

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF OLMDSTED

THIRD JUDICIAL DISTRICT

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File No.

Olmsted Medical Center,

CASE TYPE: Other Contracts

Plaintiff,

v.

**COMPLAINT**

Continental Casualty Company,

Defendant.

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Plaintiff Olmsted Medical Center (“Plaintiff” or “Olmsted Medical”), for its complaint against Defendant Continental Casualty Company (“Defendant” or “Continental”), states and alleges as follows:

**INTRODUCTION**

1. This action arises out of an insurance dispute over the coverage available to Plaintiff Olmsted Medical under a commercial property insurance policy that includes business interruption coverage, contingent business interruption coverage, and additional coverage for denial of access by civil authority, sold by Defendant Continental. Olmsted Medical seeks a declaration of its rights and Continental’s obligations under the insurance policy, damages for breach of contract for Continental’s refusal to pay losses as required by the insurance policy, along with interest, attorneys’ fees, costs, and such other further relief as the Court may deem just and proper.

**PARTIES**

2. Plaintiff Olmsted Medical is a Minnesota 501(c) organization with its principal place of business in Olmsted County, Minnesota.

3. Defendant Continental is an Illinois corporation which is licensed and does business in Minnesota, including the sale of the insurance policy at issue here.

### **JURISDICTION AND VENUE**

4. This Court has general subject matter jurisdiction over this action pursuant to Minn. Const., Art. VI, § 3, and Minn. Stat. § § 484.01, 555.01, *et seq.*

5. This Court has personal jurisdiction over the Defendant pursuant to Minn. Stat. § 543.19 because it is licensed or authorized to do business in Minnesota and transacted the business of selling insurance in Minnesota within the relevant time periods.

6. Venue is proper in Olmsted County pursuant to Minn. Stat. § 542.09.

### **INSURANCE POLICY**

7. Continental sold an insurance policy, No. XXXXXX5797 to Olmsted Medical for the policy period January 1, 2020 to January 1, 2021 which included coverage for business interruption, contingent business interruption, and denial of access by civil authority (“the Policy”), among other coverages. Specifically, the Policy provides coverage for up to \$171,297,565 in “Business Interruption,” \$500,000 in “Contingent Business Interruption,” and \$1,000,000 in “Denial of Access by Civil Authority / Ingress – Egress.” A true copy of the Continental Policy, with restricted identifiers, is attached hereto as **Exhibit A**.

8. Olmsted Medical is an “Insured” under the insurance policy sold by Continental.

9. The insuring provision of the “Business Interruption” Time Element section in the Policy states that Continental “covers against loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property . . . . In the event of such physical loss or damage the Company shall be liable for the actual loss sustained by the Insured resulting directly from such interruption of business, but not exceeding the reduction in

**Gross Earnings** as set forth below less charges and expenses which do not necessarily continue during the interruption of business . . . .”

10. Olmsted Medical suffered loss resulting from the necessary interruption of business caused by direct physical loss to or damage to covered property when the COVID pandemic, including the SARS-CoV-2 virus, hit Minnesota and upon information and belief, specifically Olmsted Medical.

11. Continental denied coverage on the basis of business interruption, stating “You have not claimed that [Olmsted Medical] operations were suspended because of any direct physical loss of or damage to property at those Locations, and our investigation has revealed no evidence of such direct or physical loss or damage.” A correct copy of Continental’s denial of coverage dated May 14, 2020 is attached hereto as **Exhibit B**.

12. The insuring provision of the “Contingent Business Interruption” section in the Policy states that Continental will cover “loss to the Insured resulting from necessary interruption of business conducted by the Insured at **Locations** occupied by the Insured and covered in this policy, caused by perils insured against that result in direct physical loss or damage to any real or personal property, of the type insured hereunder, owned and operated by: (a) direct suppliers or service providers of the Insured, which wholly or partially prevents the delivery of materials, products or services . . . to the Insured or to others for the account of the Insured;” or “(b) direct customers of the insured, to whom the Insured’s products or services . . . are provided, which wholly or partially prevents the acceptance of said products or services . . . ;” or “(c) any other third-parties that the Insured depends upon to attract customers. Coverage under this subsection is limited to dependent property within 5 miles of the Insured’s **Location** . . . .”

13. Olmsted Medical suffered loss resulting from necessary interruption of business resulting from direct physical loss or damage to real or personal property of: direct suppliers and service providers, preventing the delivery of products and services to the insured; customers preventing acceptance of Olmsted Medicals products and services; and third-parties preventing the attraction of new customers.

14. Continental did not address contingent business interruption in its denial of coverage.

15. The insuring provision of the “Denial of Access by Civil Authority and Ingress-Egress” section in the Policy states that Continental will cover “the actual loss sustained: (a) during the period of time while access to the Insured’s Location is prohibited by order of civil authority, but only when such order is given as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of said **Location**; or (b) during the period of time when as a direct result of physical loss or damage to property of the type insured from a peril insured against, ingress to or egress from the Insured’s **Location** is thereby physically prevented.”

16. Olmsted Medical suffered loss resulting from Civil Authority because there was actual loss sustained during a time where access was prohibited by the Minnesota Governor’s order as a direct result of physical loss or damage to property occurring upon information and believe at Olmsted Medical and the immediate vicinity due to the pervasive existence of COVID 19 and the attendant SARS-CoV-2 virus. Additionally, as a result of the same physical loss or damage to property, the Governor’s Order physically prevented ingress or egress from Olmsted Medical’s location.

17. Continental denied coverage based on the Civil Authority provision, stating “the Executive Order by Governor Waltz was not issued as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of any of the scheduled Locations . . . . The Executive Orders also did not prohibit access to [Olmsted Medical’s] Locations or physically prevent ingress to or egress from those Locations. Rather, the Executive Orders restricted the services that OMC could provide at those Locations.”

18. Continental also stated that several exclusions might apply to coverage for Olmsted Medical’s claim, such as exclusions for loss or damage caused by or resulting from contaminants or pollutants, microbes, consequential loss, and any loss during a period when business would not or could not have been conducted for any reason other than physical damage of the type insured against.

19. Specifically, Policy excludes loss or damage directly or indirectly caused by or resulting from “the release, discharge, or dispersal of . . . contaminants or pollutants . . . caused by, contributed to or aggravated by any physical loss or damage covered by this policy.”

20. The Policy defines “contaminates or pollutants” as including but not limited to: “smoke and soot . . . vapor, fumes acids, alkalis, chemicals, vaccines and waste and any other substances which pose a hazard to human health or the environment.” Viruses are not included in the definition.

21. The Policy further excludes loss or damage directly or indirectly caused by or resulting from the presence, growth, proliferation, spread or any activity of fungi, wet rot, dry rot or microbes . . . caused by, contributed to or aggravated by any physical damage insured by this policy.”

22. The Policy defines “microbes” as “any non-fungal microorganism or non-fungal, colony-form organism that causes infection or disease. Microbe includes any spores, mycotoxins, odors, or any other substances, products or byproducts produced by, released by, or arising out of the current or past presence of microbes.” Viruses are not microorganism or “microbes” or organisms of any kind, nor are they substance produced by the presence of microbes, but are self-replicating RNA strands.

23. This Policy excludes physical loss or damage caused by or resulting from “delay, loss of market, loss of use or any other consequential or remote loss, unless coverage is provided by this policy, and then such loss is covered only to the extent provided herein.” However, the loss here did not result from “delay” but from the physical loss or damage to property due to the existence of SARS-CoV-2 in or immediately around Olmsted Medical’s property.

24. The Policy further excludes “[a]ny loss during a period during which business would not or could not have been conducted for any reason other than physical damage of the type insured against herein.” However, the loss here was due, at least in part, to physical damage due to the existence of the SARS-CoV-2 virus, so this exclusion does not apply.

**THE COVID-19 PANDEMIC AND ITS ENSUING EFFECTS CAUSED DIRECT  
PHYSICAL LOSS OF OR DAMAGE TO OLMSTED MEDICAL**

25. On March 13, 2020, Governor Waltz declared a peacetime emergency because the COVID-19 pandemic “threatens the lives of Minnesotans, and local resources are inadequate to address the threat.”

26. During this time, COVID-19 cases in Minnesota were rapidly increasing and risked overwhelming the healthcare system.

27. On March 17, 2020, the Center for Disease Control and Prevention recommended delaying elective and inpatient and outpatient surgeries and procedures.

28. On March 23, 2020, Governor Waltz, through Executive Order 20-09, indefinitely postponed all non-essential or elective surgeries and procedures that utilize PPE or ventilators.

29. Olmsted Medical offers a wide variety of preventive, primary, and specialty care throughout southeastern Minnesota. Olmsted Medical estimates that 60% of surgeries or procedures performed at its locations annually are considered non-essential or elective surgeries.

30. From March 23, 2020 to approximately June 8, 2020 patients who previously schedule non-essential or elective surgeries and procedures or patients who wanted to schedule non-essential or elective surgeries and procedures were not permitted to be treated at Olmsted Medical due to the pervasive existence of SARS-CoV-2, upon information and belief at Olmsted Medical, at involving its suppliers, service providers, customers and third-parties, and in the immediate vicinity of Olmsted Medical, and due to the Governor's Order.

31. As a result of the existence of SARS-CoV-2 and Executive Order 20-09, Olmsted Medical canceled or postponed approximately 50% of their surgeries and procedures.

32. Upon information and belief, the existence of COVID-19 cases at Olmsed Medical also caused the cancelation, delay and postponement of surgeries and procedures.

33. Furthermore, Olmsted Medical uses suppliers and service providers within five miles of the insured property.

34. Upon information and belief suppliers and service providers were also directly impacted by COVID-19 during this time.

35. As a result, Olmsted Medical suffered losses from March through May of 2020 of at least \$19,336,351 not including attorneys' fees, interest and costs.

**DEFENDANT BREACHED ITS CONTRACT BY REFUSING TO PROVIDE  
COVERAGE**

36. Olmsted Medical discovered and reported the loss during the Policy period and submitted a timely Property Loss Notice to Defendant on or about May 12, 2020, in compliance with the Policy's provisions.

37. Specifically, on or about May 12, 2020, Kevin Higgins, on behalf of Olmsted Medical, submitted a claim for loss of income due to the COVID-19 pandemic. A true copy of Olmsted Medical's Property Loss Notice is attached hereto as **Exhibit C**.

38. Olmsted Medical was fully cooperative with Continental's inquiry into the claims under the Policy. Olmsted Medical satisfied all applicable conditions to coverage and requested that Continental pay the losses under the Policy.

39. On May 14, 2020, Continental denied coverage for Olmsted Medical based on Business Interruption in the Time Element section, and coverage under the Civil Authority provision of the Policy.

**FIRST CAUSE OF ACTION  
(BREACH OF CONTRACT)**

40. Olmsted Medical restates and realleges all of the foregoing paragraphs of this Complaint as though fully set forth herein.

41. Olmsted Medical has fully complied with all of the terms and conditions of the Policy with regard to Olmsted Medical's claim for losses due to COVID-19 and Governor Waltz's Executive Orders.

42. Continental refused and continues to refuse to agree to pay Olmsted Medical for the losses under the Policy, subject to Continental's applicable limits of liability.

43. Continental's refusal to acknowledge coverage and pay Olmsted Medical for the losses constitutes a breach of Continental's Policy.

44. Continental's breach has proximately caused Olmsted Medical harm for which Olmsted Medical is entitled to damages according to proof.

45. By reason of the foregoing, Continental is liable to Olmsted Medical for the amount of the losses and for additional damages Olmsted Medical has sustained as a result of Continental's breach of contract and total at least \$19,336,351. The damages will also include, but are not limited to: pre- and post-judgment interest, attorneys' fees, costs, and disbursements that Olmsted Medical has incurred to date and may incur in the future in prosecuting this action to obtain the benefit of its insurance coverage.

**SECOND CAUSE OF ACTION**  
**(DECLARATORY JUDGMENT)**

46. Olmsted Medical restates and realleges all of the foregoing paragraphs of this Complaint as though fully set forth herein.

47. Olmsted Medical has fully complied with all of the terms and conditions of the Policy with regarding to Olmsted Medical's claim for the losses.

48. A justiciable controversy exists between Olmsted Medical and Continental as to their respective rights and obligations, and whether Olmsted Medical is entitled to coverage for the losses under the Policy.

49. Olmsted Medical seeks a judicial determination to resolve a present justiciable controversy among the parties regarding the coverage owed for the losses under the Policy.

50. The Plaintiff is entitled to a judicial declaration by this Court pursuant to Minn. Stat. § 555.01 that Continental is obligated to reimburse Olmsted Medical for each of its losses to the full extent of the limits of liability prescribed in the Policy.

51. The issuance of declaratory relief by this Court will terminate some or all of the existing controversy among the parties.

**WHEREFORE**, Olmsted Medical respectfully prays for an Order of this Court declaring, determining, and providing as follows:

- (a) Entering judgment for Olmsted Medical and against Continental, ordering Continental to reimburse Olmsted Medical for the direct and consequential losses it has sustained estimated to be at least \$19,336,351;
- (b) Entering a declaratory judgment that the Policy provides coverage for the losses and Continental must reimburse Olmsted Medical for all losses up to the limits of liability prescribed in the Policy;
- (c) Entering declaratory judgment that Continental has breached its contractual obligations to pay Olmsted Medical in full for all losses;
- (d) Otherwise entering a declaratory judgment of Olmsted Medical's rights and Continental's obligations under the Policy;
- (e) Entering declaratory judgment that Continental is obligated to pay or provide Olmsted Medical all other and further relief that the Court considers just, appropriate, necessary, or proper;
- (f) Awarding Olmsted Medical its reasonable attorneys' and expert fees, costs, and expenses incurred in prosecuting this action;
- (g) Awarding Olmsted Medical all interest allowed by law, including but not limited to all interest due under Minn. Stat. § 60A.0811, subd. 2; and
- (h) Providing such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Olmsted Medical demands a jury on all issues so triable.

Respectfully,

**LARKIN HOFFMAN DALY & LINDGREN, LTD.**

Dated: May 11, 2021

*s/Christopher H. Yetka*

Christopher H. Yetka (0241866)

Sarah Greening (0401238)

Larkin Hoffman Daly & Lindgren, Ltd.

8300 Norman Center Drive

Suite 1000

Minneapolis, Minnesota 55437-1060

(952) 835-3800

[cyetka@larkinhoffman.com](mailto:cyetka@larkinhoffman.com)

[sgreening@larkinhoffman.com](mailto:sgreening@larkinhoffman.com)

**ATTORNEYS FOR PLAINTIFF OLMSTED  
MEDICAL CENTER**

#### **ACKNOWLEDGMENT**

I hereby acknowledge that sanctions may be awarded pursuant to Minn. Stat. § 549.211, Subd. 3, if the court determines that this document violates Minn. Stat. § 549.211, Subd. 2.

*s/Christopher H. Yetka*

Christopher H. Yetka

4839-9111-2937, v. 1



# **EXHIBIT A**

MINNESOTA  
JUDICIAL  
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# IMPORTANT INFORMATION

## REQUEST FOR JURISDICTIONAL INSPECTION OF PRESSURE EQUIPMENT

Many states and some cities issue certificates permitting the continued operation of certain equipment such as boilers, water heaters and pressure vessels. Periodic inspections are required to renew these certificates. In most jurisdictions, as part of an equipment breakdown policy, insurance company employees who have been licensed are authorized to perform these inspections.

**If:**

- You own/operate pressure equipment that requires a certificate from a state, county, city or parish to operate legally, and
- We insure that equipment under this Policy, and
- You would like CNA to perform the next required inspection:

**Then:**

Complete the form on page 2 and email, mail or fax as instructed:

**No need to call or respond if you do not have boilers or pressure vessels that require operating certificates.**

**BY EMAIL :** [EBinspections@cna.com](mailto:EBinspections@cna.com) (please scan the completed form and attach)

**BY MAIL :**

CNA Equipment Breakdown Risk Control  
184 Liberty Corner Road  
4<sup>th</sup> Floor, Suite 402  
Warren, NJ 07059

**BY FAX :** 609-524-3649

**BY PHONE :** call 866-262-0540 – press “4”

Questions or inquiries can be made via any of the above methods of communication.

**Please note the following :**

- Your jurisdiction(s) may charge you a fee for renewing a certificate. It is your responsibility to pay such a fee.
- If CNA is required to pay the fee on your behalf, CNA will invoice you to recover that fee.
- All the provisions of the INSPECTION AND SURVEYS condition apply to the inspections described in this notice.

**Failure to notify us can result in fines and penalties being issued to the equipment owner by the governing jurisdiction. CNA is not responsible for said fines or penalties.**

### REMINDER

If new equipment is installed or old equipment replaced that requires a jurisdictional inspection, please let us know by transmitting the new information to the postal address/fax number/email address listed above and on the following page.

If this is a renewal and information (locations) has not changed, please disregard this notice.

If inspection and maintenance are outside of your area of responsibility, we would appreciate your forwarding this notice to the appropriate person. **If no response is received, we are assuming there are no jurisdictional objects at your location(s) and no inspections are required.**

**Note: Jurisdictional inspections are not conducted outside of the United States, its territories, possessions, or Canada.**



# CNA Property Policy

## Policy Holder Notice - Countrywide

### REQUEST FOR JURISDICTIONAL INSPECTION

**Insured Name:** OLMSTED MEDICAL CENTER

**Facility/Location Name:**

**Policy Number:** [REDACTED] 5797

**Policy Term:** January 1, 2020 January 1, 2021

**Contact Person & Title:**

**Contact Phone Number(s)—Office:**

**Cell:**

**Contact Email Address:**

Location Address <sup>1</sup>	City	State	Zip
1.			
2.			
3.			

Equipment Type <sup>2,3,4</sup> (Boiler, Pressure Vessel)	Registration Number (State #)	Certificate Expiration Date

**Completed By (Name & Date):** \_\_\_\_\_

**Telephone #/Email Address:** \_\_\_\_\_

**BY EMAIL:** EBinspections@cna.com (please scan the completed form and attach)

**BY MAIL:**

**BY FAX:** 609-524-3649

CNA Equipment Breakdown Risk Control  
184 Liberty Corner Road  
4<sup>th</sup> Floor, Suite 402  
Warren, NJ 07059

**BY PHONE:** call 866-262-0540 – press “4”

<sup>1</sup>If multiple objects and/or multiple locations, please list all required information on separate page(s).

<sup>2</sup>Boiler is defined as an enclosed vessel heated by fuel or electricity to produce steam or hot water.

<sup>3</sup>Pressure Vessel is defined as an enclosed vessel (tank) greater than 6 cubic feet (18 inches x 40 inches) to store liquid or gas under pressure for use when needed.

<sup>4</sup>LPG (ex: propane, propylene, butane & butylenes) Tank with vapor pressures not exceeding that allowed for commercial propane. California requirement only.

**Policy Holder Notice - Large Property Claims Reporting**

All new property claims under CNA Large Property policies should be reported to our centralized Loss Processing Center. Claims will be assigned to our specialized technical staff or to one of our preferred service providers.

**FOR EMERGENCY CONTACT:**

- Our 24-hour toll free number for direct contact with the CNA Loss Processing Center is:

877-261-6676

**FOR NON-EMERGENCY:**

- Property claims may be reported by toll free fax to the CNA Loss Processing Center at:

877-566-2728

- Property claims may also be reported via email to the CNA Loss Processing Center at:

CNAproperty.LPC@cna.com

Claims reported by fax or email are processed during normal business hours. If your claim is an emergency requiring after hours contact with an adjuster, call the 24-hour toll free number.

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# IMPORTANT INFORMATION

## NOTICE – OFFER OF TERRORISM COVERAGE; DISCLOSURE OF PREMIUM

**THIS NOTICE DOES NOT FORM A PART OF THE POLICY, GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

As used herein, 1) “we” means the insurer listed on the Declarations or the Certificate of Insurance, as applicable; and 2) “you” means the first person or entity named on the Declarations or the Certificate of Insurance, as applicable.

