

SULLIVAN MEHEULA LEE  
A Limited Liability Law Partnership

WILLIAM MEHEULA (2277)  
NATASHA L.N. BALDAUF (9620)  
Pacific Guardian Center, Makai Tower  
733 Bishop Street, Suite 2900  
Honolulu, Hawai'i 96813  
Telephone: (808) 599-9555  
Facsimile: (808) 533-2467  
[meheula@smlhawaii.com](mailto:meheula@smlhawaii.com); [baldauf@smlhawaii.com](mailto:baldauf@smlhawaii.com)

Attorneys for Plaintiff  
MSD PARTNERS, L.P.

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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MSD PARTNERS, L.P.,

Plaintiff,

v.

ACE AMERICAN INSURANCE  
COMPANY; GUIDEONE NATIONAL  
INSURANCE COMPANY; ENDURANCE  
AMERICAN SPECIALTY INSURANCE  
COMPANY; STEADFAST INSURANCE  
COMPANY; NATIONAL FIRE & MARINE  
INSURANCE COMPANY; IRONSHORE  
SPECIALTY INSURANCE COMPANY;  
EVANSTON INSURANCE COMPANY;  
CONTINENTAL CASUALTY COMPANY;  
PRINCETON EXCESS & SURPLUS LINES  
INSURANCE COMPANY; EVEREST  
INDEMNITY INSURANCE COMPANY;  
HALLMARK SPECIALTY INSURANCE  
COMPANY; HDI GLOBAL SPECIALTY  
SE; WESTERN WORLD INSURANCE  
COMPANY; NAVIGATORS SPECIALTY  
INSURANCE COMPANY; ARCH  
SPECIALTY INSURANCE COMPANY;  
INDIAN HARBOR INSURANCE  
COMPANY; COLONY INSURANCE  
COMPANY; WESTCHESTER SURPLUS

CIVIL NO. \_\_\_\_\_  
(Declaratory Judgment)

COMPLAINT; EXHIBITS A-B; DEMAND  
FOR JURY TRIAL; SUMMONS

LINES INSURANCE COMPANY; QBE  
SPECIALTY INSURANCE COMPANY;  
GENERAL SECURITY INDEMNITY  
COMPANY OF ARIZONA; STARSTONE  
SPECIALTY; and CERTAIN  
UNDERWRITERS AT LLOYD’S,  
LONDON,

Defendants.

**COMPLAINT**

Plaintiff MSD Partners, L.P. (“MSD Partners” or “Plaintiff”), by and through its undersigned attorneys, as and for its Complaint against ACE American Insurance Company, GuideOne National Insurance Company; Endurance American Specialty Insurance Company; Steadfast Insurance Company; National Fire & Marine Insurance Company; Ironshore Specialty Insurance Company; Evanston Insurance Company; Continental Casualty Company; Princeton Excess & Surplus Lines Insurance Company; Everest Indemnity Insurance Company; Hallmark Specialty Insurance Company; HDI Global Specialty SE; Western World Insurance Company; Navigators Specialty Insurance Company; Arch Specialty Insurance Company; Indian Harbor Insurance Company; Colony Insurance Company; Westchester Surplus Lines Insurance Company; QBE Specialty Insurance Company; General Security Indemnity Company of Arizona; Starstone Specialty; and Certain Underwriters at Lloyd’s, London (collectively, “Insurers” or “Defendants”), alleges as follows:

**INTRODUCTION**

1. This action for breach of contract and declaratory relief arises out of Defendants’ refusal to provide insurance coverage under an “all risk” property policy for MSD Partners’ significant property and business interruption losses arising out of the novel coronavirus outbreak and ongoing COVID-19 pandemic. However, despite issuing broad property insurance policies

that expressly include coverage for Business Interruption, Defendants have refused to compensate MSD Partners for its losses.

2. MSD Partners manages the entities that own three insured properties: the Four Seasons Maui, the Four Seasons Hualalai, and the Fairmont Miramar Hotel (the “Insured Hotels”). The Insured Hotels are luxury properties located in popular tourist destinations. The Four Seasons Maui and Four Seasons Hualalai are Four Seasons-flagged hotels operated by the Four Seasons. The Fairmont Miramar is a Fairmont-flagged and operated hotel. When the coronavirus pandemic began to sweep through the world in early 2020, travel and tourism were halted abruptly, and the Insured Hotel’s bookings – and in turn, business income – dropped to zero. Each of the Insured Hotels suffered the presence of coronavirus on property, which caused physical loss or damage to the properties and resulted in significant business interruption losses.

3. With its insured interest in busy tourism destination hotels in a pandemic, MSD Partners has suffered significant property damage losses from the presence of the coronavirus at and around the Insured Hotels. MSD Partners has suffered business interruption losses, including but not limited to losses from the cancellation of bookings and refunds/rebates given to hotel guests due to the pandemic, prevention of access of guests to the hotel property, including dining, bar, sporting, and spa services, and expenses incurred to protect the property and continue operations as normally as possible. Further, despite all precautions, the Insured Hotels have suffered from the actual presence of COVID-19 on property, among both guests and staff.

4. MSD Partners’ losses are due not only to the cancellation of bookings resulting from guests’ prevention of access to their locations, but the numerous and evolving mandates from local and national authorities around the world, including in Hawai‘i and California, issued in response to the COVID-19 crisis, many of which have expressly recognized that COVID-19 causes

direct physical loss of and/or damage to property (the “Orders”). The Orders generally directed all non-essential businesses to close and restricted residents from leaving their homes except for limited purposes such as getting groceries or medicine, or to perform essential jobs. Restaurants and other non-essential businesses near the Insured Hotels were forced to close. Many government officials across the country explained that these drastic measures were needed because of the unique characteristics of the novel coronavirus, including that the COVID-19 virus physically causes property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.

5. The pandemic and the resulting Orders, most of which have been renewed and/or extended multiple times, have devastated the Insured Hotels’ business. Overnight, hotel properties that were once busy, bustling destinations for travelers became ghost towns. The Insured Hotels were forced to close for months at a time, remaining closed for the majority of 2020. Based on the information available to it, MSD Partners has suffered hundreds of millions of dollars in damages since March 2020 and expects to suffer millions more in losses from lost revenue and expenses in connection with the pandemic. These losses are expected to continue for the indefinite future, given that even once the Orders are lifted, a return to normalcy will take many months, if not years.

6. However, as the management entity responsible for several world-renowned travel destinations, MSD Partners had the foresight to insure against the risks posed by pandemics that can impose a crippling strain on the travel industry. To cover the Insured Hotels, in exchange for a substantial premium, MSD Partners purchased \$400 million worth of property insurance in a layered program from the Insurers. Each of the Insurers issued a policy that provides a specified share of the total coverage (together, the “Policies”). That coverage includes Business Interruption

coverage for losses resulting from direct physical loss or damage (such as the presence of the coronavirus at the Insured Hotels). Among other things, the Policy provides coverage for:

- Loss resulting from the interruption of the Insured Hotels' normal business operations;
- Loss caused by restriction of access to property, including specifically if caused by an order issued by a civil authority;
- Loss caused by impairment of ingress to or egress from property, even when the insured property itself is not damaged;
- Contingent business interruption losses resulting from physical loss or damage to property of suppliers or customers;
- Costs to clean and decontaminate the Insured Hotels; and
- Extra expenses incurred to continue the Insured Hotels' business as nearly normal as practicable.

7. The Insured Hotels have experienced losses that fall within the Policies' coverage, as the presence of the coronavirus and the resulting COVID-19 disease have caused direct physical loss of and/or damage to the Insured Hotels' property covered by the Policies.

8. Relying on the terms of its Policies, MSD Partners promptly wrote to the Insurers and made a claim for coverage under the Policies following its initial losses caused by the pandemic and shutdowns. But in this time of crisis, the Insurers did not act to reimburse the Insured Hotels' losses. Instead, in a move that has now become standard across the insurance industry, the Insurers, through their appointed adjustor, requested additional information but never agreed to pay MSD Partners' claim. Insurers have given every indication they will not cover MSD Partners' losses stemming from the pandemic and resulting shutdowns.

9. MSD Partners expects Insurers to argue that the coronavirus pandemic does not constitute direct physical loss or damage and/or that Policy provisions operate to bar coverage for MSD Partners' pandemic-related losses. This interpretation contravenes the plain meaning of the coverage language and case law across the country interpreting the same or similar policy provisions. Moreover, in direct contrast to other policies in the marketplace, many of the Policies do not contain exclusions for communicable disease or viruses, confirming that the presence of a virus, whether on or near insured property, can cause loss of or damage to property.

10. Insurers have refused to pay any amounts to MSD Partners to date. As a result, MSD Partners brings this action for breach of contract and declaratory judgment that it is entitled to the full amount of all risks coverage for its costs and losses.

#### **THE PARTIES**

11. Plaintiff MSD Partners is the Named Insured under the Policies. MSD Partners manages the entities that own the Insured Hotels. The limited partners of MSD Partners reside in New York, Connecticut, Florida, and California.

12. Upon information and belief, Defendant ACE American Insurance Company ("ACE") is a Pennsylvania corporation with its principal place of business in Pennsylvania.

13. Upon information and belief, Defendant GuideOne National Insurance Company is an Iowa corporation with its principal place of business in Iowa.

14. Upon information and belief, Defendant Endurance American Specialty Insurance Company is a Delaware corporation with its principal place of business in New York.

15. Upon information and belief, Defendant Steadfast Insurance Company is a Delaware corporation with its principal place of business in Illinois.

16. Upon information and belief, Defendant National Fire and Marine Insurance Company is a Nebraska corporation with its principal place of business in Nebraska.

17. Upon information and belief, a number of the Policies were issued by Lloyd's underwriting syndicates or consortiums that are organized and registered under the laws of the United Kingdom. The specific Lloyd's syndicates or consortiums that participate in the program are set forth below:

- a. Upon information and belief, Defendant RenaissanceRe Syndicate 1458 is an underwriting syndicate subscribing to Policy No. JEM-20-XS-1044 that is organized and registered under the laws of the United Kingdom;
- b. Upon information and belief, Defendant Canopus Syndicate 4444 is an underwriting syndicate subscribing to Policy No. JEM-20-XS-1044 that is organized and registered under the laws of the United Kingdom;
- c. Upon information and belief, Defendant Arcus Syndicate 1856 is an underwriting syndicate subscribing to Policy No. JEM-20-XS-1044 that is organized and registered under the laws of the United Kingdom;
- d. Upon information and belief, Defendant WRB Underwriting Syndicate 1967 is an underwriting syndicate subscribing to Policy No. JEM-20-XS-1044 that is organized and registered under the laws of the United Kingdom;
- e. Upon information and belief, Defendant Arcus Syndicate 1856 is an underwriting syndicate subscribing to Policy No. JEM-20-XS-1044 that is organized and registered under the laws of the United Kingdom;

- f. Upon information and belief, Defendant BRIT Syndicate 2987 is an underwriting syndicate subscribing to Policy No. PD-1135-00 that is organized and registered under the laws of the United Kingdom;
  - g. Upon information and belief, Defendant BRIT Syndicate 2988 is an underwriting syndicate subscribing to Policy No. PD-1135-00 that is organized and registered under the laws of the United Kingdom;
18. Defendants BRIT Syndicate 2987 and BRIT Syndicate 2988 may be served with process via Corporation Service Company, 84 State Street, Boston, MA, 02109.
19. Upon information and belief, Defendant Western World Insurance Company is a New Hampshire corporation with its principal place of business in New Jersey.
20. Upon information and belief, Defendant Navigators Specialty Insurance Company is a New York corporation with its principal place of business in New York.
21. Upon information and belief, Defendant Ironshore Specialty Insurance Company is an Arizona corporation with its principal place of business in Massachusetts.
22. Upon information and belief, Defendant Evanston Insurance Company is an Illinois corporation with its principal place of business in Illinois.
23. Upon information and belief, Defendant Continental Casualty Company is an Illinois corporation with its principal place of business in Illinois.
24. Upon information and belief, Defendant Princeton Excess and Surplus Lines Insurance Company is a Delaware corporation with its principal place of business in New Jersey.
25. Upon information and belief, Defendant Everest Insurance Company is a Delaware corporation with its principal place of business in Delaware.

26. Upon information and belief, Defendant Hallmark Specialty Company is an Oklahoma corporation with its principal place of business in Texas.

27. Upon information and belief, Defendant Arch Specialty Insurance Company is a Missouri corporation with its principal place of business in New Jersey.

28. Upon information and belief, Defendant Indian Harbor Insurance Company is a Delaware corporation with its principal place of business in Connecticut.

29. Upon information and belief, Defendant Colony Insurance Company is a Virginia corporation with its principal place of business in Virginia.

30. Upon information and belief, Defendant Westchester Surplus Lines Insurance Company is a Georgia corporation with its principal place of business in Pennsylvania.

31. Upon information and belief, Defendant QBE Specialty Insurance Company is a North Dakota corporation with its principal place of business in Wisconsin.

32. Upon information and belief, Defendant Princeton Excess & Surplus Lines Insurance Company is a Delaware corporation with its principal place of business in New Jersey.

33. Upon information and belief, Defendant General Security Indemnity Company of Arizona is an Arizona corporation with its principal place of business in New York.

34. Upon information and belief, Defendant HDI Global Specialty SE Insurance Company is a German corporation with its principal place of business in Hanover, Germany. Defendant HDI Global Specialty SE Insurance Company may be served with process at Mendes & Mount, 750 Seventh Ave., New York, New York 10019-6829.

35. Upon information and belief, Defendant Starstone Specialty Insurance Company is a Delaware corporation with its principal place of business in New Jersey.

36. Upon information and belief, Defendant Insurers are authorized to sell and/or write insurance in Hawai‘i and, at all material times, have conducted and continue to conduct substantial insurance business in Hawaii, including engaging in the business of selling insurance, investigating claims, and issuing policies that cover policyholders or activities located in Hawai‘i.

### **JURISDICTION AND VENUE**

37. This Court has subject matter jurisdiction pursuant to Hawai‘i Revised Statutes (“HRS”) §§ 603-21.5 and 632-1.

38. This Court has jurisdiction over each Defendant because each Defendant is authorized either to sell or to write insurance in Hawai‘i and/or, at all material times, has conducted business within the state of Hawai‘i, including by issuing property policies covering properties located in Hawai‘i.

39. Venue in this action is properly laid in this court pursuant to HRS § 603-36.

### **FACTUAL ALLEGATIONS**

#### **I. The Coronavirus Outbreak**

40. In December 2019, an outbreak of an illness known as COVID-19 caused by a novel coronavirus formally known as SARS-CoV-2 was first identified in Wuhan, Hubei Province, China. In an event that has not occurred in more than a century, a pandemic of global proportions then ensued, with the virus spreading quickly to Europe and then to the United States.

41. From the first reported case in the United States in January 2020 to the present, the impact of the coronavirus and resulting COVID-19 disease has been staggering on life and property. And, specifically, the impact on the travel and hospitality industry has been particularly acute.

42. On January 30, 2020, the World Health Organization (“WHO”) declared the first outbreak of the novel coronavirus a “public health emergency of international concern.” As of February 26, 2020, the Centers for Disease Control and Prevention (“CDC”) warned that community transmission of the disease existed in the United States. The coronavirus was spreading with no ability to trace the origins of new infections.<sup>1</sup> Moreover, the nature of the novel coronavirus that causes COVID-19 has made its containment particularly challenging. Numerous scientific studies and articles have identified that the virus can spread when droplets from an infected person land on objects and surfaces and then, after contact with the infected objects and surfaces, other individuals touch their eyes, nose, or mouth.

43. Coronavirus has several modes of transmission. According to the CDC, “everyone is at risk for getting COVID-19.” Per the CDC and World Health Organization (the “WHO”), a person may become infected by: (1) coming into close contact (about 6 feet) with a person who has COVID-19; (2) absorbing respiratory droplets when an infected person talks, sneezes, or coughs; or (3) touching surfaces or objects that have the virus on them and then touching his or her mouth, eyes, or nose. Thus the coronavirus is present both in fluid particles in the air, and on surfaces.

44. Hotels in popular destinations are particularly susceptible to the spread of the virus. Given the influx of COVID-19 cases in the United States and overseas resulting in severe travel restrictions, the Insured Hotels were vulnerable targets for the damage and loss that the coronavirus pandemic causes.

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<sup>1</sup> *CDC Confirms Possible Instance of Community Spread of COVID-19 in U.S.*, CDC Newsroom, available at <https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html>.

45. COVID-19 is not only highly contagious but deadly. According to the CDC, more than 29 million Americans have contracted the disease, of which more than 530,000 have died.

46. Besides being deadly, the virus is challenging to contain because infected individuals can be asymptomatic—and thus unaware that they might be spreading the virus through the mere touching of objects and surfaces. Studies have estimated that more than 40% of infected individuals may never develop any symptoms.<sup>2</sup> But even individuals who appear healthy and present no identifiable symptoms of the disease will still spread the virus by merely breathing, speaking, or touching objects and surfaces.

47. The virus also continues to evolve, making it more difficult to contain. In late December 2020, a new strain of COVID-19 was detected, which is believed to be more contagious and easily spread, and its presence has been confirmed in Hawaii and California. Early research also suggests the new strain may be resistant to antiviral treatment, making it more dangerous.

48. The coronavirus also continues to evolve, further stymying efforts to control the pandemic. Multiple variants of the coronavirus are circulating globally, including variants originating in the United Kingdom, South Africa, and Brazil.<sup>3</sup> Early research suggests these variants may spread more easily and quickly, and the United Kingdom variant may be associated with an increased risk of death, making the coronavirus evermore dangerous. The presence of all three variants in the United States has been confirmed.

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<sup>2</sup> Erika Edwards, *Asymptomatic COVID-19 Cases May Be More Common Than Suspected*, NBC News (May 27, 2020, 12:43 PM), <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-may-be-more-commonsuspected-n1215481>.

<sup>3</sup> *About Variants of the Virus that Causes COVID-19*, CDC (updated Feb. 12, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited Mar. 4, 2021).

## **II. Coronavirus Causes Direct Physical Loss of or Damage to Property**

49. The United States reported its first COVID-19 case on January 20, and on January 30, the WHO declared the pandemic a “Public Health Emergency of International Concern.” On March 13, 2020, the federal government declared a national emergency. Three days later, the CDC and members of the national Coronavirus Task Force issued public guidance, styled as “30 Days to Slow the Spread,” that advocated for the first time far-reaching social-distancing measures.

50. By mid-March, it became clear that drastic action had to be taken to slow down the rate of infections. Many states and local governments then began to impose sweeping restrictions on residents’ daily lives and property to protect them and stop the spread.<sup>4</sup> Most states restricted or prohibited the operation of non-essential business or required individuals to stay at home except for essential purposes.

51. New York, where MSD Partners is headquartered, declared a state of emergency to limit the spread of the virus that was causing direct physical loss of or damage to property. It issued Orders suspending or severely curtailing the operations of all non-essential or high-risk business and permitted residents to leave their homes only for limited purposes, such as for groceries and to perform essential jobs.

52. For example, New York Mayor Bill De Blasio signed a series of stay-home orders and explained that these drastic measures were needed because of the unique characteristics of the novel coronavirus and, of particular relevance here, stating that “the virus physically is causing property loss and damage[.]” On March 22, 2020, New York Governor Andrew Cuomo issued

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<sup>4</sup> Jasmine C. Lee et al., *See How All 50 States Are Reopening (and Closing Again)*, N.Y. Times (updated July 31, 2020), <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>.

the “New York State on PAUSE” executive order, ordering the closure of all non-essential businesses and prohibiting non-essential gatherings. This order has been extended since its initial issuance, and the Governor and the City of New York have issued similar orders and orders bearing directly on healthcare providers. Similar executive orders have been issued by state and municipal governments across the country and have been renewed and amended.

53. Similarly, Los Angeles Mayor Eric Garcetti issued a stay-at-home order that closed non-essential businesses and operations and directed residents to remain at home except for limited, essential purposes, recognizing that “the COVID-19 virus . . . is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.”

54. Hawai‘i Governor David Ige issued a series of orders, including guidance to implement social distancing measures, and for property owners to protect and preserve property and infrastructure. Travelers to Hawai‘i were required to self-quarantine. These Orders have directly impacted the Insured Hotels’ business.

55. The Orders and the presence of the coronavirus have rendered portions of the Insured Hotels’ properties uninhabitable due to the threat of the spread of COVID-19 and prohibited access to those portions of MSD Partners’ covered properties.

56. Finally, the presence of COVID-19 and SARS-CoV-2, including in infected guests and employees at the Insured Hotels, has caused and is continuing to cause physical loss of or damage to the Insured Hotels.

57. Although droplets carrying the virus are not visible, they are nonetheless physical objects, carrying a physical substance, that attach to and cause harm to property. Studies have shown that the virus can survive on a whole range of surfaces, including stainless steel, wood, paper, plastic, glass, ceramic, cardboard, and cloth.

58. And unlike many other viruses that are unable to survive for long periods of time outside the body, the novel coronavirus is resilient and survives on surfaces for long periods of time. The virus thus compromises the physical integrity of the structures it permeates and poses an imminent risk of physical damage to all other structures. The virus likewise renders such structures unusable.

### **III. MSD Partners' Property Damage Resulted in Business Interruption Losses and Costs**

59. MSD Partners manages the entities that own the Four Seasons Maui and the Four Seasons Hualalai in Hawai'i, which are part of the Four Seasons chain of hotels, and the Fairmont Miramar in Santa Monica, California.

60. The Four Seasons Maui is one of Hawaii's premier luxury 5-star resorts. It has been open since 1990 and has more than 300 guest rooms, a world-class spa, and an acclaimed restaurant.

61. The Four Seasons Hualalai is a luxury 5-star resort on the Kona coast of Hawai'i. It has 243 guest rooms, a branded golf course, award-winning spa, and five restaurants.

62. The Fairmont Miramar is a luxury hotel in Santa Monica, California. It has 297 guest rooms, a spa, and restaurants.

63. Before the pandemic upended domestic and international travel, the Insured Hotels were popular among both national and international travelers. Beginning in March 2020, however, as travel everywhere was severely restricted, the Insured Hotels' bookings decreased to virtually nothing. Events like weddings and corporate retreats ceased. Huge amounts of guest bookings were cancelled in response to the pandemic and/or the Orders, and new bookings were not made. The United States and other countries imposed travel restrictions on travelers from other countries.

64. As of March 31, 2020, all of the Insured Hotels' guest rooms sat empty, bringing in no revenue. Bookings at the Insured Hotels' restaurants, bars, and meeting spaces were also cancelled or rendered impossible, decimating the Insured Hotels' revenue. The Insured Hotels' customers were prevented from travelling or unable to travel safely due to the presence of coronavirus in their cities.

65. Beginning with this complete halt in bookings and revenue, the Insured Hotels incurred significant costs and losses caused by the coronavirus pandemic, costs and losses that are mounting every day.

66. As examples of its rising costs, MSD Partners undertook costs and efforts to transition employees to working virtually, sanitize all public spaces, and install new safety measures to keep its premises safe and sanitized.

#### **IV. The Policies**

67. In exchange for substantial premiums, Insurers sold MSD Partners a program of "All Risks" Commercial Property Insurance Policies for the period of March 11, 2020 to March 11, 2021. Each Policy is part of a layered property insurance program, in which each Insurer provides a specified per-occurrence limit of liability, as part of either a \$25 million primary layer or an excess layer, with various sublimits, time limits, and waiting periods for certain coverages, and per-occurrence deductibles. The total property insurance program MSD Partners purchased provides up to \$400 million in coverage.<sup>5</sup> Each of the Policies in the program follows the general

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<sup>5</sup> See coverage chart attached as Exhibit A. The Defendant Insurers make up \$150 million of the \$400 million property program. An additional insurer that participates in the program is not party to this action, due to an arbitration provision in its Policy.

terms and conditions of the primary policy issued by ACE (“the “ACE Policy,” attached as Exhibit B), except where noted otherwise in the Policies.<sup>6</sup>

68. The Policies identify the Named Insured as MSD Partners, L.P., MSD Capital, L.P., MSD Real Estate Partners, L.P. and other entities with ownership interest in the Insured Hotels.

69. The Policies are designed to cover exactly the type of costs and losses MSD Partners has suffered due to the COVID-19 pandemic: costs and losses arising out of physical loss of property or damage to property, and resulting losses due to business interruption.

70. Unless damage is clearly included within a listed sublimit, the full limit of liability of each Policy is available for MSD Partners’ damages.

