800) 241-4209
	Murrysville	(800) 553-3367
	Philadelphia	(800) 821-2902
	Pittsburgh	(800) 922-1824
Tennessee	Knoxville	(888) 922-3743
Virginia	Richmond	(800) 322-3743
	Roanoke	(800) 533-3743
	Waynesboro	(800) 542-2250
Wisconsin	Waukesha	(877) 740-3743
West Virginia	Parkersburg	(800) 642-1948

**Note:** When contacting Erie Insurance to report a claim, please be advised that the company cannot provide advice or counsel Policyholders on whether or not to file a claim. Erie Insurance is obligated to file the claim when contacted by a Policyholder. Discussions about how the claim will impact your policy or questions about whether or not to file a claim should be directed to your Erie Insurance Agent.

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

## **EXCLUSION – ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY – WITH LIMITED BODILY INJURY EXCEPTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Exclusion 2.p. of Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

**2. Exclusions**

This insurance does not apply to:

**p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- 1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- 2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph **1)** or **2)** above.

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

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**B. The following is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**Access Or Disclosure Of Confidential Or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

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

## **EXCLUSION – UNMANNED AIRCRAFT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Exclusion 2.g. Aircraft, Auto Or Watercraft under Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:**

**2. Exclusions**

This insurance does not apply to:

**g. Aircraft, Auto Or Watercraft**

**1) Unmanned Aircraft**

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

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

**2) Aircraft (Other Than Unmanned Aircraft), Auto Or Watercraft**

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

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

This Paragraph **g.2)** does not apply to:

- a) A watercraft while ashore on premises you own or rent;

- b) A watercraft you do not own that is:

i) Less than 26 feet long; and

ii) Not being used to carry persons or property for a charge;

- c) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

- d) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

- e) "Bodily injury" or "property damage" arising out of:

i) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

ii) The operation of any of the machinery or equipment listed in Paragraph **f.2)** or **f.3)** of the definition of "mobile equipment".

**B. The following exclusion is added to Paragraph 2. Exclusions of Coverage B – Personal And Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**Unmanned Aircraft**

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

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



This exclusion does not apply to:

- a. The use of another's advertising idea in your "advertisement"; or
- b. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

- C. The following definition is added to the **Definitions** section:

"Unmanned aircraft" means an aircraft that is not:

- 1. Designed;
- 2. Manufactured; or
- 3. Modified after manufacture;

to be controlled directly by a person from within or on the aircraft.

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## COMMON POLICY CONDITIONS

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

### A. Cancellation

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

### B. Changes

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

### C. Examination Of Your Books And Records

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

### D. Inspections And Surveys

1. We have the right to:

- a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be changed. 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 and only with respect to that property.



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INTERLINE  
IL 00 21 (Ed. 9/08) UF-3005

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT**

**(Broad Form)**

This endorsement modifies insurance provided under the following:

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

1. The insurance does not apply:

**A.** Under any Liability Coverage, to "bodily injury" or "property damage":

- 1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability; or
- 2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**B.** Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear

material" and arising out of the operation of a "nuclear facility" by any person or organization.

**C.** Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- 1) The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or **(b)** has been discharged or dispersed therefrom;
- 2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- 3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **(3)** applies only to "property damage" to such "nuclear facility" and any property threat.

2. As used in this endorsement:

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

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

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

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

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

"Nuclear facility" means:

- a) Any "nuclear reactor";
- b) Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or

utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

- c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

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

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

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



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## PENNSYLVANIA NOTICE

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

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

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

The Act does not apply:

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

### **Instruction to Policy Writers**

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

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

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

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

COMMERCIAL INLAND MARINE COVERAGE PART(S)

FIVESTAR CONTRACTORS' COMMERCIAL PROPERTY COVERAGE PART

ULTRAFLEX COMMERCIAL PROPERTY COVERAGE PART

ULTRAPACK COMMERCIAL PROPERTY COVERAGE PART

ULTRASURE FOR PROPERTY OWNERS' COMMERCIAL PROPERTY COVERAGE PART

ULTRASURE FOR LANDLORDS POLICY

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

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

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

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

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

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

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

## DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT

### SCHEDULE

#### **Terrorism Premium (Certified Acts) § 2**

**This premium is the total Certified Acts premium attributable to the following Coverage Part(s), Coverage Forms(s) and/or Policy(s):**