You are hereby notified that under the Terrorism Risk Insurance Act, as extended and reauthorized (“Act”), you have a right to purchase insurance coverage of losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, subject to all applicable policy provisions. The Terrorism Risk Insurance Act established a federal program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks.

This Notice is designed to alert you to coverage restrictions and to certain terrorism provisions in the policy. If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) apply.

### CHANGE IN THE DEFINITION OF A CERTIFIED ACT OF TERRORISM

The Act applies when the Secretary of the Treasury certifies that an event meets the definition of an act of terrorism. Originally, the Act provided that to be certified, an act of terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest to coerce the government or population of the United States. However, the 2007 re-authorization of the Act removed the requirement that the act of terrorism must be committed by or on behalf of a foreign interest, and now certified acts of terrorism may encompass, for example, a terrorist act committed against the United States government by a United States citizen, when the act is determined by the federal government to be “a certified act of terrorism.”

In accordance with the Act, we are required to offer you the ability to purchase coverage for losses resulting from an act of terrorism that is certified under the federal program. The other provisions of this policy, including nuclear, war or military action exclusions, will still apply to such an act.

### DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES

The Department of the Treasury will pay a share of terrorism losses insured under the federal program. In 2015, the federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention, and shall decrease by 1 percentage point per calendar year until equal to 80%.

### LIMITATION ON 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 (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

Further, this coverage is subject to a limit on our liability pursuant to the federal law where, if aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a calendar year (January 1 through December 31) and we have met our insurer deductible under the Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion. 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.

### CONFIRMATION OF ACCEPTANCE OF COVERAGE

In accordance with the Act, we offered you coverage for losses resulting from an act of terrorism that is certified under the federal program. This notice confirms that you have chosen to accept our offer of coverage for certified acts of terrorism. The policy's other provisions, including nuclear, war or military action exclusions, will still apply to such an act. The premium charge for terrorism coverage, if any, is shown separately on the Declarations or the Certificate of Insurance, as applicable.



# IMPORTANT INFORMATION

## POLICYHOLDER DISCLOSURE NOTICE OF INSURANCE COVERAGE FOR CERTIFIED ACTS OF TERRORISM

**THIS NOTICE DOES NOT FORM A PART OF YOUR POLICY, GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY**

The Terrorism Risk Insurance Act established a program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. The Act was scheduled to terminate on December 31, 2014, but was reauthorized through December 31, 2020.

You are hereby notified that under the Terrorism Risk Insurance Act, as extended and reauthorized ("Act"), you have a right to purchase insurance coverage of losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, subject to all applicable policy provisions. The Terrorism Risk Insurance Act established a federal program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. This Act applies when the Secretary of the Treasury certifies that an event meets the definition of an act of terrorism, which is an act committed by an individual or individuals to coerce the government or population of the United States, that results in aggregate losses of \$5 million or more. The 2007 re-authorization no longer requires the act of terrorism to be committed by or on behalf of a foreign interest and certified acts of terrorism now encompass, for example, a terrorist act committed against the United States government by a United States citizen when the act is determined by the federal government to be "a certified act of terrorism."

You may choose to exclude Certified Acts of Terrorism, as described above. This form is valid only if fully completed and returned to us. To reject coverage, the "Reject" area must be checked and the SIGNATURE BLOCK (below) must be completed in its entirety

### DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES

If the circumstances in the above paragraphs apply, the United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. In 2015, the federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention, and shall decrease by 1 percentage point per calendar year until equal to 80%. However, if aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a Calendar Year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion. Further, this coverage is subject to a limit on our liability, pursuant to the federal law where if aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a Calendar Year (January 1 through December 31) and we have met our insurer deductible under the 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.

### FIRE FOLLOWING ACTS OF TERRORISM

The states of CA, CT, GA, HI, IA, IL, MA, ME, MO, NC, NJ, NY, OR, RI, WA, WI, and WV have Standard Fire Policy (SFP) statutes that are applicable to your property coverage and, in CA, ME, MO, OR and WI, to your Inland Marine coverages. In these states, coverage is required to be provided for fire damage that results or follows from any cause of loss, even those that are otherwise excluded. As a result, although certified acts of terrorism are excluded from your policy, we are statutorily required to insure against fire damage that might result from otherwise excluded acts of terrorism. The states of CA, IL and NY also have capping regulations that limit the terrorism premium (including the applicable premium because of SFP statutes) to no more than 25% of the property premium. Accordingly, if you reject coverage for certified acts of terrorism for property coverage you may only receive a partial premium return or no return premium because the terrorism premium is recalculated, applying the 25% cap to premium still due based on the SFP statutory requirements and which may exceed the return of the non-SFP portion of the premium. In addition, certain states may not allow coverage for certified acts of terrorism to be rejected. Finally, terrorism coverage cannot be rejected for Workers' Compensation in any state.


**CNA Property Policy**
**Terrorism Cover Notices**
**SELECTION OR REJECTION OF TERRORISM INSURANCE COVERAGE**

<input type="checkbox"/>	I hereby elect to purchase coverage for losses arising out of certified acts of terrorism, as defined in the Act and subject to all applicable policy provisions, for a premium of \$2,598.
<input type="checkbox"/>	I hereby reject coverage for losses arising out of certified acts of terrorism, as defined in the Act. I understand that losses arising from acts of terrorism will be excluded, except as described under FIRE FOLLOWING ACTS OF TERRORISM.

OLMSTED MEDICAL CENTER

Applicant/Named Insured

CONTINENTAL CASUALTY COMPANY

Insurance Company

By: \_\_\_\_\_

Authorized Representative's Signature

Authorized Representative's Title

Date

 [REDACTED] 5797  
 Policy Number

We recommend that you keep a copy of this notice for your records.

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# CNA Property Policy

## Policy Declarations

CNA Insurance  
151 N. Franklin St.  
Chicago, IL 60606

Branch	Producer Number	Prefix	Policy Number
260	500023	RMP	██████5797

### NAMED INSURED & ADDRESS:

OLMSTED MEDICAL CENTER  
210 9TH STREET SE  
ROCHESTER, MN 55904

NAMED INSURED IS: Corporation

INSURANCE IS PROVIDED BY THE  
COMPANY DESIGNATED BELOW (A stock  
insurance company, herein called the company)

CONTINENTAL CASUALTY COMPANY

Policy Period: From January 1, 2020 to January 1, 2021

This policy becomes effective and expires at 12:01 a.m. Standard Time at Your Mailing Address Shown Above.

**In Return For The Payment Of The Premium, And Subject To All The Terms Contained Herein, the Company Agrees With the Named Insured To Provide The Insurance As Stated.**

☐ "X" if Supplemental Declarations is attached

### DESCRIPTION OF PREMISES

Per CNA SIGNATURE Property Policy

**COVERAGES PROVIDED – INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR COVERAGES FOR WHICH A LIMIT IS SHOWN**

Per CNA SIGNATURE Property Policy

**OPTIONAL COVERAGES – APPLICABLE ONLY WHEN ENTRIES ARE MADE IN THE SCHEDULE BELOW**

Per CNA SIGNATURE Property Policy

### MORTGAGE HOLDER(S)

Per CNA SIGNATURE Property Policy

### DEDUCTIBLE

Per CNA SIGNATURE Property Policy

### FORMS AND ENDORSEMENTS APPLICABLE AT TIME OF ISSUANCE:

APPLICABLE TO ALL COVERAGES: SEE ATTACHED SCHEDULE OF FORMS AND ENDORSEMENTS.



# CNA Property Policy

## Policy Declarations

<b>TOTAL PREMIUM PAYABLE AT INCEPTION:</b>	<b>\$134,211.91</b>
Premium includes the following amount for Terrorism coverage:	\$2,598.00
Total amount payable includes Taxes/Surcharges of:	\$1,043.91
Minnesota Fire Safety Insurance Surcharge	\$240.99
Minnesota Insurance Surcharge	\$802.92

IN WITNESS WHEREOF, the Company has caused this Policy to be signed by its Chairman and Secretary.

Chairman of the Board

Secretary

MINNESOTA  
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BRANCH



# CNA Property Policy

## Policy Declarations

### SCHEDULE OF FORMS AND ENDORSEMENTS

Forms and endorsements attached to this Policy at inception are as follows:

FORM NAME	FORM NUMBER	FORM EDITION DATE
Policy Declarations	G55161E	(01-17)
CNA Signature Property Policy	G300709A	(10-08)
Equipment Breakdown Coverage	G300710A	(10-08)
Contingent Business Interruption Revisions Endorsement	G301199A	(10-11)
Earth Movement & Loss Conditions Amendatory Endorsement	G300981B	(03-18)
Healthcare Endorsement	G300789B	(03-19)
Terrorism Coverage Under TRIA Endorsement	G300714A	(10-08)

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(All words or terms in **bold, italic, underlined** format are defined in the Glossary at the end of this policy)

### I. DECLARATIONS

#### 1. NAMED INSURED and MAILING ADDRESS

OLMSTED MEDICAL CENTER  
210 9TH STREET SE  
ROCHESTER, MN 55904

and its **Affiliated or Subsidiary Organizations** as of the date hereof.

The word "Insured" shall include as Named Insured any organization which is acquired or formed by the Insured and over which the Insured maintains an interest of more than fifty percent (50%) (other than a joint venture), provided that the Company is promptly notified of the acquisition or the formation within ninety (90) days after such organization is acquired or formed by the Insured. However, any such organization which is acquired by the Insured and over which the Insured maintains an interest of more than fifty percent (50%) shall only be covered from the effective date of such acquisition or formation.

#### 2. TERM

This insurance shall attach on **January 1, 2020** and cover continuously thereafter until **January 1, 2021** at 12:01 AM Local Standard Time at the mailing address shown above or for such further period as may be agreed upon in writing.

#### 3. TERRITORIAL LIMITS

The coverage territory is The United States of America, including its territories and possessions, and Canada.

#### 4. LIMITS OF LIABILITY

##### POLICY LIMITS: \$334,969,518

Blanket Real and Personal Property: \$163,671,953

Blanket Business Interruption (Gross Earnings): \$171,297,565

For the schedule of locations and values dated 11/05/2019 attached to this policy or on file with the Company, subject to a maximum limit any one occurrence of: \$334,969,518

**And further subject to the individual sublimits stated below.**

**These sublimits are part of and not in addition to the above-stated POLICY LIMITS, the Property sublimits and the Business Interruption sublimits.**

Coverage hereunder applies up to, but not more than, the stated limits per **Occurrence**, except where an **Annual Aggregate** is stated. Coverage attaches only to those items for which a dollar amount or "INCLUDED" is shown. "INCLUDED" means the coverage does not have a separate sublimit and is included within the applicable sublimits as shown above. See Section II. **COVERAGE** for description of items.

a.	Accounts receivable:	\$5,000,000
b.	Arson and Crime Reward:	\$100,000
c.	Brand or Trademark Removal:	\$100,000
d.	Contingent Business Interruption (Gross Earnings):	
	• Scheduled dependent property:	NOT COVERED
	• Unscheduled dependent property within <b>TERRITORIAL LIMITS:</b>	\$500,000
e.	Contract Penalties:	\$100,000
f.	Debris Removal:	\$10,000,000



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- g. Decontamination Expense: \$250,000
- h. Defense Costs: \$100,000
- i. Deferred Payments: \$100,000
- j. Denial of Access by Civil Authority / Ingress – Egress: \$1,000,000
- k. **Earth Movement – Annual Aggregate** at all **Locations** inclusive of **Locations** further limited as follows: \$50,000,000
- (1) **Locations** in Alaska, California, Hawaii, Puerto Rico – **Annual Aggregate**: NOT COVERED
- (2) **Locations** in **Critical New Madrid Areas – Annual Aggregate**: NOT COVERED
- (3) **Locations** in **Critical Pacific Northwest Areas – Annual Aggregate**: NOT COVERED
- l. **Electronic Data Processing**:
- Electronic data processing equipment: INCLUDED
  - For additional perils specified in extension: INCLUDED
  - Cost of research to replace or restore information lost: \$500,000
  - Expense to Extract **Computer Viruses**: \$100,000
  - Unauthorized Computer Access: \$100,000
- m. Equipment Breakdown (refer to addendum form): \$100,000,000
- Ammonia Contamination: \$250,000
  - Spoilage: \$250,000
- n. Expediting Expense: \$1,000,000
- o. Extra Expense: \$5,000,000
- p. Fine Arts: \$100,000
- q. Fire Brigade Charges and Extinguishing Expenses: \$100,000
- r. **Flood – Annual Aggregate** at all **Locations** inclusive of **Locations** further limited as follows: \$50,000,000
- **Locations** wholly or partially situated in those areas designated as 100 Year (1% annual chance of flooding) floodplains by the Federal Emergency Management Agency or other governmental authority – **Annual Aggregate**: \$1,000,000
  - **Locations** outside of 100 Year (1% annual chance of flooding) floodplains, but wholly or partially situated in those areas designated as 500 Year (0.2% annual chance of flooding) floodplains by the Federal Emergency Management Agency or other governmental authority - or areas where the flood hazard has not been determined by the Federal Emergency Management Agency or other governmental authority – **Annual Aggregate**: \$5,000,000



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s.	<b><u>Fungi, Wet Rot, Dry Rot, And Microbes - Annual Aggregate:</u></b>	\$250,000
t.	<b><u>Leasehold Interest:</u></b>	\$500,000
u.	Loss Adjustment Expense:	\$100,000
v.	<b><u>Named Storm</u></b> per <b><u>occurrence</u></b> all covered loss or damage for all <b><u>Locations</u></b> inclusive of all applicable sublimits, and <b><u>Locations</u></b> further limited as follows:	\$334,969,518
	<ul style="list-style-type: none"> <li><b><u>Named Storm</u></b> per <b><u>occurrence</u></b> all <b><u>Locations</u></b> in Puerto Rico and the U.S. Virgin Islands, the states of Florida and Hawaii and <b><u>First Tier Areas</u></b> in all other states:</li> </ul>	\$334,969,518
w.	Newly Acquired or Constructed Property – All Coverages Combined:	\$7,500,000
x.	Ordinance or Law:	
	<ul style="list-style-type: none"> <li>Undamaged Portion of Building:</li> </ul>	INCLUDED
	<ul style="list-style-type: none"> <li>Demolition Cost, and Increased Cost of Construction:</li> </ul>	\$10,000,000
	<ul style="list-style-type: none"> <li>Business Interruption, Extra Expense, or Rental Value:</li> </ul>	\$100,000
y.	Pollution Cleanup and Removal – <b><u>Annual Aggregate:</u></b>	\$100,000
z.	Preservation of Property	INCLUDED
aa.	Professional Fees:	INCLUDED
bb.	Property in Course of Construction – Soft Costs:	\$100,000
cc.	Property Off Premises – Including Fairs, Trade Shows and Exhibits:	\$500,000
dd.	Radioactive Contamination:	\$250,000
ee.	Rental Value:	\$500,000
ff.	Research and Development Expenses:	\$100,000
gg.	Royalties:	\$100,000
hh.	Service Interruption:	
	<ul style="list-style-type: none"> <li>Property:</li> </ul>	\$1,000,000
	<ul style="list-style-type: none"> <li><b><u>Time Element:</u></b></li> </ul>	\$1,000,000
ii.	Transit:	
	<ul style="list-style-type: none"> <li>Per <b><u>Occurrence:</u></b></li> </ul>	\$500,000
	<ul style="list-style-type: none"> <li>Per Conveyance:</li> </ul>	\$500,000
jj.	Trees, Shrubs, Plants and <b><u>Land Improvements:</u></b>	
	<ul style="list-style-type: none"> <li>Per <b><u>Occurrence</u></b></li> </ul>	\$250,000
	<ul style="list-style-type: none"> <li>Per Tree, Shrub or Plant:</li> </ul>	\$5,000
kk.	Unintentional Errors and Omissions:	\$1,000,000



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<b>II.</b>	Unscheduled <b><u>Locations</u></b> – All Coverages Combined:	\$1,000,000
<b>mm.</b>	Valuable Papers and Records:	\$5,000,000
<b>nn.</b>	Condemnation of Drugs, Devices or Supplies::	\$50,000

## 5. TIME LIMITS

a.	Business Interruption Period of Indemnity:	Twenty Four (24) Months
b.	Denial of Access by Civil Authority / Ingress – Egress:	Thirty (30) Days
c.	Extended Period of Indemnity:	Three Hundred And Sixty Five (365) Days
d.	Newly Acquired or Constructed Property:	One Hundred And Twenty (120) Days
e.	Ordinary Payroll Included in Determination of Gross Earnings:	Three Hundred And Sixty Five (365) Days
f.	Service Interruption Qualifying Period:	Twenty Four (24) Hours

## 6. DEDUCTIBLES

All claims for loss, damage or expense covered under this policy and arising out of or resulting from any one **Occurrence** shall be adjusted as one claim. Except as provided below, from the amount of each such adjusted loss the sum of \$25,000 shall be deducted before the Company shall be liable for any loss, damage or expense covered.

Except as provided below, in the event of any one **Occurrence** where two or more deductibles apply, the total to be deducted shall not exceed the largest deductible applicable.

When this policy insures more than one **Location**, the deductible will apply against the total loss or damage covered by this Policy in an **Occurrence**. However, a deductible that applies on a per **Location** basis, will apply separately to each **Location** where the physical loss or damage occurred regardless of the number of **Locations** involved in the **Occurrence**.

If two or more deductibles apply on a per **Location** basis in an **Occurrence**, the largest deductible applying to each **Location** will be applied separately to each such **Location**.

If two or more minimum deductibles per **Occurrence** apply to loss or damage due to **Named Storm** or **Earth Movement**, only the largest minimum deductible will be applied.

If separate physical damage and **Time Element** loss deductibles are shown, then the deductibles shall apply separately.

- a. (1) As respects loss or damage due to **Flood** occurring at all **Locations** except as may be further provided below, the deductible shall be \$100,000 per **Occurrence**.
- (2) As respects loss or damage due to **Flood** occurring anywhere within the policy territory at **Locations** wholly or partially situated in those areas designated as 100 Year (1% annual chance of flooding) floodplains by the Federal Emergency Management Agency or other governmental authority, the deductible for **Flood** shall be the sum of:
- \$500,000 for physical damage to covered real property;
  - \$500,000 for physical damage to covered personal property while at an insured **location**; and
  - \$250,000 for **Time Element**;
- for each **Location** damaged.
- (3) As respects loss or damage due to **Flood** occurring anywhere within the policy territory at **Locations** outside of 100 Year (1% annual chance of flooding) floodplains, but wholly or partially situated in those areas designated as 500 Year (0.2% annual chance of flooding) floodplains by the Federal Emergency Management Agency or other governmental authority or areas where the flood hazard has not been determined by the Federal Emergency Management Agency or other governmental authority, the deductible for **Flood** shall be the sum of:



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- \$100,000 for physical damage to covered real property;
- INCLUDED for physical damage to covered personal property while at an insured location; and
- INCLUDED for Time Element;

for each Location damaged.

However, this deductible shall not apply to ensuing loss by fire or explosion.

- b. (1) As respects loss or damage due to Earth Movement occurring at all Locations except as may be further provided below, the deductible shall be \$100,000 per Occurrence.
- (2) As respects loss or damage due to Earth Movement at Locations in the states of California, Hawaii and Alaska, and Puerto Rico, the deductible shall be the sum of:
- NOT COVERED for physical damage per Location, and
  - NOT COVERED for Time Element per Location.
- Subject to a minimum of NOT COVERED in any one Occurrence.
- (3) As respects loss or damage due to Earth Movement at Locations in Critical New Madrid Areas the deductible shall be the sum of:
- NOT COVERED for physical damage per Location, and
  - NOT COVERED for Time Element per Location.
- Subject to a minimum of NOT COVERED in any one Occurrence.
- (4) As respects loss or damage due to Earth Movement at Locations in Critical Pacific Northwest Areas, the deductible shall be the sum of:
- NOT COVERED for physical damage per Location, and
  - NOT COVERED for Time Element per Location.
- Subject to a minimum of NOT COVERED in any one Occurrence.