71. Unless otherwise stated, the Limits of Liability in the Policy are on a per occurrence basis.

72. The largest policy in the primary coverage layer is issued by Defendant ACE American Insurance Policy. The ACE Policy provides up to \$7.5 million in coverage for loss by any one occurrence.

73. “Occurrence” is defined as “all direct physical loss, damage or destruction insured against arising out of or caused by one event, or series of events.” ACE Policy at 4.

74. The Policies contain a broad grant of coverage for property damage and time element coverage, stating that they cover “all risks of direct physical loss of or damage,” except and unless specifically excluded. ACE Policy at 3.

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<sup>6</sup> Each of the Policies that forms the program, as referenced on Exhibit A, is expressly incorporated by reference into this Complaint. The Complaint cites to the ACE Policy, which is substantially similar to the remaining Policies in the program, except where noted otherwise in the Policies.

75. The ACE Policy’s Time Element (business interruption) coverage provides: “This Policy insures the Actual Time Element loss sustained, as provided in the Time Element Coverages, directly resulting from physical loss or damage of the type insured by this Policy,” including Gross Earnings, Extra Expense, Leasehold Interest, and Rental Insurance. Policy at 31-35.

76. As part of the Policy’s Time Element coverage, the Policy covers MSD Partners’ actual loss sustained and Extra Expense.

77. The Declarations page does not list a sublimit for Business Interruption or Time Element coverage.

78. Within Time Element coverages, “Extra Expense” means “extra expenses to temporarily continue as nearly normal as practicable the conduct of the Insured’s business” and “extra costs of temporarily using property or facilities of the Insured or others, less any value remaining at the end of the Period of Liability for property obtained in connection with the above. ACE Policy at 33.

79. For each occurrence, Extra Expense coverage is subject to a \$25,000,000 sublimit.

80. The ACE Policy also includes several specific special coverages with per occurrence sublimits, including but not limited to:

<b>Special Coverage</b>	<b>Per Occurrence Sublimit</b>
Contingent Time Element	\$25 million
Civil or Military Authority	45 days or \$25 million
Ingress/Egress	45 days or \$25 million
Leasehold Interest	\$5 million

81. The ACE Policy also covers MSD Partners’ “Decontamination Costs” as follows:

If insured property is contaminated as a result of direct physical damage insured by this Policy and there is in force at the time of the loss any law or ordinance regulating contamination, including but not limited to the presence of pollution or hazardous material, including Asbestos, then this Policy covers, as a result of

enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such contaminated insured property in a manner to satisfy such law or ordinance. This Additional Coverage applies only to that part of insured property so contaminated as a result of insured physical damage.

82. The ACE Policy provides coverage for “Civil/Military Authority.” Specifically, the ACE Policy provides a period of liability in the event “an order of civil authority/military authority prohibits access to the Insured Location and provided such order is the direct result of physical damage of the type insured against under this Policy at the Insured Location or within ten statute miles of it.” ACE Policy at 40.

83. For each occurrence, the Civil or Military Authority special coverage is subject to a 90-day time limitation.

84. The Policy’s “Ingress/Egress” special coverage provides:

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured due to the necessary interruption of the Insured's business due to impairment of ingress to or egress from an Insured Location, whether or not the premises or property of the Insured is damaged, provided that such impairment is a direct result of direct physical damage of the type insured by this Policy, to the kind of property not excluded by this Policy.

ACE Policy at 37.

85. For each occurrence, the Ingress/Egress special coverage is subject to a 45-day time limitation.

86. The Policy contains numerous other special coverages that may cover MSD Partners’ ongoing costs and losses as it continues to battle COVID-19 and its long-term impact on the travel industry, including: Contingent Time Element and Protection and Preservation of Property.

87. The Insured Hotels are insured properties under the Policies, and the insured damages include MSD Partners’ loss of gross earnings, extra expense, and increased costs.

88. Operating hotels that rely on the possibility of domestic and international travel, MSD Partners understood that it would be severely impacted in the event of a pandemic such as COVID-19, and it reasonably expected that the Policies would cover such losses arising from such a pandemic. MSD Partners' reasonable expectation is based upon, among other things, the broad language in the Policy, the express coverage for losses resulting from business interruption, and the express coverage for decontamination costs.

89. Moreover, none of the Policies' exclusions preclude MSD Partners' claim for coverage. Rather, the "Contamination" exclusion found in some of the Policies bars loss or damage resulting from the "release, discharge, escape or dispersal of Contaminants or Pollutants," which only applies to traditional environmental and industrial pollution. It has no effect on claims arising from the presence of the novel coronavirus at or surrounding the Insured Hotels, the constant imminent threat of its presence, or the associated government action in response to the pandemic.

90. MSD Partners has paid all premiums due to Insurers to purchase the Policies, complied with all applicable duties under the Policies, and satisfied the applicable deductible.

## **V. MSD Partners' Claim for Coverage**

91. In March 2020, as domestic and international travel ceased and local restrictions forced the Insured Hotels to close, with no guest rooms occupied, MSD Partners submitted a claim for coverage under the Policies.

92. In March 2021, having examined and quantified its initial losses as a result of the coronavirus pandemic and the Orders, MSD Partners submitted a Proof of Loss to Insurers, estimating more than \$100 million in losses, and up to \$300 million in losses from March to December 2020.

93. Insurers have never agreed to reimburse MSD Partners' losses. Upon information and belief, Insurers have taken the position that the Policy does not provide coverage for loss of revenue for the coronavirus outbreak because it does not involve "physical loss or damage to property."

94. In failing to reimburse MSD Partners' claim for coverage, Insurers ignore that COVID-19 and SARS-CoV-2 cause physical loss of or damage to the Insured Hotels, and thus MSD Partners' costs and losses are covered under the Policies' insuring agreements for Property Damage and Time Element and numerous special coverages, including, but not limited to, Contingent Time Element, Ingress/Egress, Protection and Preservation of Property, and Extra Expense.

95. Finally, Insurers ignore that MSD Partners' losses result from a number of causes other than the virus or disease, including, but not necessarily limited to, the pandemic, governmental negligence, or the Orders, all of which are other covered causes of loss under the Policies and constitute direct physical loss of the Insured Hotels and direct physical damage to the Insured Hotels.

96. The lack of response from Insurers sent a clear message that they do not intend to pay for all of, or indeed any of, MSD Partners' significant costs and losses covered under the Policies.

97. Insurers' refusal to respond has further harmed MSD Partners by depriving it of the benefit of the bargain it purchased in the Policies. Insurers' position has forced MSD Partners to fight a two-front battle, both against the COVID-19 pandemic that decimated the Insured Hotels' business, but also to obtain coverage to which it is clearly entitled. MSD Partners comes to this

Court to force Insurers to provide the coverage MSD Partners purchased and is owed under the Policies.

**FIRST CAUSE OF ACTION**  
**(Anticipatory Breach of Contract)**

98. MSD Partners repeats and realleges the allegations set forth in the foregoing paragraphs as if fully set forth herein.

99. The Policies constitute valid and enforceable contracts between MSD Partners and Insurers.

100. As described above, MSD Partners has sustained, and is continuing to sustain, costs and losses covered under the Policies.

101. MSD Partners provided prompt notice of its costs and losses, performed all obligations required of it under the Policies, and/or was ready, willing, and able to perform its obligations under the Policies at the time Insurers refused to provide coverage to MSD Partners under the Policies.

102. Under the terms of the Policies, Insurers must pay for any costs or losses covered under the Policies, subject only to policy limits, sublimits, time limits, and/or deductibles for specific coverages.

103. Insurers have not paid any amounts to MSD Partners in connection with its claim. Instead, Insurers have indicated they will asserted various inapplicable bases to wrongfully deny coverage for MSD Partners' claim.

104. As a direct and proximate result of Insurers' anticipatory breach of contract, MSD Partners have suffered and will continue to suffer damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law.

**SECOND CAUSE OF ACTION**  
**(Declaratory Judgment)**

105. MSD Partners repeats and realleges the allegations set forth in the foregoing paragraphs as if fully set forth herein.

106. Under the terms of the Policies, Insurers must pay for any costs or losses covered under the Policies, subject only to policy limits, sublimits, time limits, and/or deductibles for specific coverages.

107. As detailed above, MSD Partners' costs and losses are covered under the Policies and are not excluded from coverage.

108. Insurers dispute their legal obligation to pay MSD Partners' claim.

109. An actual and justiciable controversy presently exists between MSD Partners and Insurers concerning the proper construction of the Policies, and the rights and obligations of the parties thereto, with respect to MSD Partners' claim for costs and losses arising out of the coronavirus outbreak.

110. MSD Partners seeks a declaratory judgment in favor of MSD Partners and against Insurers declaring that MSD Partners is entitled to coverage under the Policies.

111. A declaratory judgment would be useful in resolving this case or controversy. MSD Partners' costs and losses are ongoing. By clarifying the parties' rights and duties under the Policies, a declaratory judgment would guide Insurers' treatment of MSD Partners covered, but unaccrued, costs and losses, in addition to the significant damages MSD Partners has already accrued. Because MSD Partners accrued costs and losses have not yet ripened such that a final amount of damages can be ascertained, the declaratory judgment claim would afford MSD Partners relief independent of the breach of contract claim.

**PRAYER FOR RELIEF**

WHEREFORE, MSD Partners prays for relief as follows:

a. On the First Cause of Action, MSD Partners requests that the Court enter judgment against Insurers, awarding MSD Partners damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law;

b. On the Second Cause of Action, MSD Partners requests that the Court enter a declaratory judgment in favor of MSD Partners against Insurers that MSD Partners' costs and losses are covered under the Policy and declaring that Insurers are required to pay MSD Partners, up to the applicable limits, for claimed amounts under the Policies.

c. For all Causes of Action, all pre-judgment and post-judgment interest as allowed by law and all costs incurred as a consequence of having to prosecute this lawsuit, including attorneys' fees; and

d. MSD Partners requests such other and further relief as the Court deems just and proper.

DATED: Honolulu, Hawai'i, March 17, 2021.

/s/ William Meheula  
WILLIAM MEHEULA  
NATASHA BALDAUF

Attorneys for Plaintiff  
MSD PARTNERS, L.P.

# EXHIBIT A

<b><u>Insurer(s)</u></b>	<b><u>Policy Number</u></b>	<b><u>Policy Limits/Attachment</u></b>
ACE American Insurance Company	MAUD37870651 001	30% share or \$7.5M part of \$25M primary layer
Endurance American	ESP30001559700	10% share or \$2.5M part of \$25M primary layer
GuideOne	099000147	10% share or \$2.5M part of \$25M primary layer
Steadfast Insurance Company	CPP-0917787-00	25% share or \$2.5 part of \$10M primary layer
National Fire and Marine	DF00009234	20% share or \$2M part of \$10M primary layer
Brit Global Specialty USA	PD-11135-00	10% share or \$1.5M part of \$15M excess of \$10M layer
Ironshore Specialty Insurance Company	1000389573-01	25% share or \$3.75M part of \$15M excess of \$10M layer
Evanston Insurance Company	MKLV13XP003045	10% share or \$1.5M part of \$15M excess of \$10M layer
Continental Casualty Company	6073213626	5% share or \$5M part of \$100M layer
Princeton Excess and Surplus Lines Insurance Company	78-A3-XP0000673-00	25% share or \$18.75M of \$75M excess of \$25M layer
Everest Indemnity Insurance Company	RP5CF00289201	10% share or \$7.5M part of \$75M excess of \$25M layer
Hallmark Specialty Insurance Company	73PRX20A4FB	60% share or \$15M part of \$25M excess of \$25M layer
RenaissanceRe Syndicate 1458; Canopus Syndicate 4444; Arcus Syndicate 1856 WRB; Underwriting Syndicate 1967; HDI Global Specialty SE; Western World Insurance Company; Evanston Insurance Company; Navigators Specialty Insurance Company; General Security Indemnity Company of Arizona	JEM-20-XS-1044	20% share or \$10M part of \$50M excess of \$50M layer
Arch Specialty Insurance Company	ESP1002115-00	10% share or \$5M part of \$50M excess of \$50M layer

<u>Insurer(s)</u>	<u>Policy Number</u>	<u>Policy Limits/Attachment</u>
Indian Harbor	US00098828PR20A	10% share or \$5M part of \$50M excess of \$50M layer
Colony Insurance Company	XP200061	10% share or \$5M part of \$50M excess of \$50M layer
Westchester Surplus Lines Insurance Company	D42303033 001	10% share or \$5M part of \$50M excess of \$50M layer
QBE Specialty Insurance Company; Princeton Excess and Surplus Lines Insurance Company; General Security Indemnity Company of Arizona; HDI Global Specialty SE; Starstone Specialty	1080670	\$50M excess of \$100M layer

# **EXHIBIT B**

# CHUBB

Renewing or in lieu of **NEW**

**ACE American Insurance Company**  
436 Walnut Street  
Philadelphia PA 19106

**POLICY NO: MAUD37870651 001**

### DECLARATIONS

Commission: 15.00%      Service Office: BOU Agency No: 120367

**Insured:** MSD Partners, L.P.  
**Address:** 100 Wilshire Boulevard, Suite 1700  
Santa Monica, CA 90401  
c/o Robert M. Currey & Associates  
One Beacon Street  
Boston, MA 02108

**Agent/Broker:** Willis of Massachusetts Northeast, Inc.  
**Address:** 800 Boylston Street  
Boston, MA 02199

**Policy Period:** From March 11, 2020 at 11:13 A.M., to March 11, 2021 at 12:01 A.M. Standard Time at the location of property insured.

To the extent that coverage in this policy replaces coverage in other policies terminating at noon standard time on the inception date of this policy, coverage under this policy shall not become effective until such other coverage has terminated.

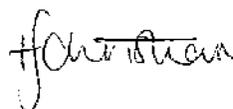
The insurance afforded is only with respect to the specific part and coverages therein, the full title of which is set forth below the caption "Form."

PERILS INSURED	COVERAGE PROVIDED	FORM	LIMITS OF INSURANCE	PREMIUM
All Risk	Property Damage/Time Element	AS PER MANUSCRIPT WORDINGS ATTACHED	\$7,500,000 part of \$25,000,000 excess of various deductibles	██████████
AGENT/BROKER: Willis of Massachusetts Northeast, Inc.			<b>TOTAL</b>	██████████

Endorsements attached to policy at inception: See attached AGP-46572 (08/15) for Schedule of Endorsements.

Surcharges at inception: Nil

\_\_\_\_\_  
Signature of Licensed Agent (if required)



This Declaration and Form(s), with Policy Standard Conditions and Endorsements, if any, issued to form a part thereof, completes the above numbered policy.

## Schedule of Endorsements and Notices

AGP-33235b (08/15)	Terrorism Exclusion
AGP-45216 (01/15)	Exclusion of Certified Acts of Terrorism
TRIA15d (01/15)	POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE
AGP-33207 (05/16)	Certificates of Insurance - Automatic Additional Insured and Loss Payee Endorsement
AGP-33208a (05/18)	ASBESTOS, ASBESTOS-CONTAINING PRODUCT, OR ASBESTOS-CONTAINING MATERIAL EXCLUSION
AGP-33209 (12/17)	Biological, Chemical or Nuclear Exclusion
AGP-33211 (02/11)	Computer Date Recognition Exclusion
AGP-33219 (09/19)	ELECTRONIC DATA/MEDIA EXCLUSION ENDORSEMENT
AGP-33221 (02/11)	Government, Court or Tribunal Order Exclusion
AGP-33224 (09/18)	Limited Fungi And Bacteria Coverage Resulting From An Insured Peril
AGP-33231 (02/11)	Pollution And Contamination Exclusions And Related Coverage Extensions With Sub-Limits Endorsement
AGP-33233a (06/17)	Products Recall Exclusion
AGP-46571 (08/15)	Policy Revision Endorsement
AGP-33227 (06/19)	Notification of Claims
AGP-33236a (09/14)	Trade Or Economic Sanctions Notice
ALL 20887 (10/16)	Chubb Producer Compensation Practices & Policies
IL P 001 01 04	U.S. Treasury Departments' Office of Foreign Assets Control

## DECLARATIONS PAGE

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## **DECLARATIONS - SECTION A**

### **1. NAMED INSURED AND MAILING ADDRESS**

MSD Partners, L.P., MSD Capital, L.P., MSD Real Estate Partners, L.P. and their respective entities, divisions, or other interests, including, but not limited to, joint ventures, partnerships, investments, limited liability companies, members and other interests; and including automatically the interests of the parent, trust(s), affiliated, subsidiary, limited liability companies, members and associated companies or corporations, owner(s), entity(ies) or individual(s) in such joint ventures, partnerships, investments, limited liability companies or other entities which either have existed, exist now, or may exist in the future, and any joint venture or partnership interests in which any of the Named Insureds is a participant to the extent any of the Named Insureds is required to insure such interests.

#### **All hereafter referred to as the “Insured.”**

**MSD Partners, L.P.**  
**100 Wilshire Boulevard, Suite 1700**  
**Santa Monica, CA 90401**  
c/o Robert M. Currey & Associates, Inc.  
One Beacon Street, 22<sup>nd</sup> Floor  
Boston, MA 02108

### **2. POLICY DATES**

FROM: 11:13AM EST on March 11<sup>th</sup>, 2020  
TO: 12:01AM EST on March 11<sup>th</sup>, 2021      TERM: 1 Year

### **3. INSURING AGREEMENT**

This Policy covers property, as described in this Policy, against ALL RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while at an insured location or within 1,000 feet thereof.

### **4. TERRITORY**

This Policy covers Insured Locations within the United States of America.

### **5. INSURED LOCATION**

- A. The coverages under this Policy apply to an Insured Location unless otherwise provided.

Insured Location is a location:

- 1) listed on a schedule on file with the Company
- 2) covered as a Miscellaneous Unnamed Location.
- 3) covered under the terms and conditions of the Automatic Coverage or Errors and Omissions provisions.

- B. References and Application. The following term(s) wherever used in this Policy means:

- 1) Location:

- a) an Insured Location;
- b) or
- b) if not so specified or if a Miscellaneous Unnamed Location, a building, yard, dock, wharf, pier or bulkhead (or any group of the foregoing) bounded on all sides by public streets, clear land space or open waterways, each not less than fifty feet wide. Any bridge or tunnel crossing such street, space or waterway will render such separation inoperative for the purpose of this References and Application.

**6. CURRENCY**

All amounts, including deductibles and limits of liability, indicated in this Policy are in the currency of the United States of America, except for Insured Locations in Canada where such amounts will be in Canadian currency. Losses will be adjusted and paid as provided in the CURRENCY FOR LOSS PAYMENT clause of the LOSS ADJUSTMENT AND SETTLEMENT section.

Premium for this Policy is in the currency of the United States of America except for the premium applying for Insured Locations in Canada where such amounts will be in Canadian currency.

**7. PARTICIPATION**

The Company’s liability under this Policy will not exceed the appropriate percentage shown below of any limits of liability as provided in the LIMITS OF LIABILITY clause in this section, nor for more than the appropriate percentage of the recoverable loss in any one occurrence.

<u>Participation</u>	<u>Layer</u>	<u>Percentage</u>
\$7,500,000	\$25,000,000	30%

**8. LIMITS OF LIABILITY**

The Company’s maximum limit of liability in a single occurrence regardless of the number of Locations or coverages involved will not exceed the Policy limit of liability of \$400,000,000

If a lesser limit of liability is stated below or elsewhere in this Policy, the lesser limit will apply. The limits of liability stated below or elsewhere in this Policy are part of and not in addition to the Policy limit of liability.

Limits of liability stated below apply per Occurrence for all Insured Locations and coverage’s involved unless an annual aggregate limit of liability is specified.

When a limit of liability is shown as applying in the Aggregate During Any Policy Year, the Company’s maximum limit of liability will not exceed such limit during any policy year regardless of the number of locations and coverage’s involved.

In the event an Occurrence results in liability payable under more than one policy issued to the Named Insured by the Company, or its representative companies, the maximum amount payable in

the aggregate under all such policies will be the applicable limit(s) of liability indicated in this Policy regardless of the number of coverages, locations or perils involved.

\$25,000,000	EARTH MOVEMENT in the Annual Aggregate inclusive of the following:
\$25,000,000	EARTH MOVEMENT in the Annual Aggregate in the State of California
\$25,000,000	EARTH MOVEMENT in the Annual Aggregate in the State of Hawaii
Excluded	EARTH MOVEMENT in the Annual Aggregate in the State of Alaska, New Madrid Earth Movement Zones, Pacific Northwest Earth Movement Zones, and the Commonwealth of Puerto Rico.
Excluded	Earth Movement in the Annual Aggregate for Automatic Coverage Locations, Miscellaneous Unnamed Locations and Personal Property and Contingent Time Element Locations
\$25,000,000	FLOOD in the Annual Aggregate but not to exceed the following limits in the Annual Aggregate:
Excluded	FLOOD in the Annual Aggregate in Special Hazard Flood Areas
Excluded	FLOOD in the Annual Aggregate for Automatic Coverage Locations, Miscellaneous Unnamed Locations and Personal Property, and Contingent Time Element Locations
\$25,000,000	ACCOUNTS RECEIVABLE
\$25,000,000	AUTOMATIC COVERAGE (subject to values being reported within 120 days and pro-rata premium payment, after which the MISCELLANEOUS UNNAMED LOCATION AND MISCELLANEOUS PERSONAL PROPERTY sub-limit applies)
Excluded	Boiler & Machinery
45 Days, 5 mile radius	Civil/Military Authority, subject to a \$25,000,000 per occurrence limit
Not Applicable	CO-INSURANCE
\$25,000,000	CONTINGENT TIME ELEMENT (Direct Only)
\$10,000,000	CONSEQUENTIAL REDUCTION IN VALUE
\$25,000,000	DEMOLITION AND INCREASED COST OF CONSTRUCTION
\$25,000,000 or 25% of adjusted loss, whichever is greater	DEBRIS REMOVAL
\$5,000,000	DECONTAMINATION COSTS
\$5,000,000	DEFERRED PAYMENTS

\$10,000,000	DOWNZONING
\$5,000,000	Brands and Labels
\$5,000,000	EDP MEDIA AND HARDWARE (Including Lap Tops)
\$10,000,000	EMERGENCY VACATING
\$10,000,000	UNINTENTIONAL ERRORS AND OMISSIONS
\$25,000,000	EXPEDITING COSTS and EXTRA EXPENSE Combined
365 Days	EXTENDED PERIOD OF INDEMNITY
\$10,000,000	FINE ARTS, subject to a \$25,000 per item maximum
\$1,000,000	FIRE DEPARTMENT SERVICE CHARGES
\$10,000,000	Fungus, Wet Rot, Dry Rot, and Moss (Annual Aggregate)
\$5,000,000	UPGRADE TO GREEN COVERAGE (per Endorsement 3)
\$12,200,000 subject to \$1,000,000 limit per hole	GOLF COURSE PROPERTY Per AGP-46571(08/15)
\$5,000,000	LOCK AND KEYS
30 Days, 1 mile radius	ATTRACTION PROPERTY, subject to a \$2,500,000 annual aggregate
45 Days, 5 mile radius	INGRESS / EGRESS, subject to a \$25,000,000 per occurrence limit
\$1,000,000	LAND AND WATER CONTAMINANT OR POLLUTANT CLEANUP, REMOVAL, AND DISPOSAL (ANNUAL AGGREGATE)
\$5,000,000	LEASEHOLD INTEREST
\$5,000,000	LOSS ADJUSTMENT EXPENSE/PROFESSIONAL FEES COMBINED
Excluded	PROPERTY IN THE COURSE OF CONSTRUCTION – HARD and SOFT COSTS
\$5,000,000	PROTECTION AND PRESERVATION OF PROPERTY
\$10,000,000	MISCELLANEOUS UNNAMED LOCATIONS AND MISCELLANEOUS PERSONAL PROPERTY
\$10,000,000	MOLD AS A RESULT OF INSURED PERIL (Annual Aggregate)
\$5,000,000	OFF-SITE STORAGE LOCATIONS for Property Under Course of Construction
\$10,000,000,	OUTDOOR PROPERTY, subject to a \$25,000 per item maximum

\$25,000,000	Commissions, Profits and Royalties
\$25,000,000	RENTAL VALUE INSURANCE
\$1,000,000	TAX TREATMENT OF PROFITS
30 Days	Impounded Water
Excluded	ORDINARY PAYROLL
\$1,000,000	PROPERTY on EXHIBITION
\$25,000,000	SERVICE INTERRUPTION PROPERTY DAMAGE AND TIME ELEMENT COMBINED
\$10,000,000	TENANT/GUEST RELOCATION / MOVE-OUT / MOVE-BACK COVERAGE
\$5,000,000	TRANSPORTATION
\$5,000,000	VALUABLE PAPERS AND RECORDS
\$25,000,000	NAMED WINDSTORM
Excluded	NAMED WINDSTORM for Automatic Coverage Locations, Miscellaneous Unnamed Locations and Personal Property and Contingent Time Element Locations
Excluded	TERRORISM
Excluded	DELAY IN START UP OF PROPERTY IN COURSE OF CONSTRUCTION
Excluded	RADIOACTIVE CONTAMINATION

## 9. OCCURRENCE DEFINITION:

Occurrence means all direct physical loss, damage or destruction insured against arising out of or caused by one event, or series of events, except:

- A. With respect to theft, the term **Occurrence** as referred to above means the sum total of all theft losses of insured property resulting from one or more concealed acts committed by one person or more than one person acting in unison to the extent such loss is not otherwise excluded under this **Policy**.
- B. With the exception of direct physical loss, damage or destruction caused by **Earthquake** and **Named Windstorm**, in situations where an event of direct physical loss, damage or destruction is designated by Insurance Services Office's Property Claim Services (PCS) unit with a PCS Catastrophe Serial Number also known as an ISO CAT Code, all such direct physical loss, damage or destruction insured against under this **Policy** occurring as part of such PCS Catastrophe Serial Number shall be considered "one **Occurrence**" regardless of the time period involved.
- C. Each loss by **Earthquake** shall constitute a single **Occurrence** hereunder if more than one **Earthquake** shock occurs within any period of 168 hours during the term of this **Policy**, the beginning of which 168 hour period may be determined by the Insured.
- D. Each loss by **Named Windstorm** shall constitute a single **Occurrence** if resulting loss, damage or destruction arising from such Named Windstorm occurs within a period of 168 hours, the beginning of which period may be determined by the Insured.
- E. Each loss by **Flood** shall constitute a single **Occurrence** if any **Flood** occurs within a period of the continued rising or overflow of any body of water and the subsidence of same; or any **Flood** which results from any tsunami, tidal wave, seismic sea wave, or series thereof caused by any one disturbance.
- F. Should any time period referred to in Clauses (D) and (E) above commence prior to expiration or cancellation date of this **Policy**, the **Company** shall pay all such **Earthquake** and **Named Windstorm** losses occurring during such period as if such period fell entirely within the term of this **Policy**.