Business Catastrophe Liability  
Ultrapack Plus

**Additional Information, if any, concerning the terrorism premium:**

#### **SCHEDULE – PART II (Refer to Paragraph B. in this endorsement)**

**Federal share of Terrorism Losses 85% Year: 2015**

**Federal share of Terrorism Losses 84% Year: 2016**

**Federal share of Terrorism Losses 83% Year: 2017**

**Federal share of Terrorism Losses 82% Year: 2018**

**Federal share of Terrorism Losses 81% Year: 2019**

**Federal share of Terrorism Losses 80% Year: 2020**

(Applicable if policy is in force)

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

#### **A. Disclosure of Premium**

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

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

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals a percentage (as shown in Part II of the Schedule of this endorsement) of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses at-

tributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

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

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



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INTERLINE  
IL 02 46 (Ed. 9/07) UF-3030

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

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

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

**CANCELLATION**

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

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

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

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

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

- a. You have made a material misrepresentation which affects the insurability of the risk. Notice of cancellation will be mailed or delivered at least 15 days before the effective date of cancellation.
- b. You have failed to pay a premium when due, whether the premium is payable directly

to us or our agents or indirectly under a premium finance plan or extension of credit. Notice of cancellation will be mailed at least 15 days before the effective date of cancellation.

- c. A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become known during the policy period. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- d. Loss of reinsurance or a substantial decrease in reinsurance has occurred, which loss or decrease, at the time of cancellation, shall be certified to the Insurance Commissioner as directly affecting in-force policies. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- e. Material failure to comply with policy terms, conditions or contractual duties. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.



- f. Other reasons that the Insurance Commissioner may approve. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

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

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

7. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.

**B.** The following are added and supersede any provisions to the contrary:

**1. Nonrenewal**

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

**2. Increase Of Premium**

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

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

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

## **EXCLUSION - LEAD LIABILITY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following is added to Paragraph 2., **Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability**:

### **Lead Liability**

This insurance does not apply to:

1. Actual or alleged "bodily injury" arising out of the ingestion, inhalation, or absorption of lead or lead compounds in any form;
  2. Actual or alleged "bodily injury" or "property damage" arising out of any form of lead or lead compounds;
  3. Any legal obligation of the insured for indemnification or contribution due to damages arising out of "bodily injury" or "property damage" caused by lead, resulting from paint containing lead or contributed to by any other substance or material containing lead;
  4. "Bodily injury" or "property damage" arising out of the actual or alleged:
    - a. Exposure to or existence of lead, paint containing lead, or any other material or substance containing lead; or
    - b. Manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of lead, paint containing lead, or any other material or substance containing lead;
- whether or not the lead is now or was at any time airborne as a particle, contained as a product, ingested, inhaled, transmitted in any fashion, or found in any form whatsoever.
5. Any loss, cost or expense arising out of any:
    - a. Request, demand or order that the insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, lead or lead compounds.
    - b. Claim or "suit" by or on behalf of any governmental authority for damages resulting from testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, lead or lead compounds in any form.

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

## **EXCLUSION - ASBESTOS**

This endorsement modifies the insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

The following exclusion is added to Paragraph 2., **Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability** and to Paragraph 2., **Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability**:

#### **Asbestos**

This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of:

1. The inhaling, ingesting, or physical exposure to asbestos, or goods or products containing asbestos;
2. The manufacture, distribution, sale, resale, rebranding, transportation, storage, or disposal of asbestos or products containing asbestos;

3. The installation, repair, removal, encapsulation, abatement, replacement, handling of or exposure to, asbestos or products containing asbestos; or
4. The use of asbestos in constructing or manufacturing any goods, products, or structures.

We will not pay for the investigation or defense of any claim or "suit" or for any fine, cost, or expense of any claim or "suit" resulting from asbestos.