However, this deductible shall not apply to ensuing loss by fire, explosion or leakage from fire protective systems or devices.

- c. (1) As respects loss or damage due to wind or hail (other than wind or hail associated with a Named Storm) occurring at all Locations, except as may be further provided below, the deductible shall be \$25,000 per Occurrence.
- d. (1) As respects loss or damage due to wind or hail associated with a Named Storm occurring at all Locations, except as may be further provided below, the deductible shall be \$250,000 per Occurrence.
- (2) As respects loss or damage due to wind or hail associated with a Named Storm at Locations in Puerto Rico or the U.S. Virgin Islands, the deductible shall be the sum of:
- five percent (5%) for physical damage per Location, and
  - five percent (5%) for Time Element loss per Location.
- Subject to a minimum of \$250,000 in any one Occurrence.
- (3) As respects loss or damage due to wind or hail associated with a Named Storm at Locations in the states of Florida and Hawaii, and in First Tier Areas in all other states, the deductible shall be the sum of:
- five percent (5%) for physical damage per Location, and
  - five percent (5%) for Time Element loss per Location.



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Subject to a minimum of \$250,000 in any one **Occurrence**.

- e. As respects loss or damage under the additional coverage **TRANSIT** the deductible shall be \$25,000.
- f. As respects loss or damage under the additional coverage **Equipment Breakdown** the deductible shall be:

Physical Damage: \$25,000

Time Element: Days/Hours: 24 Hours

Spoilage: 10% of Loss subject to a minimum of \$10,000 per **Occurrence**.

### Application of **Earth Movement** and **Named Storm** Percentage Deductibles:

**Physical Damage:** In the event of a claim for physical damage loss, the Company shall not be liable unless the Insured sustains a loss greater than the applicable percentage of the property value including foundations (replacement cost or actual cash value based on Section **IV. 12. VALUATION** of this form), at each **Location** where the physical damage occurred, and then only for its share of that greater amount in excess of the applicable percentage.

**Time Element:** In the event of a claim for **Time Element** loss, the Company shall not be liable unless the Insured sustains a loss greater than the applicable percentage of the full annual **Time Element** value which would have been earned in the twelve (12) month period following the loss by use of the facilities at each **Location** where the physical damage occurred, and then only for its share of that greater amount in excess of the applicable percentage.

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### II. COVERAGE

Except as hereafter excluded and subject to the **LIMITS OF LIABILITY** in Section **I.4.** and all other policy provisions, this policy insures against risks of direct physical loss of or damage to property and/or interests described herein at covered **Locations**. Unless otherwise indicated, all items contained herein are part of and not in addition to the **POLICY LIMIT** shown in Section **I.4.**

#### A. PROPERTY

##### 1. COVERED PROPERTY AND RELATED INTERESTS

- a. The interest of the Insured in all real and personal property owned or used by the Insured, or hereafter erected, installed, or acquired, including while in course of building, erection, installation, and assembly, and including interest in **Improvements and Betterments**.

In the event of loss or damage, the Company agrees to accept and consider the Insured as sole and unconditional owner of **Improvements and Betterments**, notwithstanding any contracts or leases to the contrary.

- b. The interest of the Insured in the real and personal property of others in the Insured's care, custody and control, and the Insured's liability imposed by law or assumed by contract for physical loss or damage to such property.
- c. Personal property of the Insured's officers and employees while at **Locations** of the Insured, or within one thousand (1,000) feet thereof.

For the purpose of coverage provided herein, personal property shall mean business personal property owned by the Insured or by officers and employees of the Insured which is usual to the occupancy of the Insured, including manuscripts, furniture, fixtures, equipment (including Electronic Data Processing Equipment) and supplies not otherwise excluded under this policy. Such property is covered while at or within one thousand (1,000) feet of the **Locations** insured by this policy.

##### 2. PROPERTY NOT COVERED

**This policy does not cover the following types of property or interests (unless otherwise provided for elsewhere in this form or endorsed hereon):**

- a. **Money**, deeds, accounts, bills, stamps, letters of credit, evidence of debt, notes, **Securities**;
- b. Standing timber, growing crops, trees, shrubs and plants, animals or livestock except stock for sale;
- c. Land (including water or any other substance in land, or water on land), land values, excavations, the cost to replace land lost to **Earth Movement** or **Flood**;
- d. Personal property leased or rented to others for more than 180 days; or property sold by the Insured under conditional sale, trust agreement, installment plan, or other deferred payment plan after such property has been delivered to customers;
- e. Property in the course of transit, except as provided in Section **II.C.34. TRANSIT**;
- f. Transmission and distribution lines of any type, owned, operated, controlled by or leased by the Insured, beyond one thousand (1,000) feet of covered **Locations**;
- g. Satellites and spacecraft on the launch pad or after launch;
- h. Furs, jewelry, watches, precious stones and metals, gold, silver, including bullion and fine arts other than as included in Section **I.4.** This exclusion does not apply to precious metals and stones used by the Insured for industrial purposes;
- i. Watercraft, aircraft; railroad rolling stock, and motor vehicles licensed for highway use when not at the Insured's **Locations**;



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- j. Underground mines, caves, caverns, tunnels and any property contained therein or any property underground. This exclusion does not apply to footings and foundations of covered buildings or machinery; underground pipes, flues, drains and tanks; or property in basements or cellars;
- k. Off-shore property, drilling rigs, production rigs and platforms, including personal property thereon;
- l. Bridges, dams, dikes, docks, bulkheads, reservoirs, retaining walls, pilings, piers and wharves, when loss or damage is caused by water pressure, ice or impact of watercraft;
- m. Contraband or any property in course of illegal transport or trade;
- n. Property or interests more specifically covered under another policy, except as excess under the terms of that policy.

### B. TIME ELEMENT

#### 1. BUSINESS INTERRUPTION (GROSS EARNINGS)

- a. This policy covers against loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property, except **Finished Stock**, by the peril(s) insured against and occurring during the term of this policy at covered **Locations** occupied by the Insured, subject to the sublimit specified in Section **I.4.** of this policy.

In the event of such physical loss or damage the Company shall be liable for the actual loss sustained by the Insured resulting directly from such interruption of business, but not exceeding the reduction in **Gross Earnings** as set forth below less charges and expenses which do not necessarily continue during the interruption of business, for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property herein described as has been damaged or destroyed, commencing with the date of such damage or destruction and not limited by the date of expiration of this policy, but in no event to exceed the number of months specified in Section **I.5. TIME LIMITS** if a Business Interruption Period of Indemnity limit is specified.

#### b. Determination of Gross Earnings:

- (1) Manufacturing **Locations**: **Gross Earnings** are the sum of:
  - (a) Total net sales value of production;
  - (b) Total net sales of **Merchandise**; and
  - (c) Other earnings derived from operations of the business;

*Less the cost of:*

  - (d) **Raw Stock** from which production is derived;
  - (e) Supplies consisting of materials consumed directly in the conversion of such **Raw Stock** into **Finished Stock** or in supplying the service(s) sold by the Insured;
  - (f) **Merchandise** sold, including packaging materials therefore;
  - (g) Service(s) purchased from outsiders (not employees of the Insured) for resale which do not continue under contract;
  - (h) Ordinary Payroll expense (the entire payroll expense for all employees of the insured, except officers, executives, department managers and employees under contract) beyond the number of days included in Section **I.5.** of this policy;
  - (i) Depreciation Expense for any asset destroyed by perils insured hereunder; and
  - (j) Other Discontinued Expenses meaning any other operating expenses discontinued as a result of the direct physical loss or damage caused by peril(s) insured against.



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- (2) Mercantile & Non-Manufacturing **Locations**: **Gross Earnings** are the sum of:
- (a) Total net sales; and
  - (b) Other earnings derived from operations of the business;
- Less the cost of:*
- (c) **Merchandise** sold, including packaging materials therefore;
  - (d) Materials and supplies consumed directly in supplying the service(s) sold by the Insured;
  - (e) Service(s) purchased from outsiders (not employees of the Insured) for resale which do not continue under contract; and
  - (f) Depreciation Expense for any asset destroyed by perils insured hereunder;
  - (g) Ordinary Payroll expense (the entire payroll expense for all employees of the insured, except officers, executives, department managers and employees under contract) beyond the number of days included in Section **I.5.** of this policy; and
  - (h) Other Discontinued Expenses meaning any other operating expenses discontinued as a result of the direct physical loss or damage caused by a peril insured against.

### C. ADDITIONAL COVERAGES, COVERAGE EXTENSIONS AND LIMITATIONS

#### 1. ACCOUNTS RECEIVABLE

This policy also covers subject to the sublimit specified in Section **I.4.** of this policy:

- a. All sums due the Insured from customers, which the Insured is unable to collect solely as the direct result of direct physical loss or damage by peril(s) insured against to the Insured's records of accounts receivable;
- b. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage;
- c. Collection expense in excess of **Normal** collection cost and made necessary because of such loss or damage;
- d. Other expenses, when reasonably incurred by the Insured in reestablishing records of accounts receivable following such loss or damage.

For the purpose of this insurance, credit card company charge **Media** shall be deemed to represent sums due the Insured from customers, until such charge **Media** is delivered to the credit card company.

When there is proof that a loss of records of accounts receivable has occurred but the Insured cannot more accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be computed as follows:

- e. The monthly average of accounts receivable during the last available twelve (12) months, together with collection expenses in excess of **Normal** collection costs during the last available twelve (12) months and made necessary because of such loss or damage, and reasonable expenses incurred in reestablishing records of accounts receivable following such loss or damage, shall be adjusted in accordance with the percentage increase or decrease in the twelve (12) months from when last available average of monthly gross revenues which may have occurred in the interim.
- f. The monthly amount of accounts receivable thus established shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by the Insured, and an amount to allow for probable bad debts which would **Normally** have been uncollectible by the Insured.



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### 2. ARSON and CRIME REWARD

The Company will pay up to the sublimit specified in Section **I.4.** of this policy for information that leads to an arson or other criminal conviction in connection with a loss covered under this policy.

### 3. BRAND OR TRADEMARK REMOVAL

In case of covered physical damage to property bearing a brand or trademark of the Named Insured or which in any way carries or implies the guarantee or the responsibility of the Named Insured, the salvage value of such damaged property shall be determined after removal in the customary manner of all such brands or trademarks or other identifying characteristics. The Company will pay up to the Brand or Trademark Removal sublimit specified in Section **I.4.** of this policy for the reasonable costs incurred in the removal of such brands, trademarks or identifying characteristics.

### 4. CONTINGENT BUSINESS INTERRUPTION (GROSS EARNINGS)

Subject to the sublimits for scheduled and unscheduled dependent properties specified in Section **I.4.** of this policy, the policy is extended to pay for loss resulting from necessary interruption of business conducted at **Locations** occupied by the Insured and covered in this policy, caused by direct physical loss or damage by peril(s) insured against to:

- a. any real or personal property of the type insured hereunder of direct suppliers or service providers which wholly or partially prevents the delivery of materials, products or services (other than water, communication or power supply) to the Insured or to others for the account of the Insured; or
- b. any real or personal property of the type insured hereunder of direct customers to whom the Insured's product(s) or services (other than water, communication or power supply) is provided, which wholly or partially prevents the acceptance of said product(s) or services;
- c. any real or personal property of the type insured that is operated by others that the Insured depends upon to attract customers. Coverage is limited to dependent property within 5 miles of the Insured's **Location** unless it is a Scheduled Dependent Property.

### 5. CONTRACT PENALTIES

This Company will pay contractual penalties incurred by the insured for its failure to timely deliver its products or services to its customers according to the contract terms, but only when such failure results solely from covered direct physical loss or damage to covered property, subject to the sublimit specified in Section **I.4.** of this policy.

### 6. DEBRIS REMOVAL

This policy also covers the reasonable and necessary costs and expenses the Insured incurs, due to physical loss or damage from a peril covered under this policy, for removing from a covered **Location**, debris remaining after such physical loss or damage to property of the type insured under this policy.

The maximum amount payable under this clause is the Debris Removal Sublimit specified in Section **I.4.** of this policy.

This Coverage part does not apply to the increased cost of removal or disposal of covered property due to **Contaminants or Pollutants**.

There shall be no liability for the expense of removing contaminated property not covered by this policy or the **Contaminants or Pollutants** therein or thereon, whether or not the contamination results from an insured event.

### 7. DECONTAMINATION EXPENSE

Subject to the Decontamination Expense sublimit in Section **I.4.**, if covered property is contaminated as a direct result of physical damage caused by perils insured against, or if the damaged covered property inherently contains **Contaminants or Pollutants**, and there is in force at the time of such damage any law or ordinance regulating contamination, including but not limited to pollution, then this policy covers, as a result of enforcement of such law or ordinance, the increased cost of decontamination of the covered property and debris removal of such property in a manner to satisfy the minimum requirements of such law or ordinance.



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If this policy includes **Time Element** coverage, the period of interruption for **Time Element** coverage is extended to include the additional time as is necessary and reasonable, with the exercise of due diligence and dispatch, to decontaminate covered property in a manner to satisfy the minimum conditions of the aforementioned law or ordinance. Any increase in **Time Element** loss shall also be included in the Decontamination Expense sublimit.

There is no liability for expense or time required for removing contaminated property not insured under this policy or the contaminant therein or thereon, whether or not the contamination results from an insured **Occurrence**.

This coverage part does not apply to **RADIOACTIVE CONTAMINATION**.

### 8. DEFENSE COSTS

Subject to the sublimit in Section **I.4.** this policy covers the cost to defend any suit against the Insured alleging physical loss or damage as insured against, to real or personal property of others in the care, custody control of the Insured to the extent of the Insured's Liability therefore, even if such suit is groundless, false or fraudulent; but the Company may, without prejudice, make such investigation, negotiation or settlement of any such claim or suit as they deem expedient.

### 9. DEFERRED PAYMENTS

Subject to the Deferred Payments sublimit in Section **I.4.** the Company will reimburse the Insured for payments the Insured is unable to collect due to direct physical loss or damage within Territorial Limits to **Merchandise** or **Finished Stock** sold by the Insured on an installment or other deferred payment basis after it has been accepted by the Insured's customer(s). In no event shall this Company pay more than the Insured's financial interest in such property,

### 10. DENIAL OF ACCESS BY CIVIL AUTHORITY AND INGRESS-EGRESS

This policy is extended to cover for up to the time limit specified in Section **I.5.** but not exceeding the sublimit shown in Section **I.4.** of this policy, the actual loss sustained:

- a. during the period of time while access to the Insured's **Location** is prohibited by order of civil authority, but only when such order is given as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of said **Location**; or
- b. during the period of time when as a direct result of physical loss or damage to property of the type insured from a peril insured against, ingress to or egress from the Insured's **Location** is thereby physically prevented.

### 11. ELECTRONIC DATA PROCESSING

This policy also covers:

- a. **Electronic Data Processing Equipment** for loss caused by or resulting from these additional perils:
  - (1) Artificially generated electrical current, including arcing that disturbs electrical devices, appliances, or wires; or
  - (2) Mechanical breakdown and machinery breakdown, including malfunction or component failure; all subject to the Limits specified in Section **I.4.** of this policy.
- b. **Electronic Media and Records**: for the cost of research to replace or restore the information lost due to perils insured, subject to the sublimit specified in Section **I.4.** of this policy.  
The Company will not pay for loss or damage due to accidental erasure of information on **Electronic Media and Records** in the absence of physical damage to the **Electronic Media and Records**.
- c. **Computer Virus**: This Company will also pay for the expense incurred by the Insured to extract **Computer Viruses** that become known to the Insured during the policy period even though no direct loss or damage has occurred, subject to the sublimit specified in Section **I.4.** of this policy.

The Insured must report such **Occurrence** within one hundred-eighty (180) days of knowledge thereof for payment to be made under this clause.



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d. **Unauthorized Computer Access:** With respect to the Insured's information systems operations, subject to the sublimit specified in Section I.4. of this policy, coverage shall include:

- (1) Accidental, intentional or malicious distortion, corruption, manipulation, erasure or loss by unauthorized persons of **Media**, **Data**, **Application Software**, **System Software** or **Source Code** owned or operated on the Insured's **Electronic Data Processing Equipment**;
- (2) **Theft** of any covered property (other than by an employee of the Insured) or willful acts causing loss or damage to covered property by any person when such loss results from the unauthorized use of the Insured's **Electronic Data Processing Equipment** including **Media**, **Data**, **Application Software**, **System Software** or **Source Code**. This provision does not apply to **Money** and **Securities** or any other property specifically excluded in this policy.

### 12. EXPEDITING EXPENSES

This Company will pay reasonable and necessary costs incurred by the Insured to expedite repairs to covered property following loss or damage covered under this policy. This includes payment of overtime wages and the extra cost to use express or other rapid means of transportation, subject to the sublimit specified in Section I.4. of this policy. However, coverage is not included hereunder for costs recoverable elsewhere in this policy or for the permanent repair or replacement of damaged property.

### 13. EXPENSES RELATED TO REDUCING LOSS

This policy covers such expenses as are necessarily incurred for the purpose of reducing a **Time Element** loss (except expense incurred to extinguish a fire) and such expenses, in excess of **Normal**, as would necessarily be incurred in replacing any **Finished Stock** used by the Insured to reduce loss. But in no event shall the aggregate of such expenses exceed the amount by which the loss otherwise recoverable elsewhere in this policy is thereby reduced.

### 14. EXTENDED PERIOD OF INDEMNITY

a. Business Interruption other than Rental Value:

This policy is extended to cover the loss of **Gross Earnings** sustained by the Insured resulting directly from the interruption of business, as covered by this policy, for such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred, commencing with the later of the following dates:

- (1) the date on which the liability of the Company for loss under Section II.B.1.a. would terminate if this provision had not been added to this policy; or
- (2) the date on which the repair, replacement or rebuilding of damaged or destroyed covered property is actually completed;

but in no event for more than the number of days indicated in Section I.5. of this policy.

b. Rental Value:

This policy is extended to cover the loss of Rental Value sustained by the Insured resulting directly from the untenability of insured premises, as covered by this policy, for such additional length of time as would be required with the exercise of due diligence and dispatch to restore tenant occupancy to the condition that would have existed had no loss occurred, commencing with the later of the following dates:

- (1) the date on which the liability of the Company for loss under Section II.C.30. RENTAL VALUE would terminate if this provision had not been added to this policy; or
- (2) the date on which the repair, replacement or rebuilding of damaged or destroyed covered property is actually completed;

but in no event for more than the number of days indicated in Section I.5. of this policy.

### 15. EXTRA EXPENSE

The Company will pay for the reasonable and necessary extra expense, as hereinafter defined, incurred by the Insured in order to continue as nearly as practicable the **normal** operation of the Insured's business following direct physical loss of or damage to covered property by perils(s) insured against.



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In the event of such physical loss or damage, the Company shall be liable for such reasonable and necessary extra expense incurred for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property as has been damaged, commencing with the date of damage and not limited by the date of expiration of this policy, subject to the sublimit specified in Section I.4. of this policy.

### 16. FINE ARTS

This policy is extended to cover physical loss or damage from peril(s) insured against to fine arts in which the Insured has an interest, subject to the sublimit specified in Section I.4. of this policy and the following:

Additional Exclusions - This extension does not insure against loss or damage caused by:

- a. any repairing, restoration or retouching process performed on any fine arts;
- b. breakage of statuary, art glass windows, glassware, bric-a-brac, marble, porcelain and similar fragile property unless such breakage is caused by a peril insured under this policy.