## 10. PREMIUM

This Policy is issued in consideration of an initial premium. The initial premium will be adjusted quarterly on a pro rata basis for any additions or deletions to schedule of locations and total values insured which occur during the term of the policy. If the term of this Policy is longer than one year, for each subsequent year of coverage, premium will be due at the anniversary and will be subject to rules and rates in effect at that time.

## 11. PREMIUM PAYABLE

MSD Partners, L.P. pays the premium under this Policy, and any return of the paid premium accruing under this Policy will be paid to the account as directed by the First Named Insured.

## 12. WAITING PERIODS

For the purposes of applying TIME ELEMENT Coverage, the Waiting Period is 24 hours.

For the purposes of applying SERVICE INTERRUPTION Coverage, the Waiting Period is 48 hours.

For the purposes of applying ATTRACTION PROPERTY Coverage, the waiting Period is 48 hours.

### **13. DEDUCTIBLES**

In each case of loss covered by this Policy, the Company will be liable only if the Insured sustains a loss in a single occurrence greater than the applicable deductible specified below, and only for its share of that greater amount.

Unless otherwise stated below:

- A. When this Policy insures more than one location, the deductible will apply against the total loss covered by this Policy in any one occurrence.
- B. If two or more deductibles provided in this Policy apply to a single Occurrence, the total to be deducted will not exceed the largest deductible applicable, unless otherwise provided.

#### **EARTH MOVEMENT**

\$100,000 Per Occurrence, except;

As respects Locations in California:

5% Of Total Insurable Value of property insured at the location where physical damage occurs including the full 12 month Time Element Values that would have been earned in the 12 month period following the occurrence subject to a \$250,000 Per Occurrence minimum.

As respects Locations in Hawaii:

3% Of Total Insurable Value of property insured at the location where physical damage occurs including the full 12 month Time Element Values that would have been earned in the 12 month period following the occurrence subject to a \$250,000 Per Occurrence minimum

#### **FLOOD**

\$100,000 Per Occurrence

#### **TSUNAMI**

3% of Total Insurable Value of property insured at the location where physical damage occurs including the full 12 month Time Element Values that would have been earned in the 12 month period following the occurrence subject to a \$250,000 Per Occurrence minimum.

#### **NAMED WINDSTORM**

3% Of Total Insurable Value of property insured at the location where physical damage occurs including the full 12 month Time Element Values that would have been earned in the 12 month period following the occurrence subject to a \$250,000 Per Occurrence Minimum.

**ALL OTHER PERILS**

For all other perils, the deductible shall be \$100,000 per occurrence.

## **PROPERTY DAMAGE - SECTION B**

### **1. PROPERTY INSURED**

This Policy insures the following property, unless otherwise excluded elsewhere in this Policy, located at an Insured Location, or for personal property located in this Policy's TERRITORY, to the extent of the interest of the Insured in such property.

- A. Real Property, including new buildings and additions under construction at an Insured Location, in which the Insured has an insurable interest. In the event of physical loss or damage to such Real Property, the Company agrees to accept and consider the Insured as sole and unconditional owner, notwithstanding any contract or lease to the contrary
- B. Personal Property:
  - 1) owned by the Insured, including but not limited to the Insured's interest in tenant improvements and betterments, whether or not insured is a tenant. In the event of physical loss or damage, the Company agrees to accept and consider the Insured as sole and unconditional owner of improvements and betterments, notwithstanding any contract or lease to the contrary.
  - 2) of officers and employees of the Insured.
  - 3) of others in the Insured's custody to the extent the Insured is under obligation to keep insured for physical loss or damage insured by this Policy.
  - 4) of others in the Insured's custody to the extent of the Insured's legal liability for physical loss or damage to Personal Property. The Company will defend that portion of any suit against the Insured that alleges such liability and seeks damages for such insured physical loss or damage. The Company may, without prejudice, investigate, negotiate and settle any claim or suit as the Company deems expedient.

This Policy also insures the interest of contractors and subcontractors in insured property during construction at an Insured Location to the extent of the Insured's legal liability for insured physical loss or damage to such property. Such interest of contractors and subcontractors is limited to the property for which they have been hired to perform work and such interest will not extend to any TIME ELEMENT coverage provided under this Policy.

### **2. PROPERTY EXCLUDED**

This Policy excludes:

- A. currency, money, precious metal in bullion form, notes, or securities.
- B. land, water or any other substance in or on land; except this exclusion does not apply to:
  - 1) land improvements consisting of landscaping, landscape gardening, retaining walls, pedestrian walkways, roadways, tunnels and bridges when connecting buildings, and pavements.
  - 2) water that is contained within any enclosed tank, piping system or any other processing equipment.

- C. animals, standing timber, growing crops.
- D. watercraft or aircraft, except when unfueled and manufactured by the Insured.
- E. vehicles of officers and employees of the Insured or vehicles otherwise insured for physical loss or damage.
- F. underground mines or mine shafts or any property within such mine or shaft.
- G. dams and dikes.
- H. property in transit, except as otherwise provided by this Policy.
- I. property sold by the Insured under conditional sale, trust agreement, installment plan or other deferred payment plan after delivery to customers, except as provided by the DEFERRED PAYMENTS coverage of this Policy.
- J. electronic data, programs and software, except when they are stock in process, finished goods manufactured by the Insured, raw materials, supplies or other merchandise not manufactured by the Insured or as otherwise provided by the DATA, PROGRAMS OR SOFTWARE coverage of this Policy.
- K. This policy also excludes:
  - 1) Air supported structures
  - 2) Docks, Piers, and Wharves
  - 3) Furs, jewelry, precious or semi-precious stones
  - 4) Off-shore drilling rigs or platforms
  - 5) Railroad Rolling Stock
  - 6) Overhead transmission and distribution lines, except those within 1,000 feet of an insured premises
  - 7) Vehicles licensed for highway use
  - 8) Satellites

### **3. ADDITIONAL COVERAGES**

This Policy includes the following Additional Coverages for physical loss or damage insured by this Policy.

These Additional Coverages:

- 1) are subject to the applicable limit of liability;
  - 2) will not increase the Policy limit of liability; and
  - 3) are subject to the Policy provisions, including applicable exclusions and deductibles,
- all as shown in this section and elsewhere in this Policy.

## A. ACCOUNTS RECEIVABLE

This Policy covers any shortage in the collection of accounts receivable, resulting from insured physical loss or damage to accounts receivable records, including accounts receivable records stored as electronic data, while anywhere within this Policy's TERRITORY, including while in transit. The Company will be liable for the interest charges on any loan to offset impaired collections pending repayment of such sum uncollectible as the result of such loss or damage. Unearned interest and service charges on deferred payment accounts and normal credit losses on bad debts will be deducted in determining the recovery.

- 1) In the event of loss to accounts receivable records, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding accounts receivable.
- 2) The Insured agrees to use any suitable property or service:
  - a) owned or controlled by the Insured; or
  - b) obtainable from other sources,in reducing the loss under this Additional Coverage.
- 3) This Policy covers any other necessary and reasonable costs incurred to reduce the loss, to the extent the losses are reduced.
- 4) If it is possible to reconstruct accounts receivable records so that no shortage is sustained, the Company will be liable only for the reasonable and necessary cost incurred for material and time required to re-establish or reconstruct such records, and not for any costs covered by any other insurance.
- 5) ACCOUNTS RECEIVABLE Exclusions: The following exclusions are in addition to the EXCLUSIONS clause of this section:

This Additional Coverage does not insure against shortage resulting from:

- a) bookkeeping, accounting or billing errors or omissions; or
- b) (i) alteration, falsification, manipulation; or  
(ii) concealment, destruction or disposal,

of accounts receivable records committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property; but only to the extent of such wrongful giving, taking, obtaining or withholding.

- 6) The settlement of loss will be made within 90 days from the date of physical loss or damage. All amounts recovered by the Insured on outstanding accounts receivable on the date of loss will belong and be paid to the Company up to the amount of loss paid by the Company. All recoveries exceeding the amount paid will belong to the Insured.

## **B. ATTRACTION PROPERTY**

This policy covers the Actual Loss Sustained and EXTRA EXPENSE, including without limitation transportation fees, incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to property of the type insured that attracts business to an Insured Location and is within 1(one) mile of the insured location.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be:

The period of time:

- 1) starting at the time of such physical damage; but
- 2) not to exceed the time limit shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section.

## **C. AUTOMATIC COVERAGE**

This Policy covers insured property at any Location rented, leased or purchased by the Insured after the inception date of this Policy. This coverage applies from the date of rental, lease or purchase.

This Additional Coverage does not apply to property insured in whole or in part by any other insurance policy.

This coverage will apply until whichever of the following occurs first:

- 1) The Location is bound by the Company.
- 2) Agreement is reached that the Location will not be insured under this Policy.
- 3) The Time Limit shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section has been reached. The Time Limit begins on the date of rental, lease or purchase.

#### **D. BRANDS AND LABELS**

If branded or labeled property insured by this Policy is physically damaged and the Company elects to take all or any part of that property, the Insured may at the Company's expense:

- 1) stamp "salvage" on the property or its containers; or
- 2) remove or obliterate the brands or labels,

if doing so will not damage the property. In either event, the Insured must re-label such property or its containers to be in compliance with any applicable law.

#### **E. CONSEQUENTIAL REDUCTION IN VALUE**

This Policy covers the reduction in value of insured merchandise that is a part of pairs, sets, or components, directly resulting from physical loss or damage insured by this Policy to other insured parts of pairs, sets or components of such merchandise. If settlement is based on a constructive total loss, the Insured will surrender the undamaged parts of such merchandise to the Company.

#### **F. CONTROL OF DAMAGED PROPERTY**

This Policy gives control of physically damaged property consisting of finished goods as follows:

- 1) The Insured will have full rights to the possession and control of damaged property in the event of insured physical damage to such property provided proper testing is done to show which property is physically damaged.
- 2) The Insured using reasonable judgment will decide if the physically damaged property can be reprocessed or sold.
- 3) Property so judged by the Insured to be unfit for reprocessing or selling will not be sold or disposed of except by the Insured, or with the Insured's consent.
- 4) Any salvage proceeds received will go to the:
  - a) Company at the time of loss settlement; or
  - b) Insured if received prior to loss settlement and such proceeds will reduce the amount of loss payable accordingly.

#### **G. DATA, PROGRAMS OR SOFTWARE**

This Policy covers insured Physical Loss Or Damage To Electronic Data, Programs Or Software, while anywhere within this Policy's TERRITORY, including while in transit.

- 1) With respect to Physical Loss Or Damage caused by the malicious introduction of machine code or instruction, this Additional Coverage will apply when the Period of

Liability is in excess of the time shown as Waiting Period in the WAITING PERIOD clause of the DECLARATIONS section.

- 2) This Additional Coverage also covers the cost of the following reasonable and necessary actions taken by the Insured:
  - a) Actions to temporarily protect and preserve insured electronic data, programs or software;
  - b) Actions taken for the temporary repair of insured Physical Loss Or Damage To Electronic Data, Programs Or Software and to expedite the permanent repair or replacement of such damaged property,

provided such actions are taken due to actual insured Physical Loss Or Damage To Electronic Data, Programs Or Software.

- 3) This Additional Coverage also covers the reasonable and necessary costs incurred by the Insured to temporarily protect or preserve insured electronic data, programs or software against immediately impending insured Physical Loss Or Damage To Electronic Data, Programs Or Software. In the event that the physical loss or damage does not occur, the costs covered under this item 3 will be subject to the deductible that would have applied if the physical loss or damage had occurred.
- 4) Costs recoverable under this Additional Coverage are excluded from coverage elsewhere in this Policy.
- 5) This Additional Coverage excludes loss or damage to data, programs or software when they are stock in process, finished goods manufactured by the Insured, raw materials, supplies or other merchandise not manufactured by the Insured.
- 6) DATA, PROGRAMS OR SOFTWARE Exclusions: The exclusions in the EXCLUSIONS clause of this section do not apply to DATA, PROGRAMS OR SOFTWARE except for A1, A2, A6, B1, B2, B3a, and B4. In addition as respects DATA, PROGRAMS OR SOFTWARE the following exclusions apply:

This Policy does not insure:

- a) errors or omissions in processing, or copying; all unless physical damage not excluded by this Policy results, in which event, only that resulting damage is insured.
  - b) loss or damage to data, programs or software from errors or omissions in programming or machine instructions; all unless physical damage not excluded by this Policy results, in which event, only that resulting damage is insured.
  - c) deterioration, inherent vice, vermin or wear and tear; all unless physical damage not excluded by this Policy results, in which event, only that resulting damage is insured.
- 7) References and Application. The following term(s) means:

a) Physical Loss Or Damage To Electronic Data, Programs Or Software:

The destruction, distortion or corruption of electronic data, programs or software.

## **H. DEBRIS REMOVAL**

This Policy covers the reasonable and necessary costs incurred in removal of debris and cleanup from an Insured Location that remains as a direct result of physical loss or damage insured by this Policy.

This Additional Coverage does not cover the costs of removal or cleanup of:

- 1) contaminated uninsured property; or
- 2) the contaminant in or on uninsured property,

whether or not the contamination results from insured physical loss or damage. Contamination includes, but is not limited to, the presence of pollution or hazardous material.

## **I. DECONTAMINATION COSTS**

If insured property is contaminated as a direct result of physical damage insured by this Policy and there is in force at the time of the loss any law or ordinance regulating contamination, including but not limited to the presence of pollution or hazardous material, then this Policy covers, as a direct result of enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such contaminated insured property in a manner to satisfy such law or ordinance. This Additional Coverage applies only to that part of insured property so contaminated as a direct result of insured physical damage.

The Company is not liable for the costs required for removing contaminated uninsured property nor the contaminant therein or thereon, whether or not the contamination results from an insured event.

## **J. DEFERRED PAYMENTS**

This Policy covers insured physical loss or damage to Personal Property of the type insured sold by the Insured under a conditional sale or trust agreement or any installment or deferred payment plan and after such property has been delivered to the buyer. Coverage is limited to the unpaid balance for such property.

In the event of loss to property sold under deferred payment plans, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding amounts due or to regain possession of the property.

There is no liability under this Policy for loss:

- 1) pertaining to products recalled including, but not limited to, the costs to recall, test or to advertise such recall by the Insured.

- 2) from theft or conversion by the buyer of the property after the buyer has taken possession of such property.
- 3) to the extent the buyer continues payments.
- 4) not within the TERRITORY of this Policy.

#### **K. DIFFERENCE IN CONDITIONS/LIMITS**

This Policy provides coverage when this Policy is broader in meaning or scope or provides higher limits or sub-limits than a “primary policy” that is intended to insure property for which a named insured under this policy has an insurable interest.

When a “primary policy” insures or is intended to insure property and/or interests that would otherwise be insured by this Policy, this Policy shall apply as excess insurance when the perils, definitions and/or conditions set forth in such “primary policy” are the same as those set forth herein. When conditions set forth in a “primary policy” are broader in meaning or scope than those contained herein and are required by judicial decision, statute or regulation, this Policy shall conform to such broader perils, definitions and/or conditions, but only in the amount required by such decision, statute or regulation; however, this provision shall not apply to government reserve funds or insurance pools such as Catastrophe Naturelle, GAREAT, Consorcio or SASRIA/NASRIA.

In the absence of a “primary policy,” this Policy provides primary insurance, subject to the conditions outlined in the previous paragraphs.

#### **L. DEMOLITION AND INCREASED COST OF CONSTRUCTION**

- 1) This Policy covers the reasonable and necessary costs incurred, described in item 3 below, to satisfy the minimum requirements of the enforcement of any law, ordinance or brand standard regulating the demolition, construction, repair, replacement or use of buildings or structures at an Insured Location, provided:
  - a) such law, ordinance or brand standard is in force on the date of insured physical loss or damage; and
  - b) its enforcement is a direct result of such insured physical loss or damage.
- 2) This Additional Coverage does not cover loss due to any law, ordinance or brand standard with which the Insured was required to comply had the loss not occurred.
- 3) This Additional Coverage, as respects the property insured in item 1 above, covers:
  - a) the cost to repair or rebuild the physically damaged portion of such property with materials and in a manner to satisfy such law, ordinance or brand standard; and
  - b) the cost:
    - (i) to demolish the physically undamaged portion of such property insured; and

- (ii) to rebuild it with materials and in a manner to satisfy such law, ordinance or brand standard,

to the extent that such costs result when the demolition of the physically damaged insured property is required to satisfy such law, ordinance or brand standard.

- 4) This Additional Coverage excludes any costs incurred as a direct or indirect result of enforcement of any laws or ordinances regulating any form of contamination including but not limited to the presence of pollution or hazardous material.
- 5) Notwithstanding the above, the Company's maximum liability for rebuilding the physically undamaged portion of the property insured will not exceed the Policy limit of liability and will not be subject to any applicable limit of liability for this Additional Coverage

## M. EARTH MOVEMENT

This Policy covers physical loss or damage caused by or resulting from Earth Movement

This Additional Coverage does not apply to loss or damage caused by or resulting from flood; surface waters; rising waters; waves; tide or tidal water; the release of water; the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; or sewer back-up resulting from any of the foregoing; all regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

Earth Movement wherever used in this Policy means:

- a) Any natural or man-made earth movement including, but not limited to earthquake, or landslide, regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical damage by fire, explosion, sprinkler leakage or any other ensuing loss not otherwise excluded by this Policy resulting from Earth Movement will not be considered to be loss by Earth Movement within the terms and conditions of this Policy. All earth movements within a continuous 168 hour period will be considered a single Earth Movement.
- b) **Earthquake** means a shaking or trembling of the earth that is tectonic in origin. However, ensuing physical loss, damage or destruction arising from fire or explosion caused by such **Earthquake** shall not be considered **Earthquake** within the terms and conditions of this **Policy**.

## N. ERRORS AND OMISSIONS

If physical loss or damage is not payable under this Policy solely due to an error or unintentional omission:

- 1) in the description of where insured property is physically located;

- 2) to include any Location:
  - a) owned, rented or leased by the Insured on the effective date of this Policy; or
  - b) purchased, rented or leased by the Insured during the term of this Policy; or
- 3) that results in cancellation of the property insured under this Policy;

this Policy covers such physical loss or damage, to the extent it would have provided coverage had such error or unintentional omission not been made.

It is a condition of this Additional Coverage that any error or unintentional omission be reported by the Insured to the Company when discovered and corrected.

#### **O. EXPEDITING COSTS**

This Policy covers the reasonable and necessary costs incurred to pay for the temporary repair of insured damage to insured property and to expedite the permanent repair or replacement of such damaged property.

This Additional Coverage does not cover costs:

- 1) recoverable elsewhere in this Policy; or
- 2) of permanent repair or replacement of damaged property.

#### **P. FINE ARTS**

This Policy covers insured physical loss or damage to Fine Arts articles while anywhere within this Policy's TERRITORY, including while in transit.

- 1) This Additional Coverage excludes loss or damage if the Fine Arts cannot be replaced with other of like kind and quality, unless it is specifically declared to the Company.
- 2) FINE ARTS Exclusion: The exclusions in the EXCLUSIONS clause of this section do not apply to FINE ARTS coverage except for A1, A2, A6, A7, B1, B2, B3a, and B4. In addition, as respects FINE ARTS, the following exclusions apply:

This Policy does not insure against:

- a) deterioration, wear and tear or inherent vice.
- b) loss or damage from any repairing, restoration or retouching process.
- 3) References and Application. The following term(s) wherever used in this Policy means:
  - a) Fine Arts:

Paintings; etchings; pictures; tapestries; rare or art glass; art glass windows; valuable rugs; statuary; sculptures; bronzes; marbles; antique furniture; antique jewelry; silver; bric-a-brac; porcelains; rare books; manuscripts; photographs (positives and negatives); lithographs; illustrations; gallery proofs; original records; and similar property of rarity, historical value, or artistic merit.

#### **Q. FLOOD**

This Policy covers physical loss or damage caused by or resulting from Flood.

Flood wherever used in this Policy means:

Flood; surface waters; rising waters; waves; tsunami; tide or tidal water; the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical damage by fire, explosion, sprinkler leakage or any other ensuing loss not otherwise excluded by this Policy resulting from Flood is not considered to be loss by Flood within the terms and conditions of this Policy.

#### **R. LAND AND WATER CONTAMINANT OR POLLUTANT CLEANUP, REMOVAL AND DISPOSAL**

This Policy covers the reasonable and necessary cost for the cleanup, removal and disposal of contaminants or pollutants from uninsured property consisting of land, water or any other substance in or on land at the Insured Location if the release, discharge or dispersal of contaminants or pollutants is a direct result of insured physical loss or damage to insured property.

This Policy does not cover the cost to cleanup, remove and dispose of contaminants or pollutants from such property:

- 1) at any location insured for Personal Property only.
- 2) at any property insured under AUTOMATIC COVERAGE, ERRORS AND OMISSIONS or Miscellaneous Unnamed Location and Personal Property coverage provided by this Policy.
- 3) when the Insured fails to give written notice of loss to the Company within 180 days after inception of the loss.

#### **S. LOST KEY**

The consequential loss due to damage to or theft of keys in the possession of the insured or insured's employees is covered by this policy. Coverage afforded shall include cost of keys, adjustment of locks to accept new keys, or if required, new locks including cost of installation.

## **T. MISCELLANEOUS UNNAMED LOCATION AND MISCELLANEOUS PERSONAL PROPERTY**

This policy covers loss caused to:

- a) a Miscellaneous Unnamed Location that has not been reported to the Company but is under the Insured's care, custody and/or control or the Insured otherwise has a contractual responsibility to insure; and/or
- b) Miscellaneous Personal Property that has not been reported to the Company, but is under the Insured's care, custody and/or control or the Insured otherwise has a contractual responsibility to insure it.