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

## **EXCLUSION - PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

- A.** The following is added to Paragraph 2., **Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability** and Paragraph 2., **Exclusions of Section I - Coverage B - Personal and Advertising Injury Liability**:

### **Professional Liability**

This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" due to:

1. The rendering of or failure to render:
  - a. Diagnostic, medical, surgical, dental, x-ray, or nursing service or treatment, or the furnishing of food or beverages with them;
  - b. Health or therapeutic service, treatment, advice, or instruction; or
  - c. Ambulance, paramedical, rescue squad, or other service or treatment conducive to health;
2. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances;
3. The handling of or performing of autopsies;
4. The rendering of or failure to render cosmetic, ear piercing, tonsorial, massage, physiotherapy, chiropody, hearing aid, optical or optometrical services or treatments;
5. The selling, licensing, franchising, or furnishing of your computer software, including electronic data processing programs, designs, specifications, manuals, and instructions;
6. Any act, error, or omission with respect to data processing services or operations;
7. Any act, error, or omission with respect to any real estate agent or broker services.
8. The rendering of or failure to render any "professional services" by you or on your behalf, but only with respect to either or both of the following operations:
  - a. Providing engineering, architectural, or surveying services to others in your capacity as an engineer, architect, or surveyor; and
  - b. Providing or hiring independent professionals to provide engineering, architectural, or surveying

services in connection with construction work you perform; or

9. Any other service of a professional nature, including but not limited to accounting, printers, or attorneys.

These exclusions apply even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you or on your behalf with respect to the operations described above.

- B.** The following definition is added to **Section V - Definitions**:

"Professional services" includes:

1. The preparing, approving, or failing to prepare or approve maps, plans, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
2. Supervision or inspection activities performed as part of any related architectural or engineering activities.

"Professional services" do not include services within construction means, methods, techniques, sequences, and procedures employed by you in connection with your operations in your capacity as a construction contractor.

- C.** This Exclusion - Professional Liability does not apply to liability for damages because of "bodily injury", "property damage", or "personal and advertising injury" if a premium for professional liability coverage is shown in the Declarations.

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

## **AMENDMENT OF POLICY - TWO OR MORE COVERAGE PARTS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following Condition is added to **Section IV - Commercial General Liability Conditions**:

### **TWO OR MORE COVERAGE PARTS OR POLICIES ISSUED BY US**

Notwithstanding the OTHER INSURANCE Condition in your policy, if this policy and any other coverage part or policy issued to you by us apply to the same occurrence, offense or accident, the maximum Limits of Insurance under all coverage parts or policies will not exceed the highest applicable Limits of Insurance under any one coverage part or policy.

In no event will coverage be provided during the policy period after

1. The applicable Aggregate Limit of Protection under any one coverage part or policy has been exhausted; or
2. The applicable Aggregate Limits of Insurance under any one coverage part or policy would have been exhausted had all covered claims been submitted under that one coverage part or policy rather than under two or more coverage parts or policies.

This condition does not apply to any coverage part or policy issued by us specifically to apply as excess insurance over this policy.



**FORMS - FILED**

JULY 6, 2006

FROM: LARRY PODOSHEN, SENIOR ANALYST

COMMERCIAL PROPERTY

LI-CF-2006-175

## NEW ENDORSEMENTS FILED TO ADDRESS EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

**This circular announces the submission of forms filings to address exclusion of loss due to disease-causing agents such as viruses and bacteria.**

### BACKGROUND

Commercial Property policies currently contain a pollution exclusion that encompasses contamination (in fact, uses the term *contaminant* in addition to other terminology). Although the pollution exclusion addresses contamination broadly, viral and bacterial contamination are specific types that appear to warrant particular attention at this point in time.

### ISO ACTION

We have submitted forms filing CF-2006-OVBEF in all ISO jurisdictions and recommended the filing to the independent bureaus in other jurisdictions. This filing introduces new endorsement CP 01 40 07 06 - Exclusion Of Loss Due To Virus Or Bacteria, which states that there is **no coverage 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.**

**Note:** In Alaska, District of Columbia, Louisiana\*, New York and Puerto Rico, we have submitted a different version of this filing, containing new endorsement CP 01 75 07 06 in place of CP 01 40. The difference relates to lack of implementation of the mold exclusion that was implemented in other jurisdictions under a previous multistate filing.

Both versions of CF-2006-OVBEF are attached to this circular.

\* In Louisiana, the filing was submitted as a recommendation to the Property Insurance Association of Louisiana (PIAL), the independent bureau with jurisdiction for submission of property filings.

### PROPOSED EFFECTIVE DATE

Filing CF-2006-OVBEF was submitted with a proposed effective date of January 1, 2007, in accordance with the applicable effective date rule of application in each state, with the exception of various states for which the insurer establishes its own effective date.

Upon approval, we will announce the actual effective date and state-specific rule of effective date application for each state.



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**RATING SOFTWARE IMPACT**

New attributes being introduced with this revision:

- A new form is being introduced.