For purposes of the coverage provided herein, fine arts means property that is rare or has historic or artistic value including works of art, antiques, rare articles, etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac.

### 17. FIRE BRIGADE CHARGES AND EXTINGUISHING EXPENSES

This policy also covers fire brigade charges and other extinguishing expenses for which the Insured may be assessed after a covered loss hereunder, subject to the sublimit specified in Section I.4. of this policy.

### 18. FUNGI, WET ROT, DRY ROT AND MICROBES

- a. This policy covers loss or damage by **Fungi**, wet rot, dry rot and **Microbes**, when the **Fungi**, wet rot, dry rot and **Microbes** are the result of covered physical loss, damage or destruction of property insured by this policy, but only if;
  - (1) The Covered Cause of Loss from which the **Fungi**, wet rot, dry rot and **Microbes** loss or damage resulted occurred during this policy period; and
  - (2) All reasonable means were used to save and preserve the property from further damage at the time of and after that **Occurrence**; and
  - (3) The existence of the **Fungi**, wet rot, dry rot and **Microbes** loss or damage is reported as soon as practicable, but no later than 180 days after the **Occurrence** of the Covered Cause of Loss from which the **Fungi**, wet rot, dry rot and **Microbes** loss or damage resulted.
- b. As used in this policy, the term **Fungi**, wet rot, dry rot and **Microbes** loss or damage means:
  - (1) Direct physical loss or damage to covered property caused by **Fungi**, wet rot, dry rot and **Microbes**, including the cost of removal of the **Fungi**, wet rot, dry rot and **Microbes**;
  - (2) The cost to tear out and replace any part of the building or other property as needed to gain access to the **Fungi**, wet rot, dry rot and **Microbes**; and
  - (3) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that **Fungi**, wet rot, dry rot and **Microbes**, are present.
- c. Coverage is subject to the **Fungi**, wet rot, dry rot and **Microbes** sublimit specified in Section I.4. Regardless of the number of claims, this limit is the most the Company will pay for the total of all loss or damage arising out of all **Occurrences** of Covered Causes of Loss which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular **Occurrences** of loss which results in **Fungi**, wet rot, dry rot and **Microbes**, the Company will not pay more than the **Fungi**, wet rot, dry rot and **Microbes** Sublimit, even if the **Fungi**, wet rot, dry rot and **Microbes**, continues to be present or active, or recurs, in a later policy period.



- d. This coverage does not increase the applicable limit or sublimit of liability on any covered property, or applicable sublimit of any Covered Cause of Loss. If a particular **occurrence** results in loss or damage by **Fungi**, wet rot, dry rot and **Microbes**, and other loss or damage, the Company will not pay more, for the total of all loss or damage, than the applicable Limit or Sublimit of Insurance on the affected covered property.

If there is covered loss or damage to covered property, not caused by **Fungi**, wet rot, dry rot and **Microbes**, loss payment will not be limited by the terms of this Coverage, except to the extent that **Fungi**, wet rot, dry rot and **Microbes**, causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

## 19. LEASEHOLD INTEREST

Subject to the sublimit specified in Section I.4. of this policy and all other policy provisions, this policy covers the interest of the Insured as lessee at all leased real property.

Recovery in the event of loss hereunder shall be the actual loss sustained to the **Leasehold Interest** by the Insured if caused by physical loss or damage of the type insured against by this policy to real property of the type covered by this policy situated at **Locations** occupied by the Insured, as follows:

- a. The actual rent which remains payable for the unexpired term of the lease if such property becomes wholly untenable or unusable and the lease agreement requires continuation of the rent payment; or
- b. the proportion of rent which remains payable for the unexpired term of the lease if such property becomes partially untenable or unusable and the lease agreement requires continuation of the rent payment; or
- c. the **Leasehold Interest** for the first three (3) months following loss or damage and the **Net Leasehold Interest** for the remaining unexpired term of the lease if the lease is canceled by the lessor pursuant to the lease agreement or by the operation of law.

Exclusions: This Section does not insure against any loss or expense resulting from:

- (1) the suspension, lapse, or cancellation of any license; or
- (2) the Insured exercising an option to cancel the lease; or
- (3) any act or omission by the Insured which constitutes a default under the lease.

Additional Condition: It is a condition of this Section that the Insured shall use any suitable property or service owned or controlled by the Insured or obtainable from another source to reduce the amount of loss hereunder.

## 20. LOSS ADJUSTMENT EXPENSE

This insurance applies to the reasonable expenses incurred by the Insured in preparing claim data when required by the Company, subject to the sublimit in Section I.4. This includes the cost of taking inventories, obtaining appraisals and preparing other documentation to show the extent of loss. The Company will not pay for any expenses incurred, directed, or billed by or payable to attorneys, public adjusters, insurance brokers or agents or their associates or subsidiaries, or any costs as provided in Section IV. **LOSS CONDITIONS 1. APPRAISAL.**

## 21. MACHINERY/PAIR AND SET

In case of physical loss or damage caused by peril(s) insured against in this policy to any part of a machine or unit (consisting of two or more parts when complete either for sale or use), the liability of the Company shall be limited to the value of the part or parts lost or damaged or, at the Insured's option, to the cost and expense of replacing or duplicating the lost or damaged part or parts or of repairing the machine or unit.

In case of loss to any part of a pair or set, the Company may repair or replace such part to restore the pair to its value before the loss, or pay the difference between the value of the pair or set before and after the loss. In no event shall such loss or damage be construed to mean total loss of the pair or set.

## 22. NEWLY ACQUIRED or CONSTRUCTED PROPERTY

This policy covers newly acquired property of the Insured at any **Location** within the territorial limit of the policy



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that is not listed on the schedule of **Locations** and values on file with the Company; and new buildings constructed at any **location**; subject to the Newly Acquired or Constructed Property sublimit specified in Section **I.4.** of this policy and the following conditions:

- a. The Insured's interest is not covered under any other policy;
- b. The insured shall report newly acquired property or the beginning of construction of new buildings to this Company within the Newly Acquired or Constructed Property Time Limit specified in Section **I.5.**, otherwise coverage under this policy shall cease except to the extent of any sublimit stated elsewhere for **Unscheduled Locations**; and
- c. Additional premium shall be payable from the date of acquisition or beginning of construction thereof.

If this policy includes **Time Element** coverage, any **Time Element** loss resulting from covered physical loss or damage at a newly acquired **Location**, or newly constructed building shall also be included in the Newly Acquired or Constructed Property sublimit.

This coverage excludes loss or damage directly or indirectly caused by or resulting from **Earth Movement** or **Flood**.

### 23. ORDINANCE OR LAW, DEMOLITION COST, AND INCREASED COST OF CONSTRUCTION

In the event of physical loss or damage covered hereunder that causes the enforcement of any law or ordinance in effect at the time of loss regulating the construction, repair or use of the damaged building(s), this Company shall be liable for:

- a. The value of the undamaged portion of the damaged building(s) that must be demolished;
- b. The cost of demolishing the undamaged portion of the damaged building(s) that must be demolished because of such law or ordinance, including the cost of clearing the site;
- c. The increased cost of repair or reconstruction of the damaged and undamaged portion of the damaged building(s) on the same site or another site, but limited to the costs that would have been incurred in order to comply with the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged building(s) on the same site; and
- d. The increased loss or costs for business interruption, extra expense or rental value arising out of the additional time required to comply with said law or ordinance.

The Company shall not be liable for any costs attributable to any ordinance or law that the Insured was required to, but failed to, comply with before the loss.

The Company shall not be liable under **23.c.** or **23.d.** of this clause for any loss unless the damaged building is actually repaired, rebuilt or replaced with property of the same size and occupancy on the same site or at another site as soon as reasonably possible.

This coverage does not increase the applicable limit or sublimit of any Cause of Loss. For example, if **Earth Movement** or **Flood** are the cause of the physical loss or damage which results in the enforcement of an ordinance or law regulating the construction, repair or use of a damaged building, the most the Company will pay for all loss or damage including this coverage, is the **Earth Movement** or **Flood** sublimit in Section **I.4.**

The Company will not pay under this coverage for loss due to the enforcement of any ordinance or law which requires an Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the affects of **Contaminants or Pollutants**.

In no event will the Company pay more under this coverage than the Ordinance or Law sublimits specified in Section **I.4.** of this policy.

### 24. POLLUTION CLEAN UP AND REMOVAL

The Company will pay the Insured's expense to extract **Contaminants or Pollutants** from land or water at insured **Locations** if the presence of the **Contaminants or Pollutants** is caused by or results from a covered peril that occurs during the policy period, subject to the **Annual Aggregate** sublimit specified in Section **I.4.** of this policy.



Costs to test for, monitor or assess the existence, concentration or effects of **Contaminants or Pollutants** are not covered, but the Company will pay for testing which is performed in the course of extracting the **Contaminants or Pollutants** from land or water, subject to the Pollution Cleanup and Removal sublimit specified in Section **I.4.** of this policy

The expenses will be paid only if they are reported to the Company within one hundred- eighty (180) days of the date on which the loss or damage at insured **Locations** occurs.

## 25. PRESERVATION OF PROPERTY

If it is necessary to move covered property from an insured **Location** to preserve it from direct physical loss or damage by peril(s) insured against the Company will pay for any direct physical loss or damage to that property:

- a. While it is being moved or while temporarily stored at another location; and
- b. Only if the loss or damage occurs within 60 days after the property is first moved.

## 26. PROFESSIONAL FEES

This policy is extended to cover the fees of architects, surveyors, consulting engineers and fees of other professionals necessarily incurred in the work of repairing or rebuilding the property following a loss subject to the sublimit specified in Section **I.4.** of this policy. Such fees do not include those incurred by the Insured in the preparation of any claim.

## 27. PROPERTY IN THE COURSE OF CONSTRUCTION – SOFT COSTS

This policy includes, subject to the Property In the Course of Construction – Soft Costs sublimit specified in Section **I.4.** of this policy, Soft Cost expenses incurred due to physical loss or damage from peril(s) insured against for that property described in **II.A.1.** which is in the course of construction, installation, erection, start-up, commissioning, reconstruction, repairs, alteration, or renovation and the like at **Locations** insured hereunder.

Soft Cost expenses include the following reasonable and necessary expenses which are over and above those which would have **normally** been incurred had no loss occurred:

- a. Additional interest expense;
- b. General overhead-developer expenses and additional real estate taxes;
- c. Legal or professional fees;
- d. Extra marketing expenses and advertising fees;
- e. Debt service payments and insurance premiums;
- f. Refinancing charges and bond interest.

## 28. PROPERTY OFF PREMISES

This policy is extended to cover property that is temporarily at a location the Insured does not own, lease or operate, including property in the care, custody or control of a salesperson; or at any fair, exhibition or trade show.

This extension does not apply to property in the due course of transit.

This coverage is subject to the sublimit specified in Section **I.4.** of this policy.

## 29. RADIOACTIVE CONTAMINATION

This policy covers loss or damage caused by sudden and accidental radioactive contamination, including resultant radiation damage, to the property covered hereunder, provided that such radioactive contamination arises out of material originating at the Insured **Locations**, and provided, at the time of such loss, there is neither a nuclear reactor capable of sustaining nuclear fission in a self supporting chain reaction, nor any new or used nuclear fuel which is intended for or which has been used in such a nuclear reactor, at the Insured's Locations. This coverage is subject to the sublimit specified in Section **I.4.** of this policy.



### 30. RENTAL VALUE

Subject to the sublimit specified in Section **I.4.** of this policy, recovery in the event of loss hereunder shall be the actual loss sustained by the Insured resulting directly from necessary untenability of insured premises, caused by direct physical loss or damage from peril(s) insured against, but not exceeding the reduction in rental value less charges and expenses which do not necessarily continue during the period of untenability for only such length of time as would be required, with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property insured herein as has been damaged, commencing with the date of such damage and not limited by the date of expiration of this policy.

For purposes of this policy, rental value is defined as the sum of:

The total anticipated gross rental income from tenant occupancy of the covered property, and

- a. the amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be obligations of the Insured, and
- b. the fair rental value of any portion of the said property which is occupied by the Insured.

In determining the rental value, due consideration shall be given to the rental experience before the date of the damage and the probable experience thereafter had no loss occurred.

As respects rental value coverage, this policy also covers such expenses as are necessarily incurred for the purpose of reducing loss, but in no event shall the aggregate of such expenses exceed the amount by which the loss otherwise payable under this policy is thereby reduced.

### 31. RESEARCH AND DEVELOPMENT EXPENSES

In the event of direct physical loss or damage by peril(s) insured against to covered property which results in an interruption of research and development activities, which in themselves would not have produced income during the period of restoration, this policy shall cover the actual loss sustained of the continuing fixed charges and expenses, including ordinary payroll directly attributable to such research and development activities, subject to the sublimit specified in Section **I.4.** of this policy.

### 32. ROYALTIES

This policy is extended to cover the actual loss of royalties, commissions or similar fees the Insured sustains resulting from direct physical loss or damage to property of another not insured under this policy with whom the Insured has a royalty, licensing or commission agreement if that loss or damage is caused by a covered peril. The most the Company will pay under this coverage is the sublimit specified in Section **I.4.** of this policy.

### 33. SERVICE INTERRUPTION

This policy is extended to provide coverage when any direct physical loss or damage to unowned property described in paragraphs **a.** or **b.** below is caused directly by peril(s) insured against, (including covered **Equipment Breakdown** if applicable) and which, without the intervention of any other independent cause, results in a sequence of events which cause direct physical loss or damage to covered property at a covered **Location**, including loss caused by a change in temperature or humidity, and/or **Time Element** loss, as provided by this policy.

- a. Property, not otherwise excluded, at covered **Locations** and within one thousand (1,000) feet thereof that is used by the Insured for: air conditioning; communications; cooling; heating; humidifying; lighting; refrigeration; or generation and/or conversion of power. This includes all associated transmission and distribution lines while on covered **Locations** and within one thousand (1,000) feet thereof.
- b. Property, not otherwise excluded, beyond one thousand (1,000) feet from covered **Locations** that provides the Insured services of: communications; electricity; fuel; gas; refrigeration; sewer; steam; or water to covered **Locations**. This includes generating equipment, switching stations, substations, transformers, pumping and storage facilities, but excludes any associated transmission and distribution lines beyond the physical boundaries of the service providing facility.
  - (1) The physical damage deductible for this coverage is the applicable deductible for the covered peril causing such physical loss or damage to such unowned property.



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- (2) Coverage for any **Time Element** loss, as provided by this policy, for this coverage applies only if any of the above mentioned services are continuously affected, as described above, for more than the number of hours specified in Section **I.5.** Service Interruption Qualifying Period.

In the event that the qualifying period has been satisfied, the Company shall then be liable for the amount of the **Time Element** loss until the resumption of **Normal** operations, in excess of the applicable deductible for the covered peril causing such physical loss or damage to such unowned property.

Liability under **33.b.** is subject to the Service Interruption sublimits specified in Section **I.4.** of this policy.

### 34. TRANSIT

This policy is extended to cover the property insured while in due course of transit within the Territorial Limits of the policy from the time the property leaves the location at the initial point of shipment and continuously thereafter, until delivered at the final destination. Coverage shall include general average or salvage charges on shipments covered while waterborne.

This extension of coverage also insures against physical loss or damage:

- a. Occasioned by the acceptance by the Insured, Insured's agent, customer or consignee or others of fraudulent bills of lading, shipping or messenger receipts;
- b. Occasioned by fraud or deceit, perpetrated by any person(s) who may represent themselves to be the proper party or parties to receive the property for shipment or to accept it for delivery.

However, this coverage shall not apply to any fraud or deceit by an employee of the Insured, whether acting alone or in collusion with others.

This coverage does not apply to:

- (1) Export shipments, which have been laden on board export conveyance or have come under the protection of marine insurance, whichever first occurs;
- (2) Import shipments until fully discharged from import conveyance or until marine insurance has ceased to cover, whichever last occurs;
- (3) Shipments while waterborne except while on ferries or barges on inland waterways within territorial limits of the policy;
- (4) Property of others, including the Insured's legal liability therefore, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier.
- (5) Household goods of employees.

Coverage is subject to Transit the sublimits shown in Section **I.4.**

### 35. TREES, SHRUBS, PLANTS AND LAND IMPROVEMENTS

This policy is extended to cover physical loss or damage to trees, shrubs, plants (other than trees, shrubs or plants grown or held for sale) and **land improvements** at covered **Locations** caused by peril(s) insured against herein. The most the Company will pay under this coverage, per **occurrence** or per item, is the sublimit specified in Section **I.4.** of this policy.

### 36. UNINTENTIONAL ERRORS AND OMISSIONS

This insurance shall not be prejudiced by any unintentional or inadvertent error, omission, incorrect valuation or incorrect description of the interest, risk or property, provided notice is given to the Company as soon as practicable upon discovery of any such error, omission, incorrect valuation or incorrect description. The most the Company will pay under this coverage is the sublimit specified in Section **I.4.** of this policy.

### 37. UNSCHEDULED **LOCATIONS**

This policy is extended to cover property at unscheduled **Locations** which are **Locations** owned, leased, operated or regularly used by the Insured that do not appear on any Schedule of **Locations** and values on file



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with the Company. The most the Company will pay for loss or damage at any one of these **Locations** is the sublimit specified in Section **I.4.** of this policy.

If this policy includes **Time Element** coverage, any **Time Element** loss resulting from covered physical loss or damage at an unscheduled **Location** shall also be included in the Unscheduled **Locations** sublimit in Section **I.4.** of this policy.

This coverage excludes loss or damage directly or indirectly caused by or resulting from **Earth Movement** or **Flood**.

### 38. VALUABLE PAPERS & RECORDS

This policy also covers the costs of research and other expenses to replace or restore the information on valuable papers and records for which there are no duplicates. It also covers the amount in excess, if any, of valuation provision **IV.12.** All coverage is subject to the sublimit specified in Section **I.4.** of this policy.

For the purposes of the coverage provided herein, valuable papers and records means: written, printed, or otherwise inscribed documents and records, including books, manuscripts, maps, drawings, film, and other photographically produced records such as slides and microfilms, legal and financial agreements such as deeds, mortgages and leases, but does not mean **Money** or **Securities** nor does it mean **Media**, **Data**, **Application Software**, **System Software** or **Source Code**.

## D. EXCLUSIONS

### 1. Group 1. Exclusions

**Unless otherwise provided for and limited in Section I.4., this Policy excludes loss or damage directly or indirectly caused by or resulting from any of the following regardless of (a) the cause of the excluded event; or (b) other causes of the loss; or (c) any other causes or events, whether or not insured under this Policy, which may have contributed concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurred suddenly or gradually, involved isolated or widespread damage, arose from natural or external forces, or occurred as a result of any combination of any of the following:**

#### a. Nuclear Hazard

Nuclear reaction or nuclear radiation, or radioactive contamination from any cause, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by the peril(s) insured against in this policy. However, ensuing loss from fire will be covered.

This exclusion does not apply to physical loss or damage caused by sudden and accidental radioactive contamination, including resultant radiation damage, from materials used or stored or from processes conducted on the insured premises, provided that, at the time of such loss or damage, there is neither a nuclear reactor nor any new or used nuclear fuel on the insured premises.

#### b. War and Military Action

War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war;

Mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military uprising, insurrection, rebellion, revolution, military or usurped power, martial law or state of siege or any of the events or causes which determine the proclamation or maintenance of martial law or state of siege;

Seizure or destruction under quarantine or customs regulation, commandeering, confiscation, expropriation, nationalization, or destruction by order of any government (de jure or de facto) or public authority, except destruction by order of public authority to prevent spread of fire or explosion.