## **U. NAMED WINDSTORM**

This policy covers Named Windstorm, which means a storm or weather disturbance is identified by name by the National Oceanic and Atmospheric Administration (NOAA) National Hurricane Center. For purposes of this definition, Named Windstorm shall include direct physical loss, damage or destruction caused by:

- 1) direct action of wind including ensuing Storm Surge;
- 2) any material, object or debris that is carried, propelled or in any manner moved by such windstorm;
- 3) any tornado(s) that is the result of actions or effects of such windstorm;
- 4) hail that is the result of actions or effects of such windstorm;
- 5) lightning that is the result of actions or effects of such windstorm;
- 6) rain or water (not constituting a Flood), whether the rain or water is driven by wind or not, that enters a building or structure insured under this Policy

However, ensuing physical loss, damage or destruction not contained in paragraphs (1) to (6) above and not otherwise excluded herein shall not be considered Named Windstorm within the terms conditions of this Policy.

Once the Named Windstorm no longer meets the parameters of a Named Windstorm, as set forth by the National Oceanic and Atmospheric Administration (NOAA) National Hurricane Center, then all subsequent loss, damage or destruction will not be considered caused by a Named Windstorm.

Storm Surge is defined as water driven inland from coastal waters by high winds and low atmospheric pressure. Such definition shall not be considered flood.

Notwithstanding whether or not the loss location is situated within a SFHA designated flood zone, the limits and deductibles applicable to "Named Windstorm" shall apply.

## **V. OFF-SITE STORAGE LOCATIONS**

The Policy covers insured physical loss or damage to property of the type insured that relates to an Insured Location or is under contract to be used in a construction project at an Insured Location:

- 1) from the time such property is delivered to the Insured or their contractor (with respect to the property under construction) by the manufacturer or supplier,
- 2) while such property is located at a storage site, and
- 3) while such property is in transit from a storage site to another storage site or to a construction project at an Insured Location,

all while within this Policy's TERRITORY but away from the Insured Location.

This coverage includes necessary expendable materials and supplies to be utilized in the construction project but does not include any such property owned or rented by the contractor.

### **OFF PREMISES STORAGE FOR PROPERTY UNDER CONSTRUCTION**

Exclusions: As respects OFF PREMISES STORAGE FOR PROPERTY UNDER CONSTRUCTION, the following additional exclusion applies:

- 1) As respects property in transit, the TRANSPORTATION Exclusions clause of the TRANSPORTATION coverage applies.

## **W. PROFESSIONAL FEES**

This Policy covers the actual costs incurred by the Insured, of reasonable fees payable to the Insured's accountants, architects, auditors, engineers, or other professionals and the cost of using the Insured's employees, for producing and certifying any particulars or details contained in the Insured's books or documents, or such other proofs, information or evidence required by the Company resulting from insured loss payable under this Policy for which the Company has accepted liability.

- 1) This Additional Coverage will not include the fees and costs of attorneys, public adjusters, and loss appraisers, all including any of their subsidiary, related or associated entities either partially or wholly owned by them or retained by them for the purpose of assisting them nor the fees and costs of loss consultants who provide consultation on coverage or negotiate claims.
- 2) This Additional Coverage is subject to the deductible that applies to the loss.

## **X. PROPERTY COURSE OF CONSTRUCTION – HARD AND SOFT COSTS**

Coverage is Excluded for improvements and renovations to existing structures and all new ground up construction.

## **Y. PROTECTION AND PRESERVATION OF PROPERTY**

This Policy covers:

- 1) reasonable and necessary costs incurred for actions to temporarily protect or preserve insured property; provided such actions are necessary due to actual, or to prevent immediately imminent or impending, insured physical loss or damage to such insured property.
- 2) reasonable and necessary:
  - a) fire department fire fighting charges imposed as a result of responding to a fire in, on or exposing the insured property.
  - b) costs incurred of restoring and recharging fire protection systems following an insured loss.
  - c) costs incurred for the water used for fighting a fire in, on or exposing the insured property.

This Additional Coverage is subject to the deductible provisions that would have applied had the physical loss or damage occurred.

## **AA. SERVICE INTERRUPTION PROPERTY DAMAGE**

- 1) This Policy covers insured physical loss or damage to insured property at an Insured Location when such physical loss or damage results from the interruption of the specified incoming services (including overhead transmission or distribution lines) consisting of electricity, gas, fuel, steam, fiber optics, data communication lines, water, refrigeration or from the lack of outgoing sewerage service by reason of any accidental occurrence to the facilities of the supplier of such service located within this Policy's TERRITORY, that immediately prevents in whole or in part the delivery of such usable service.

- 2) This Additional Coverage will apply when the Period of Service Interruption is in excess of the time shown as Waiting Period in the WAITING PERIOD clause of the DECLARATIONS section.
- 3) The exclusions in the EXCLUSIONS clause of this section do not apply to SERVICE INTERRUPTION coverage except for:
  - a) A1, A2, A4, A6, B1, B2, D1, and
  - b) B4 with respect to incoming or outgoing voice, data, or video.
- 4) Additional General Provisions:
  - a) The Insured will immediately notify the suppliers of services of any interruption of such services.
  - b) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such specified services.
- 5) References and Application. The following term(s) means:
  - a) Period of Service Interruption:

The period starting with the time when an interruption of specific services occurs; and ending when with due diligence and dispatch the service could be wholly restored.

#### **AB. TAX TREATMENT OF PROFITS**

This Policy is extended to cover the increased tax liability from an insured loss at an Insured Location if the tax treatment of:

- 1) the profit portion of a loss payment under this Policy involving finished stock manufactured by the Insured; and/or
- 2) the profit portion of a TIME ELEMENT loss payment under this Policy;

is greater than the tax treatment of profits that would have been incurred had no loss occurred.

#### **AC. TEMPORARY REMOVAL OF PROPERTY**

- 1) When insured property is removed from an Insured Location for the purpose of being repaired or serviced or in order to avoid threatened physical loss or damage of the type insured by this Policy, this Policy covers such property:
  - a) while at the location to which such property has been moved; and

- b) for physical loss or damage as provided at the Insured Location from which such property was removed.
- 2) This Additional Coverage does not apply to property:
- a) insured, in whole or in part, elsewhere in this Policy.
  - b) insured, in whole or in part, by any other insurance policy.
  - c) removed for normal storage, processing or preparation for sale or delivery.

#### **AD. TENANT & GUEST RELOCATION / MOVE-OUT / MOVE-BACK COVERAGE**

This policy will pay expenses incurred by the Insured for covered relocation move-out / move-back costs of tenants, owners, employees and hotel guests who temporarily vacate a portion of a covered building. The vacancy must have occurred while the portion of the building rented by the tenant, owner, employee or hotel guest that could not be occupied due to direct physical loss or damage to the Insured's covered property caused by or resulting from any covered cause of loss during the policy period. The relocation / move-back must take place within 120 days after the portion of the covered building rented by the tenant, owner, employee or hotel guest that has been repaired or rebuilt and is ready for occupancy. This policy will pay for covered relocation move-out / move-back costs whether or not the tenants, owners, employees and/or hotel guests relocate / move-out / move-back before the expiration date of this policy.

Covered relocation move-out / move-back costs means documented, reasonable and necessary:

- A. Costs of packing, insuring and carting business personal property;
- B. Costs of re-establishing electric utility services, less refunds from discontinued services;
- C. Costs of assembling and setting up fixtures and equipment; and
- D. Costs to unpack and reshelv stock and supplies; and
- E. Costs to temporarily relocate tenants to a hotel

Covered relocation move-out / move-back costs does not include:

- A. Loss caused by the termination of a lease or other agreement; or
- B. Security deposits or other payments, forfeitures or penalties made to the landlord or lessor of other premises

#### **AE. TERRORISM**

This Policy covers physical loss or damage caused by or resulting from Terrorism at an Insured Location and property covered under the OFF PREMISES STORAGE FOR PROPERTY UNDER CONSTRUCTION.

Terrorism shall be defined as follows in Section "A" below;

- 1) Any act, involving the use or threat of: force, violence, dangerous conduct, interference with the operations of any business, government or other organization or institution, or any similar act,

When the effect or apparent purpose is:

- a) To influence or instill fear in any government (de jure or de facto) or the public or any segment of either; or
  - b) To further or to express support for, or opposition to, any political, religious, social, ideological or similar type of objective or position.
- 2) Amounts recoverable under this Additional Coverage are excluded from coverage elsewhere in this Policy.

This Additional Coverage does not cover loss or damage which also comes within the terms of either item B2a or B2c of the EXCLUSIONS clause in this section of the Policy.

This Additional Coverage does not in any event cover loss or damage directly or indirectly caused by or resulting from any of the following, regardless of any other cause or event, whether or not insured under this Policy contributing concurrently or in any other sequence to the loss:

- 1) that involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination or that involves the discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion, or radioactive force, whether in time of peace or war and regardless of who commits the act; or
- 2) that is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- 3) in which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials; or
- 4) that involves action taken to prevent, defend against, respond to or retaliate against Terrorism or suspected Terrorism.

As respects this Additional Coverage, this Policy does insure the actual loss sustained for any TIME ELEMENT loss as provided in the TIME ELEMENT section of this Policy.

## **AF. TRANSPORTATION**

- 1) This Policy covers the following Personal Property, except as excluded by this Policy, while in transit within the TERRITORY of this Policy:
  - a) owned by the Insured.
  - b) shipped to customers under F.O.B., C & F or similar terms. The Insured's contingent interest in such shipments is admitted.

- c) of others in the actual or constructive custody of the Insured to the extent of the Insured's interest or legal liability.
  - d) of others sold by the Insured, that the Insured has agreed prior to the loss to insure during course of delivery.
- 2) This Additional Coverage excludes:
- a) samples in the custody of salespeople or selling agents.
  - b) property insured under import or export ocean marine insurance.
  - c) waterborne shipments, unless:
    - (i) by inland water; or
    - (ii) by roll-on/roll-off ferries operating between European ports; or
    - (iii) by coastal shipments.
  - d) airborne shipments unless by regularly scheduled passenger airlines or air freight carriers.
  - e) property of others, including the Insured's legal liability for it, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier.
  - f) any transporting vehicle.
  - g) property shipped between continents, except by land or air between Europe and Asia.
- 3) Coverage Attachment and Duration:
- a) This Additional Coverage covers from the time the property leaves the original point of shipment for transit. It then covers continuously in the due course of transit:
    - (i) within the continent in which the shipment commences until the property arrives at the destination within such continent; or
    - (ii) between Europe and Asia, for land or air shipments only, from when the shipment commences until the property arrives at the destination.
  - b) However, coverage on export shipments not insured under ocean cargo policies ends when the property is loaded on board overseas vessels or aircraft. Coverage on import shipments not insured under ocean cargo policies begins after discharge from overseas vessels or aircraft.
- 4) This Additional Coverage:

- a) covers general average and salvage charges on shipments covered while waterborne.
- b) insures physical loss or damage caused by or resulting from:
  - (i) unintentional acceptance of fraudulent bills of lading, shipping or messenger receipts.
  - (ii) improper parties having gained possession of property through fraud or deceit.
- 5) The exclusions in the EXCLUSIONS clause of this section do not apply to TRANSPORTATION coverage except for A1 through A4, B1 through B4, C1, C3, C5, C6, D1 through D3.
- 6) Additional General Provisions:
  - a) This Additional Coverage will not inure directly or indirectly to the benefit of any carrier or bailee.
  - b) The Insured has permission, without prejudicing this insurance, to accept:
    - (i) ordinary bills of lading used by carriers;
    - (ii) released bills of lading;
    - (iii) undervalued bills of lading; and
    - (iv) shipping or messenger receipts.
  - c) The Insured may waive subrogation against railroads under side track agreements.

Except as otherwise stated, the Insured will not enter into any special agreement with carriers releasing them from their common law or statutory liability.

## **AG. VALUABLE PAPERS AND RECORDS**

This Policy covers insured physical loss or damage to Valuable Papers and Records while anywhere within this Policy's TERRITORY, including while in transit.

- 1) This Additional Coverage excludes loss or damage to:
  - a) property described below, if such property cannot be replaced with other of like kind and quality, unless specifically declared to the Company.
  - b) currency, money or securities.
  - c) property held as samples or for sale or for delivery after sale.
- 2) VALUABLE PAPERS AND RECORDS Exclusions: The exclusions in the EXCLUSIONS clause of this section do not apply to VALUABLE PAPERS AND

RECORDS coverage except for A1, A2, A6, A7, B1, B2, B3a, B4, and D3. In addition, as respects VALUABLE PAPERS AND RECORDS the following exclusions apply:

This Policy does not insure:

- a) errors or omissions in processing, or copying; all unless physical damage not excluded by this Policy results, in which event, only that resulting damage is insured.
  - b) deterioration, inherent vice, vermin or wear and tear; all unless physical damage not excluded by this Policy results, in which event, only that resulting damage is insured.
- 3) References and Application. The following term(s) wherever used in this Policy means:
- a) Valuable Papers and Records:

Written, printed or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, all of which must be of value to the Insured.

#### **4. APPLICATION OF POLICY TO DATE OR TIME RECOGNITION**

- A. With respect to situations caused by the so-called "Year 2000" problem or any other Date or Time Recognition problem by Electronic Data Processing Equipment or Media, this Policy applies as follows.
  - 1) This Policy does not pay for remediation, change, correction, repair or assessment of any Year 2000 or any other Date or Time Recognition problem in any Electronic Data Processing Equipment or Media, whether preventative or remedial, and whether before or after a loss, including temporary protection and preservation of property. This Policy does not pay for any TIME ELEMENT loss resulting from the foregoing remediation, change, correction, repair or assessment.

- 2) Failure of Electronic Data Processing Equipment or Media to correctly recognize, interpret, calculate, compare, differentiate, sequence, access or process data involving one or more dates or times, including the Year 2000, is not physical loss or damage insured against by this Policy. This Policy does not pay for any such incident or for any TIME ELEMENT loss resulting from any such incident.

Subject to all of its terms and conditions, this Policy does pay for physical loss or damage not excluded by this Policy that results from a failure of Electronic Data Processing Equipment or Media to correctly recognize, interpret, calculate, compare, differentiate, sequence, access or process data involving one or more dates or times, including the Year 2000. Such covered resulting physical loss or damage does not include any loss, cost or expense described in 1 or 2 above. If such covered resulting physical loss or damage occurs, and if this Policy provides TIME ELEMENT coverage, then, subject to all of its terms and conditions, this Policy also covers any insured Time Element loss directly resulting therefrom.

B. References and Application. The following term(s) wherever used in this Policy means:

- 1) Date or Time Recognition:

The recognition, interpretation, calculation, comparison, differentiation, sequencing, accessing or processing of data involving one or more dates or times, including the Year 2000.

- 2) Electronic Data Processing Equipment or Media:

Any computer, computer system or component, hardware, network, microprocessor, microchip, integrated circuit or similar devices or components in computer or non-computer equipment, operating systems, data, programs or other software stored on electronic, electro-mechanical, electro-magnetic data processing or production equipment, whether the property of the Insured or not.

## 5. EXCLUSIONS

The following exclusions apply unless specifically stated elsewhere in this Policy:

A. This Policy excludes:

- 1) indirect or remote loss or damage.
- 2) interruption of business, except to the extent provided by this Policy.
- 3) loss of market or loss of use except as noted in the Extended Period of Indemnity Coverage
- 4) loss or damage or deterioration arising from any controllable delay.
- 5) mysterious disappearance, loss or shortage disclosed on taking inventory, or any unexplained loss.

- 6) loss from enforcement of any law or ordinance:
    - a) regulating the construction, repair, replacement, use or removal, including debris removal, of any property; or
    - b) requiring the demolition of any property, including the cost in removing its debris;except as provided by the DECONTAMINATION COSTS and DEMOLITION AND INCREASED COST OF CONSTRUCTION coverages of this section of this Policy.
  - 7) loss resulting from the voluntary parting with title or possession of property if induced by any fraudulent act or by false pretense.
- B. This Policy excludes loss or damage directly or indirectly caused by or resulting from any of the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:
- 1) nuclear reaction or nuclear radiation or radioactive contamination. However:
    - a) if physical damage by fire or sprinkler leakage results, then only that resulting damage is insured; but not including any loss or damage due to nuclear reaction, radiation or radioactive contamination.
  - 2) a) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack by any:
    - (i) government or sovereign power (de jure or de facto);
    - (ii) military, naval or air force; or
    - (iii) agent or authority of any party specified in i or ii above.
  - b) discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion or radioactive force, whether in time of peace or war and regardless of who commits the act.
  - c) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an event.
  - d) seizure or destruction under quarantine or custom regulation, or confiscation by order of any governmental or public authority.
  - e) risks of contraband, or illegal transportation or trade.

3) any dishonest act, including but not limited to theft, committed alone or in collusion with others, at any time:

a) by any director or officer, of the Insured

This Policy does insure acts of direct insured physical damage intentionally caused by any individual specified in a above, and done without the knowledge of the Insured. In no event does this Policy cover loss by theft by any individual specified in a above.

4) lack of the following services:

a) incoming electricity, fuel, water, gas, steam, refrigerant;

b) outgoing sewerage;

c) incoming or outgoing voice, data or video,

all when caused by an occurrence off the Insured Location, except as provided in SERVICE INTERRUPTION in the PROPERTY DAMAGE or TIME ELEMENT section of this Policy. But, if the lack of such a service directly causes physical damage insured by this Policy on the Insured Location, then only that resulting damage is insured.

C. This Policy excludes the following, but, if physical damage not excluded by this Policy results, then only that resulting damage is insured:

1) faulty workmanship, material, construction or design from any cause.

2) loss or damage to stock or material attributable to manufacturing or processing operations while such stock or material is being processed, manufactured, tested, or otherwise worked on.

3) deterioration, depletion, rust, corrosion or erosion, wear and tear, inherent vice or latent defect.

4) gradual settling, cracking, shrinking, bulging, or expansion of:

a) foundations (including any pedestal, pad, platform or other property supporting structure).

b) walls.

c) ceilings.

5) a) changes of temperature damage (except to machinery or equipment); or

b) changes in relative humidity damage,

all whether atmospheric or not.

6) insect, animal or vermin damage.

D. This Policy excludes the following unless directly resulting from other physical damage not excluded by this Policy:

1) contamination including but not limited to the presence of pollution or hazardous material.

2) shrinkage.

3) changes in color, flavor, texture or finish.

## **TIME ELEMENT - SECTION C**

### **1. LOSS INSURED**

This Policy insures the ACTUAL TIME ELEMENT loss sustained, as provided in the TIME ELEMENT COVERAGES, directly resulting from physical loss or damage of the type insured by this Policy, within the policy territory:

- 1) to property described elsewhere in this Policy and not otherwise excluded by this Policy or otherwise limited in the TIME ELEMENT COVERAGES below;
  - 2) used by the Insured, or for which the Insured has contracted use;
  - 3) located at an Insured Location; or
  - 4) while in transit, as provided by this Policy, and
  - 5) during the Periods of Liability described in this section.
- B. This Policy insures TIME ELEMENT loss only to the extent it cannot be reduced through:
- 1) the use of any property or service owned or controlled by the Insured;
  - 2) the use of any property or service obtainable from other sources;
  - 3) working extra time or overtime; or
  - 4) the use of inventory,
- all whether at an Insured Location or at any other location. The Company reserves the right to take into consideration the combined operating results of all associated, affiliated or subsidiary companies of the Insured in determining the TIME ELEMENT loss.
- C. This Policy covers expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this section of this Policy. The amount of such recoverable expenses will not exceed the amount by which the loss has been reduced.
- D. Except as respects LEASEHOLD INTEREST, in determining the amount of loss payable, the Company will consider the experience of the business before and after and the probable experience during the PERIOD OF LIABILITY.

### **2. TIME ELEMENT COVERAGES**

#### **A. GROSS EARNINGS**

- 1) Measurement of Loss:
  - a) The recoverable GROSS EARNINGS loss is the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY:

(i) Gross Earnings;

(ii) less all charges and expenses that do not necessarily continue during the interruption of production or suspension of business operations or services. It is agreed that ordinary payroll is covered. Ordinary Payroll is defined as the entire payroll expense for all employees of the insured except officers, executives, department managers, employees under contract, and other important employees as determined by the Insured.

(iii) plus all other earnings derived from the operation of the business.

b) In determining the indemnity payable as the Actual Loss Sustained, the Company will consider the continuation of only those normal charges and expenses that would have been earned had no interruption of production or suspension of business operations or services occurred.

c) There is recovery hereunder but only to the extent that the Insured is:

(i) wholly or partially prevented from producing goods or continuing business operations or services;

(ii) unable to make up lost production within a reasonable period of time, not limited to the period during which production is interrupted;

(iii) unable to continue such operations or services during the PERIOD OF LIABILITY; and

(iv) able to demonstrate a loss of sales for the operations, services or production prevented.

2) References and Application. The following term(s) means:

Gross Earnings, as used in item 1ai:

a) for manufacturing operations: the net sales value of production less the cost of all raw stock, materials and supplies used in such production; or

b) for mercantile or non-manufacturing operations: the total net sales less cost of merchandise sold, materials and supplies consumed in the operations or services rendered by the Insured.

Any amount recovered under property damage coverage at selling price for loss or damage to merchandise will be considered to have been sold to the Insured's regular customers and will be credited against net sales.

3) Coverage Extension

a) This Gross Earnings coverage includes, but is not limited to, coverage for the loss or damage to real and personal property located at Attraction properties, defined as

properties not operated by the Insured, which attract potential customers to the vicinity of the Insured locations.

## **B. EXTRA EXPENSE**

### 1) Measurement of Loss:

The recoverable EXTRA EXPENSE loss will be the reasonable and necessary extra costs incurred by the Insured of the following during the PERIOD OF LIABILITY:

- a) Extra expenses to temporarily continue as nearly normal as practicable the conduct of the Insured's business; and
- b) Extra costs of temporarily using property or facilities of the Insured or others, less any value remaining at the end of the PERIOD OF LIABILITY for property obtained in connection with the above.

### 2) EXTRA EXPENSE Exclusions: As respects EXTRA EXPENSE, the following are also excluded:

- a) Any loss of income.
- b) Costs that normally would have been incurred in conducting the business during the same period had no physical loss or damage occurred.
- c) Cost of permanent repair or replacement of property that has been damaged or destroyed.
- d) Any expense recoverable elsewhere in this Policy.

### 3) References and Application. The following term(s) means:

- a) Normal:

The condition that would have existed had no physical loss or damage occurred.

## **C. LEASEHOLD INTEREST**

### 1) Measurement of Loss:

The recoverable LEASEHOLD INTEREST incurred by the Insured of the following:

- a) If the lease agreement requires continuation of rent; and if the property is wholly un-tenantable or unusable, the actual rent payable for the unexpired term of the lease; or if the property is partially un-tenantable or unusable, the proportion of the rent payable for the unexpired term of the lease.

- b) If the lease is canceled by the lessor pursuant to the lease agreement or by the operation of law; the Lease Interest for the first three months following the loss; and the Net Lease Interest for the remaining unexpired term of the lease.

2) References and Application. The following term(s) means:

a) Lease Interest:

The excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the Insured's lease.

b) Net Lease Interest:

That sum which placed at 6% interest rate compounded annually would equal the Lease Interest (less any amounts otherwise payable hereunder).

3) LEASEHOLD INTEREST Exclusions: As respects LEASEHOLD INTEREST, TIME ELEMENT EXCLUSIONS A, B, and C do not apply and the following applies instead:

This Policy does not insure any increase in loss resulting from the suspension, lapse or cancellation of any license, or from the Insured exercising an option to cancel the lease; or from any act or omission of the Insured that constitutes a default under the lease.

In addition, there is no coverage for the Insured's loss of LEASEHOLD INTEREST directly resulting from physical loss or damage to Personal Property.

## **D. RENTAL INSURANCE**

1) Measurement of Loss:

The recoverable RENTAL INSURANCE loss is the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY:

- a) The fair rental value of any portion of the property occupied by the Insured;
- b) The income reasonably expected from rentals of unoccupied or unrented portions of such property; and
- c) The rental income from the rented portions of such property according to bona fide leases, contracts or agreements in force at the time of loss, including commitments for leases in process.

all not to include non-continuing charges and expenses.

2) RENTAL INSURANCE Exclusions: As respects RENTAL INSURANCE, TIME ELEMENT EXCLUSIONS A does not apply and the following applies instead:

- A. This Policy does not insure any loss of rental income during any period in which the insured property would not have been tenantable for any reason other than an insured loss.