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**CAUTION**

This filing has not yet been approved. If you print your own forms, do not go beyond the proof stage until we announce approval in a subsequent circular.

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**RELATED RULES REVISION**

We are announcing in a separate circular the filing of a corresponding rules revision. Please refer to the **Reference(s)** block for identification of that circular.

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**REFERENCE(S)**

LI-CF-2006-176 (7/6/06) - New Additional Rule Filed To Address Exclusion Of Loss Due To Virus Or Bacteria

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**ATTACHMENT(S)**

- Multistate Forms Filing CF-2006-OVBEF
- State-specific version of Forms Filing CF-2006-OVBEF (Alaska, District of Columbia, Louisiana, New York, Puerto Rico)

We are sending these attachments only to recipients who asked to be put on the mailing list for attachments. If you need the attachments for this circular, contact your company's circular coordinator.

---

**PERSON(S) TO CONTACT**

If you have any questions concerning:

- the content of this circular, please contact:

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# Amendatory Endorsement - Exclusion Of Loss Due To Virus Or Bacteria

## About This Filing

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This filing addresses exclusion of loss due to disease-causing agents such as viruses and bacteria.

## New Form

We are introducing:

- ◆ Endorsement CP 01 40 07 06 - Exclusion Of Loss Due To Virus Or Bacteria

## Related Filing(s)

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Rules Filing CF-2006- OVBEB

## Introduction

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The current pollution exclusion in property policies encompasses contamination (in fact, uses the term *contaminant* in addition to other terminology). Although the pollution exclusion addresses contamination broadly, viral and bacterial contamination are specific types that appear to warrant particular attention at this point in time.

An example of bacterial contamination of a product is the growth of listeria bacteria in milk. In this example, bacteria develop and multiply due in part to inherent qualities in the property itself. Some other examples of viral and bacterial contaminants are rotavirus, SARS, influenza (such as avian flu), legionella and anthrax. The universe of disease-causing organisms is always in evolution.

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.

## Current Concerns

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Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case. In addition, pollution exclusions are at times narrowly applied by certain courts. In recent years, ISO has filed exclusions to address specific exposures relating to contaminating or harmful substances. Examples are the mold exclusion in property and liability policies and the liability exclusion addressing silica dust. Such exclusions enable elaboration of the specific exposure and thereby can reduce the likelihood of claim disputes and litigation.

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent.

In light of these concerns, we are presenting an exclusion relating to contamination by disease-causing viruses or bacteria or other disease-causing microorganisms.

## Features Of New Amendatory Endorsement

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The amendatory endorsement presented in this filing states that there is **no coverage 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**. The exclusion (which is set forth in Paragraph B of the endorsement) applies to property damage, time element and all other coverages; introductory Paragraph A prominently makes that point. Paragraphs C and D serve to avoid overlap with other exclusions, and Paragraph E emphasizes that other policy exclusions may still apply.

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**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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# Amendatory Endorsement - Exclusion Of Loss Due To Virus Or Bacteria

## About This Filing

---

This filing addresses exclusion of loss due to disease-causing agents such as viruses and bacteria.

## New Form

We are introducing:

- ◆ Endorsement **CP 01 75 07 06** - Exclusion Of Loss Due To Virus Or Bacteria

## Related Filing(s)

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Rules Filing CF-2006-OVBER

## Introduction

---

The current pollution exclusion in property policies encompasses contamination (in fact, uses the term *contaminant* in addition to other terminology). Although the pollution exclusion addresses contamination broadly, viral and bacterial contamination are specific types that appear to warrant particular attention at this point in time.

An example of bacterial contamination of a product is the growth of listeria bacteria in milk. In this example, bacteria develop and multiply due in part to inherent qualities in the property itself. Some other examples of viral and bacterial contaminants are rotavirus, SARS, influenza (such as avian flu), legionella and anthrax. The universe of disease-causing organisms is always in evolution.

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement

of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.

## Current Concerns

---

Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case. In addition, pollution exclusions are at times narrowly applied by certain courts. In recent years, ISO has filed exclusions to address specific exposures relating to contaminating or harmful substances. Examples are the mold exclusion in property and liability policies and the liability exclusion addressing silica dust. Such exclusions enable elaboration of the specific exposure and thereby can reduce the likelihood of claim disputes and litigation.

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent.