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### c. Terrorism

For the purposes of this policy, Terrorism shall mean the use or threat of force or violence against persons or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organization, government, power, authority or military force, when one or more of the following apply:

The effect is to intimidate or coerce a government or business, or to disrupt any segment of the economy;

The effect is to cause any alarm, fright, fear or danger, or apprehension of public safety; or

The apparent or logically implied intent is to further political, ideological, religious or cultural objectives, or to express support for (or opposition to) a philosophy, ideology, religion or culture.

### d. Earth Movement,

unless otherwise endorsed hereon or limited in Section I.4. of this policy. However, ensuing loss by fire, explosion or leakage from fire protective systems or devices will be covered.

### e. Flood,

unless otherwise endorsed hereon or limited in Section I.4. of this policy. However, ensuing loss by fire or explosion will be covered.

### f. Computer Virus

### g. Contaminants or Pollutants

The release, discharge, or dispersal of toxic or hazardous substances, Contaminants or Pollutants, all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any physical loss or damage covered by this policy; unless the contamination is itself caused by covered physical loss or damage of property insured by this Policy for the following Causes of Loss:

Fire; lightning; explosion; wind or hail; smoke; direct impact of vehicle, aircraft or vessel; strike, riot or civil commotion; vandalism or malicious mischief; Equipment Breakdown; leakage or accidental discharge of fire protection equipment; collapse; falling objects; weight of snow, ice or sleet; theft; sudden and accidental discharge, leakage, backup, or overflow of liquids or molten material from confinement within piping, plumbing systems, tanks, equipment or other containment located at the insured location;

This policy does not insure against any loss, damages, costs or expenses incurred as the result of any government or regulatory directive or request that the Insured or anyone acting under the Insured's direction or control test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any toxic hazardous substances, Contaminants or Pollutants.

### h. Fungi, Wet Rot, Dry Rot and Microbes,

(1) The presence, growth, proliferation, spread or any activity of Fungi, wet rot, dry rot or Microbes, all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any physical damage insured by this policy;

(2) Any government or regulatory directive or request that the Insured or anyone acting under the Insured's direction or control test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any Fungi, wet rot, dry rot or Microbes.

### i. Unexplained loss, mysterious disappearance, or loss or shortage disclosed upon taking inventory;

### j. Any willful or dishonest act or omission of the Insured or any associate, proprietor, partner, director, trustee, elected officer or employee, or agent of the Insured except a bailee or common carrier. This exclusion applies to Theft by the Insured's employees, but not to acts of destruction by such employees;



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- k. Losses which are eligible for coverage under any government or national program or scheme to the extent of recoverability there under (conditions of payment and or delays in payment shall not abrogate this exclusion). This policy shall apply as excess of any amounts recoverable under such programs or schemes subject to the terms, conditions and limitations of this policy.
- l. Loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.
- m. Costs, expenses, fines or penalties incurred or sustained by or imposed on the Insured at the order of any government agency, court or other authority arising from any cause whatsoever.

**In any action, suit or other proceeding where the Company alleges that by reason of the above provisions any loss or damage is not covered by this insurance, the burden of proving that such loss or damage is covered shall be upon the Insured.**

## 2. Group 2. Exclusions

**Unless otherwise provided for and limited in Section I.4., this policy does not insure against physical loss or damage caused by or resulting from the following; however, if physical loss or damage from a peril(s) insured against herein ensues, then this policy shall cover only for such ensuing loss or damage:**

- a. Errors or defects in design, construction or specification, errors in processing or manufacture, faulty workmanship or faulty materials;
- b. Electrical injury or disturbance to electrical appliances, devices or wiring caused by electrical currents artificially generated;
- c. Mechanical or machinery breakdown;
- d. Explosion, rupture, or bursting of fired or unfired pressure vessels or pipes, steam boilers, steam pipes, steam turbines, steam engines or flywheels owned or operated by the Insured;
- e. Damage sustained to goods while they are actually being processed, manufactured, tested or otherwise worked on;
- f. Enforcement of any ordinance or law regulating the construction, repair, use or demolition of any property insured hereunder, or which necessitates demolition of undamaged portions of property covered herein;
- g. Settling, bulging, cracking, shrinking or expansion of foundations, walls, roofs, ceilings, floors, walkways, patios, roadways and other paved surfaces;
- h. Delay, loss of market, loss of use or any other consequential or remote loss, unless coverage is provided by this policy, and then such loss is covered only to the extent provided herein;
- i. Gradual deterioration; depletion; inherent vice; insects, birds, rodents, or other animals, including nesting or infestation, or discharge or release of waste products or secretions; ordinary wear and tear; latent defect; decay, smog, shrinkage, evaporation, condensation, contamination, corrosion, erosion, rust, marring or scratching; loss of weight, change in flavor, color, texture or finish unless such loss or damage is caused directly by physical damage not otherwise excluded;
- j. Dampness or dryness of atmosphere, extremes of temperature, changes of temperature or humidity, all whether atmospheric or not;
- k. Product Contamination and Recall

Loss or damage caused by or resulting from adulteration or contamination to raw stock, stock in process or finished stock or products in the stream of commerce which causes the stock or products to become diminished in value or use, including but not limited to diminished value or use due to change in color,



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finish, flavor, size or texture. This exclusion applies unless the adulteration or contamination is itself caused by covered physical loss or damage of property insured by this policy for the following causes of loss:

Fire; lightning; explosion; wind or hail; smoke; direct impact of vehicle, aircraft or vessel; strike, riot or civil commotion; vandalism or malicious mischief; Equipment Breakdown; leakage or accidental discharge of fire protection equipment; collapse; falling objects; weight of snow, ice or sleet; theft; sudden and accidental discharge, leakage, backup, or overflow of liquids or molten material from confinement within piping, plumbing systems, tanks, equipment or other containment located at the insured Location;

Further, this policy does not insure against any loss, damages, costs or expenses incurred by the Insured or by others for loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of the Insured's products or the Insured's direct or indirect customers or suppliers if such product or any portion of it is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy, contamination or dangerous condition.

- I. Loss or damage to the interior portion of buildings under construction or renovation from rain, sleet or snow, whether or not driven by wind, when the installation of the roof, walls and windows of such buildings has not been completed.

### 3. Time Element Exclusions

In addition to the Group 1. and Group 2. exclusions, the following exclusions apply to Time Element coverages;

- a. Any loss during a period during which business would not or could not have been conducted for any reason other than physical damage of the type insured against herein;
- b. Any increase in loss due to interference at the insured Locations by strikers or other persons charged with rebuilding, repairing or replacing the property, or with the resumption or continuation of business;
- c. Any increase in loss due to the suspension, lapse or cancellation of any lease, license, contract or order, except as provided by Section II.C.14. **EXTENDED PERIOD OF INDEMNITY**;
- d. Any loss resulting from damage to, expense associated with, or cost to remanufacture or recall any Finished Stock;
- e. Time Element loss arising from property in transit away from Locations insured by this policy.

## III. GENERAL CONDITIONS

### 1. ABANDONMENT

There can be no abandonment to the Company of any property.

### 2. ACCESS TO BOOKS AND RECORDS

It is agreed that the Company, or its authorized representatives, shall at all reasonable times, have access to and the right to review the books and records of the Insured for the purposes of conducting an audit or determining any facts relating to this insurance or a claim. With regard to any such review or access, the Insured shall provide, at the Insured's expense, adequate private working area and facilities and staff, adequate copying and telephone facilities.

### 3. ASSIGNMENT OF THE POLICY

This policy may be assigned or transferred only with the prior written consent of the Company.

### 4. CANCELLATION

This policy may be canceled at any time at the request of the Insured by mailing or delivering advance written notice of cancellation to the Company. If canceled at the Insured's request, the Company shall retain or collect



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the customary short rates for the time the policy has been in force. This policy may be canceled by the Company by mailing to the Insured written notice stating that not less than sixty (60) days after the mailing date such cancellation shall be effective. Upon cancellation by the Company, the Company shall return any pro-rata unearned premium to the Insured. Notwithstanding the above, this policy may be canceled by the Company for non-payment of premium by giving ten (10) days written notice of such cancellation.

The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Insured or by the Company shall be equivalent to mailing.

### 5. CERTIFICATES OF INSURANCE

Any certificate of insurance issued in conjunction with this policy shall be issued solely as a matter of convenience or information for the addressee(s) or holder(s) of said certificate of insurance, except where any Additional Insured(s) or Loss Payee(s) are named pursuant to the Special Provisions of said certificate of insurance. In the event any Additional Insured(s) or Loss Payee(s) are so named, this policy shall be deemed to have been endorsed accordingly, subject to all other terms, conditions, and exclusions stated herein.

The listed broker of record may only issue Certificates of Insurance evidencing coverage afforded by this policy.

### 6. CONCEALMENT, MISREPRESENTATION OR FRAUD

This entire policy shall be void if, whether before or after a loss, the Insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Insured therein, or in any claim, or in the case of fraud, or false swearing by the Insured relating thereto.

### 7. CONFORMANCE WITH STATE STATUTES

The terms of this policy which are in conflict with the applicable statutes of the state wherein this policy is issued are hereby amended to conform to such statutes, unless the statutes narrow or limit the coverage afforded by this policy and do not bar a policy from providing broader coverage.

### 8. CONTRIBUTING INSURANCE

Permission is granted for the Insured to have other policies written upon the same plan, conditions and provisions as those contained in this policy. This policy will contribute to the total of each loss otherwise payable herein that percent resulting from the ratio that the limit of liability of this policy bears to the total limit of liability as provided by all policies written upon the same plan, conditions and provisions as these contained in this policy.

### 9. CURRENCY

Unless otherwise specified, all amounts expressed herein are in the currency of the United States of America.

### 10. DIVISIBLE CONTRACT CLAUSE

If this policy covers two (2) or more freestanding buildings, the breach of any condition of the policy in any one (1) or more of the buildings covered or containing covered property shall not prejudice the right to recover for loss occurring in any building covered or containing covered property, where, at the time of loss, a breach of condition does not exist.

### 11. ECONOMIC AND TRADE SANCTIONS

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy is void **ab initio** (void from its inception) with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

- a. Any insured, or any person or entity claiming the benefits of an insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to U.S. economic or trade sanctions;
- b. Any claim or "suit" that is brought in a Sanctioned Country or by a Sanctioned Country Government, where any action in connection with such claim or suit is prohibited by U.S. economic or trade sanctions;



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- c. Any claim or "suit" that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to U.S. economic or trade sanctions;
- d. Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country Government, where any activities related to such property are prohibited by U.S. economic or trade sanctions; or
- e. Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity that is otherwise subject to U.S. economic or trade sanctions.

As used in this policy a Specially Designated National or Blocked Person is any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury Department's Office of Foreign Asset Control (O.F.A.C.) as it may be from time to time amended.

As used in this policy a Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

### 12. EXCESS INSURANCE

Permission is granted the Insured to have excess insurance over the limit of liability set forth in this policy without prejudice to this policy and the existence of such insurance, if any, shall not reduce any liability under this policy.

### 13. INSPECTIONS

The Company, at all reasonable times during the policy period, shall be permitted but not obligated to inspect the property insured. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute any undertaking, on behalf of or for the benefit of the Named Insured or others, to determine or warrant that such property is safe or healthful.

### 14. IMPAIRMENT OF RECOVERY RIGHTS FOR PROPERTY IN TRANSIT

Any act or agreement by the Insured before or after loss or damage to property in transit whereby any right of the Insured to recover in whole or in part for loss or damage to property covered hereunder against any carrier, bailee or other party liable therefore, is released, impaired or lost, shall render this policy null and void, but the Company's right to retain or recover the premium shall not be affected.

The Company is not liable for any loss or damage which, without its written consent, has been settled or compromised by the Insured. It shall, however, be permissible for the Insured without prejudice to this insurance, to accept the ordinary bill of lading or shipment receipts issued by carriers limiting their liability to less than the actual value.

### 15. LOSS PAYABLE CLAUSE

Loss, if any, shall be adjusted with and payable to the Named Insured or their order, whose receipt shall constitute a release in full of all liability under this policy with respect to such loss.

### 16. MORTGAGEE INTERESTS AND OBLIGATIONS

The following provisions in favor of any Mortgagee named in a schedule or Certificate of Insurance on file with the Company apply to the Location for which the Mortgagee is named, unless another Mortgagee Clause is specifically indicated as applying.

- a. The term "Mortgagee" includes Trustees.
- b. For insured loss under this policy to specified property the Company will pay to each specified Mortgagee, as its interest may appear under all present or future mortgages upon the property, in order of precedence of the mortgages.
- c. The interest of the Mortgagee in property insured under this policy will not be invalidated by:
  - (1) Any act or neglect of the Mortgagor or owner of the specified property;
  - (2) Foreclosures, notice of sale, or similar proceeding with respect to the specified property;



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- (3) Change in the title or ownership of the specified property; or
- (4) Change to an occupancy of the premises more hazardous than that permitted by this policy;

Provided that, if the Mortgagor or owner has failed to pay any premium due under this policy, the Mortgagee must pay the premium within ten (10) days of written notice by the Company.

- d. The Mortgagee will notify the Company of any known change in ownership or occupancy or increase in hazard of the covered property that has come to the knowledge of said Mortgagee. The Mortgagee may immediately pay the increased premium associated with such known change. If the Mortgagee fails immediately to notify the Company of such known change or fails to pay the increased premium, all coverage under this policy will cease at the time of such premium due date.
- e. The Company may cancel this policy, including the interest of the Mortgagee, by giving the Mortgagee or its agent written notice:
  - (1) Ten (10) days prior to the effective date of cancellation, if cancellation is for nonpayment of premium;
  - (2) Sixty (60) days prior to effective date of cancellation, if cancellation is for any other reason.
- f. If a loss hereunder is made payable, in whole or in part, to a designated Mortgagee not named in this policy, that interest may be canceled by giving to such Mortgagee ten (10) days written notice of cancellation.
- g. If the Company pays the Mortgagee for loss under this policy, and denies liability to the Mortgagor or owner, the Company will, to the extent of the payment made to the Mortgagee, be subrogated to all the rights of the Mortgagee under all securities and loan agreements held as collateral to the debt. At its option, the Company may pay to the Mortgagee the whole principal on the debt with its interest; and in this event, all rights and securities will be transferred from the Mortgagee to the Company. However, any subrogation by the Company will not impair the right of the Mortgagee to recover the full amount of said Mortgagee's claim.
- h. If the Insured fails to render proof of loss, the Mortgagee, upon notice, will render proof of loss within sixty (60) days of notice and will be subject to the provisions of the policy relating to Appraisal, Payment of Loss and Suit Against the Insurers.

Other provisions relating to the interests and obligations of such Mortgagee may be added hereto by agreement in writing.

### 17. NO BENEFIT TO BAILEE

This insurance shall in no way inure directly or indirectly to the benefit of any transportation carrier or bailee.

### 18. OTHER INSURANCE

Except as stated in the contributing insurance and excess insurance provisions, if there is any other collectible insurance, this policy will apply as excess insurance and will not contribute with any other insurance.

The Company's liability for payment will begin at the greater of the ground up loss exceeding this policy's deductible or the primary insurance payment.

### 19. REINSTATEMENT

With the exception of loss subject to Annual Aggregate limits as noted in the Declarations (or elsewhere), no loss hereunder shall reduce the amount of this policy.

### 20. SUBROGATION

- a. If the Company pays a claim under this policy, it will be subrogated, to the extent of such payment, to all the Insured's rights of recovery from other persons, organizations and entities. The Insured will execute and deliver instruments and papers and do whatever else is necessary to secure such rights.



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The Company will have no rights of subrogation against:

- (1) Any person or entity, which is an Insured.
  - (2) Any subsidiary or affiliated corporations or companies or any other corporations or companies associated with the Insured through ownership or management
  - (3) Any other person or entity, which the Insured has waived its rights of subrogation against in writing before the time of loss.
- b. Notwithstanding the foregoing, it is a condition of this policy that the Company shall be subrogated to all the Insured's rights of recovery against:
- (1) Any Architect or Engineer, whether named as an Insured or not, for any loss or damage arising out of the performance of professional services in their capacity as such and caused by an error, omission, deficiency or act of the Architect or Engineer, by any person employed by them or by any others for whose acts they are legally liable, and
  - (2) Any manufacturer or supplier of machinery, equipment or other property, whether named as an Insured or not, for the cost of making good any loss or damage which said party has agreed to make good under a guarantee or warranty, whether expressed or implied.
- c. The Insured will act in concert with the Company and all other interests concerned in the exercise of such rights of recovery. The Insured will do nothing after a loss to prejudice such rights of subrogation. If any amount is recovered as a result of such proceedings, the net amount recovered after deducting the costs of recovery, will accrue first to the Company. Any excess of this amount will be remitted to the Insured. If there is no recovery, the interests instituting the proceedings will bear the expense of the proceedings proportionately.

### 21. TIME

Wherever reference is made to time in this policy regarding hours of the day or night, it shall be held to be Local Standard Time at the mailing address of the Named Insured shown in section I.1.

### 22. TITLES OF PARAGRAPHS

The several titles of the various paragraphs of this form (and of endorsements and supplemental contracts, if any, now or thereafter attached to this policy) are inserted solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

## IV. LOSS CONDITIONS

### 1. APPRAISAL

If the Insured and the Company fail to agree on the amount of loss, each shall, upon the written demand of either made within sixty (60) days after receipt of proof of loss by the Company, select a competent and disinterested appraiser. The two selected appraisers shall then select a competent and disinterested umpire. If the appraisers should fail for fifteen (15) days to agree upon such umpire, then upon the request of the Insured or of the Company such umpire shall be selected by a judge of a court of record in the county and state, region, locale, or territory in which such appraisal is pending. Then at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss.

The Insured and the Company shall each pay their chosen appraiser and shall bear equally the other expenses of the appraisal and the umpire.

### 2. ASSISTANCE AND COOPERATION OF THE INSURED

The Insured shall cooperate with the Company and upon the Company's request, shall attend hearings and trials



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and shall assist in effecting settlements, in securing and giving evidence, in obtaining the attendance of witnesses, and in conducting suits.

### 3. CLAIMS AGAINST CARRIER

In the event of any loss or damage to the goods and/or **Merchandise** insured hereunder, the Insured shall immediately make claim in writing against the carrier or carriers involved.

### 4. DUTIES AFTER A LOSS

- a. The Insured shall protect the property from further loss or damage, separate damaged and undamaged personal property, and maintain such property in the best possible order; and refrain from demolishing damaged property until the Company has had the opportunity to inspect such damaged property.
- b. As soon as practical, the Insured shall give written notice to the Company of any loss, damage or expense, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed.
- c. Within sixty (60) days after being requested by the Company, unless such time is extended in writing by the Company, the Insured shall render to the Company a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following:
  - the time and origin of the loss,
  - the interest of the Insured and of all others in the property,
  - the value of each item thereof, in accordance with Section **IV.12. VALUATION** of this form, and the amount of loss thereto,
  - all encumbrances thereon,
  - all other contracts of insurance, whether valid or not, covering any of said property,
  - any changes in title, use, occupation, Location, possession or exposures of said property since the issuing of this policy,
  - by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss whether or not it then stood on leased ground,
  - The Insured shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The Insured shall, as often as may be reasonably required, exhibit to any person designated by the Company all that remains of any property herein described, and submit to examinations under oath by any person named by the Company, and subscribe the same.

The Insured shall, as often as may be reasonably required, produce for examination at the request of the Company all books of account, business records, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its authorized representative, and shall permit extracts and copies thereof to be made.

### 5. EXPERIENCE OF THE BUSINESS

In determining the amount payable under **Time Element** coverages due consideration shall be given to the experience of the business before the interruption of business and the probable experience thereafter had no interruption of business occurred.