## **E. COMMISSIONS, PROFITS AND ROYALTIES**

1) Measurement of Loss:

- a) The recoverable COMMISSIONS, PROFITS AND ROYALTIES loss is the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY:
- (i) Commissions, Profits and Royalties;
  - (ii) Less non-continuing expenses and charges during the PERIOD OF LIABILITY.
- b) The Commissions, Profits And Royalties payable hereunder will be the Actual Loss Sustained of income to the Insured during the PERIOD OF LIABILITY under any royalty, licensing fee or commission agreement between the Insured and another party which is not realizable due to physical loss or damage insured by this Policy to property of the other party of the type insured by this Policy located within the Policy's TERRITORY.
- c) The Insured will influence, to the extent possible, said party(ies) with whom the agreements described above have been made to use any other machinery, supplies or locations in order to resume business so as to reduce the amount of loss hereunder, and the Insured will cooperate with that party in every way to effect this. This Policy does not cover any cost to effect the above unless authorized in advance by the Company.
- d) In determining the indemnity payable hereunder, the Company will consider the amount of income derived from such agreements before and the probable amount of income after the date of loss or damage.
- e) There is recovery hereunder but only if such loss or damage interrupts the delivery of goods in whole or in part to the Insured or for their account.

2) COMMISSIONS, PROFITS AND ROYALTIES Exclusions: As respects COMMISSIONS, PROFITS AND ROYALTIES, TIME ELEMENT EXCLUSIONS C does not apply.

3) References and Application. The following term(s) means:

a) Commissions:

The income that would have been received by the Insured from the sale of goods not owned by the Insured.

b) Profits:

The amount that would have been received by the Insured from the sale of goods belonging to the Insured, in excess of the cost to the Insured of such goods.

c) Royalties:

The income the Insured is not able to collect under royalty or licensing agreements.

### **3. TIME ELEMENT COVERAGE EXTENSIONS**

#### **A. CONTINGENT TIME ELEMENT**

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY:

- 1) directly resulting from physical loss or damage of the type insured; and
- 2) to property of the type insured,

at any locations of direct suppliers or customers located within the TERRITORY of this Policy.

The terms "suppliers" or "customers" does not include any company supplying to or receiving from the Insured Location, as described elsewhere in this Policy, such as electricity, fuel, gas, water, steam, refrigeration, fiber optics, data communication lines, water, or sewage.

#### **B. EXTENDED PERIOD OF LIABILITY**

The GROSS EARNINGS coverage and RENTAL INSURANCE is extended to cover the reduction in sales resulting from:

- 1) the interruption of business as covered by GROSS EARNINGS;
- 2) 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; and
- 3) commencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Extension had not been included herein.

EXTENDED PERIOD OF LIABILITY Exclusions: As respects EXTENDED PERIOD OF LIABILITY, the TIME ELEMENT EXCLUSIONS B of this section does not apply and the following applies instead:

This Policy does not insure against any increase in loss due to fines or damages for breach of contract or for late or non-completion of orders, or penalties of any nature.

Coverage under this Extension for the reduction in sales due to contract cancellation will include only those sales that would have been earned under the contract during the extended period of liability.

Coverage under this Extension does not apply for more than the number of consecutive days shown in the LIMITS OF LIABILITY clause of the DECLARATIONS section.

**C. INGRESS/EGRESS**

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured due to the necessary interruption of the Insured's business due to prevention of ingress to or egress from an Insured Location, whether or not the premises or property of the Insured is damaged, provided that such prevention is a direct result of physical damage of the type insured by this Policy, to the kind of property not excluded by this Policy.

This Policy does not provide coverage under this Extension for more than the number of consecutive days shown in the LIMITS OF LIABILITY clause of the DECLARATIONS section.

**D. ON PREMISES SERVICES**

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to the following property located within 5 miles of the Insured Location:

- 1) Electrical equipment and equipment used for the transmission of voice, data or video.
- 2) Electrical, fuel, gas, water, steam, refrigeration, sewerage, voice, data or video transmission lines.

**E. PROTECTION AND PRESERVATION OF PROPERTY – TIME ELEMENT**

This Policy covers the Actual Loss Sustained by the Insured for a period of time not to exceed 48 hours after the Insured first takes reasonable action for the temporary protection and preservation of property insured by this Policy provided such action is necessary to prevent immediately impending physical loss or damage insured by this Policy at such insured property.

This Extension is subject to the deductible provisions that would have applied had the physical loss or damage occurred.

**F. RELATED REPORTED VALUES**

If reported TIME ELEMENT values include:

- 1) locations used by the Insured (such as branch stores, sales outlets and other plants) but not listed on a schedule under this Policy; and
- 2) a TIME ELEMENT loss would result at such locations,
- 3) from insured physical loss or damage at an Insured Location,

then this Policy provides coverage for such resulting TIME ELEMENT loss in accordance with the coverage applicable at such Insured Location.

## **G. RESEARCH AND DEVELOPMENT**

The GROSS EARNINGS coverages are extended to insure the Actual Loss Sustained by the Insured of continuing fixed charges and ordinary payroll directly attributable to the interruption of research and development activities, that in themselves would not have produced income during the PERIOD OF LIABILITY.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be the period from the time of direct physical loss or damage of the type insured by this Policy to the time when the property could be repaired or replaced and made ready for operations, but not to be limited by the date of expiration of this Policy.

## **H. SERVICE INTERRUPTION TIME ELEMENT**

- 1) This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the Period of Service Interruption at Insured Locations when the loss is caused by the interruption of incoming services (including overhead transmission or distribution lines) consisting of electricity, gas, fuel, steam, fiber optics, data communication lines, water, refrigeration or from the lack of outgoing sewerage service by reason of any accidental occurrence to the facilities of the supplier of such service located within this Policy's TERRITORY, that immediately prevents in whole or in part the delivery of such usable services.
- 2) This Extension will apply when the Period of Service Interruption is in excess of the time shown as Waiting Period in the WAITING PERIOD clause of the DECLARATIONS section.
- 3) The exclusions in the EXCLUSIONS clause of the PROPERTY DAMAGE section do not apply to SERVICE INTERRUPTION TIME ELEMENT coverage except for:
  - a) A1, A2, A3, A6, B1, B2, and
  - b) B4 with respect to incoming or outgoing voice, data or video.
- 3) Additional General Provisions:
  - a) The Insured will immediately notify the suppliers of services of any interruption of such services.
  - b) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such specified services.
- 4) References and Application: The following term(s) means:
  - a) Period of Service Interruption:

- (i) The period starting with the time when an interruption of specified services occurs; and ending when with due diligence and dispatch the service could be wholly restored and the Location receiving the service could or would have resumed normal operations following the restorations of service under the same or equivalent physical and operating conditions as provided by the PERIOD OF LIABILITY clause in this section.
- (ii) The Period of Service Interruption is limited to only those hours during which the Insured would or could have used service(s) if it had been available.
- (iii) The Period of Service Interruption does not extend to include the interruption of operations caused by any reason other than interruption of the specified service(s).

#### **4. PERIOD OF LIABILITY**

A. The PERIOD OF LIABILITY applying to all TIME ELEMENT COVERAGES, except LEASEHOLD INTEREST and as shown below, or if otherwise provided under the TIME ELEMENT COVERAGE EXTENSIONS, is as follows:

1) For building and equipment, the period:

- a) starting from the time of physical loss or damage of the type insured against; and
- b) ending when with due diligence and dispatch the building and equipment could be:
  - (i) repaired or replaced; and
  - (ii) made ready for operations,

under the same or equivalent physical and operating conditions that existed prior to the damage including such additional time as may be required to obtain and maintain "Green" Certification.

c) not to be limited by the expiration of this Policy.

2) For building and equipment under construction:

- a) the equivalent of the above period of time will be applied to the level of business that would have been reasonably achieved after construction and startup would have been completed had no physical damage happened; and
- b) due consideration will be given to the actual experience of the business compiled after completion of the construction and startup.

This item does not apply to COMMISSIONS, PROFITS AND ROYALTIES.

3) For stock-in-process and mercantile stock, including finished goods not manufactured by the Insured, the time required with the exercise of due diligence and dispatch:

- a) to restore stock in process to the same state of manufacture in which it stood at the inception of the interruption of production or suspension of business operations or

services; and

- b) to replace physically damaged mercantile stock.

This item does not apply to RENTAL INSURANCE.

- 4) For raw materials and supplies, the period of time:
  - a) of actual interruption of production or suspension of operations or services resulting from the inability to get suitable raw materials and supplies to replace similar ones damaged; but
  - b) limited to that period for which the damaged raw materials and supplies would have supplied operating needs.

- 5) If water:
  - a) used for any manufacturing purpose, including but not limited to as a raw material or for power;
  - b) stored behind dams or in reservoirs; and
  - c) on any Insured Location,

is released as the result of physical damage of the type insured against under this Policy to such dam, reservoir or connected equipment, the Company's liability for the actual interruption of production or suspension of operations or services due to inadequate water supply will not extend beyond 30 consecutive days after the damaged dam, reservoir or connected equipment has been repaired or replaced.

This item does not apply to RENTAL INSURANCE.

- 6) For physically damaged exposed films, records, manuscripts and drawings, the time required to copy from backups or from originals of a previous generation. This time does not include research, engineering or any other time necessary to restore or recreate lost information.

This item does not apply to RENTAL INSURANCE.

- 7) For physically damaged or destroyed property covered under DATA, PROGRAMS OR SOFTWARE , the time to recreate or restore including the time for researching or engineering lost information.

This item does not apply to RENTAL INSURANCE.

- 8) If an order of civil authority/military authority prohibits access to the Insured Location and provided such order is the direct result of physical damage of the type insured against under this Policy at the Insured Location or within ten statute miles of it, the period of time and EXTRA EXPENSE:
  - a) starting at the time of such physical damage; but
  - b) not to exceed 90 consecutive days.

- B. The PERIOD OF LIABILITY does not include any additional time due to the Insured's inability to resume operations for any reason, including but not limited to:
- 1) making changes to equipment.
  - 2) making changes to the buildings or structures except as provided in the DEMOLITION AND INCREASED COST OF CONSTRUCTION clause in the PROPERTY DAMAGE section.
  - 3) re-staffing or retraining employees.

If two or more Periods of Liability apply such periods will not be cumulative.

## **5. TIME ELEMENT EXCLUSIONS**

In addition to the exclusions elsewhere in this Policy, the following exclusions apply to TIME ELEMENT loss:

This Policy does not insure against:

- A. Any loss during any idle period, including but not limited to when production, operation, service or delivery or receipt of goods would cease, or would not have taken place or would have been prevented due to:
- 1) physical loss or damage not insured by this Policy on or off of the Insured Location.
  - 2) planned or rescheduled shutdown.
  - 3) strikes or other work stoppage.
  - 4) any other reason other than physical loss or damage insured by this Policy.
- B. Any increase in loss due to:
- 1) suspension, cancellation or lapse of any lease, contract, license or orders.
  - 2) fines or damages for breach of contract or for late or non completion of orders.
  - 3) for penalties of any nature.
  - 4) any other consequential or remote loss.
- C. Any loss resulting from loss or damage to finished goods manufactured by the Insured, nor the time required for their reproduction.

## **6. TIME ELEMENT INTERDEPENDENCY**

If there is a loss at an Insured Location that involves interdependency at one or more other Insured Locations, the loss, including any resulting interdependency loss, will be adjusted based on the TIME ELEMENT coverage that applies at the Insured Location where the physical loss or damage insured by this Policy occurred.

## **LOSS ADJUSTMENT AND SETTLEMENT - SECTION D**

### **1. LOSS ADJUSTERS**

It is hereby understood and agreed that each and every loss will be adjusted by and only by:

Vito Russo, VP, Executive General Adjuster  
McLarens Young International  
One Battery Park Plaza  
24 State Street, 7th Floor  
New York, NY 10004  
(212)-344-2600

Or such adjuster as the First Named Insured declares.

### **2. LOSS ADJUSTMENT/PAYABLE**

Loss, if any, will be adjusted with and payable to MSD Partners, L.P. or as may be directed by MSD Partners, L.P. Additional insured interests will also be included in loss payment as their interests may appear when named as additional named insured, lender, mortgagee and/or loss payee in the Certificates of Insurance on file with the Company. Insurer will adjust any loss with the First Named Insured and pay claim to the First Named Insured or their designee whose receipt will constitute a full release of liability under this policy for this loss.

### **3. CURRENCY FOR LOSS PAYMENT**

Losses will be adjusted and paid in the currency of the United States of America, except in Canada where losses will be paid in Canadian currency, unless directed otherwise by the Insured.

In the event of a loss adjustment involving currency conversion, the exchange selling rate will be calculated as follows:

- A. As respects the calculation of deductibles and limits of liability, the rate of exchange published in The Wall Street Journal on the date of loss.
- B. As respects loss or damage to Real and Personal Property:
  - 1) the cost to repair or replace Real and Personal Property will be converted at the time the cost of repair or replacement is incurred based on the rate of exchange published in The Wall Street Journal.
  - 2) if such property is not replaced or repaired, the conversion will be based on the rate of exchange published in The Wall Street Journal as of the date of loss.
- C. As respects TIME ELEMENT loss the conversion will be based on the average of the rate of exchange published in The Wall Street Journal on the date of loss and the rate of exchange published in The Wall Street Journal on the last day of the Period of Liability.

If The Wall Street Journal was not published on the stipulated date, the rate of exchange will be as published on the next business day.

#### 4. VALUATION

Adjustment of the physical loss amount under this Policy will be computed as of the date of loss at the location of the loss, and for no more than the interest of the Insured, subject to the following:

- A. On stock in process, the value of raw materials and labor expended plus the proper proportion of overhead charges.
- B. On finished goods manufactured by the Insured, the regular cash selling price at the Location where the loss happens, less all discounts and charges to which the finished goods would have been subject had no loss happened.
- C. On raw materials, supplies and other merchandise not manufactured by the Insured:
  - 1) if repaired or replaced, the actual expenditure incurred in repairing or replacing the damaged or destroyed property; or
  - 2) if not repaired or replaced, the Actual Cash Value.
- D. On exposed films, records, manuscripts and drawings, that are not Valuable Papers and Records, the value blank plus the cost of copying information from back-up or from originals of a previous generation. These costs will not include research, engineering or any costs of restoring or recreating lost information.
- E. On property covered under DEFERRED PAYMENTS, the lesser of the:
  - 1) total amount of unpaid installments less finance charges.
  - 2) Actual Cash Value of the property at the time of loss.
  - 3) cost to repair or replace with material of like size, kind and quality.
- F. On FINE ARTS articles,:
  - 1) the reasonable and necessary cost to repair or restore such property to the physical condition that existed on the date of loss.
  - 2) cost to replace the article.
  - 3) if unable to repair or replace, the value stated on a schedule on file with the Company.

In the event a Fine Arts article is part of a pair or set, and a physically damaged article cannot be replaced, or repaired or restored to the condition that existed immediately prior to the loss, the Company will be liable for the lesser of the full value of such pair or set or the amount designated on the schedule. The Insured agrees to surrender the pair or set to the Company.

- G. On property covered under DATA, PROGRAMS OR SOFTWARE:

- 1) The cost to repair, replace or restore data, programs or software including the costs to recreate, research and engineer;
  - 2) If not repaired, replaced or restored within two years from the date of loss, the blank value of the media.
- H. On VALUABLE PAPERS AND RECORDS, the lesser of the following:
- 1) The cost to repair or restore the item to the condition that existed immediately prior to the loss.
  - 2) The cost to replace the item.
  - 3) The amount designated for the item on the schedule on file with the Company.
- I. On property in transit:
- 1) Property shipped to or for the account of the Insured will be valued at actual invoice to the Insured. Included in the value are accrued costs and charges legally due. Charges may include the Insured's commission as selling agent.
  - 2) Property sold by the Insured and shipped to or for the purchaser's account will be valued at the Insured's selling invoice amount. Prepaid or advanced freight costs are included.
  - 3) Property not under invoice will be valued:
    - a) for property of the Insured, at the valuation provisions of this Policy applying at the location from which the property is being transported; or
    - b) for other property, at the actual cash market value at the destination point on the date of occurrence,  
  
less any charges saved which would have become due and payable upon arrival at destination.
- J. On all other property, the loss amount will not exceed the lesser of the following:
- 1) The cost to repair.
  - 2) The cost to rebuild or replace on the same site with new materials of like size, kind and quality.
  - 3) The cost in rebuilding, repairing or replacing on the same or another site, but not to exceed the size and operating capacity that existed on the date of loss.
  - 4) The selling price of real property or machinery and equipment, other than stock, offered for sale on the date of loss.
  - 5) The cost to replace unrepairable electrical or mechanical equipment, including computer equipment, with equipment that is the most functionally equivalent to that damaged or

destroyed, even if such equipment has technological advantages and/or represents an improvement in function and/or forms part of a program of system enhancement.

- 6) The increased cost of demolition, if any, resulting from loss covered by this Policy, if such property is scheduled for demolition.
- 7) The unamortized value of improvements and betterments, if such property is not repaired or replaced at the Insured's expense.

In the event the property is LEED Certified, the loss amount insured will include costs to maintain that LEED certification.

However, the Insured may elect not to repair or replace the insured real and/or personal property lost, damaged or destroyed. If the insured elects not to repair, rebuild or replace within two years of the date of loss, valuation of such loss shall be on an Actual Cash Value basis.

## **5. LOSS CONDITIONS**

### **A. REQUIREMENTS IN CASE OF LOSS**

The Insured will:

- 1) give notice to the Company of any loss as soon as reasonably possible.
- 2) protect the property from further loss or damage.
- 3) promptly separate the damaged and undamaged property; put it in the best possible order; and furnish a complete inventory of the lost, destroyed, damaged and undamaged property showing in detail the quantities, costs, Actual Cash Value, replacement value and amount of loss claimed.
- 4) give a signed and sworn proof of loss to the Company within 180 days after the loss, unless that time is extended in writing by the Company. The proof of loss must state the knowledge and belief of the Insured as to:
  - a) the time and origin of the loss.
  - b) the Insured's interest and that of all others in the property.
  - c) the Replacement Value of each item and the amount of loss to each item; all encumbrances; and all other contracts of insurance, whether valid or not, covering any of the property.
  - d) any changes in the title, use, occupation, location, possession or exposures of the property since the effective date of this Policy.
  - e) by whom and for what purpose any location insured by this Policy was occupied on the date of loss, and whether or not it then stood on leased ground.

- 5) include a copy of all the descriptions and schedules in all policies and, if required, provide verified plans and specifications of any buildings, fixtures, machinery or equipment destroyed or damaged.
- 6) further, the Insured, will as often as may be reasonably required:
  - a) exhibit to any person designated by the Company all that remains of any property;
  - b) submit to examination under oath by any person designated by the Company and sign the written records of examinations; and
  - c) produce for examination at the request of the Company:
    - (i) all books of accounts, business records, bills, invoices and other vouchers; or
    - (ii) certified copies if originals are lost,

at such reasonable times and places that may be designated by the Company or its representative and permit extracts and machine copies to be made.

## **B. COMPANY OPTION**

The Company has the option to take all or any part of damaged property at the agreed or appraised value. The Company must give notice to the Insured of its intention to do so within 30 days after receipt of proof of loss.

## **C. ABANDONMENT**

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

## **D. SUBROGATION**

The Insured is required to cooperate in any subrogation proceedings. The Company may require from the Insured an assignment or other transfer of all rights of recovery against any party for loss to the extent of the Company's payment.

The Company will not acquire any rights of recovery that the Insured has expressly waived prior to a loss, nor will such waiver affect the Insured's rights under this Policy.

Any recovery from subrogation proceedings, less costs incurred by the Company in such proceedings, will be payable to the Insured in the proportion that the amount of:

- 1) any applicable deductible; and/or
- 2) any provable uninsured loss,

bears to the entire provable loss amount.

## **E. APPRAISAL**

If the Insured and the Company fail to agree on the amount of loss, each will, on the written demand of either, select a competent and disinterested appraiser after:

- 1) the Insured has fully complied with all provisions of this Policy, including REQUIREMENTS IN CASE OF LOSS; and
- 2) the Company has received a signed and sworn proof of loss from the Insured.

Each will notify the other of the appraiser selected within 20 days of such demand.

The appraisers will first select a competent and disinterested umpire. If the appraisers fail to agree upon an umpire within 30 days then, on the request of the Insured or the Company, the umpire will be selected by a judge of a court of record in the jurisdiction in which the appraisal is pending. The appraisers will then appraise the amount of loss, stating separately the Actual Cash Value and replacement cost value as of the date of loss and the amount of loss, for each item of physical loss or damage or if, for TIME ELEMENT loss, the amount of loss for each TIME ELEMENT coverage of this Policy.

If the appraisers fail to agree, they will submit their differences to the umpire. An award agreed to in writing by any two will determine the amount of loss.

The Insured and the Company will each:

- 1) pay its chosen appraiser; and
- 2) bear equally the other expenses of the appraisal and umpire.

A demand for APPRAISAL shall not relieve the Insured of its continuing obligation to comply with the terms and conditions of this Policy, including as provided under REQUIREMENTS IN CASE OF LOSS.

The Company will not be held to have waived any of its rights by any act relating to appraisal.

## **F. SUIT AGAINST THE COMPANY**

No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless:

- 1) the Insured has fully complied with all the provisions of this Policy; and
- 2) legal action is started within twelve months after inception of the loss.

If under the insurance laws of the jurisdiction in which the property is located, such twelve months' limitation is invalid, then any such legal action needs to be started within the shortest limit of time permitted by such laws.

## **6. SETTLEMENT OF CLAIMS**

The amount of loss, except for ACCOUNTS RECEIVABLE coverage, for which the Company may be liable will be paid within 30 days after:

- A. proof of loss as described in this Policy is received by the Company; and
- B. when a resolution of the amount of loss is made either by:
  - 1) written agreement between the Insured and the Company; or
  - 2) the filing with the Company of an award as provided in the APPRAISAL clause of this section.

## **7. COLLECTION FROM OTHERS**

The Company will not be liable for any loss to the extent that the Insured has collected for such loss from others.

## **8. PARTIAL PAYMENT OF LOSS SETTLEMENT**

In the event of a loss occurring which has been ascertained to be insured loss or damage under this Policy and determined by the Company's representatives to be in excess of the applicable Policy deductible, the Company will advance mutually agreed upon partial payment(s) on the insured loss or damage, subject to the Policy's provisions. To obtain said partial payments, the Insured will submit a signed and sworn Proof of Loss as described in this Policy, with adequate supporting documentation.

## **9. JURISDICTION**

This Policy will be governed by United States of America Law. Any disputes arising hereunder will be exclusively subject to United States of America jurisdiction.

## **GENERAL PROVISIONS - SECTION E**

### **1. ADDITIONAL INSURABLE INTERESTS/CERTIFICATES OF INSURANCE**

Additional insured interests are automatically added to this Policy as their interest may appear when named as additional named insured, lender, mortgagee and/or loss payee in the Certificates of Insurance on a schedule on file with the Company. Such interests will not amend, extend or alter the terms, conditions, provisions and limits of this Policy.

### **2. CANCELLATION/NON-RENEWAL**

This Policy may be:

- A. cancelled at any time at the request of the Insured by surrendering this Policy to the Company or by giving written notice to the Company stating when such cancellation will take effect; or
- B. cancelled by the Company by giving the Insured not less than:
  - 1) 90 days' written notice of cancellation; or
  - 2) 10 days' written notice of cancellation if the Insured fails to remit, when due, payment of premium for this Policy; or
- C. non-renewed by the Company by giving the Insured not less than 90 days' written notice of non-renewal.

Return of any unearned premium will be calculated on the customary short rate basis if the Insured cancels and on a pro-rata basis if the Company cancels this Policy. Return of any unearned premium will be made by the Company as soon as practicable.

### **3. INSPECTIONS**

The Company, at all reasonable times, will be permitted, but will not have the duty, to inspect insured property.

The Company's:

- A. right to make inspections;
- B. making of inspections; or
- C. analysis, advice or inspection report,

will not constitute an undertaking, on behalf of or for the benefit of the Insured or others, to determine or warrant that the insured property is safe or healthful. This Company will have no liability to the Insured or any other person because of any inspection or failure to inspect.

When the Company is not providing jurisdictional inspections, the Owner/Operator has the responsibility to assure that jurisdictional inspections are performed as required, and to assure that required jurisdictional Operating Certificates are current for their pressure equipment.