In light of these concerns, we are presenting an exclusion relating to contamination by disease-causing viruses or bacteria or other disease-causing microorganisms.

## Features Of New Amendatory Endorsement

---

The amendatory endorsement presented in this filing states that there is **no coverage 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.** The exclusion (which is set forth in Paragraph B of the endorsement) applies to property damage, time element and all other coverages; introductory Paragraph A prominently makes that point. Paragraph C serves to avoid overlap with another exclusion, and Paragraph D emphasizes that other policy exclusions may still apply.

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**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. 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 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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March 23, 2020

Walters  
4501 Butler Street  
Pittsburgh, PA 15201

Re: ERIE Claim #A00002505423  
ERIE Policy #Q97-1915981  
Date of Loss: 3/16/20

Dear Walters:

This letter is in reference to the above-captioned claim which was reported to Erie Insurance Exchange (ERIE) on March 16, 2020 seeking coverage under the Ultrapack Policy #Q97-1915981 issued to Walters.

It is ERIE's understanding that a claim is being asserted for business interruption/loss of income due to mandatory nonessential business shutdowns mandated by the Allegheny County Authorities.

At this time, ERIE is proceeding to investigate this claim under a Reservation of Rights. What this means is that ERIE is investigating this claim and reviewing your policy to determine if there is coverage for this claim.

The Insuring Agreement for Building(s) – Coverage 1, Business Personal Property – Coverage 2 and Income Protection – Coverage 3 reads in relevant part:

## **SECTION I - COVERAGES**

### **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 a peril insured against.

SECTION II – PERILS INSURED AGAINST states:

### **SECTION II - PERILS INSURED AGAINST**

#### **BUILDING(S) - COVERAGE 1**

#### **BUSINESS PERSONAL PROPERTY AND PERSONAL PROPERTY OF OTHERS - COVERAGE 2**

#### **INCOME PROTECTION - COVERAGE 3**

#### **Covered Cause of Loss**

This policy insures against direct physical "loss", except "loss" as excluded or limited in this policy.



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***Under the express language of these provisions, coverage will not apply unless there is direct physical "loss" of or damage to Covered Property.***

### **Business Interruption Coverage**

Refer to SECTION I of the policy for what constitutes Covered Property under INCOME PROTECTION – COVERAGE 3. **Income Protection** means loss of "income" and/or "rental income" you sustain due to partial or total "interruption of business" resulting directly from "loss" or damage to property on the premises described in the "Declarations" from a peril insured against. **Extra Expense Coverage** under paragraph B of Coverage 3 also requires a partial or total "interruption of business" resulting directly from "loss" or damage to property on the premises described in the "Declarations" from a peril insured against.

As defined in Section XI of the policy, "Loss" means direct and accidental loss of or damage to covered property. "Interruption of business" means the period of time that your business is partially or totally suspended and it:  
(1) Begins with the date of direct "loss" to covered property caused by a peril insured against; and (2) Ends on the date when the covered property should be repaired, rebuilt, or replaced with reasonable speed and similar quality.

***Income Protection does not apply unless a partial or total "interruption of business" results directly from direct physical "loss" or damage to Covered Property on the premises from a peril insured against. No coverage is provided when the facts and circumstances do not meet these requirements.***

### **Additional Coverages - Civil Authority**

Additional Coverages - Civil Authority under paragraph C of the Income Protection Coverage Section of the policy (SECTION I, Coverage 3) reads:

#### **C. Additional Coverages**

##### **1. Civil Authority**

When a peril insured against causes damage to property other than property at the premises described in the "Declarations", we will pay for the actual loss of "income" and/or "rental income" you sustain and necessary "extra expense" caused by action of civil authority that prohibits access to the premises described in the "Declarations" provided that both of the following apply:

- a. Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the premises described in the "Declarations" are within that area but are not more than one mile from the damaged property; and
- b. The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the peril insured against 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 "income" and/or "rental income" will begin 72 hours after the time of the first action of civil authority that prohibits access to the premises described in the "Declarations" and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

***Civil Authority coverage does not apply unless there is damage to property within one mile of the premises described in the "Declarations," caused by a peril insured against. Civil Authority coverage also does not apply unless the action of civil authority is issued as a result of the damage to such other property. No coverage is provided when the facts and circumstances do not meet these requirements.***

#### **Extension of Coverage – Contingent Business Interruption**

The Extension of Coverage for loss of "income" or "rental income" for Contingent Business Interruption under SECTION VIII (B)(5) also requires a partial or total "interruption of business" resulting directly from "loss" or damage to Building(s) or Business Personal Property of "dependent properties" from a peril insured against.