In the event the Insured would have experienced an operating deficit had no interruption of business occurred, then

- a. the amount of **Fixed Costs** included in the actual loss sustained shall be determined by subtracting the operating deficit from the **Fixed Costs** that necessarily continue;



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- b. the amount of payroll included in the actual loss sustained shall be determined by subtracting the excess, if any, of the operating deficit from the **Fixed Costs** that necessarily continue from such payroll.

### 6. PARTIAL PAYMENT OF LOSS

In the event of loss covered by this policy, the Company shall allow partial payments of claims, subject to the policy provisions and normal adjustment process. To obtain said partial claim payment the Insured shall submit a partial proof of loss with supporting documentation. It shall be lawful for the Insured to make claim in accordance with the valuation provisions contained in this policy. It is agreed that the policy deductible must be satisfied before said partial payments are allowable.

### 7. PAYMENT OF LOSS

All adjusted claims shall be due and payable no later than sixty (60) days after presentation and acceptance of proofs of loss by the Company or its authorized representative.

### 8. RESUMPTION OF OPERATIONS

If the Insured could reduce the loss resulting from the interruption of business:

- a. by complete or partial resumption of operation of the property herein described, whether damaged or not; or
- b. by making use of **Merchandise** or other property at the insured **Locations** or elsewhere; or
- c. in respect of manufacturing risks, by making use of stock (raw, in process or finished) or **Merchandise** at the insured **Locations** or elsewhere;

the amount of the loss that the Insured could have reduced shall be subtracted from the amount payable under this policy.

### 9. SUIT AGAINST THE INSURERS

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless the Insured shall have fully complied with all of the requirements of this policy, nor unless commenced within the twelve (12) months immediately following inception of the loss, unless a longer period of time is prescribed by the insurance laws of the state or jurisdiction in which this contract is issued.

### 10. SALVAGE AND RECOVERIES

All salvages, recoveries, and payments, excluding proceeds from subrogation and underlying insurance, recovered or received prior to a loss settlement under this policy, shall reduce the loss accordingly. If recovered or received subsequent to a loss settlement under this policy, such net amounts received shall be divided between the interests concerned, i.e., the Insured and any other Company(ies) participating in the payment of any loss, in the proportion of their respective interests.

### 11. VACANCY

#### a. Description of Terms

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:
  - (a) When this policy is issued to a tenant, and with respect to that tenant's interest in covered property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
  - (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:
    - (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or



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(ii) Used by the building owner to conduct customary operations.

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

### b. Vacancy Provisions

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

(1) The Company will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

- (a) Vandalism;
- (b) Sprinkler leakage, unless the Insured has protected the system against freezing;
- (c) Building glass breakage;
- (d) Water damage;
- (e) Theft; or
- (f) Attempted theft.

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

## 12. VALUATION

In the event of physical loss or damage to covered property by perils(s) insured against the Company will not pay more than the least of: the limit of liability applicable to the lost or damaged property; the interest of the Insured in the lost or damaged property; the cost to repair the lost or damaged property; the actual expenditure incurred in repairing or replacing the damaged property; or the value of property insured determined as follows:

- a. **Raw Stock**, supplies and other **Merchandise** not manufactured by the Insured: the replacement cost;
- b. **Goods in Process**: the value of raw materials and labor expended plus the proper proportion of overhead charges;
- c. **Finished Stock** manufactured, owned and held for sale by the Insured: the regular cash selling price, less (1) all costs to complete the sale and (2) discounts and charges to which such **Finished Stock** would have been subject had no loss occurred;
- d. Exposed film, records, manuscripts and drawings: the value blank plus the cost of copying information from backup or from originals of a previous generation, but this policy does not insure any other cost, including research, engineering or other cost, of restoring or re-creating information lost;

**Data**, programs or any other software stored on electronic, electromechanical, electromagnetic data processing or production equipment: the cost of transferring such from backup or from originals of a previous generation, but this policy does not insure any other cost, including research, engineering or other cost of restoring or re-creating information lost, except as provided in Section **II.C.10**.

### **ELECTRONIC DATA PROCESSING;**

Other documents not specifically excluded or addressed above: not to exceed the value blank plus cost of reproducing; but no liability is assumed hereunder for the cost of gathering or assembling information or data for such reproduction;

- e. Property of others: at the amount for which the Insured is liable, but not to exceed **replacement cost**;
- f. Tenant's **Improvements and Betterments**: at replacement cost if repaired or replaced at Insured's expense within one (1) year from date of loss. If not so replaced, at **actual cash value** on date of loss;



# CNA Property Policy

## Signature Policy Form

**g. Electronic Data Processing Equipment:**

If leased property, then the amount for which the Insured is liable under contract.

If not leased property, the least of the following:

- (1) If not under warranty or service contract, the cost to repair;
- (2) If under warranty or service contract, the cost to repair plus the minimum cost to reinstate such warranty or service contract;
- (3) The actual expenditure incurred in repairing or replacing the damaged property;
- (4) The cost to replace with functionally equivalent property;

**h. Fine Arts:**

- (1) If there is a schedule of values on file with the Company, then the scheduled value;
- (2) If there is no schedule of values on file with the Company, then the appraised market value at the time and place of loss;

**i. Property For Sale, other than stock or merchandise , the least of:**

- (1) The selling price;
- (2) The cost to repair;
- (3) or **actual cash value**;

**j. Property in transit:**

- (1) Property under invoice, at the actual invoice cost, including prepaid freight, together with such cost and charges since shipment as may have accrued and become legally due thereon;
- (2) Property not under invoice, in accordance with the valuation provisions of this policy, less any charges saved which would have become due and payable upon delivery at destination.

**k. Motor vehicles, railroad rolling stock and contractor's equipment:**

The least of the following amounts:

- (1) The scheduled limit of liability applying to the damaged property (if specifically scheduled);
- (2) The **actual cash value** of the property;
- (3) The cost of reasonably restoring that property to its condition immediately before loss; or
- (4) The cost of replacing the property with used, but substantially identical property.

**l. All Other Property at **replacement cost**.**

However, if within one (1) year, the process of repair, rebuilding or replacement in accordance with the provisions of this section (Section **IV.12.**), has not begun, then the value of the property will be **actual cash value**.

For the purposes of this Valuation section:

The term **replacement cost** as used here means the cost to repair or replace lost or damaged property with property of comparable material and quality on the same or another site, and used for the same purpose, without deduction for depreciation, deterioration, and obsolescence;

The term **actual cash value** as used here means the replacement cost with deduction for depreciation, deterioration and obsolescence.

All the above to be computed as of the time and at the place of loss insured against by this policy. The above valuation shall also be used for computing the premium due under this policy.



# CNA Property Policy

## Signature Policy Form

### GLOSSARY

#### **Affiliated or Subsidiary Organization**

Entity of which fifty percent (50%) or more is either directly or indirectly owned by the Named Insured.

#### **Annual Aggregate**

Denotes the most this Company will pay for loss or damage during any annual policy term. However, in the case of any extended policy term of more than one (1) year, but less than twenty-four (24) months, the annual aggregate will be construed to apply to the whole of such extended term.

#### **Application Software**

Any data entry, update, query or report program that processes **Data** for the user, whether purchased or internally developed, including but not limited to: word processors, spreadsheets, data bases, and accounting programs.

#### **Computer Virus**

Any unauthorized intrusive codes or programming that is entered by any means into covered **Electronic Data Processing Equipment** and **Electronic Media and Records** and interrupt the Insured's operations at any **Location**.

#### **Contaminants or Pollutants**

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to: smoke and soot (other than smoke and soot emanating from a fire involving property insured under this policy), vapor, fumes, acids, alkalis, chemicals, vaccines and waste and any other substances which pose a hazard to human health or the environment. Waste includes materials to be recycled, reconditioned or reclaimed.

#### **Critical New Madrid Areas**

Counties, parishes, independent cities, including all barrier islands, as listed below:

##### State

##### County/Parish/Independent City

Arkansas

Arkansas, Clay, Cleburne, Craighead, Crittenden, Cross, Fulton, Greene, Independence, Izard, Jackson, Lawrence, Lee, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Randolph, Sharp, St. Francis, Stone, White, Woodruff.

Illinois

Alexander, Bond, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Jersey, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Moultrie, Perry, Pope, Pulaski, Randolph, Saline, St. Clair, Richland, Shelby, Union, Wabash, Washington, Wayne, White, Williamson.

Indiana

Gibson, Knox, Posey, Sullivan, Vanderburgh, Vigo.

Kentucky

Ballard, Caldwell, Calloway, Carlisle, Crittenden, Fulton, Graves, Henderson, Hickman, Hopkins, Livingston, Lyon, Marshall, McCracken, Trigg, Union, Webster.

Mississippi

Benton, Coahoma, DeSoto, Lafayette, Marshall, Panola, Quitman, Tate, Tippah, Tunica.

Missouri

Bollinger, Butler, Cape Girardeau, Carter, Crawford, Dent, Dunklin, Franklin, Howell, Iron, Jefferson, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Reynolds, Ripley, Shannon, St. Charles, St. Francis, St. Genevieve, St. Louis, St. Louis City, Scott, Stoddard, Texas, Washington Wayne.

Tennessee

Benton, Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Stewart, Tipton, Weakley.



# CNA Property Policy

## Signature Policy Form

### Critical Pacific Northwest Areas

Counties, parishes, independent cities, including all barrier islands, as listed below:

<u>State</u>	<u>County/Parish/Independent City</u>
Oregon	Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill.
Washington	Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom.

### Data

Information stored in electronic, electromechanical or electromagnetic form such as, but not limited to, work processing documents, spreadsheet files, data base files, images and digitally-encoded voice and video.

### Earth Movement

Earthquake, landslide, mine subsidence, volcanic eruption, volcanic action, earth sinking (including sinkhole collapse), rising, shifting, or any other earth movement (natural or man-made) except as follows:

- Flood, surface water, mudslide or mud flow (caused by accumulation of water on or underground), waves, tidal water or tidal wave, Tsunami, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
- Release of water impounded by a dam regardless of cause.

However, any fire, explosion or leakage from fire protective systems or devices resulting from **Earth Movement** will not be considered to be loss by **Earth Movement** within the terms of this policy.

### Electronic Data Processing Equipment

**Data** processing systems including computer equipment/networks, component parts and related systems, and peripheral equipment including air conditioning and fire protective equipment used solely for data processing operations. This does not include equipment held for sale or distribution and equipment in the course of manufacture.

### Electronic Media and Records

See definitions for **Media**, **Data**, **Application Software**, **System Software**, and **Source Code**.

### Finished Stock

Stock manufactured, owned and held by the Insured for sale which in the ordinary course of the Insured's business is ready for packing, shipment or sale.

### First Tier Areas

Counties, parishes, independent cities, including all barrier islands, as listed below:

<u>State</u>	<u>County/Parish/Independent City</u>
Alabama	Baldwin, Mobile
Georgia	Bryan, Camden, Chatham, Glynn, Liberty, McIntosh
Louisiana	Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Mary, St. Tammany, Terrebonne, Vermilion
Mississippi	Hancock, Harrison, Jackson
No. Carolina	Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, Washington
So. Carolina	Beaufort, Berkeley, Charleston, Colleton, Georgetown, Horry, Jasper
Texas	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Willacy
Virginia	Accomack, Gloucester, Lancaster, Mathews, Middlesex, Northampton, Northumberland, and independent cities of Chesapeake, Hampton, Norfolk, Poquoson, Portsmouth, and Virginia Beach



# CNA Property Policy

## Signature Policy Form

### Fixed Costs

Operating costs not directly related to the level of sales achieved by the Insured; including, but not limited to wages and depreciation on property.

### Flood

A general and temporary condition of partial or complete inundation of **normally** dry land areas, including dewatered areas, whether caused by natural **Occurrences**, acts or omissions of man or any other cause or combination of causes, including:

- a. The overflow of inland or tidal waters, waves or tidal waves, tsunamis, or spray from any of the foregoing, all whether driven by wind or not.
- b. The unusual and rapid accumulation or runoff of surface waters from any source.
- c. Mudslide or mudflow caused or precipitated by accumulation of water on or under the ground.
- d. Release of water held by a dam, levee or dike or by a water or flood control device.
- e. Sewer backup resulting from **Flood**.

However, any fire or explosion resulting from **Flood** will not be considered to be loss by **Flood** within the terms of this policy.

### Fungi

**Fungi** includes any form of fungus, including but not limited to, yeast, mold, mildew, rust, smut or mushroom, and including any spores, mycotoxins, odors, or any other substances, products or byproducts produced by, released by, or arising out of the current or past presence of **fungi**. But **fungi** do not include any **fungi** intended by the Insured for consumption.

### Goods in Process

**Raw Stock** which has undergone any aging, seasoning, mechanical or other process of manufacture at the **Locations** herein described but which has not become **Finished Stock**.

### Improvements and Betterments

Fixtures, alterations, installations or additions comprising part of a building occupied but not owned by the Insured and acquired or made at the expense of the Insured, which the Insured cannot legally remove.

### Land improvements

Lawns, plants, shrubs or trees; pavements, roadways, sidewalks or similar works, but not including any fill or land beneath such property.

### Leasehold Interest

The excess rent paid for either the same or similar replacement property over the amount of rent and other charges which would have been payable under the unexpired lease plus bonuses or advance rent paid (including any maintenance, operating charges or taxes) for each month during the unexpired term of the Insured's lease.

### Location

The area within legal boundaries of the premises, or of the portion of the premises, in which the Insured has an interest.

### Media

Any **Data** storage substance using electronic, electromechanical, or electromagnetic technology to represent values of stored bits and bytes of information. Such **Media** includes but is not limited to: CD-ROM, microcomputer diskettes, magnetic tapes, disk packs, paper tapes and cards.

### Merchandise

Goods kept for sale by the Insured which are not the product of manufacturing operations conducted by the Insured.

### Microbe

Any non-fungal microorganism or non-fungal, colony-form organism that causes infection or disease. **Microbe** includes any spores, mycotoxins, odors, or any other substances, products or byproducts produced by, released by, or arising out of the current or past presence of microbes.

### Money

Currency, coins, notes, bullion, traveler's checks, registered checks and money orders held for sale to the public.



# CNA Property Policy

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### **Named Storm**

A storm system that has been declared to be a named tropical storm or hurricane by the U.S. National Weather Service or other governmental authority including hurricane or tropical storm spawned tornado(s) or microburst(s). The named tropical storm or hurricane begins when the National Weather Service officially declares the storm system to be a named tropical storm or hurricane and ends when the National Weather Service officially declares the named tropical storm or hurricane permanently downgraded to a tropical depression.

### **Net Leasehold Interest**

The present value of the amount which placed at four percent (4%) annual interest would equal the Leasehold Interest (less any amounts otherwise payable hereunder).

### **Normal, Normally**

The condition that would have existed had no loss occurred.

### **Occurrence**

One or more losses which result from one common cause or disaster, even if arising out of more than one event.

Each event of **Theft** will be considered a separate **occurrence**.

If this policy covers against Earthquake, each loss by Earthquake shall constitute a single claim hereunder, provided if more than one Earthquake shock shall occur within any period of seventy-two (72) hours originating during the term of this policy, all such shocks shall be deemed to be a single **Occurrence**, the policy expiration date and time notwithstanding.

If this policy covers against **Flood**, any **Flood** occurring within a period of continuous rising or overflow of any river(s) or stream(s); or any **Flood** resulting from any **Tsunami**, tidal wave or series of tidal waves caused by any one disturbance shall be deemed to be a single **Occurrence** within the meaning of this policy.

All covered loss or damage including but not limited to **Flood**, wind, wind driven rain, or hail, that is associated with and occurs during a **Named Storm** shall be considered a single **occurrence**. Covered loss or damage that occurs subsequent to a **Named Storm** being downgraded to a tropical depression shall be considered a separate **occurrence**.

### **Raw Stock**

Material in the state in which the Insured receives it for conversion by the Insured into **finished stock**.

### **Securities**

All negotiable and nonnegotiable instruments or contracts representing either **Money** or other property and includes revenue and other stamps in current use, tokens and tickets, but not **Money**.

### **Source Code**

**Application** and **System Software** in its original form as written by the programmer, not executable by the computer directly (because it must be converted into machine language by compilers, assemblers and interpreters).

### **System Software**

Programs used to control the computer and develop **application software** such as operating systems, communications software, and application development tools.

### **Theft**

An unlawful taking of property.

### **Time Element**

Business Interruption (Gross Earnings), Expediting Expense, Extra Expense, Rental Value, **Leasehold Interest**, Contingent Business Interruption (Gross Earnings), Rents.

### **Tsunami**

A great sea wave produced by sub-marine earth movement, volcanic eruption or other earth movement.



## Equipment Breakdown Coverage

**EB1. INSURING AGREEMENT**

- a. Subject to all the terms and conditions stated herein and in the policy of which this Coverage is part, and not in conflict herewith, the Company shall be liable for:

- (1) Direct physical loss to property of the Insured and to property of others in the care, custody or control of the Insured; and
- (2) The loss and expense resulting from the necessary interruption of business;

All as resulting from **Breakdown of Covered Equipment**. **Covered Equipment** must be in use or connected ready for use at the location specified for it at the time of the **Breakdown**.

- b. When used in this Coverage part, the following shall apply:

- (1) **Covered Equipment** shall mean any:
  - (a) Equipment built to operate under internal pressure or vacuum other than weight of contents;
  - (b) any mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power, including production machinery.
  - (c) Equipment described in paragraphs (a) or (b) that is owned by a public or private utility and used solely to provide utility services to the insured premises.
- (2) **Breakdown** shall mean sudden and accidental breakdown of **Covered Equipment** or a part thereof which manifests itself at the time of its occurrence by physical damage that necessitates repair or replacement of the **Covered Equipment** or part thereof.
- (3) None of the following is a **Breakdown**:
  - (a) Wear and tear, depletion, deterioration, corrosion or erosion;
  - (b) Malfunction including but not limited to adjustment, alignment, calibration, cleaning or modification;
  - (c) Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
  - (d) The functioning of any safety or protective device.
  - (e) The cracking of any part of an internal combustion gas turbine exposed to the products of combustion.

**EB2. LIMIT OF LIABILITY**

The most the Company will pay for any and all coverages for loss or damage from any one **Breakdown** is the Equipment Breakdown Limit of Insurance shown in Section **I.4.m.** of the Declarations. If the Limit of Insurance is shown as "INCLUDED" the limit for Equipment Breakdown coverage is included in the Property and Business Interruption Limits provided under **I.4. LIMITS OF LIABILITY**.

If an initial **Breakdown** causes other **Breakdowns**, all **Breakdowns** at any one location which manifest themselves at the same time and are the result of the same cause will be considered one **Breakdown**.

**EB3. SUBLIMITED COVERAGES**

The following coverages are subject to the corresponding Equipment Breakdown sublimits shown in Section **I.4.m.** of the Declarations.

a. **Ammonia Contamination**

The Company will pay for loss, including salvage expense, with respect to damage by ammonia contacting or permeating property under refrigeration or in process requiring refrigeration, resulting from **Breakdown of Covered Equipment**.

b. **Spoilage**

The Company will pay for the spoilage damage to raw materials, property in process or finished products, provided all of the following conditions are met:



# CNA Property Policy

## Equipment Breakdown Coverage

- (1) The raw materials, property in process or finished products must be in storage or in the course of being manufactured;
- (2) The Insured must own or be legally liable under written contract for the raw materials, property in process or finished products; and
- (3) The spoilage damage must be due to the lack or excess of power, light, heat, steam or refrigeration resulting from **Breakdown of Covered Equipment**.

### EB4. DEDUCTIBLE

There shall be no liability for loss or damage resulting from any one **Breakdown** until the amount of covered loss or damage exceeds the deductible shown in the Declarations for each applicable coverage. The Company will then pay the amount of covered loss or damage in excess of the deductible, up to the applicable Limit of Insurance.