#### **4. PROVISIONS APPLICABLE TO SPECIFIC JURISDICTIONS**

- A. If the provisions of this Policy conflict with the laws of any jurisdictions in which this Policy applies, and if certain provisions are required by law to be stated in this Policy, this Policy will be read so as to eliminate such conflict or deemed to include such provisions for Insured Locations within such jurisdictions.
- B. The Company will provide to the Insured copies of endorsements mandated for use by the laws of provinces in Canada. The endorsements may modify this Policy with respect to any insured property located in the province in which the endorsement applies.

#### **5. MISREPRESENTATION AND FRAUD**

This entire Policy will be void if, whether before or after a loss, an Insured has:

- A. willfully concealed or misrepresented any material fact or circumstance concerning this insurance, the subject thereof, any insurance claim, or the interest of an Insured.
- B. made any attempt to defraud the Company.
- C. made any false swearing.

#### **6. OTHER INSURANCE**

- A. If there is any other insurance that would apply in the absence of this Policy, this Policy will apply only after such insurance whether collectible or not.
- B. In no event will this Policy apply as contributing insurance.
- C. The Insured is permitted to have other insurance over any limits or sublimits of liability specified elsewhere in this Policy without prejudice to this Policy. The existence of any such insurance will not reduce any limit or sublimit of liability in this Policy. Any other insurance that would have provided primary coverage in the absence of this Policy will not be considered excess.
- D. The Insured is permitted to have other insurance for all, or any part, of any deductible in this Policy. The existence of such other insurance will not prejudice recovery under this Policy. If the proceeds available of such other insurance are greater than this Policy's applicable deductible, this Policy's insurance will apply only after such other insurance has been exhausted.
- E. In the event this Policy is deemed to contribute with other insurance, the limit of liability applicable at each Location, for purposes of such contribution with other insurers, will be the latest amount described in this Policy or the latest Location value on file with the Company.
- F. When this Policy includes property in more than one jurisdiction, separate policies underlying this Policy may be issued by the Company in compliance with jurisdictional requirements. Such underlying policies will not be considered as additional insurance, but as duplicate insurance only.

## **7. POLICY MODIFICATION**

This Policy contains all of the agreements between the Insured and the Company concerning this insurance. The Insured and the Company may request changes to this Policy. This Policy can be changed only by endorsements issued by the Company and made a part of this Policy.

Notice to any agent or knowledge possessed by any agent or by any other person will not:

- A. create a waiver, or change any part of this Policy; or
- B. prevent the Company from asserting any rights under the provisions of this Policy.

## **8. REDUCTION BY LOSS**

Claims paid under this Policy will not reduce its' limit of liability, except claims paid will reduce any Policy Year Aggregate Limit of Liability.

## **9. SUSPENSION**

On discovery of a dangerous condition, the Company may immediately suspend this insurance on any machine, vessel or part thereof by giving written notice to the Insured. The suspended insurance may be reinstated by the Company. Any unearned premium resulting from such suspension will be returned by the Company.

## **10. TITLES**

The titles in this Policy are only for reference. The titles do not in any way affect the provisions of this Policy.

## **11. DROP DOWN WORDING**

It is agreed and understood that in the event of a reduction or exhaustion of the underlying limit or limits, it is hereby understood and agreed that such insurance as is afforded by this Policy shall apply in excess of the reduced underlying limit, or if such limits are exhausted, shall apply as underlying insurance, notwithstanding anything to the contrary in the terms and conditions of this Policy.

In no event, however, shall this Company be liable for more than the limits of liability specified in this policy. It is a condition of this Policy that the policies of the primary and underlying excess insurers shall be maintained in full effect during the currency of this Policy except for any reduction or exhaustion of the aggregate limits contained solely therein by payments of losses during the policy year.

## **12. PRIORITY OF PAYMENTS**

The amount of loss from any one occurrence for which this policy is excess shall be determined by the combined loss, damage or expense as insured by the Underlying Policy(ies). Any recovery made under such Underlying Policy(ies) shall be treated as applying first in satisfaction of the interests (for application of this policy condition, meaning perils insured, coverage's provided and/or locations insured) not insured by this Policy, and thereafter in satisfaction of the interests insured under this Policy. Upon exhaustion of the Underlying Policy's(ies') limits, this Policy

shall be liable for the amount of loss in excess of the amount attributable to the Underlying Policy(ies) for interests insured by this Policy, but such liability shall only apply to interests insured by this Policy

**ENDORSEMENT 1 – NAMED INSUREDS**

**This Endorsement, effective 03/11/2020**

**Issued to: MSD Partners, L.P.**

**Named Insureds as on file with the carriers.**

All other terms and conditions remain unchanged.

## **ENDORSEMENT 2 - WEH ASBESTOS CLAUSE**

**This Endorsement, effective 03/11/2020**

**Issued to: MSD Partners, L.P.**

### **WEH ASBESTOS CLAUSE**

- A. This policy only insures asbestos physically incorporated in an insured building or structure, and then only that part of the asbestos which has been physically damaged during the policy period by an insured peril.

This coverage is subject to all limitations in the policy to which this endorsement is attached and, in addition, to each of the following specific limitations:

1. The said building or structure must be insured under this policy for damage by that Listed Peril.
  2. The Peril must be the immediate, sole cause of the damage to the asbestos.
  3. The Assured must report to Underwriters the existence and cost of the damage as soon as practicable after the Listed Peril first damaged the asbestos. However this policy does not insure any such damage first reported to Underwriters more than 12 (twelve) months after the expiration, or termination, of the policy period.
  4. Insurance under this policy in respect of asbestos shall not include any sum relating to:
    - (i) any faults in the design, manufacture or installation of the asbestos.
    - (ii) asbestos not physically damaged by an insured Peril including any governmental or regulatory authority direction or request of whatsoever nature relating to undamaged asbestos.
- B. Except as set forth in the foregoing Section A, this policy does not insure asbestos or any sum relating thereto.

## ENDORSEMENT 3 - UPGRADE TO GREEN

**This Endorsement, 03/11/2020**

**Issued to: MSD Partners, L.P.**

### UPGRADE TO GREEN<sup>SM</sup> – COMMERCIAL ENDORSEMENT

This endorsement modifies insurance provided by the policy:

The coverages and valuation provision provided by this endorsement only apply if direct physical loss or damage to covered real and/or personal property is caused by any of the perils covered by the policy and replacement cost valuation applies. This coverage does not apply to: (1) personal property of others in the Insured's care, custody, and control, (2) leased personal property, and/or (3) finished or unfinished stock.

In no event, does this endorsement increase or change the per occurrence limit of liability shown in the declarations or the annual aggregate for specified perils.

1. Notwithstanding the Valuation Provision of this policy or limits of liability applicable to specific locations or perils, if replacement cost valuation applies to real and/or personal property, then the Company's liability for loss applicable to this endorsement shall be the cost to repair or replace the covered damaged property, subject to the applicable limit of liability, plus the least of the following amounts:
  - A. The reasonable and necessary amount to upgrade to green the covered damaged property as described in Coverage Section A – Non-LEED<sup>®</sup> Certified Coverage *or* as described in Coverage Section B – LEED<sup>®</sup> Certified Coverage, whichever is applicable; or
  - B. An additional 25% of the applicable limit of liability for the building and/or business personal property shown in the Statement of Values or similar schedule to upgrade to green; or
  - C. \$5,000,000 (five million dollars) to upgrade to green.

At the Insured's sole discretion, the Insured may elect not to upgrade to green any or all property for which upgrade to green coverage is provided under this endorsement. In such case, the Company will adjust the claim in accordance with the standard provisions of the policy, as modified by all other applicable endorsements.

Subject to the least of A., B., or C. above, if business interruption coverage is provided as part of this policy, if necessary, the Period of Restoration shall be increased to allow for additional time to upgrade to green the damaged property plus up to an additional two week period to meet the requirements set forth in 4.B.

## 2. **COVERAGE SECTION A: NON-LEED CERTIFIED COVERAGE**

In the event of direct physical loss or damage by any of the perils covered by the policy to a building that is not LEED certified at the time of the loss, or to the personal property within such a building, the Company will pay to repair or replace damaged or destroyed:

### **A. Loss Settlement for Personal Property**

- (1) “Appliances” or “Office Equipment” with products of like kind and quality that have been identified as “ENERGY STAR<sup>®</sup>” or equivalent products of such energy efficiency. If there are no such products available at the time of the loss, this upgrade to green coverage does not apply.
- (2) “Systems Furniture” or “Seating”, with products of like kind and quality that are certified as GREENGUARD Indoor Air Quality Certified<sup>®</sup> or products with similar emissions characteristics. If there are no such products available at the time of the loss, this upgrade to green coverage does not apply.

### **B. Loss Settlement for Your Building**

#### **(1) Interior Finish Materials Upgrade**

##### **a. Lower Emissions Products Upgrade Coverage**

“Defined Building Materials” with products of like kind and quality that have “Lower Emissions”. If there are no such products available at the time of the loss, this upgrade to green coverage does not apply.

##### **b. Environmentally Preferable Products Upgrade Coverage**

Interior wood, carpeting and flooring with products of like kind and quality that have “Lower Emissions”, are “Sustainably Produced”, are “Rapidly Renewable” or include “Recycled Content”. If there are no such products available at the time of the loss, this upgrade to green coverage does not apply.

#### **(2) Interior Plumbing Systems Upgrade Coverage**

Interior plumbing fixtures including, but not limited to, toilets, shower heads, and lavatory faucets with products of like kind and quality that are more “Water Efficient”. If there are no such products available at the time of the loss, this upgrade to green coverage does not apply. For damaged or destroyed faucets, the Company will also pay to install occupant sensors to reduce the potable water demand.

#### **(3) Lighting Systems Upgrade Coverage**

Lighting systems, with products of like kind and quality that have been identified as “ENERGY STAR” or equivalent products of such energy efficiency. If there are no such products available at the time of the loss, this upgrade to green coverage does not apply. The Company will also pay to repair or replace damaged light bulbs with light bulbs which have low mercury content.

**(4) Efficient Heating and Cooling Equipment Upgrade Coverage**

“Heating and cooling equipment” with products of like kind and quality that have been identified as “ENERGY STAR” or equivalent products of such energy efficiency. If there are no such products available at the time of the loss, this upgrade to green coverage does not apply.

**(5) Building Reconstruction Following Total Loss**

**a.** Solely with respect to a “Total Loss” to a building, the Company will pay to replace the building on its existing foundation using the most cost effective techniques, products and materials that should satisfy the prerequisites and earn the minimum number of points required to qualify for LEED Silver certification using the LEED New Construction (LEED NC<sup>®</sup>) Rating System.

**b. Certification Expenses**

**(i)** The Company will pay the reasonable and necessary registration and certification fees charged by the United States Green Building Council (USGBC) that the Insured incurs should the Insured decide to seek LEED Silver certification. However, the Company will not pay to modify the reconstructed structure if it is not certified.

**(ii)** The Sublimit of Insurance for this coverage is \$5,000,000.

**3. COVERAGE SECTION B: LEED CERTIFIED COVERAGE**

In addition to all Coverage’s provided in Coverage Section A (with the exception of 2.B.(5) Building Reconstruction Following a Total Loss) and in the event of direct physical loss or damage by any of the perils covered by the policy to a building that is LEED certified at the time of the loss, or to the personal property within such building, the Company will pay to repair or replace damaged or destroyed:

**A. Loss Settlement for Trees, Shrubs, and Vegetative Roofs**

**(1)** Trees and shrubs planted specifically to secure the Heat Island Effect: Non-Roof point as described in LEED NC. For the purposes of this coverage only, notwithstanding any other provision of the policy to the contrary, trees and shrubs are Covered Property.

**(2)** Vegetative roofs on LEED certified buildings. Notwithstanding any other provision of the policy to the contrary, vegetative roofs are Covered Property.

**B. Loss Settlement for Your Building**

**(1) Recertification Expenses**

- a. In the event of direct physical loss or damage by any of the perils covered by the policy that necessitates recertification of the damaged building, the Company will pay the reasonable and necessary registration and certification fees charged by the USGBC that the Insured incurs as a result of the recertification process.
- b. The Sublimit of Insurance for this coverage is \$5,000,000

**(2) Building Reconstruction Following Total Loss**

- a. Solely with respect to a “Total Loss” to a building that is LEED certified at the time of the loss, the Company will pay to replace the building on its existing foundation using the most cost effective techniques, products and materials that would satisfy the prerequisites and should earn the minimum number of points required to qualify for LEED certification at one level above the certification in effect at the time of the loss using the LEED NC Rating System.
- b. **Certification Expenses**
  - (i) The Company will pay the reasonable and necessary registration and certification fees charged by the USGBC that the Insured incurs should the Insured decide to seek LEED certification. However, the Company will not pay to modify the reconstructed structure if it is not certified.
  - (ii) The Sublimit of Insurance for this coverage is \$5,000,000.

**4. COVERAGES INCLUDED WITHIN COVERAGE SECTIONS A OR B AND APPLICABLE TO LEED<sup>®</sup> AND NON-LEED<sup>®</sup> CERTIFIED BUILDINGS**

In the event of direct physical loss or damage by any of the perils covered by the policy to a LEED or Non-LEED certified building:

**A. Recycling Expenses**

- (1) The Company will pay the Insured’s expenses to cleanup, sort, segregate, and transport debris from the Insured’s damaged building to recycling facilities, if such debris can be recycled.
- (2) The Sublimit of Insurance for this coverage is \$5,000,000 and is in addition to the debris removal expense sublimit provided by the policy, if any.
- (3) Any income or remuneration derived from this recycling shall be used to reduce the loss.

**B. Air Testing and Outdoor Air Ventilation of the Reconstructed Space**

- (1) In accordance with the requirements for the Construction IAQ Management Plan: Before Occupancy Credit as described in the LEED NC rating system (hereinafter, "Construction IAQ"), the Company will pay to conduct air testing and a building flush-out (if required because of a failure to meet air quality standards set forth in the Construction IAQ) and follow-up air testing for a total period of time not to exceed two weeks.
- (2) After the two-week period of increased outdoor air ventilation of the reconstructed space, the Company will pay to replace the filtration media with new media.
- (3) The Sublimit of Insurance for this coverage is \$5,000,000.

**C. Professional Services**

The Company will pay reasonable and necessary expenses to hire a LEED Accredited architect or engineer to participate in the design and/or construction administration of the damaged portion of the building or the entire building, whichever is applicable.

The Sublimit for this coverage is \$5,000,000.

**D. Building Commissioning Expenses**

- (1) In the event of direct physical loss or damage to mechanical, electrical, or electronic building systems, by any of the perils covered by the policy which necessitates the commissioning or re-commissioning of those systems, the Company will pay reasonable and necessary expenses of a Professional Engineer to commission or re-commission those damaged systems in accordance with LEED protocols.
- (2) The Sublimit of Insurance for this coverage is \$5,000,000.

**5. Additional Definitions**

- A. "Appliances" means products including, but not limited to, dishwashers, refrigerators, freezers, ovens, microwave ovens, room air conditioners, room air cleaners and water heaters.
- B. "Defined Building Materials" means: (1) all carpet and floor coverings, including, adhesives to affix them to the floor, (2) all interior paints, architectural coatings, primers, undercoatings, adhesives, sealants, and (3) permanently installed composite wood fixtures, including, counters, cabinets, and partitions.
- C. "ENERGY STAR" means any product that has been identified by the United States Government Department of Energy, Environmental Protection Agency as ENERGY STAR qualified at the time of the loss.
- D. "Heating and Cooling Equipment" means products including, but not limited to, heat pumps, boilers, central air conditioning, ceiling fans, dehumidifiers, exhaust fans, furnaces, thermostats, and ventilating fans.
- E. "Lower emissions" means:

- (1) With respect to adhesive and sealant products, such as, general construction adhesives, flooring adhesives, fire-stopping sealants, caulking, duct sealants, plumbing adhesives, and cove base adhesives, products that meet the requirements of South Coast Air Quality Management District (SCAQMD) Rule # 1168; with respect to aerosol adhesives, products that meet Green Seal Standard GS-36 requirements;
  - (2) With respect to architectural paints, coatings, and primers, products that do not exceed the volatile organic compound (VOC) content limits established in Green Seal Standard GS-11, with respect to anti-corrosive and anti-rust paints, products that do not exceed the VOC content limits established in Green Seal Standard GS-03; and with respect to clear wood finishes, floor coatings, stains, and shellacs, products that do not exceed the VOC content limits established by SCAQMD Rule # 1113;
  - (3) With respect to carpet and carpet cushion, products that meet the requirements of the Carpet and Rug Institute's Green Label Plus Program; and
  - (4) With respect to composite wood and agrifiber products such as particleboard, medium density fiberboard (MDF), plywood, wheat board, strawboard, panel substrates and door cores as well as laminating adhesives used to fabricate on-site and shop-applied composite wood and agrifiber assemblies, products that contain no added urea-formaldehyde resins.
- F.** "Office Equipment" means electronic products including, but not limited to, desktop computers, laptop computers, monitors, printers, fax machines, scanners, copiers, and telephones.
- G.** "Recycled Content" means those products that contain at least 20% post-consumer recycled content.
- H.** "Rapidly Renewable" means products that are made from plant resources that are harvested within a ten-year cycle or shorter, including, but not limited to, bamboo, eucalyptus, wheat straw, sunflower hulls, cork oak, wheat board, linoleum, and sorghum.
- I.** "Seating" means task and guest chairs used with "System Furniture".
- J.** "Sustainably Produced" means those products certified by the Forest Stewardship Council ("FSC").
- K.** "System Furniture" means either a panel-based workstation comprised of modular interconnecting panels, hang-on components and drawer/filing components of a freestanding grouping of furniture items and their components that have been designed to work in concert.

- L.** “Total Loss” means:
- (1) The covered building is completely destroyed regardless of whether any damage is done to the foundation or slab, or
  - (2) The covered building is in such condition after the loss that the standard method of rebuilding or repairing the covered building is to raze the structure except for the foundation or slab or including all or part of the foundation or slab and rebuild the entire structure, whether such structure is actually rebuilt or not.
- M.** “Water Efficient” means dry fixtures such as composting toilet systems and non-water using urinals, flush toilets using no more than 1.6 gallons of water per flush, and shower heads and faucets with a flow rate of no more than 2.2 gallons per minute.

All other terms and conditions of the policy remain the same.

## **ENDORSEMENT 4 - DOWNZONING**

**This Endorsement, 03/11/2020**

**Issued to: MSD Partners, L.P.**

Replacement cost new on real property, which must be demolished and may not be rebuilt due to the enforcement of said law, ordinance, governmental directive or standard.

This policy shall also be liable for the (additional) business interruption and/or rental value loss resulting from such demolishment and inability to rebuild and measured for the length of time as would have been required with the exercise of due diligence and dispatch to rebuild or replace such demolished property and not otherwise recoverable elsewhere under the policy.

In determining the amount of net profit, charges, expenses and/or rental value covered hereunder for the purpose of ascertaining the amount of loss sustained for such demolished property under this paragraph, due consideration shall be given to the experience of the business before the date of damage or destruction and to the probable experience thereafter had no loss occurred involving said demolished property.

## TERRORISM EXCLUSION

Named Insured MSD Partners, L.P.			Endorsement Number 005
Policy Symbol MAU	Policy Number D37870651 001	Policy Period 03/11/2020 to 03/11/2021	Effective Date of Endorsement 03/11/2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

The following exclusion is added to this policy and applies to all coverages, additional coverages, and coverage extensions, notwithstanding any provision to the contrary in this policy or any other endorsement hereto:

This Policy excludes loss, damage, cost, or expense directly or indirectly caused by or resulting from any of the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence thereto:

- (1) Act of Terrorism;
- (2) action taken by or on behalf of any government or any branch or division thereof (including, without limitation, the uniformed armed forces, militia, police, state security, and anti-terrorism agencies) in responding to, preventing, combating, defending or retaliating against any Act of Terrorism; or
- (3) dispersal, application, or release of any actual or alleged pathogen, poison, biologic or chemical product, material, waste or substance as a result of an Act of Terrorism, and it reasonably appears that one purpose of the Act of Terrorism was to release such product, material, waste or substance.

This exclusion applies whether or not the Act of Terrorism was committed in concert with or on behalf of any organization or government.

The terms and limitations of this exclusion do not serve to create coverage for any loss which would otherwise be excluded under this Policy, such as, but not limited to, losses excluded by the "Nuclear Exclusion" or the "War Exclusion" or similar provision.

If an Act of Terrorism results in a fire and the direct physical loss or damage to property insured hereunder located in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands and any territory or possession of the United States, that, either pursuant to the Standard Fire Policy or otherwise, prohibits exclusions for acts of terrorism that result in fire, this Company will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage to property insured hereunder and may be limited, in accordance with the Standard Fire Policy, to the lesser of the actual cash value of the property at the time of the loss or the amount which it would cost to repair or replace the property, without allowance for any increased cost of repair or replacement by reason of any ordinance or law, and without any compensation for business interruption, extra expense to continue business activities, or any other coverage for loss or damage other than direct physical loss or damage to the property insured hereunder.

As used in this endorsement, "Act of Terrorism" means any act against persons, organizations or property of any nature:

1. That involves the following or preparation for the following:

- a. Use or threat of force or violence; or
- b. Commission or threat of a dangerous act; or
- c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

2. When one or both of the following applies:

- a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
- b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

“Act of Terrorism” includes any incident determined to be such by an official, department or agency that has been specifically authorized by federal law to make such a determination.

All other terms and conditions remain unchanged.

## EXCLUSION OF CERTIFIED ACTS OF TERRORISM

Named Insured MSD Partners, L.P.			Endorsement Number 006
Policy Symbol MAU	Policy Number D37870651 001	Policy Period 03/11/2020 to 03/11/2021	Effective Date of Endorsement 03/11/2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

- The following definition is added to the policy with respect to the provisions of this endorsement:
  - "Certified Act of Terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "Certified Act of Terrorism" include the following:
    - The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
    - The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- The following exclusion is added to the policy:
  - CERTIFIED ACT OF TERRORISM EXCLUSION**

The Company will not pay for loss or damage caused directly or indirectly by a "Certified Act of Terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.
- The following exception to the exclusion in paragraph 2. of this endorsement applies only as indicated:
  - Exception Covering Certain Fire Losses**

If an Act of Terrorism results in a fire and the direct physical loss or damage to property insured hereunder located in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands and any territory or possession of the United States, that, either pursuant to the Standard Fire Policy or otherwise, prohibits exclusions for acts of terrorism that result in fire, this Company will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage to property insured hereunder and may be limited in accordance with the Standard Fire Policy to the lesser of the actual cash value of the property at the time of the loss or the amount which it would cost to repair or replace the property, without allowance for any increased cost of repair or replacement by reason of any ordinance or law, and without any compensation for business interruption, extra expense to continue business activities, or any other coverage for loss or damage other than direct physical loss or damage to the property insured hereunder.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and the Company has met its insurer deductible under the Terrorism Risk Insurance Act, the Company 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.

4. The terms and limitations of this exclusion do not serve to create coverage for any loss which would otherwise be excluded under this Policy, such as, but not limited to, losses excluded by the "Nuclear Exclusion" or the "War Exclusion" or similar provision..

All other terms and conditions remain unchanged.

**POLICYHOLDER DISCLOSURE  
NOTICE OF TERRORISM INSURANCE COVERAGE**

You were notified that under the Terrorism Risk Insurance Act, as amended, you have a right to purchase insurance coverage for losses resulting from acts of terrorism. *As defined in Section 102(1) of the Act.* The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury---in consultation with the Secretary of Homeland Security, and the Attorney General of the United States---to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY YOUR POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% FOR YEAR 2015, 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017, 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019 AND 80% BEGINNING ON JANUARY 1, 2020, OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM THAT WOULD BE CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.**

**YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE 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. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.**

You elected **NOT** to purchase terrorism coverage under the Act at the price indicated. ACCORDINGLY, WE WILL **NOT** PROVIDE THIS COVERAGE AND YOU DO NOT OWE THE ADDITIONAL PREMIUM FOR THAT COVERAGE INDICATED BELOW.

Terrorism coverage described by the Act under your policy was made available to you for additional premium in the amount of \$ 1 , 5 0 0 , however you elected to decline such coverage. By signing the Notice of Election, you are acknowledging your declination of such coverage.