"Dependent property" means premises operated by others whom you depend on in any way for continuation of your normal business operations. The "dependent properties" are:

- a. Contributing Locations which mean those premises you depend on as a source of materials or services that you need for your operations. Services do not include water, communication, power supply, or waste water removal services;
- b. Recipient Locations which mean those premises you depend on as a customer for your products or services;
- c. Manufacturing Locations which mean those premises you depend on to manufacture products for your customers under contract or sale; or
- d. Leader Locations which mean those premises you depend on to attract customers to your business.

"Interruption of business" for contingent business interruption means the period of time that your business is suspended and it:

- a. Begins with the date of direct "loss" or damage to the "dependent property" caused by a peril insured against; and
- b. Ends on the date when the "dependent property" should be repaired, rebuilt, or replaced with reasonable speed and similar quality.

***Contingent Business Interruption does not apply unless a partial or total "interruption of business" results directly from "loss" or damage to Buildings or Business Personal Property of "dependent properties" from a peril insured against. No coverage is provided when the facts and circumstances do not meet these requirements.***

In addition to the discussion above, the following exclusions may apply to this loss:

### **SECTION III - EXCLUSIONS**

#### **E. Coverage 3**

We do not cover under **Income Protection - Coverage 3**:

1. Increase of loss resulting from ordinance or law regulating construction or repair of buildings.
2. Consequential damages resulting from the breach of contractual obligations.
4. Loss due to delay or loss of market.
6. "Extra expense" caused by the suspension, lapse, or cancellation of any license, lease, or contract beyond the "interruption of business".
7. Increase of loss resulting from ordinance or law regulating the prevention, control, repair, clean-up, or restoration of environmental damage.
8. Income protection specifically insured in whole or in part by this or any other insurance.

Additionally, the following policy provisions apply:

#### **15. SUITS AGAINST US**

We may not be sued unless there is full compliance with all the terms of this policy. Suit must be brought within 2 years (Maryland and North Carolina - 3 years) after the "loss" occurs.

#### **18. YOUR DUTIES AFTER A LOSS**

In case of a covered "loss", you must perform the following duties:

- a. Give us or our Agent immediate notice. If a crime "loss", also notify the police (except Virginia);
- b. Protect the property from further damage. If necessary for property protection, make reasonable repairs and keep a record of all repair costs;
- c. Furnish a complete inventory of damaged property stating its original cost. At our request, furnish a complete inventory of undamaged property stating its original cost. If a "loss" is both less than \$10,000 and less than 5% of the amount of insurance, no special inventory and appraisal of the undamaged property shall be required;

- d. Produce for examination, with permission to copy, all books of accounts, bills, invoices, receipts, and other vouchers as we may reasonably require;
- e. Show us or our representative the damaged property, as often as may be reasonably required;
- f. Cooperate with us in our investigation of a "loss" and any suits;
- g. Separately submit to examinations under oath and sign a transcript of the same;
- h. Send us, within 90 days after the "loss", your signed and sworn proof of loss statement which includes:
  - 1) Time and cause of "loss";
  - 2) Your interest in the property and the interest of all others involved;
  - 3) Any encumbrances on the property;
  - 4) Other policies which may cover the "loss";
  - 5) Any changes in title, use, occupancy, or possession of the property which occurred during the policy term;
  - 6) When required by us any plans, specifications, and estimates for the repair of the damaged building; and
  - 7) The inventory of damaged property as prepared in c. above;
- i. In addition to the other conditions under **Income Protection - Coverage 3**, make necessary replacements or repairs and use all available means to eliminate any unnecessary delay in order to resume operations as soon as possible;
- j. Agree to help us enforce any right of recovery against any party liable for "loss" under this policy. This will not apply if you have waived recovery rights in writing prior to a "loss".

Until ERIE can complete a thorough review of all the documentation pertaining to this claim, we are unable to fully evaluate if any exclusions or limitations do apply to this claim. Please understand that this is not a letter denying coverage for your claim. We simply wish to inform you that some or all of the loss may not be covered.