**a. Deductibles apply separately for each applicable coverage except if:**

- (1) A deductible is shown as COMBINED for any of the coverages in the Declarations, then the Company will first subtract the combined deductible amount from the aggregate amount of any loss to which the combined deductible applies; or
- (2) More than one item of **Covered Equipment** is involved in one **Breakdown**, then only the highest deductible shall apply for each of the applicable coverages.

**b. Determination Of Deductibles:**

- (1) **Dollar Deductible:** If a dollar deductible is shown in the Declarations, the deductible amount will be subtracted from any loss the Company would otherwise pay.
- (2) **Time Deductible:** If a time deductible is shown in the Declarations, the Company will not be liable for any loss under that coverage that occurs during that specified time period immediately following a Breakdown. If a time deductible is shown in days, each day shall mean twenty-four consecutive hours.
- (3) **Multiple Of Daily Value Deductible:** If a multiple of daily value deductible is shown in the Declarations, the deductible will be calculated as follows:
  - (a) For the entire premises where the loss occurred, determine the total amount of **Time Element** that would have been earned during the period of interruption had no **Breakdown** taken place.
  - (b) Divide the result in Paragraph (a) by the number of days the business would have been open during the period of interruption. The result is the daily value.
  - (c) Multiply the daily value in Paragraph (b) by the number of days shown in the Declarations. The deductible amount will be subtracted from any loss the Company would otherwise pay. The Company will then pay the amount of loss or damage in excess of the deductible, up to the applicable Limit of Insurance.
- (4) **Percentage Of Loss Deductible:** If a deductible is expressed as a percentage of loss in the Declarations, the Company will not be liable for the indicated percentage of gross amount of loss or damage (prior to the applicable deductible or coinsurance) insured under the applicable coverage.

**c. Minimum Or Maximum Deductibles:**

- (1) If:
  - (a) A minimum dollar amount deductible is shown in the Declarations; and
  - (b) The dollar amount of the Multiple of Daily Value or the Percentage of Loss Deductible is less than the Minimum Deductible;



## Equipment Breakdown Coverage

then the Minimum Deductible amount shown in the Declarations will be the applicable deductible.

(2) If:

- (a) A maximum dollar amount deductible is shown in the Declarations; and
- (b) The dollar amount of the Multiple of Daily Value or the Percentage of Loss Deductible is greater than the Maximum Deductible;

Then the Maximum Deductible amount shown in the Declarations will be the applicable deductible.

### EB5. EXCLUSIONS

All of the exclusions in the policy of which this Coverage is part except **exclusions II.D.2. b., c., d., and j.**, shall apply to Equipment Breakdown. The following additional exclusions shall also apply:

- a. Breakdown of any structure or foundation (other than a bedplate of a machine) supporting **Covered Equipment** or any part thereof, not caused by a **Breakdown of Covered Equipment**;
- b. Breakdown of any boiler settling, insulating or refractory material not caused by a **Breakdown of Covered Equipment**;
- c. Breakdown of well casings, penstock or draft tubes;
- d. Breakdown of **Covered Equipment** manufactured, rebuilt, repaired, refurbished or held by the Insured for sale to others;
- e. Breakdown of any oven, stove or furnace;
- f. Breakdown of any vacuum tube, gas tube or brush;
- g. Breakdown of any electronic computer or electronic data processing equipment used exclusively for administrative purposes;
- h. Breakdown of catalyst not caused by a **Breakdown of Covered Equipment** containing such catalyst or any other **Covered Equipment**;
- i. Breakdown of any sewer piping, any buried piping or any piping forming a part of a sprinkler system or any water piping other than:
  - (1) Feed water piping between any boiler and its feed pumps or injectors,
  - (2) Boiler condensate return piping, or
  - (3) Water piping forming a part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes;
- j. Breakdown of **Covered Equipment** until such time as said **Covered Equipment** has been installed and completely tested on the premises of the Insured. For the purposes of this insurance, "completely tested" shall mean that said **Covered Equipment** has operated on the Insured's premises in the capacity for which it was designed as part of the Insured's normal production process or processes. Notwithstanding the above, coverage under this Agreement shall apply to any newly installed **Covered Equipment** having a fair market value of **\$1,000,000** or less and to any spare or replacement Objects or parts therefor;
- k. **Breakdown of Covered Equipment** while it is being maintained or altered if said **Breakdown** is a direct result of said maintenance or alterations. However, if a **Breakdown** otherwise insured hereunder subsequently ensues, then the Company shall be liable for such **Breakdown**. Any opening, closing or transporting of **Covered Equipment** shall not be considered a part of any maintenance or alterations;
- l. Loss or damage resulting from corrosion anywhere following **Breakdown** of any **Covered Equipment** utilizing sulfur dioxide or hydrogen sulfide gas.
- m. Loss or damage for which there is coverage under any other part of the Policy to which this coverage is attached.

**CNA Property Policy****Equipment Breakdown Coverage****EB6. CONDITIONS**

The following Condition applies in addition to all other Policy Conditions:

**a. SUSPENSION**

Upon the discovery of a dangerous condition with respect to any **Covered Equipment**, any representative of the Company may immediately suspend the Insurance with respect to a **Breakdown** to such **Covered Equipment** by written notice mailed or delivered to the Insured at the address of the Insured, or at the location of the **Covered Equipment**. Insurance so suspended may be reinstated by the Company, but only by an endorsement issued to form a part of this policy. The Insured will be allowed the unearned portion of the premium paid for the suspended insurance, pro rata for the period of suspension; however, the suspension will be effective even if the company has not yet made or offered a refund.



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## Contingent Business Interruptions Revision Endorsement

### THIS ENDORSEMENT CHANGES YOUR POLICY - PLEASE READ IT CAREFULLY

It is hereby understood and agreed that the policy to which this endorsement is attached is amended as follows:

Section II. **COVERAGE, C. ADDITIONAL COVERAGES, COVERAGE EXTENSIONS AND LIMITATIONS** item 4. **CONTINGENT BUSINESS INTERRUPTION (GROSS EARNINGS)** is deleted in its entirety and replaced by the following:

#### 4. CONTINGENT BUSINESS INTERRUPTION (GROSS EARNINGS)

Subject to the sublimits for scheduled and unscheduled dependent properties specified in Section I.4 of this policy, the policy is extended to cover against loss to the Insured resulting from necessary interruption of business conducted by the Insured at Locations occupied by the Insured and covered in this policy, caused by perils insured against that result in direct physical loss or damage to any real or personal property, of the type insured hereunder, owned or operated by:

- a. direct suppliers or service providers of the Insured, which wholly or partially prevents the delivery of materials, products or services (other than water, communication or power supply) to the Insured or to others for the account of the Insured; or
- b. direct customers of the Insured, to whom the Insured's products or services (other than water, communication or power supply) are provided, which wholly or partially prevents the acceptance of said products or services by the Insured's customers; or
- c. any other third-parties that the Insured depends upon to attract customers. Coverage under this subsection is limited to dependent property within 5 miles of the Insured's Location, unless it is a Scheduled Dependent Property.

The Coverage provided under this endorsement does not apply to direct physical loss or damage to real or personal property owned or operated by the Insured.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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## Earth Movement & Loss Conditions Amendatory Endorsement

### EARTH MOVEMENT & LOSS CONDITIONS AMENDATORY ENDORSEMENT

It is hereby understood and agreed:

- I. Subparagraph **g.** under **Group 2 Exclusions** in the **EXCLUSIONS** part of the **COVERAGE** section of this Policy is deleted and replaced by the following:
  - g.** Settling, bulging, cracking, shrinking or expansion of foundations, walls, roofs, ceilings, floors, walkways, patios, or roadways and other paved surfaces; or expansion, contraction or settling of soil;
- II. Subparagraph **d.** of **VALUATION** under the **LOSS CONDITIONS** section of this Policy is deleted and replaced by the following:
  - d.** Exposed film, records, manuscripts and drawings: the value blank plus the cost of copying information from backup or from originals of a previous generation, but this policy does not insure any other cost, including research, engineering or other cost, of restoring or re-creating information lost;

**Data**, programs or any other software stored on electronic, electromechanical, electromagnetic data processing or production equipment: the cost of transferring such from backup or from originals of a previous generation, but this policy does not insure any other cost, including research, engineering or other cost of restoring or re-creating information lost, except as provided in Section **II.C.11. ELECTRONIC DATA PROCESSING**;

Other documents not specifically excluded or addressed above: not to exceed the value blank plus cost of reproducing; but no liability is assumed hereunder for the cost of gathering or assembling information or data for such reproduction;
- III. The definition of **Earth Movement** in the **GLOSSARY** section of this Policy is deleted and replaced by the following:
 

Earthquake, landslide, mine subsidence, volcanic eruption, volcanic action, and other sudden earth sinking (including sinkhole collapse), rising, shifting, or movement (natural or man-made) except as follows:

  - a.** Flood, surface water, mudslide or mud flow (caused by accumulation of water on or underground), waves, tidal water or tidal wave, Tsunami, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
  - b.** Release of water impounded by a dam regardless of cause.

However, any fire, explosion or leakage from fire protective systems or devices resulting from **Earth Movement** will not be considered to be loss by **Earth Movement** within the terms of this policy.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



# CNA Property Policy

## Health Care Endorsement

It is hereby understood and agreed:

I. The following sublimits are added to **LIMITS OF LIABILITY** under the **DECLARATIONS** section of this Policy:

SCHEDULE	
Coverage	Limit of Insurance
Bio-Contamination – Property Damage and Time Element Combined	\$500,000 Each Location
Contaminated Personal Property and Reduced Quality Stock Coverage Governmental Authority Quality Standards	Included within applicable Limit of Insurance \$25,000 Each Location
Disease Contamination Coverage – Property Damage and Time Element Combined	\$1,000,000 Each Occurrence \$25,000 Deductible
Home Health Care Medical Equipment	\$250,000 Each Patient Location
Laboratory Animals	\$10,000 Each Occurrence
Mobile Medical Equipment Coverage	\$250,000 Each Unit \$50,000 Each Occurrence
Patient Evacuation Expense Coverage	\$50,000 Each Occurrence

II. Under **PROPERTY NOT COVERED** in the **PROPERTY** part of the **COVERAGE** section of this Policy, the following changes apply:

A. Subparagraph **b.** is deleted and replaced by the following:

b. Standing timber, growing crops, trees, shrubs and plants, animals, laboratory animals, or livestock except stock for sale;

B. Subparagraph **i.** is deleted and replaced by the following:

i. Watercraft, aircraft; railroad rolling stock, mobile medical equipment, and motor vehicles licensed for highway use when not at the Insured's Locations;

III. **Determination of Gross Earnings** under **BUSINESS INTERRUPTION (GROSS EARNINGS)** in the **TIME ELEMENT** part of the **COVERAGE** section of this Policy is deleted and replaced by the following:

b. **Determination of Gross Earnings**

**Gross Earnings** are the sum of:

- (1) In-Patient Services;
- (2) Out-Patient Services;
- (3) Grants and Research Contracts



# CNA Property Policy

## Health Care Endorsement

- (4) Schools (tuition, fees and other income);
- (5) Commissions or Rents from Leased Departments;
- (6) Cafeteria operations;
- (7) Ambulance services;
- (8) Total net sales of **Merchandise**; and
- (9) Other earnings derived from operations of the business;

**Less the cost of:**

- (10) Contractual Adjustments, Bad Debts, and Free Services;
- (11) Supplies consisting of materials consumed directly in supplying the services of the Insured;
- (12) **Merchandise** sold, including packaging materials therefore;
- (13) Services purchased from outsiders (not employees of the insured) for resale which do not continue under contract;
- (14) Ordinary payroll expense (the entire payroll expense for all employees of the Insured, except officers, executives, department managers and employees under contract) beyond the number of days shown in Section **I.5.** of this policy.

No other costs shall be deducted in determining Gross Earnings

**IV.** The **ADDITIONAL COVERAGES, COVERAGE EXTENSIONS and LIMITATIONS** part of the **COVERAGE** section of this Policy is amended as follows:

**A.** The following coverages are added:

- **BIO-CONTAMINATION COVERAGE – PROPERTY DAMAGE AND TIME ELEMENT COMBINED**

- a. The Company will pay for direct physical loss of or damage to covered property as well as **Time Element** loss resulting from such physical loss or damage while at a **location** directly caused by **bio-contamination**.
- b. To the extent **BUSINESS INTERRUPTION (GROSS EARNINGS)** coverage is applicable at that **location**, the Company will also pay, as provided, for the **BUSINESS INTERRUPTION (GROSS EARNINGS)** loss the Insured sustains during the Business Interruption Period of Indemnity shown in Section **I.5.** from the necessary interruption of the Insured's business due to direct physical loss of or damage to covered property while at a **location** directly caused by **bio-contamination**.
- c. The most the Company will pay for such loss, damage, cost or expense combined under this additional coverage at any one **location** for each **occurrence** is the Bio-Contamination – Property Damage and Time Element Combined limit of insurance shown in the above **SCHEDULE**.



# CNA Property Policy

## Health Care Endorsement

- d. The **Contaminants or Pollutants** Exclusion under **Group 1 Exclusions** in the **EXCLUSIONS** section of this Policy does not apply, but only to the extent of the coverage provided under this additional coverage.
- e. This additional coverage does not apply to loss or damage for which coverage is provided under **DECONTAMINATION EXPENSE** or **POLLUTION CLEAN UP AND REMOVAL** under **ADDITIONAL COVERAGES, COVERAGE EXTENSIONS and LIMITATIONS** under the **COVERAGE** section of this Policy.

- **CONTAMINATED PERSONAL PROPERTY AND REDUCED QUALITY STOCK COVERAGE**

- a. **GOVERNMENTAL AUTHORITY**

- (1) If as a result of direct physical loss of or damage to covered property at a **location** caused by a peril insured against, undamaged personal property is declared contaminated by or on behalf of an authorized governmental authority, the Company will consider such personal property physically damaged from such peril insured against.
- (2) The amount the Company will pay for such undamaged personal property under this **CONTAMINATED AND REDUCED QUALITY PERSONAL PROPERTY COVERAGE – GOVERNMENTAL AUTHORITY** coverage at any one **location** for any one **occurrence** is included within the applicable Personal Property limit of insurance shown in the **LIMITS OF LIABILITY** part of the **DECLARATIONS** section of this Policy.

- b. **QUALITY STANDARDS**

- (1) If as a result of direct physical loss of or damage to covered property at a **location** caused by a peril insured against:
  - (a) undamaged **stock** of the Insured does not meet the manufacturer's written minimum quality standards in place at the time of loss or damage; or
  - (b) undamaged **stock** that is personal property of others is deemed contaminated by the property owner,
 and such **stock** cannot be sold or has diminished value, the Insurer will consider such **stock** physically damaged from such peril insured against.
- (2) The most the Company will pay for such undamaged **stock** under this **CONTAMINATED PERSONAL PROPERTY AND REDUCED QUALITY STOCK COVERAGE – QUALITY STANDARDS** coverage at any one **location** for any one **occurrence** is the Contaminated Personal Property and Reduced Quality Stock Coverage – Quality Standards limit of insurance shown in the above **SCHEDULE**.



# CNA Property Policy

## Health Care Endorsement

- **DISEASE CONTAMINATION COVERAGE – PROPERTY DAMAGE AND TIME ELEMENT COMBINED**
  - a. If as a result of an evacuation or decontamination order at a **location** by the National Center for Disease Control, authorized public health official or governmental authority because of the discovery or suspicion of a communicable disease or the threat of the spread of a communicable disease, the Insurer will pay for:
    - (1) direct physical loss of or damage to covered property; and
    - (2) the necessary and reasonable costs incurred by the Insured to:
      - (a) evacuate the contaminated **location**, if required by the governmental authority;
      - (b) decontaminate or dispose of contaminated covered property;
      - (c) test after disposal, repair, replacement or restoration of damaged property is completed; and
      - (d) pay employee overtime costs associated with providing additional care to patients affected by a communicable disease.
  - The Company will not pay the costs or expenses incurred:
    - (1) in the normal maintenance, monitoring or testing of property or employees (including leased and temporary employees) for disease or contamination; or
    - (2) for fines or penalties or civil liabilities imposed by public health authorities or other governmental authority, including those arising out of covered loss or damage under this endorsement.
  - b. To the extent **BUSINESS INTERRUPTION (GROSS EARNINGS)** coverage is applicable at that **location**, the Company will also pay, as provided, for the **BUSINESS INTERRUPTION (GROSS EARNINGS)** loss the Insured sustains during the Business Interruption Period of Indemnity shown in Section I.5. from the necessary interruption of the Insured's business due to the evacuation and decontamination order at a **location** by the National Center for Disease Control, authorized public health official or governmental authority because of the discovery or suspicion of a communicable disease or the threat of the spread of a communicable disease.
  - c. The Company will not pay for loss, damage, cost or expense caused by or resulting from:
    - (1) an evacuation or decontamination order due to the failure of the Insured's employee to follow the Insured's quality control procedures or the public health authority requirements in place at the time of loss or damage; or
    - (2) the interference by any person or organization:
      - (a) in the repair, replacement or decontamination of the damaged or destroyed property; or
      - (b) in the resumption or continuation of the Insured's business.



# CNA Property Policy

## Health Care Endorsement

- d. The Company will not pay any amounts due under this coverage until the amount of covered loss, damage, cost or expense exceeds the Disease Contamination Coverage – Property Damage and Time Element Combined Deductible shown in the above **SCHEDULE**. The Company will then pay the amount of loss, damage, cost or expense in excess of the Deductible. The most the Company will pay under this additional coverage in any one **occurrence** is the Disease Contamination Coverage – Property Damage and Time Element Combined – Each Occurrence limit of insurance shown in the above **SCHEDULE**.
- e. Under the **EXCLUSIONS** section of this Policy, the **Contaminants or Pollutants** and the **Fungi**, Wet Rot, Dry Rot and **Microbes** exclusions of **Group 1 Exclusions** do not apply, but only to the extent of the coverage provided under this Additional Coverage.
- f. This Additional Coverage does not apply to loss or damage for which coverage is provided under **DECONTAMINATION EXPENSE, FUNGI, WET ROT, DRY ROT AND MICROBES, POLLUTION CLEAN UP AND REMOVAL, or RADIOACTIVE CONTAMINATION** under **ADDITIONAL COVERAGES, COVERAGE EXTENSIONS and LIMITATIONS** in the **COVERAGE** section of this Policy or under the **BIO-CONTAMINATION COVERAGE – PROPERTY DAMAGE AND TIME ELEMENT COMBINED** or **PATIENT EVACUATION EXPENSE COVERAGE** provided elsewhere in this endorsement.

- **HOME HEALTH CARE MEDICAL EQUIPMENT**

The Company will pay for direct physical loss or damage by a peril insured against to home health care medical equipment that is owned by the Insured but that is in the care, custody or control of the Insured's patient at a location that is not a scheduled **location**.

The most the Company will pay under this coverage at any one patient's locations is the Each Patient Location limit shown for this coverage in the above Schedule.

- **LABORATORY ANIMALS**

The Company will pay for the loss of or damage to **laboratory animals** if the animals are killed or their destruction is made necessary as a result of a peril insured against.

However, the Company will not pay for loss of or damage to **laboratory animals** caused directly or indirectly by or resulting from:

- a. sickness or disease;
- b. death or any medical condition due to natural causes;
- c. testing, experimenting or other work performed on or in conjunction with the **laboratory animals**;
- d. inadequate care or the failure to properly care for the **laboratory animals**; or



# CNA Property Policy

## Health Care Endorsement

- a. intentional destruction, unless the destruction is made necessary after that **laboratory animal** has been injured or damaged by a peril insured against.

The most the Company will pay for loss or damage under this additional coverage for any one **occurrence** is the Laboratory Animals Each Occurrence limit of insurance shown in the above **SCHEDULE**. This limit will be included within, not in addition to, the applicable Research and Development Expenses limit of insurance shown in Section **I.4.** of this Policy.