**CERTIFICATES OF INSURANCE – AUTOMATIC ADDITIONAL INSURED AND LOSS PAYEE ENDORSEMENT**

Named Insured MSD Partners, L.P.			Endorsement Number 007
Policy Symbol MAU	Policy Number D37870651 001	Policy Period 03/11/2020 to 03/11/2021	Effective Date of Endorsement 03/11/2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

The following provisions are added to this policy and supersede and replace any conflicting provision in this policy (including in any other endorsement hereto):

**POLICY MODIFICATION**

This Policy, including all endorsements hereto, contains all of the agreements between the Insured and the Company concerning this insurance. The first Named Insured and the Company may request changes to this Policy. This Policy can be changed only by endorsements issued by the Company and made a part of this Policy.

- a. Notice to any agent or knowledge possessed by any agent or by any other person will not:
  - (1) create a waiver, or change any part of this Policy; or
  - (2) prevent the Company from asserting any rights under the provisions of this Policy.
- b. Any Certificate of Insurance issued in connection with this Policy, whether by or on behalf of the Company or an Insured, shall be issued solely as a matter of convenience or information of the addressee(s) or holder(s) of such certificate of insurance. A Certificate of Insurance does not confer any rights upon any person or entity, nor alter any term or condition of this Policy.

**Additional Insureds and Loss Payees**

Additional Insureds and Loss Payees do not have the same rights and obligations under this policy as a Named Insured, or first Named Insured, and this provision does not confer any such rights or obligations on Additional Insureds or Loss Payees. The term Additional Insureds and Loss Payees means persons or entities, other than the First Named Insured or any other Named Insured, to whom money or insurance proceeds is to be paid for a covered loss under this Policy. An Additional Insured and Loss Payee is not a First Named or a Named Insured.

This provision does not apply to contractual requirements to add persons or entities as Named Insureds or additional Named Insureds. Such Named Insureds or additional Named Insureds can only be added to this policy by separate written endorsement.

- 1. If, pursuant to a written contract effective prior to the date of the loss in question, the Named Insured shown in the Declarations (“first Named Insured”) is required to add a person or entity to this policy that was not already added:

- a. as an Additional Insured, then this policy shall be deemed to have been endorsed accordingly, subject to all other terms, conditions, limits of liability and exclusions of this policy, as such person or entity's interest may appear;
  - b. as a Loss Payee, then this policy shall be deemed to have been endorsed accordingly, subject to all other terms, conditions, limits of liability and exclusions of this policy, and loss to covered property in which such Loss Payee has an interest shall be adjusted with the Insured and payable jointly to the first Named Insured and such Loss Payee;

and no written endorsement to this policy shall be required in order for this provision to be effective as to such person or entity subject to compliance with the following.
2. Pursuant to item 1. above and within ninety (90) business days after we are notified of a loss which may be covered under this policy, the first Named Insured or its authorized representative shall:
  - a. provide the Company with the identities of all persons or entities with interests in the property that is the subject of the loss; and
  - b. provide the Company with copies of all contracts (predating the date of loss) requiring that such persons or entities be added to this policy as Additional Insureds or Loss Payees.
  - c. if the First Named Insured reasonably requires more than ninety (90) business days to produce the information required under paragraphs 2.a. and 2.b. above, the Company will provide extensions of time that are reasonable and appropriate for the circumstances, however all such requests must be made in writing to the Company.
3. If the first Named Insured or its authorized representative fails to comply with item 2. above, the Company shall assume that there are no such persons or entities, and:
  - a. the Company shall not be liable for any failure to take such person or entity's interest into account in the adjustment or payment of any loss; and
  - b. The Company can only accept copies of those contracts which require the addition of a person or entity as an Additional Insured or Loss Payee that are directly related to the property which is the subject of the loss. Providing the Company with copies of any and all contracts requiring addition of a person or entity as an Additional Insured or Loss Payee, or with bordereaux listings of all such persons and entities, at any time before, on, or after the date of a loss shall not constitute compliance with item 2. above.
4. This Additional Insureds and Loss Payees provision does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit the Company from providing insurance to such persons or entities, including, but not limited to, the payment of claims.

All other terms and conditions remain unchanged.

**ASBESTOS, ASBESTOS-CONTAINING PRODUCT, OR ASBESTOS-CONTAINING MATERIAL EXCLUSION**

Named Insured <b>MSD Partners, L.P.</b>		Endorsement Number <b>008</b>	
Policy Symbol <b>MAU</b>	Policy Number <b>D37870651 001</b>	Policy Period <b>03/11/2020 to 03/11/2021</b>	Effective Date of Endorsement <b>03/11/2020</b>
Issued By (Name of Insurance Company) <b>ACE American Insurance Company</b>			

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

**This endorsement modifies insurance provided under the following:**

The following exclusion is added to this policy; supersedes any term, provision or endorsement to the contrary in this policy; and applies notwithstanding such term, provision or endorsement:

- A. This policy excludes loss or damage to asbestos, asbestos-containing product, or asbestos-containing material.
- B. This policy does not provide insurance against any loss, damage, cost, expense, fine or penalty resulting from or arising out of:
  - 1. remediation of any kind, including but not limited to removal or modification, of any asbestos, asbestos-containing product, or asbestos-containing material from a building or structure of any kind, whether damaged or undamaged, and regardless of the reason such removal is undertaken, whether voluntary or compelled by government directive; or
  - 2. the demolition or increased cost of reconstruction of property, the repair of property, the removal of debris, or the loss of use of property when caused by, arising out of, or undertaken due to the enforcement of any law, regulation, rule or ordinance that in any manner regulates asbestos, asbestos-containing product, or asbestos-containing material, except to the extent that coverage is provided by the Demolition and Increased Cost of Construction Additional Coverage; or
  - 3. any fault in the design, manufacture, or installation of asbestos, asbestos-containing product, or asbestos-containing material.
- C. Notwithstanding the exclusions set forth above, this Policy covers direct physical loss or damage to asbestos, asbestos-containing product, and asbestos-containing material which is physically incorporated into an insured building or structure, including the necessary costs to remove or remediate such damaged asbestos, but only when such damage occurring during the policy period is directly and solely caused by the following perils, and then only that part of such asbestos which incurs direct physical loss or damage:
  - fire, lightning, explosion, windstorm, hail, smoke, aircraft or vehicle impact, riot or civil commotion, vandalism, malicious mischief or accidental discharge of fire protective equipment.

All Other Terms And Conditions Remain Unchanged.

**BIOLOGICAL, CHEMICAL OR NUCLEAR EXCLUSION**

Named Insured MSD Partners, L.P.			Endorsement Number 009
Policy Symbol MAU	Policy Number D37870651 001	Policy Period 03/11/2020 to 03/11/2021	Effective Date of Endorsement 03/11/2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

**This endorsement modifies insurance provided under the following:**

The following exclusion is added to this policy; supersedes any term, provision or endorsement to the contrary in this policy; and applies notwithstanding such term, provision or endorsement:

- **BIOLOGICAL, CHEMICAL OR NUCLEAR EXCLUSION**

This policy does not insure against any loss, damage, cost or expense caused by or resulting from any of the following, regardless of any other cause or event contributing concurrently or in any sequence thereto:

1. The unlawful possession, use, release, discharge, dispersal or disposal of any chemical, bacteriological, viral, radioactive or similar agents or material regardless of who is responsible for the act, whether or not the act is certified as an act of terrorism pursuant to the federal Terrorism Risk Insurance Act, and whether war has been declared or not, and regardless of any other cause or event contributing concurrently or in any other sequence thereto; or
2. The unlawful possession, use, release, discharge, detonation, dispersal or disposal of any device or material capable of producing a nuclear reaction or the spread of radioactivity, regardless of who is responsible for the act, whether or not the act is certified as an act of terrorism pursuant to the federal Terrorism Risk Insurance Act, and whether war has been declared or not, and regardless of any other cause or event contributing concurrently or in any other sequence thereto.

All other terms and conditions remain unchanged.

## COMPUTER DATE RECOGNITION EXCLUSION

Named Insured MSD Partners, L.P.			Endorsement Number 010
Policy Symbol MAU	Policy Number D37870651 001	Policy Period 03/11/2020 to 03/11/2021	Effective Date of Endorsement 03/11/2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

The following exclusion is added to this policy; supersedes any term, provision or endorsement to the contrary in this policy; and applies notwithstanding such term, provision or endorsement:

#### COMPUTER DATE RECOGNITION EXCLUSION

This policy does not insure loss or damage caused directly or indirectly by the following excluded causes of loss, regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage:

1. The failure, malfunction, or inadequacy or operation of any of the following, whether belong to any insured or to others:
  - A. Computer hardware, including microprocessors; computer application software; computer operating systems and related software; computer networks; microprocessors (computer chips) not part of any computer system; or any other computerized or electronic equipment or components; or
  - B. Any other products, or any services, data, or functions, that directly or indirectly use or rely upon, in any manner, any of the items listed in paragraph 1.A. above;due to the ability to recognize, process, distinguish, interpret or accept one or more years, dates, times, or error codes, such as the inability of computer software to recognize the year 2000; or
2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement, or supervision provided or done by the Insured or for the Insured to determine, rectify, or test for, any potential or actual problems described in paragraph 1. above.

However, if a direct physical loss to insured property caused by Fire, Lighting, Explosion, Windstorm or Hail, Smoke, Aircraft or Vehicle Impact, Riot, Strike or Civil Commotion, Vandalism or Malicious Mischief, Theft, Leakage from Fire Protection Equipment, or Water Damage ensues from any excluded cause of loss as described in paragraphs 1. and 2. above, this policy will insure that direct physical loss, but this Policy never insures the excluded causes of loss as described in paragraphs 1. and 2. above.

This Policy does not insure for repair, replacement, or modification of any items listed in paragraphs 1.A. or B. above to correct any deficiencies or change any features.

All other terms and conditions remain unchanged.

**ELECTRONIC DATA/MEDIA EXCLUSION ENDORSEMENT**

Named Insured <b>MSD Partners, L.P.</b>			Endorsement Number <b>011</b>
Policy Symbol <b>MAU</b>	Policy Number <b>D37870651 001</b>	Policy Period <b>03/11/2020 to 03/11/2021</b>	Effective Date of Endorsement <b>03/11/2020</b>
Issued By (Name of Insurance Company) <b>ACE American Insurance Company</b>			

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

**This endorsement modifies insurance provided under the following:**

The following exclusions and provisions are added to this policy; supersede any term, provision or endorsement to the contrary in this policy; and apply notwithstanding such term, provision or endorsement:

1. This policy does not insure against loss, damage, destruction, distortion, erasure, corruption, alteration, diminishment in value, or loss of use or usefulness of:
  - A. Electronic Data by any cause whatsoever (including but not limited to Computer Virus); or
  - B. Electronic Media and Computers caused by or resulting from the loss, damage, destruction, distortion, erasure, corruption, alteration, diminishment in value, or loss of use or usefulness of Electronic Data;
 

regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, destruction, distortion, erasure, corruption, alteration, diminishment in value, or loss of use or usefulness of Electronic Data, Electronic Media or Computers.

This exclusion does not apply to loss or damage of Electronic Data, Electronic Media or Computers caused by or resulting from the perils of fire, explosion, riot and civil commotion, vehicle or aircraft impact or collision, sonic boom, sprinkler leakage, sinkhole collapse, Flood, Earth Movement or volcanic action, if and to the extent such perils are already covered by this or by any underlying policy.
2. This Policy excludes loss, damage, cost or expense resulting from or arising out of any failure, malfunction, deficiency, deletion, fault, Computer Virus, corruption or loss of use of computer code that results from or arises out of any authorized or unauthorized access by any means and for any purpose, whether intentional or inadvertent, in, of or to any Electronic Data, Electronic Media or Computers whether in the ownership, possession, or control of the Insured or a third party.
3. This Policy does not insure any amount pertaining to the value of such Electronic Data to the insured or any other party, even if such Electronic Data cannot be recreated, gathered or assembled.
4. The basis for valuation of Electronic Media or Electronic Data will be as follows:
  - A. Electronic Media or Electronic Data shall be valued at the cost of blank media plus the costs of copying or restoring Electronic Data from back-up or from originals of a previous generation, and including all reasonable and necessary amounts, not to exceed \$5,000,000 any one occurrence, incurred in recreating, gathering and assembling such Electronic Data. This amount is a sub-limit, and is included within, and is not in addition to, any other applicable limit or sub-limit of liability.
  - B. If not repaired, replaced or restored, Electronic Media shall be valued at the cost of the blank media.
5. The following definitions apply to this endorsement:
  - A. Electronic Data means facts, concepts, information or data, including compilations thereof, in a form useable or intended for use or processing by Computers or for storage on Electronic Media. Electronic Data includes but is not limited to files, programs, applications, operating systems, and other coded instructions for the processing, calculation and storage of facts, concepts and information by Computers.
  - B. Electronic Media means any physical device that holds, stores, contains or transfers Electronic Data, and includes but is not limited to disks, drives, films, tapes, records, drums, or cells.

- C. Computers includes but is not limited to mainframes, servers, workstations and portable computers, personal information managers, wide and local area network hardware, electronic and electromechanical equipment, data processing equipment, electronic controls for machinery, electronically programmed memory chips, and electronically controlled communication equipment.
- D. Computer Virus means instructions, code, applications or any software program that has the ability or is suspected to have the ability to damage, destroy, erase, corrupt, alter, or prevent access to Electronic Data, Electronic Media, or Computers or to disrupt or interfere with the operations of Computers.

All other terms and conditions remain unchanged.

## GOVERNMENT, COURT OR TRIBUNAL ORDER EXCLUSION

Named Insured MSD Partners, L.P.			Endorsement Number 012
Policy Symbol MAU	Policy Number D37870651 001	Policy Period 03/11/2020 to 03/11/2021	Effective Date of Endorsement 03/11/2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

The following exclusion is added to this policy and applies to all coverages, additional coverages, coverage extensions, coverage parts and coverage forms:

This insurance does not apply to loss, damage, cost, expense, fine, or penalty incurred or sustained by or imposed on an Insured at the order of any government or government body or agency, court, authority, board, or commission arising from any cause whatsoever, including without limitation loss, costs, expenses, fines, or penalties arising in connection with any kind or description of environmental impairment including seepage or pollution or contamination from any cause, except to the extent that coverage is specifically provided elsewhere in this policy.

All other terms and conditions remain unchanged.

**LIMITED FUNGI AND BACTERIA COVERAGE  
RESULTING FROM AN INSURED PERIL**

Named Insured <b>MSD Partners, L.P.</b>			Endorsement Number <b>013</b>
Policy Symbol <b>MAU</b>	Policy Number <b>D37870651 001</b>	Policy Period <b>03/11/2020 to 03/11/2021</b>	Effective Date of Endorsement <b>03/11/2020</b>
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

It is agreed that:

1. The following definition is added to this policy:
  - Fungus means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. Any exclusion of Fungus or wet or dry rot is deleted from this policy, but only insofar as such exclusion applies to Fungus or wet or dry rot, and replaced by the following exclusion, exception and sub-limit of liability:
  - **Fungus, Wet Rot or Dry Rot**
    - A. This policy does not insure any loss, damage or expense caused by or resulting from Fungus, wet rot, or dry rot.
    - B. Sub-paragraph A. above does not apply when Fungus, wet rot or dry rot results from an insured peril.
    - C. With regard to the coverage provided by sub-paragraph B. above:
      - (1) The Company will be liable for no more than its proportionate share of the 100% program sublimit of \$10,000,000 in any annual period of the Policy Term, regardless of the number of Occurrences, claims, insureds, or insured locations, for the sum of all such loss, damage or expense and all loss and expense covered under Time Element coverage (including coverage for business interruption, extra expense, rental value, leasehold interest, royalties, ingress and egress, civil authority, and any extensions of coverage), including, but not limited to:
        - i. direct physical loss or damage to insured property caused by Fungus, wet rot or dry rot resulting from an insured peril, including the cost of removal of such Fungus, wet rot or dry rot;
        - ii. the cost to tear out and replace any part of the building or other property as needed to gain access to such Fungus, wet rot or dry rot; and
        - iii. 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 such Fungus, wet rot or dry rot is present.
      - (2) The amount described in (1) is a sub-limit of liability and is included within, and is not in addition to, the policy limit of liability shown in the Declarations and any sub-limit of liability applicable to decontamination costs of insured property and/or cleanup, removal and disposal of contaminants from uninsured property. This sub-limit of liability does not increase the applicable limit of liability on any insured property.
    - D. If there is covered loss or damage to insured property, not caused by Fungus, wet rot or dry rot, loss payment will not be limited by the terms of this exclusion, except to the extent that Fungus, wet rot or dry rot cause an increase in the loss. Any such increase in the loss will be subject to the terms of this exclusion.

- E. This Policy does not cover loss under the following Additional Coverages when such loss is insured under this endorsement: **Debris Removal, Decontamination Cost, Demolition and Increased Cost of Construction, Land and Water Pollutant or Contaminant Cleanup, Removal and Disposal, and Decontamination Costs.**

All other terms and conditions remain unchanged.

**POLLUTION AND CONTAMINATION EXCLUSIONS AND RELATED COVERAGE  
EXTENSIONS WITH SUB-LIMITS ENDORSEMENT**

Named Insured MSD Partners, L.P.			Endorsement Number 014
Policy Symbol MAU	Policy Number D37870651 001	Policy Period 03/11/2020 to 03/11/2021	Effective Date of Endorsement 03/11/2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

The following exclusions and provisions are added to this policy; supersede any term, provision or endorsement to the contrary in this policy; and apply notwithstanding such term, provision or endorsement:

1. This insurance does not apply to :

A. Land and Water;

B. Loss or damage caused by, resulting from, contributed to, or made worse by actual, alleged or threatened release, discharge, escape or dispersal of 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 damage insured by this policy;

Nevertheless, if fire is not excluded from this policy and a fire arises directly or indirectly from seepage, contamination or pollution, any loss or damage insured under this policy arising directly from that fire is insured subject to the provisions of this policy.

This exclusion shall not apply when loss or damage is directly caused by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm or hail. This exclusion shall also not apply when loss or damage is directly caused by leakage or accidental discharge from automatic fire protective systems; or

C. Costs, fines, penalties or expenses incurred or sustained by the Insured or imposed on the Insured at the order of any governmental unit, agency, department, board or commission, court, or authority in connection with any kind or description of environmental impairment, including seepage, pollution or contamination from any cause.

2. The following coverage extensions are added to the policy:

A. .

1. If a physical loss or damage to insured real property caused by an insured peril causes the enforcement of any law or ordinance that:

a. requires the demolition of parts of the undamaged real property;

b. regulates the construction or repair of damaged real property;

c. is in force at the time of loss:

the Company will pay:

- (1) the cost of demolishing or clearing the site of undamaged real property;
- (2) the value of such undamaged part of the facility which must be demolished;
- (3) the increased cost of repair or reconstruction of the damaged and undamaged real property on the same or another site and limited to the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged real property on the same site. However, the Company will not pay for any increased cost of construction loss unless the damaged real property is actually rebuilt or replaced.
- (4) any increase in the business income and extra expense loss arising out of the additional time required to comply with said law or ordinance. Such additional time will not exceed thirty consecutive days.

2. The following exclusions apply to this Coverage Extension:

This insurance does not apply to:

- a. asbestos material removal unless the asbestos is itself damaged by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm or hail, vandalism, malicious mischief, leakage or accidental discharge from automatic fire protective systems;
- b. demolition or increased cost of repair or replacement, debris removal or loss of use caused by the enforcement of any law or ordinance regulating asbestos material;
- c. any governmental direction or request declaring that asbestos material present in or part of or utilized on any undamaged portion of insured property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

3. The most that the Company will pay under this Coverage Extension in any one Occurrence is the sub-limit of liability for shown in the Declarations. This sub-limit of liability is included within, and is not in addition to, the policy limit of liability applicable in any one Occurrence.

B.

1. In the event of direct physical loss or damage insured against and occurring during the term of this policy the Company will pay:

- a. necessary and reasonable costs to remove debris of the property insured herein from the premises of the Insured; and/or
- b. cost of cleanup at the premises of the Insured made necessary as a result of such direct physical loss or damage.

The Company will not pay expense or cost to extract Pollutants or Contaminants from land or water or to remove, restore or replace contaminated or polluted land or water.

It is a condition precedent to recovery under this Coverage Extension that the Company shall have paid or agreed to pay for direct physical loss or damage to the property insured hereunder and that the Insured shall give written notice to the Company of intent to claim for cost of removal of debris or cost to clean up not later than twelve months after the date of such physical loss or damage.

2. The most that the Company will pay under this Coverage Extension in any one Occurrence is the sub-limit of liability for shown in the Declarations. This sub-limit of liability is included within, and is not in addition to, the policy limit of liability applicable in any one Occurrence.

3. The following definition is added to this policy:

Contaminants or Pollutants means any material which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder, including, but not limited to bacteria, fungi, virus or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976 and Toxic Substances Control Act or as designated by the U. S. Environmental Protection Agency.

All other terms and conditions remain unchanged.

**PRODUCTS RECALL EXCLUSION**

Named Insured MSD Partners, L.P.			Endorsement Number 015
Policy Symbol MAU	Policy Number D37870651 001	Policy Period 03/11/2020 to 03/11/2021	Effective Date of Endorsement 03/11/2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

**This endorsement modifies insurance provided under the following:**

The following exclusion is added to this policy; supersedes any term, provision or endorsement to the contrary in this policy; and applies notwithstanding such term, provision or endorsement:

**PRODUCTS RECALL EXCLUSION**

This policy does not insure against any loss, damage, cost or expense:

1. associated with any form of contamination of the Insured's raw stock, stock in process, or finished stock or products in the stream of commerce, 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 in this policy, unless directly resulting from other physical damage not excluded by this policy; or
2. incurred by the Insured or by others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of the Insured's product or product of the Insured's direct or indirect customers or suppliers if such product or any portion of its withdrawn or recalled from the market or from use by any person or organization, including, but not limited to, any governmental body.

All other terms and conditions remain unchanged.

## POLICY REVISION ENDORSEMENT

Named Insured MSD Partners, L.P.			Endorsement Number 016
Policy Symbol MAU	Policy Number D37870651 001	Policy Period 03/11/2020 to 03/11/2021	Effective Date of Endorsement 03/11/2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

In consideration of the premium charged it is hereby agreed and understood that the following are added to this policy:

Subject to the sublimit and to the deductibles as set out herein, this Policy is extended to include the following:

**(1) Golf Course (tee to green)**

The real property portion of the golf course known as the:

- teeing ground,
- fairway, and/or
- green.

**(2) in-ground landscape sprinkler systems (including related equipment) and/or underground wiring; except with respect to an Accident**

**(3) flags, ball washers, benches, tee markers, tee monuments, tee signs, exterior light fixtures, poles and bells.**

**(4) bridges situated on golf course.**

**(5) any other real property and improvements attached to and forming part of the above real property. Tee to green shall not include any clubhouse or other structures.**

We will not pay for loss or damage to golf course outdoor grounds, outdoor trees, shrubs or plants, caused by or resulting from any of the following:

3. Dampness or dryness of atmosphere;
4. Changes in or extremes of temperature; or
5. Rain, snow, ice or sleet.
6. loss or damage caused by fungus and/or decay;
7. loss or damage caused by sickness and/or any other quality in the landscaping that causes it to damage or destroy itself.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

## GENERAL CHANGE ENDORSEMENT

Named Insured MSD Partners, L.P.			Endorsement Number 017
Policy Symbol MAU	Policy Number D37870651 001	Policy Period 03/11/2020 to 03/11/2021	Effective Date of Endorsement 03/11/2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

The following changes are hereby made to the policy form:

1. The following section is added to GENERAL PROVISIONS – SECTION E of the policy:

**13. ASSIGNMENT:**

Assignment of this policy is not valid without the consent of the Company.