We are requesting your cooperation in the investigation of the claims being asserted by you as required by the policy conditions. If you have any other insurance that may apply, please notify that insurer at once about this claim and supply us with the information about the other insurance. If you are aware of any additional facts that may change our present coverage analysis, please let us know. If ultimately there is no coverage for this claim, ERIE will not make payment under the policy. If part of the claim is covered and part of the claim is not covered, ERIE will only make payment for the covered portion of the claim.

This letter is not intended to nor should it be construed as setting forth an exhaustive list of all issues with respect to coverage, exclusions, defenses, conditions and limitations that may arise from this loss under your policy of insurance with ERIE. You may be advised of any and all additional issues that are identified in our investigation.

Walters  
Page 6  
March 23, 2020

It is ERIE's intention not to waive, but rather fully reserve all rights, exclusions, defenses, issues and limitations to which ERIE may be entitled with respect to the matter that may be the subject of this claim. If we ultimately resolve the coverage issues in your favor, you will be advised in writing. Our investigation or discussion with any interested parties should not be construed as a waiver of any policy conditions, provisions or terms, all of which remain in force and effect. ERIE reserves all rights and defenses under the policy. ERIE reserves the right to suspend all investigation or other activity at any time during the case of the same, advising you at the time, the reason of such suspension. ERIE further reserves the right to deny coverage to you or anyone else seeking coverage under the policy at a later date and seek a judicial determination of its rights and obligations under the policy.

If you have any questions or concerns in regard to this letter, please feel free to contact me at the number listed below.

Sincerely,

Kyle Welker  
Catastrophe Adjuster  
Pittsburgh Claims Office  
kyle.welker@erieinsurance.com  
(814) 240-9335

/dmm

By certified mail – return receipt requested

cc: Wilson & Associates IPM



**Erie  
Insurance®**

Branch Office • 301 Commonwealth Drive • Warrendale, PA 15086-7508  
724.776.4000 • Toll free 1.800.922.1824 • Fax 724.772.7700 • www.erieinsurance.com

April 1, 2020

Walters Nearest & Dearest, LLC  
4501 Butler Street  
Pittsburgh, PA 15201

Re: ERIE Claim #A00002505423  
ERIE Policy: Q97-1915981  
Date of Loss: 3/16/20

Dear Walters Nearest & Dearest, LLC:

This letter is in reference to the above-captioned claim which was reported to Erie Insurance Exchange (ERIE) on March 17, 2020 seeking coverage under the Ultrapack Plus Commercial Property Coverage Policy #Q97-1915981 issued to Walters Nearest & Dearest, LLC.

During our conversation on March 17, 2020, you explained that you sustained loss of income due to the government shutdown. We regret to inform you that there is no coverage for your loss of income because there is no direct physical loss to your building or business personal property.

Please reference the Insuring Agreement for Building(s) – Coverage I, Business Personal Property – Coverage II and Income Protection – Coverage III which reads in relevant part:

## **SECTION I - COVERAGES**

### **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 a peril insured against.

SECTION II – PERILS INSURED AGAINST states:

### **SECTION II - PERILS INSURED AGAINST**

#### **BUILDING(S) - COVERAGE 1**

#### **BUSINESS PERSONAL PROPERTY AND PERSONAL PROPERTY OF OTHERS - COVERAGE 2**

#### **INCOME PROTECTION - COVERAGE 3**

#### **Covered Cause of Loss**

This policy insures against direct physical "loss", except "loss" as excluded or limited in this policy.



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### **Business Interruption Coverage**

Refer to SECTION I of the policy for what constitutes Covered Property under INCOME PROTECTION – COVERAGE 3. **Income Protection** means loss of “income” and/or “rental income” you sustain due to partial or total “interruption of business” resulting directly from “loss” or damage to property on the premises described in the “Declarations” from a peril insured against. **Extra Expense Coverage** under paragraph B of Coverage 3 also requires a partial or total “interruption of business” resulting directly from “loss” or damage to property on the premises described in the “Declarations” from a peril insured against.

As defined in Section XI of the policy, “Loss” means direct and accidental loss of or damage to covered property. “Interruption of business” means the period of time that your business is partially or totally suspended and it: (1) Begins with the date of direct “loss” to covered property caused by a peril insured against; and (2) Ends on the date when the covered property should be repaired, rebuilt, or replaced with reasonable speed and similar quality.