- **MOBILE MEDICAL EQUIPMENT COVERAGE**

- a. The Company will pay for direct physical loss of or damage to **mobile medical equipment** directly caused by a peril insured against.
- b. In the event of any direct physical loss or damage to **mobile medical equipment** in transit, the Insured must immediately make a claim in writing against the carrier, bailee or others involved.
- c. The most the Company will pay for loss or damage under this additional coverage for any one **occurrence** is the Mobile Medical Equipment Coverage Each Occurrence limit of insurance shown in the above **SCHEDULE**. Subject to this Each Occurrence Limit, the most the Insurer will pay for any one unit is the Mobile Medical Equipment Each Unit limit of insurance shown in the above **SCHEDULE**.

- **PATIENT EVACUATION EXPENSE COVERAGE**

- a. If the Insured's patients are temporarily evacuated from a **location** to protect them from imminent injury due to a peril insured against, the Company will pay the reasonable and necessary expenses the Insured incurs in the patients' temporary evacuation from and subsequent return to such **location**.
- b. The most the Company will pay under this additional coverage for any one **occurrence** is the Patient Evacuation Expense Coverage limit of insurance shown in the above **SCHEDULE**.
- a. This Additional Coverage does not apply to loss or damage for which coverage is provided under the **DISEASE CONTAMINATION COVERAGE** provided elsewhere in this endorsement.



# CNA Property Policy

## Health Care Endorsement

B. The following coverages are amended:

1. **DECONTAMINATION EXPENSE** is deleted and replaced by the following:

### DECONTAMINATION EXPENSE

Subject to the Decontamination Expense sublimit in Section **I.4.**, if covered property is contaminated as a direct result of physical damage caused by perils insured against, or if the damaged covered property inherently contains **Contaminants or Pollutants, and** there is in force at the time of such damage any law or ordinance regulating contamination, including but not limited to pollution, then this policy covers, as a result of enforcement of such law or ordinance, the increased cost of decontamination of the covered property and debris removal of such property in a manner to satisfy the minimum requirements of such law or ordinance.

If this policy includes **Time Element** coverage, the period of interruption for **Time Element** coverage is extended to include the additional time as is necessary and reasonable, with the exercise of due diligence and dispatch, to decontaminate covered property in a manner to satisfy the minimum conditions of the aforementioned law or ordinance. Any increase in **Time Element** loss shall also be included in the Decontamination Expense sublimit.

There is no liability for expense or time required for removing contaminated property not insured under this policy or the contaminant therein or thereon, whether or not the contamination results from an insured **Occurrence**.

This Additional Coverage does not apply to loss or damage for which coverage is provided by this Policy under **RADIOACTIVE CONTAMINATION** or under the **BIO-CONTAMINATION COVERAGE** or **DISEASE CONTAMINATION COVERAGE** provided elsewhere in this Health Care Endorsement.

1. **ORDINANCE OR LAW, DEMOLITION COST, AND INCREASED COST OF CONSTRUCTION** is deleted and replaced by the following:

### ORDINANCE OR LAW, DEMOLITION COST, AND INCREASED COST OF CONSTRUCTION

In the event of physical loss or damage covered hereunder that causes the enforcement of any law or ordinance in effect at the time of loss regulating the construction, repair or use of the damaged building(s), including any mandatory changes required by the Joint Commission for the Accreditation of Healthcare Organizations, this Company shall be liable for:

- a. The value of the undamaged portion of the damaged building(s) that must be demolished;
- b. The cost of demolishing the undamaged portion of the damaged building(s) that must be demolished because of such law or ordinance, including the cost of clearing the site;
- c. The increased cost of repair or reconstruction of the damaged and undamaged portion of the damaged building(s) on the same site or another site, but limited to the costs that would have been incurred in order to comply with the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged building(s) on the same site; and



# CNA Property Policy

## Health Care Endorsement

- d. The increased loss or costs for business interruption, extra expense or rental value arising out of the additional time required to comply with said law or ordinance.

The Company shall not be liable for any costs attributable to any ordinance or law that the Insured was required to, but failed to, comply with before the loss.

The Company shall not be liable under the above paragraphs c. or d. of this clause for any loss unless the damaged building is actually repaired, rebuilt or replaced with property of the same size and occupancy on the same site or at another site as soon as reasonably possible.

This coverage does not increase the applicable limit or sublimit of any Cause of Loss. For example, if **Earth Movement** or **Flood** are the cause of the physical loss or damage which results in the enforcement of an ordinance or law regulating the construction, repair or use of a damaged building, the most the Company will pay for all loss or damage including this coverage, is the **Earth Movement** or **Flood** sublimit in Section I.4.

The Company will not pay under this coverage for loss due to the enforcement of any ordinance or law which requires an 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 **Contaminants or Pollutants**.

In no event will the Company pay more under this coverage than the Ordinance or Law sublimits specified in Section I.4. of this policy.

3. The following is added to **PROPERTY OFF PREMISES**:

This coverage does not apply to loss or damage covered under **HOME HEALTH CARE MEDICAL EQUIPMENT** or **MOBILE MEDICAL EQUIPMENT COVERAGE** as provided elsewhere in this Health Care Endorsement.

4. The following is added to **TRANSIT**:

This coverage does not apply to loss or damage covered under **MOBILE MEDICAL EQUIPMENT COVERAGE** as provided elsewhere in this Health Care Endorsement.

- V. The following provisions are added to **VALUATION** under the **GENERAL CONDITIONS** section of this Policy:

- **Laboratory animals**:



# CNA Property Policy

## Health Care Endorsement

the actual cost necessary to:

- (1) replace **laboratory animals** at the time of loss or damage with other **laboratory animals** of like kind and condition, prior to any testing, experimenting or other work performed on such **laboratory animals** by the Insured, or by others on the Insured's behalf; and
- (2) recreate or reproduce testing, experimenting or other work performed on such **laboratory animals** by the Insured, or on the Insured's behalf, to the level that existed at the time of loss or damage.

However, the Company will only pay for these costs if the Insured repairs, replaces, reproduces or recreates the research and development project. Any research and development project property not repaired, replaced, reproduced or recreated has no value. When production of a new product begins by anyone, the research and development project property for that product and all associated research and recreation costs have no value.

- **Mobile medical equipment:**

- (1) except as provided in Paragraph (2) below, the lesser of the:

- (a) **replacement cost**; or

- (b) actual cost to repair or replace the **mobile medical equipment**.

If the Insured does not repair or replace the **mobile medical equipment**, or the repair or replacement exceeds 24 months from the date of loss or damage unless a longer time frame is agreed to by the Company, the Company will pay the **actual cash value** of such property.

If the Insured commences repair or replacement of such **mobile medical equipment** and completes it within 24 months from the date of loss or damage, or such agreed to longer period, the Insurer will pay the difference between the **actual cash value** previously paid and the lesser of Paragraphs (a) or (b) above.

- (2) **mobile medical equipment** which has been permanently removed from service at **actual cash value**.

For **mobile medical equipment** which is repaired or replaced, the valuation includes the cost the Insured paid for non-refundable or non-transferable extended warranties, maintenance contracts or service contracts which are still in force at the time of loss or damage and are no longer valid as a result of loss of or damage to such **mobile medical equipment**.

#### IV The following definitions are added to the **GLOSSARY** section of this Policy:

- **Bio-contamination**

**Bio-contamination** means the sudden and accidental discharge, dispersal, seepage, migration, release or escape of hazardous biological agents or materials used in or resulting from the Insured's research and development project involving living organisms.

- **Mobile Medical Equipment**

**Mobile medical equipment** means:

- A. medical diagnostic, laboratory or treatment equipment used for mobile hospital services, including any trailer to which that equipment is permanently attached;

**CNA Property Policy****Health Care Endorsement**

- A.** supplies, generators and batteries used to support mobile hospital services; and
- B.** self-propelled vehicles designed and used primarily to carry medical diagnostic, laboratory or treatment equipment,

owned by the Insured or owned by others in the Insured's care, custody or control.

**Mobile medical equipment** does not include aircraft or any **mobile medical equipment** inside an aircraft.

- **Laboratory animals**

**Laboratory animals** means animals used in the Insured's research and development project or bred for sale to other medical technology or life science entities.

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BRANCH

**CNA Property Policy****Terrorism Coverage Under TRIA Endorsement****THIS ENDORSEMENT CHANGES YOUR POLICY - PLEASE READ IT CAREFULLY**

It is hereby understood and agreed that the policy to which this endorsement is attached is amended as follows:

**TERRORISM COVERAGE UNDER TRIA**

Coverage under this policy is extended to loss or damage not otherwise excluded that is caused by an act of Terrorism that is certified under the U.S. Terrorism Risk Insurance Act.

Exclusion 1. **c. Terrorism** is deleted for locations in the United States of America, including its territories and possessions.

**LIMITATIONS ON PAYMENT OF TERRORISM LOSSES**

The Act, as amended, contains a \$100 Billion cap that limits U.S Government reimbursement as well as insurers' liability for losses resulting from certified acts of Terrorism when the amount of such losses in any one calendar year exceeds \$100 Billion.

When an act of Terrorism that is certified under the Act exceeds \$100 billion in any one calendar year (January 1 through December 31) and we have met our insurer deductible under the 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.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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# **EXHIBIT B**

MINNESOTA  
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Continental Casualty Company  
PO Box 8317  
Chicago, IL 60680

**Joel Logelin**  
Claims Representative  
Telephone 312.822.1201  
Joel.Logelin@cna.com

May 14, 2020

Keven Higgins  
CFO  
Olmsted Medical Center  
210 9<sup>th</sup> St SE  
Rochester, MN 55904-6756

Re: Claim Reference No.: E3873430  
Insured: Insured Name: Olmsted Medical Center  
Underwriting Company: Continental Casualty Company  
Policy Number: [REDACTED] 5797  
Policy Period: 1/1/2020 to 1/1/2021  
Reported Date of Loss: 5/12/2020

Dear Mr. Higgins,

I am writing to inform you of the coverage position of Continental Casualty Company ("CCC") concerning the above-captioned claim. We value you as a customer, and we understand how challenging these trying times are for businesses like yours. For the reasons explained below, however, we must advise you that the policy does not provide coverage for your claim.

On May 12, 2020, on behalf of Olmsted Medical Center ("OMC"), you presented this claim for loss of business income in connection with recommendations from the Governor of Minnesota related to COVID-19.

As part of our investigation, we have relied upon information provided by OMC, including oral discussions of the circumstances of the claimed loss as well as email correspondence in which you provided additional documentation related to your claim. In a telephonic conversation on May 12, 2020, you advised me that OMC operates as a hospital and outpatient clinics. You advised that OMC had to stop all elective surgeries and could only complete urgent care, you had to close outpatient clinics due to lack of volume as people are canceling appointments and do not want to come in due to the fear of the COVID-19. The Executive Order issued by the Governor of Minnesota related to COVID-19 and the fear of the COVID-19 is what caused your business interruption.

Kevin Higgins  
May 14, 2020  
Page 2 of 4

We reviewed the Executive Order issued by Minnesota Governor Waltz which states “all non-essential or elective surgeries and procedures, including non-emergent or elective dental care, that utilize PPE or ventilators must be postponed indefinitely.” Our understanding, based on the information you have provided, is that the Executive Order issued by Governor Waltz is the basis for your claim.

Following the completion of our factual investigation, we evaluated the claim under the CNA Signature Policy issued by Continental to OMC for the policy period January 1, 2020 – January 1, 2021, Policy No. [REDACTED] 5797. The Policy has a blanket limit of insurance for Business Interruption of \$171,297,565.

The Policy has the following Coverage Parts: Property Coverage and Equipment Breakdown Coverage. We have reviewed your claim under the Property Coverage Part, which provides Blanket Real & Personal Property Coverage up to a limit of \$163,671,953. The Property Coverage provides, in part, that “this policy insures against risks of direct physical loss of or damage to property and/or interests described herein at covered Locations.” OMC has not reported any “direct physical loss of or damage to” its Real or Business Personal Property, and you confirmed to me when we spoke that there had been none at any of the scheduled location on the policy. Rather, the claim reported is for an interruption in OMC business caused by client cancellations of appointments and the Executive Order by governor Waltz. The Real and Business Personal Property coverage, therefore, does not apply.

We direct you next to the Time Element portion of your Policy, which states, in pertinent part:

## **B. TIME ELEMENT**

### **1. BUSINESS INTERRUPTION (GROSS EARNINGS)**

- a. This policy covers against loss resulting from necessary interruption of business caused by direct physical loss of or damage to covered property, except **Finished Stock** by the peril(s) insured against and occurring during the term of this policy at covered **Locations** occupied by the Insured, subject to the sublimit specified in Section **I.4.** of this policy.

In the event of such physical loss or damage the Company shall be liable for the actual loss sustained by the Insured resulting directly from such interruption of business, but not exceeding the reduction in **Gross Earnings** as set forth below less charges and expenses which do not necessarily continue during the interruption of business, for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property herein described as has been damaged or destroyed, commencing with the date of such damage or destruction and not limited by the date of expiration of this policy, but in no event to exceed the number of months specified in Section **I.5. TIME LIMITS** if a Business Interruption Period of Indemnity limit is specified.

This coverage is conditioned on “direct physical loss of or damage to covered property. . . at covered Locations.” Your claims of loss were presented for covered Locations scheduled on the policy, all location were affected. You have not claimed that OMC operations were suspended because of any direct physical loss of or damage to property at those Locations, and our investigation has revealed no

Kevin Higgins  
May 14, 2020  
Page 3 of 4

evidence of such direct physical loss or damage. The Business Interruption Time Element coverage therefore does not apply.

Next, we direct you to the Denial of Access by Civil Authority and Ingress–Egress Additional Coverages, Coverage Extensions and Limitations portion of your Policy, which states, in pertinent part:

#### **10. DENIAL OF ACCESS BY CIVIL AUTHORITY AND INGRESS-EGRESS**

This policy is extended to cover for up to the time limit specified in Section **I.5.** but not exceeding the sublimit shown in Section **I.4.** of this policy, the actual loss sustained:

- a. during the period of time while access to the Insured's **Location** is prohibited by order of civil authority, but only when such order is given as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of said **Location**; or
- b. during the period of time when as a direct result of physical loss or damage to property of the type insured from a peril insured against, ingress to or egress from the Insured's **Location** is thereby physically prevented.

The time limit for Civil Authority coverage under your Policy is 30 days, and the sublimit is \$1,000,000. Our investigation has determined that the Executive Order by Governor Waltz was not issued as a direct result of physical loss or damage to property of the type insured from a peril insured against occurring at or in the immediate vicinity of any of the scheduled Locations, and you have not claimed otherwise. The Executive Orders also did not prohibit access to OMC's Locations or physically prevent ingress to or egress from those Locations. Rather, the Executive Orders restricted the services that OMC could provide at those Locations. The information you have given us and our investigation confirm that the Locations are physically accessible and open for business to the extent permitted under the Executive Orders. For these reasons, the Policy does not provide coverage under the Civil Authority provision.

Even if there had been direct physical loss of or damage to property at the covered Locations as required under the Policy provisions, the Policy also contains several exclusions that might bar coverage for your claim. For example, the Policy contains exclusions for loss or damage caused by or resulting from contaminants or pollutants (section D.1.g.), microbes (section D.1.h.), consequential loss (meaning delay, loss of market, loss of use, or any other consequential or remote loss) (section D.2.h.), and any loss during a period when business would not or could not have been conducted for any reason other than physical damage of the type insured against (section D.3.a.). One or more of those exclusions might bar coverage for property damage and/or loss of business income caused by COVID-19, even if the other requirements to trigger coverage under the Policy were met. References to the Policy sections are to the CNA Property Policy, Signature Policy Form, G300709A (10-08).

Kevin Higgins  
May 14, 2020  
Page 4 of 4

Upon receipt and review of this letter, if you believe there is additional information that CCC should consider, please provide it promptly so that we can review the information you would like us to consider and assess whether it affects CCC coverage determination.

The above listed coverage issues and views are not intended in any way to be exhaustive or exclusive, and we expressly reserve all of our rights under the Policy, including but not limited to the right to raise additional policy terms and conditions as defenses to coverage, as appropriate, including in response to any additional information you may present.

CNA recognizes the challenges that commercial businesses face in responding to the COVID-19 event. We value you as a policyholder, and we want you to know that we gave thoughtful consideration to the facts of the claim presented and the terms and conditions of the Policy. Unfortunately, the Policy does not respond to provide coverage for the claim presented. Please feel free to call me if you have any questions or wish to discuss this further.

Sincerely,

*Joel Logelin*

Joel Logelin  
Claims Representative

Cc:  
Marsh USA Inc.

540 W Madison St., Suite 1200  
Chicago, IL 60661-2591



# **EXHIBIT C**

MINNESOTA  
JUDICIAL  
BRANCH

PROPERTY LOSS NOTICE										DATE (MM/DD/YY)	
PHONE (A/C, No. Ext):		312-961-6315		MISC INFO (Site & Location Code)		DATE & TIME				05/07/20	
MARSH USA INC. 540 W. MADISON ST. CHICAGO, IL 60661				POLICY TYPE		COMPANY AND POLICY NUMBER		EFFECTIVE DATE		PREVIOUSLY REPORTED?	
				PROP. CO:		CNA (Continental Casualty Co.)		01/01/20		YES <input checked="" type="checkbox"/> NO	
				POL:		5797		EXPIRATION DATE		01/01/21	
				PROP. CO:							
CODE:		SUBCODE:		PROP. CO:							
AGENCY CUSTOMER ID:				POL:							
INSURED						CONTACT				CONTACT INSURED	
NAME AND ADDRESS						NAME AND ADDRESS				WHERE TO CONTACT	
Olmsted Medical Center 210 9th Street SE Rochester, MN 55904						KEVIN HIGGINS <a href="mailto:khiggins@olmmed.org">khiggins@olmmed.org</a>					
PHONE (A/C, No. Ext):						507 529-6619				PHONE (A/C, No. Ext):	
LOSS											
LOCATION OF LOSS						POLICE OR FIRE DEPT. TO WHICH REPORTED					
VARIOUS						N/A					
KIND OF LOSS		FIRE		LIGHTNING		FLOOD		WIND		OTHER (explain)	
		THEFT		HAIL						COVID19	
PROBABLE AMOUNT OF ENTIRE LOSS						TBD					
DESCRIPTION OF LOSS & DAMAGE											
The insured has been and will be affected by the COVID19 event (loss of income, extra expense, etc.).											
POLICY INFORMATION											
FIRE, ALLIED LINES & MULTI-PERIL POLICIES (Complete only those items involved in loss)											
ITEM		SUBJECT TO INSURANCE		AMOUNT		DEDUCTIBLE		COVERAGE AND/OR DESCRIPTION OF PROPERTY INSURED			
		X BLDG. X CONTENTS				Per Policy		ALL RISK - BLDG / BPP / TE			
		BLDG. CONTENTS						LIMIT = \$334,969,518			
		BLDG. CONTENTS									
		BLDG. CONTENTS									
SUBJECT TO FORMS (Insert form numbers and edition dates, special deductibles)											
FLOOD POLICY		BUILDING CONTENTS		DEDUCTIBLE DEDUCTIBLE		ZONE		PRE FIRM POST FIRM		DIFF IN ELEVATION	
WIND POLICY		BUILDING		DEDUCTIBLE		CONTENTS		ZONE		FORM TYPE	
REMARKS / OTHER INSURANCE (List companies, policy numbers, coverages & policy amounts)											
CAT #		FICO #		ADJUSTER ASSIGNED		ADJUSTER #		DATE ASSIGNED			
REPORTED BY				REPORTED TO				SIGNATURE OF PRODUCER OR INSURED			
				M. Marcum - MARSH							