***Income Protection does not apply because there was no partial or total “interruption of business” due to direct physical “loss” or damage to Covered Property on the premises from a peril insured against.***

### **Additional Coverages - Civil Authority**

Additional Coverages - Civil Authority under paragraph C of the Income Protection Coverage Section of the policy (SECTION I, Coverage 3) reads:

#### **C. Additional Coverages**

##### **1. Civil Authority**

When a peril insured against causes damage to property other than property at the premises described in the “Declarations”, we will pay for the actual loss of “income” and/or “rental income” you sustain and necessary “extra expense” caused by action of civil authority that prohibits access to the premises described in the “Declarations” provided that both of the following apply:

- a. Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the premises described in the “Declarations” are within that area but are not more than one mile from the damaged property; and
- b. The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the peril insured against 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 “income” and/or “rental income” will begin 72 hours after the time of the first action of civil authority that prohibits access to the premises described in the “Declarations” and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

***Civil Authority coverage does not apply because a Civil Authority did not order that the business be closed due to damage to property within one mile of the premises described in the "Declarations," caused by a peril insured against.***

### **Extension of Coverage – Contingent Business Interruption**

The Extension of Coverage for loss of "income" or "rental income" for Contingent Business Interruption under SECTION VIII (B)(5) also requires a partial or total "interruption of business" resulting directly from "loss" or damage to Building(s) or Business Personal Property of "dependent properties" from a peril insured against.

"Dependent property" means premises operated by others whom you depend on in any way for continuation of your normal business operations. The "dependent properties" are:

- a. Contributing Locations which mean those premises you depend on as a source of materials or services that you need for your operations. Services do not include water, communication, power supply, or waste water removal services;
- b. Recipient Locations which mean those premises you depend on as a customer for your products or services;
- c. Manufacturing Locations which mean those premises you depend on to manufacture products for your customers under contract or sale; or
- d. Leader Locations which mean those premises you depend on to attract customers to your business.

"Interruption of business" for contingent business interruption means the period of time that your business is suspended and it:

- a. Begins with the date of direct "loss" or damage to the "dependent property" caused by a peril insured against; and
- b. Ends on the date when the "dependent property" should be repaired, rebuilt, or replaced with reasonable speed and similar quality.

***Contingent Business Interruption does not apply because there was no partial or total "interruption of business" directly from "loss" or damage to Buildings or Business Personal Property of "dependent properties" from a peril insured against.***

In addition to the discussion above, the following exclusions apply to this loss:

### **SECTION III - EXCLUSIONS**

#### **E. Coverage 3**

We do not cover under **Income Protection - Coverage 3:**

1. Increase of loss resulting from ordinance or law regulating construction or repair of buildings.
2. Consequential damages resulting from the breach of contractual obligations.
4. Loss due to delay or loss of market.
6. "Extra expense" caused by the suspension, lapse, or cancellation of any license, lease, or contract beyond the "interruption of business".
7. Increase of loss resulting from ordinance or law regulating the prevention, control, repair, clean-up, or restoration of environmental damage.
8. Income protection specifically insured in whole or in part by this or any other insurance.

Additionally, the following policy provision applies:

**15. SUITS AGAINST US**

We may not be sued unless there is full compliance with all the terms of this policy. Suit must be brought within 2 years (Maryland and North Carolina - 3 years) after the "loss" occurs.

Nothing in this letter is intended to waive, alter or restrict any of the terms, conditions or defenses of the policy of insurance in question, all of which are expressly reserved and affirmed.

We regret that we could not assist you in this matter. If you have any questions or concerns regarding this letter, please feel free to contact me at the number listed below.

Sincerely,

Thomas Chapman  
Property Adjuster  
Pittsburgh Claims Office

/ad

By certified mail – return receipt requested

cc: Walters Nearest & Dearest, LLC (By regular mail)  
cc: Wilson & Associates, IPM, AA5559

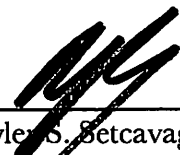
IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

NEAREST & DEAREST, LLC d/b/a	)	CIVIL DIVISION
WALTER'S SOUTHERN KITCHEN	)	
	)	No.
Plaintiff,	)	
	)	
v.	)	
	)	
ERIE INSURANCE EXCHANGE,	)	
d/b/a ERIE INSURANCE,	)	
	)	
Defendant.	)	

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access policy of the Unified Judicial System of Pennsylvania*: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

  
\_\_\_\_\_  
Tyler S. Setcavage, Esquire  
Pa. ID No. 322867