2. The following definitions are added to the policy:

**Tier 1 Wind Zones in United States** - the entire territory of the United States Virgin Islands, the entire Commonwealth of Puerto Rico, the entire State of Florida, and the following:

- Alabama: the counties of Baldwin, Escambia, and Mobile
- Georgia: the counties of Bryan, Camden, Chatham, Glynn, Liberty, and McIntosh
- Hawaii: the entire state
- Louisiana: the counties (also known as “Parishes”) of Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John The Baptist, St. Martin, St. Mary, St. Tammany, Terrebonne, and Vermillion
- Mississippi: the counties of George, Greene, Hancock, Harrison, Jackson, Pearl River, and Stone
- North Carolina: the counties of Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington
- South Carolina: the counties of Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, Jasper, and Williamsburg
- Texas: the counties of Aransas, Brazoria, Calhoun, Cameron, Chambers, Fort Bend, Galveston, Goliad, Harris, Hidalgo, Jackson, Jefferson, Kenedy, Kleberg, Liberty, Matagorda, Nueces, Orange, Refugio, San Patricio, Victoria, Wharton, and Willacy
- Virginia: the counties of Accomack, Gloucester, Isle of Wright, James City, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Surry, Westmoreland, and York; and the independent cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Suffolk, and Virginia Beach

**New Madrid Earth Movement Zones** - means the following, all in the United States of America:

- Arkansas: the counties of Clay and Mississippi
- Illinois: the counties of Alexander, Franklin, Gallatin, Hamilton, Hardin, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union, White, and Williamson
- Kentucky: the counties of Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall, and McCracken
- Missouri: the counties of Dunklin, Mississippi, New Madrid, Pemiscot, Scott, and Stoddard
- Tennessee: the counties of Crockett, Dyer, Gibson, Lake, Obion, and Weakley

**Pacific Northwest Earth Movement Zones** - means the following, all in the United States of America:

- Oregon: the counties of Clatsop, Coos, Curry, Lincoln, and Tillamook
- Washington: the counties of Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom

**Special Flood Hazard Area (SFHA)** - An area of land that would be inundated by a flood having a 1% chance of occurring in any given year (also referred to as the base flood or 100-year flood). Federal Emergency Management Agency (FEMA) Flood Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE and V.

All other terms and conditions of this Policy remain unchanged.

**To our Brokers/Agents-To Be Kept With Policy****What to do when Loss Occurs:**

1. Upon knowledge of any occurrence likely to give rise to a claim hereunder, "you" must give immediate notice to:

Chubb Property Claims  
One Beaver Valley Road, Suite 4E  
Wilmington, Delaware 19803

E-Mail: [propertyfirstnotices@chubb.com](mailto:propertyfirstnotices@chubb.com)

Fax: (302) 476-7855

Phone: (800) 433-0385

2. Chubb Property claims cannot be processed through any other facility and must be reported as indicated above.
3. Adjustors can only be assigned by or with the specific authorization of the Chubb Property Claims Department.



## Notice to Policyholders

### **TRADE OR ECONOMIC SANCTIONS Practices & Policies**

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims.



### **Chubb Producer Compensation Practices & Policies**

Chubb believes that policyholders should have access to information about Chubb's practices and policies related to the payment of compensation to brokers and independent agents. You can obtain that information by accessing our website at <http://www.chubbproducercompensation.com> or by calling the following toll-free telephone number: 1-866-512-2862.

# U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

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

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

## APPLICABLE STATE AMENDATORY PROVISIONS – BENEFIT LEVEL

Named Insured MSD Partners, L.P.			Endorsement Number 18
Policy Symbol MAU	Policy Number D37870651 001	Policy Period March 11, 2020 to March 11, 2021	Effective Date of Endorsement March 11, 2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

Per Policy Number indicated above issued by ACE American Insurance Company.

The following state amendatory provisions may apply to specific locations on the Schedule of Locations on file based on their presence within the indicated jurisdictions in compliance with local statutes. The state-specific conditions set forth in these state amendatory provisions are intended to amend the policy to conform to state-specific required minimum conditions and coverage. Where the policy form conditions and coverage are broader than that set forth in this endorsement, then this endorsement shall not apply to restrict or reduce the conditions and coverage provided by the policy form, as long as the policy form's broader conditions and coverage are permitted by applicable state law.

#### ALASKA CHANGES – ATTORNEY'S FEES

It is agreed that the policy is amended by adding the following SCHEDULE and provision:  
SCHEDULE

Attorney's Fees for a Judgment of \$ 10,000	Additional Premium \$ Included
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(If no entry appears above, information required to complete this Schedule will be shown in the Declarations as applicable to this Schedule.)

- In any "suit" we defend in Alaska, our obligation under Supplementary Payments to pay all costs taxed against the insured is amended by the following:
  - A. We will pay that portion of the attorney's fees awarded as costs which does not exceed the amount allowed for a contested case in the schedule of attorney's fees contained in Alaska Civil Rule 82 for a judgment equal to the applicable Limit of Insurance.
  - B. However, if a premium and a judgment amount are shown in the Schedule above, we will pay, instead of the attorney's fees provided in Paragraph A. above, that portion of the attorney's fees awarded as costs which do not exceed the amount allowed for a contested case in Civil Rule 82 for the judgment amount shown in the Schedule.

#### ALASKA CHANGES – APPRAISAL

It is agreed that:

1. Except as provided in section 2 of this endorsement, the Appraisal condition of this policy is deleted and replaced by the following:

##### APPRAISAL

If you and we fail to agree on the value of the property or the amount of loss, either may make a written demand for an appraisal of the loss. In this event, within 10 days of the demand, each party will choose a competent appraiser and will notify the other of the appraiser selected. The two appraisers will promptly choose a competent and impartial umpire. If they cannot agree, either may request that the choice be made by a judge of a court having jurisdiction. Not later than 15 days after the umpire has been chosen, unless this time period is extended by the umpire, each appraiser will separately state, in writing, the value of the property and the amount of loss. If the appraisers submit a written report of an agreement on the value of the property and the amount of loss, that agreement will be binding. If they fail to agree, they will promptly submit their differences to the umpire. A decision agreed to by one of the appraisers and the umpire will be binding. Each party will:

1. Pay its own counsel and adjuster fees; and
2. Bear those other expenses and fees which are incurred as a result of the appraisal, either in entirety or proportionately, as determined by the umpire.

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

#### ALASKA CHANGES – LOSS PAYMENT

It is agreed that the following is added to the Loss Payment condition of the policy:

The undisputed part of a claim will be paid in accordance with the terms of this condition, even if other parts of the claim remain in dispute.

#### ARIZONA CHANGES

It is agreed that the Additional Coverage for Fire Department Service Charge is deleted from the policy.

#### ARKANSAS CHANGES

It is agreed that:

1. The following new condition is added to the conditions section of the policy:

##### MULTI-YEAR POLICIES

We may issue this policy for a term in excess of twelve months with the premium adjusted on an annual basis in accordance with our rates and rules.

2. Except as provided in section 3. of this endorsement, the Appraisal condition of the policy, if any, is deleted and replaced by the following:

##### Appraisal

- a. If we and you disagree on the value of the property or the amount of loss, either party may make a written request for an appraisal of the loss. However, an appraisal will be made only if both we and you agree, voluntarily, to have the loss appraised. If so agreed, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire.
  - b. An appraisal decision will not be binding on either party.
  - c. If there is an appraisal, we will still retain our right to deny the claim.
  - d. Each party will:
    - (1) Pay its chosen appraiser; and
    - (2) Bear the other expenses of the appraisal and umpire equally.
3. The Legal Action Against Us condition of the policy is amended by deleting "2 years" and replacing it with "5 years".

#### ARKANSAS CHANGES – TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

It is agreed that the following is added to the Transfer Of Rights Of Recovery Against Others To Us condition of the policy:

We will be entitled to recovery only after the insured has been fully compensated for the loss or damage sustained, including expenses incurred in obtaining full compensation for the loss or damage.

#### CALIFORNIA CHANGES

It is agreed that:

1. The Concealment, Misrepresentation Or Fraud condition of the policy is replaced by the following with respect to loss or damage caused by fire:  
Concealment, Misrepresentation or Fraud.

We do not provide coverage to the insured who, whether before or after a loss, has committed fraud or intentionally concealed or misrepresented any material fact or circumstance concerning:

1. This policy;
  2. The Covered Property;
  3. That insured's interest in the Covered Property; or
  4. A claim under this policy.
2. The Concealment, Misrepresentation Or Fraud condition of the policy is replaced by the following with respect to loss ("loss") or damage caused by a Covered Cause of Loss other than fire:  
Concealment, Misrepresentation or Fraud.

This policy is void if any insured ("insured"), whether before or after a loss ("loss"), has committed fraud or intentionally concealed or misrepresented any material fact or circumstance concerning:

1. This policy;
  2. The Covered Property;
  3. An insured's ("insured's") interest in the Covered Property; or
  4. A claim under this policy.
3. Except as provided in section 4. of this endorsement, the Appraisal condition of the policy is deleted and replaced by the following:

##### Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written request for an appraisal of the loss. If the request is accepted, each party will select a competent and impartial appraiser. Each party shall notify the other of the appraiser selected within 20 days of the request. The two appraisers will select an umpire. If they cannot agree within 15 days, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

4. If a Business Income and Extra Expense endorsement or coverage form, or a Business Income endorsement or coverage form, is a part of this policy, then the Appraisal condition in such endorsement or coverage form is deleted and replaced by the following:

#### Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written request for an appraisal of the loss. If the request is accepted, each party will select a competent and impartial appraiser. Each party shall notify the other of the appraiser selected within 20 days of the request. The two appraisers will select an umpire. If they cannot agree within 15 days, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

#### COLORADO CHANGES – CONCEALMENT, MISREPRESENTATION OR FRAUD

It is agreed that the Concealment, Misrepresentation or Fraud condition of the policy is deleted and replaced by the following:

#### CONCEALMENT, MISREPRESENTATION OR FRAUD

We will not pay for any loss or damage in any case of:

1. Concealment or misrepresentation of a material fact; or
2. Fraud;

committed by you or any other insured at any time and relating to coverage under this policy.

#### FLORIDA CHANGES - LEGAL ACTION AGAINST US

It is agreed that the Legal Action Against Us condition of the policy is amended by adding the following, which supersedes any provision in that condition to the contrary:

- Legal action against us involving direct physical loss or damage to property must be brought within 5 years from the date the loss occurs.

#### FLORIDA CHANGES—MEDIATION OR APPRAISAL (COMMERCIAL RESIDENTIAL PROPERTY)

It is agreed that:

1. With respect to a loss to commercial residential property, the following replaces the Appraisal Condition of the policy (unless section 2. of this endorsement applies):

#### MEDIATION OR APPRAISAL

If we and you disagree on the value of the property or the amount of loss, either may request:

1. A mediation of the loss in accordance with the rules established by the Florida Department of Financial Services. The loss amount must be \$500 or more, prior to application of the deductible; or there must be a difference of \$500 or more between the loss settlement amount we offer and the loss settlement amount that you request. The settlement in the course of mediation is binding only if both parties agree, in writing, on a settlement, and you have not rescinded the settlement within 3 business days after reaching settlement. You may not rescind the settlement after cashing or depositing the settlement check or draft we provided to you.

We will pay the cost of conducting any mediation conference except when you fail to appear at a conference. That conference will then be rescheduled upon your payment of the mediator's fee for that rescheduled conference. However, if we fail to appear at a mediation conference, we will pay your actual cash expenses you incur in attending the conference and also pay the mediator's fee for the rescheduled conference.

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

- a. Pay its chosen appraiser; and
  - b. Bear the other expenses of the appraisal and umpire equally.
- If there is an appraisal, we will still retain our right to deny the claim.

However, you are not required to submit to, or participate in, any appraisal of the loss as a precondition to action against us for failure to pay the loss, if we:

- a. Requested mediation and either party rejected the mediation result; or
- b. Failed to notify you of your right to participate in the mediation program.

- B. With respect to a loss to commercial residential property, the following replaces the Appraisal Condition in the Mortgage Holders Errors And Omissions Coverage Form, if such form is part of this policy:

#### MEDIATION OR APPRAISAL – COVERAGES A AND B ONLY

If we and you disagree on the amount of loss, either may request:

1. A mediation of the loss in accordance with the rules established by the Florida Department of Financial Services. The loss amount must be \$500 or more, prior to application of the deductible; or there must be a difference of \$500 or more between the loss settlement amount we offer and the loss settlement amount that you request. The settlement in the course of mediation is binding only if both parties agree, in writing, on a settlement, and you have not rescinded the settlement within 3 business days after reaching settlement. You may not rescind the settlement after cashing or depositing the settlement check or draft we provided to you.

We will pay the cost of conducting any mediation conference except when you fail to appear at a conference. That conference will then be rescheduled upon your payment of the mediator's fee for that rescheduled conference. However, if we fail to appear at a mediation conference, we will pay your actual cash expenses you incur in attending the conference and also pay the mediator's fee for the rescheduled conference.

2. An appraisal of the loss, in writing. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
  - b. Bear the other expenses of the appraisal and umpire equally.
- If there is an appraisal, we will still retain our right to deny the claim.

However, you are not required to submit to, or participate in, any appraisal of the loss as a precondition to action against us for failure to pay the loss, if we:

- a. Requested mediation and either party rejected the mediation result; or

- b. Failed to notify you of your right to participate.

#### HAWAII CHANGES – FRAUD, CONCEALMENT OR MISREPRESENTATION

It is agreed that the Concealment, Misrepresentation Or Fraud condition is deleted and replaced by the following:

#### FRAUD, CONCEALMENT OR MISREPRESENTATION

- a. This insurance is void in any case of fraud by you as it relates to this insurance whether before or after a loss.
- b. Concealment or misrepresentation, whether before or after a loss, shall prevent a recovery under this insurance if it:
  - (1) Was made with actual intent to deceive; or
  - (2) Materially affects either the acceptance of the risk or the hazard assumed by us.

#### ILLINOIS CHANGES

It is agreed that:

1. The Suit Against The Company condition is hereby revised to a two (2) year period for commencement of legal action against the Company. In addition, the and the following is added to the condition of the policy and supersedes any provision in that condition to the contrary:

The two(2) year period for suit against the Company is extended by the number of days between the date the proof of loss is filed with us and the date we deny the claim in whole or in part.

2. If this policy covers:

- A. The following in a. and b., then Paragraphs B. and C. apply:

- a. Real property used principally for residential purposes up to and including a four family dwelling; or
- b. Household or personal property that is usual or incidental to the occupancy of any premises used for residential purposes.

- B. The Appraisal condition in the policy is amended by deleted the part concerning payment of appraisers and replacing it with the following:

- Each party will pay its own appraiser and bear the other expenses of the appraisal and umpire equally, except as provided in \_\_\_ below.
- We will pay your appraiser's fee and the umpire's appraisal fee, if the following conditions exist:
  - (1) You demanded the appraisal; and
  - (2) The full amount of loss, as set by your appraiser, is agreed to by our appraiser or by the umpire.

3. The Concealment, Misrepresentation Or Fraud condition of the policy is deleted and replaced by the following:

#### CONCEALMENT, MISREPRESENTATION OR FRAUD

- a. This policy is void if you or any insured commit fraud or conceal or misrepresent a fact in the process leading to the issuance of this insurance, and such fraud, concealment or misrepresentation is stated in the policy or endorsement or in the written application for this policy and:
  - (1) Was made with actual intent to deceive; or
  - (2) Materially affected either our decision to provide this insurance or the hazard we assumed.

However, this condition will not serve as a reason to void this policy after the policy has been in effect for one year or one policy term, whichever is less.

- b. This policy is void if you or any other insured, at any time subsequent to the issuance of this insurance, commit fraud or intentionally conceal or misrepresent a material fact relating to:

- (1) This policy;
- (2) The Covered Property;
- (3) Your interest in the Covered Property; or
- (4) A claim under this policy.

- c. Notwithstanding the limitations stated in paragraph a. above, we may cancel the policy accordance with the terms of the Cancellation Condition.

4. The following exclusion and related provisions are added to the policy:

We will not pay for loss or damage arising out of any act an insured commits or conspires to commit with the intent to cause a loss.

In the event of such loss, no insured is entitled to coverage, even insureds who did not commit or conspire to commit the act causing the loss.

However, this exclusion will not apply to deny payment to an innocent co-insured who did not cooperate in or contribute to the creation of the loss if:

- a. The loss arose out of a pattern of criminal domestic violence; and
- b. The perpetrator of the loss is criminally prosecuted for the act causing the loss.

If we pay a claim pursuant to the foregoing paragraph, our payment to the insured is limited to that insured's insurable interest in the property less any payments we first made to a mortgagee or other party with a legal secured interest in the property. In no event will we pay more than the Limit of Insurance.

#### INDIANA CHANGES – CONCEALMENT, MISREPRESENTATION OR FRAUD

It is agreed that the Concealment, Misrepresentation or Fraud condition of the policy is deleted and replaced by the following:

#### CONCEALMENT, MISREPRESENTATION OR FRAUD

We will not pay for any loss or damage in any case of:

1. Concealment or misrepresentation of a material fact or

2. Fraud

committed by an insured at any time and relating to a claim under this policy.

#### INDIANA CHANGES – RIGHTS OF RECOVERY

It is agreed that the Transfer of Rights of Recovery Against Others to Us condition of the policy is deleted and replaced by the following:

#### TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. Our right to recover damages from another may be enforced even if the person or organization to or for whom we make payment has not been fully compensated for damages.

The person or organization to or for whom we make payment must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

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

- (2) That owns or controls you; or  
c. Your tenant.

This will not restrict your insurance.

#### IOWA CHANGES

It is agreed that:

1. The Legal Action Against Us condition of the policy is deleted and replaced by the following:

Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from you; or  
b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against you that is returned unsatisfied; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the Limit of Insurance. The judgment creditor shall have a right of action against us to the same extent that you could have enforced a claim against us had you paid such judgment. An agreed settlement means a settlement and release of liability signed by us, you and the claimant or claimant's legal representative.

#### KANSAS CHANGES – CONCEALMENT, MISREPRESENTATION OR FRAUD

It is agreed that the Concealment, Misrepresentation or Fraud condition of the policy is deleted and replaced by the following:

CONCEALMENT, MISREPRESENTATION OR FRAUD

We will not pay for any loss or damage in any case of:

1. Concealment or misrepresentation of a material fact; or

2. Fraud;

committed by an insured at any time and relating to an insurance application, rating, claim or coverage under this policy.

#### LOUISIANA CHANGES

It is agreed that:

1. The following is added when a Coinsurance percentage is shown in the Declarations:
- The rate of premium for your Policy is based on the use of a Coinsurance percentage that is shown in the Declarations.
2. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US in the ACE GLOBAL PROPERTY COVERAGE FORM CONDITIONS is deleted and replaced with the following:

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

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

1. Prior to a loss to your Covered Property or covered income.
2. After a loss to your Covered Property or covered income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you;
  - c. Your employee or employer;
  - d. The owner, lessor or tenant of the:
    - (1) Described premises; or
    - (2) Premises where loss or damage occurred; including their employees, partners and stockholders; or
  - e. Your relative by blood or marriage.

If you waive your rights against another party in writing after a loss, we can recover from you any amount you received for that waiver. But we cannot recover more than the amount we paid you for that loss.

#### MAINE CHANGES – CONCEALMENT, MISREPRESENTATION OR FRAUD

It is agreed that the Concealment, Misrepresentation or Fraud condition of the policy is deleted and replaced by the following:

CONCEALMENT, MISREPRESENTATION OR FRAUD

We do not provide coverage to one or more insureds ("insureds") who, at any time:

1. Intentionally concealed or misrepresented a material fact;
2. Engaged in fraudulent conduct; or
3. Made a false statement; relating to this insurance.

#### MASSACHUSETTS - TENANT RELOCATION EXPENSE

This endorsement is required by Massachusetts law.

The following provisions are added to the policy:

This Policy provides relocation expense benefits as follows:

1. Relocation Expense

When a "rented living quarters" in a building covered by this policy is made uninhabitable as a result of a loss by fire, this policy covers "relocation expense" incurred by the tenant or lawful occupant to relocate to other living quarters in the shortest possible time.

2. Definitions

A. "Relocation expense" means documented, reasonable and necessary costs and living expenses, including:

- (1) Costs of packing, insuring, storing and carting household goods;
- (2) Costs of securing new utility services less refunds from discontinued services at the damaged premises;
- (3) Costs of searching for other quarters;
- (4) Costs of disconnecting and reconnecting household appliances;
- (5) Additional living expenses while searching for or awaiting possession of other quarters or the restoration of existing quarters, including costs of hotel room rental;

(6) Security deposit and first month's rent for a new rental unit, unless the security deposit or last month's rent is already due and owing from the landlord to the tenant;

(7) Costs of replacing furniture or clothing; commencing with the date of damage to the covered building and not limited by the expiration date of this policy.

"Relocation expense" does not mean:

- (1) Loss caused by the termination of a lease or other agreement;
- (2) Down payments, legal fees and closing costs incidental to the purchase of other quarters.

B. "Rented living quarters" means a room, suite of rooms or apartment rented as a single residential unit by one or more persons.

"Rented living quarters" does not mean one or more rooms occupied by one or more persons as roomers in a hotel, motel, public or private lodging or rooming house where the premises are occupied on a transient basis.

3. Limit Of Liability

The liability for "relocation expense" under this policy is limited to not more than \$750 for a "rented living quarters".

4. No Deductible

The deductible provisions of this policy do not apply to the "relocation expense" benefits.

5. Other Insurance

A. If at the time of loss, the tenant or lawful occupant has other insurance that covers "relocation expense", we shall not be liable for any loss under this coverage until the liability of such other insurance has been exhausted.

B. If you have other insurance that covers "relocation expense", payment under this policy will be prorated with such insurance for the smaller of the incurred "relocation expense" or \$750 all after application of the other insurance of the tenant or lawful occupant.

6. Loss Settlement

The claims for all persons occupying the "rented living quarters" will be settled with and payment made to the tenant or lawful occupant renting the quarters from the building owners, or lessor.

#### MINNESOTA CHANGES

It is agreed that:

1. The following is added to the Loss Payment Loss Condition of the policy and supersedes any provision to the contrary:

Provided you have complied with all the terms of this Coverage Part, we will pay for covered loss or damage within 5 business days after we have received the proof of loss and:

1. We have reached agreement with you or, in the event we use an independent claims adjuster, we have received the agreement and you have satisfied the conditions of the agreement, if any; or
2. An appraisal award has been made.

2. The following is added to the Loss Payment Loss Condition of the policy:

We agree that in the event of a total loss, the Limit of Insurance for a building which is Covered Property represents its value.

3. The Examination Of Your Books And Records condition of the policy is deleted and replaced by the following:

Examination of Your Books and Records

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

4. The Concealment, Misrepresentation Or Fraud condition of the policy is deleted and replaced by the following with respect to loss or damage caused by fire:

We do not provide coverage to the insured who has:

1. Before a loss, willfully; or
2. After a loss, willfully and with intent to defraud; concealed or misrepresented any material fact or circumstances concerning:
  - (a) This policy;
  - (b) The Covered Property;
  - (c) That insured's interest in the Covered Property; or
  - (d) A claim under this policy.

5. The Concealment, Misrepresentation Or Fraud condition of the policy is deleted and replaced by the following with respect to loss or damage caused by a Covered Cause of Loss other than fire:

We will not pay for any loss or damage if any insured has:

1. Before a loss, willfully; or
2. After a loss, willfully and with intent to defraud; concealed or misrepresented any material fact or circumstances concerning:
  - (a) This policy;
  - (b) The Covered Property;
  - (c) That insured's interest in the Covered Property; or
  - (d) A claim under this policy.

6. The following is added to the Covered Causes Of Loss section of the policy:

We insure for all loss or damage caused by fire or any damage caused by lightning.

7. The Duties In The Event Of Loss or Damage Loss condition of this policy is changed to add the following requirements:

As often as we reasonably require:

- (a) Permit us to inspect the property. Also, permit us to take samples of damaged and undamaged property for inspection, testing and analysis;
- (b) Provide us with records and documents reasonably related to the loss, or certified copies if the originals are lost, and permit us to make copies.
- (c) Send us, within 60 days after our request, a signed, sworn proof of loss containing the following information we require to investigate the claim:
  - (a) A description of how and when the loss or damage occurred;
  - (b) The value of the property, except in the case of a total loss of an insured building;
  - (c) The interest of the insured and all others in the property; and
  - (d) Other insurance which may cover the loss or damage.

We will supply you with the necessary forms.

After we inform an insured:

1. Of the right to counsel; and
2. That an insured's answers may be used against the insured in later civil or criminal proceedings;

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

8. Paragraphs a. and d of the Mortgageholders condition is amended to include the following provisions:

- a. The term "mortgageholder" includes trustees and contract for deed vendors.
  - d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
    - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
    - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.
- All of the terms of this policy will then apply directly to the mortgageholder.

- 9. The following paragraph is added to the Mortgageholders condition: We will notify the mortgageholder of changes to this policy that result in a substantial reduction of coverage to the mortgaged property.
- 10. The Ordinance Or Law exclusion in the policy exclusions is deleted and replaced by the following exclusion:

**ORDINANCE OR LAW**

- 1. The enforcement of any ordinance or law:
  - a. Regulating the construction, use or repair of any property; or
  - b. Requiring the tearing down of any property, including the cost of removing its debris.
- 2. This exclusion, Ordinance Or Law, applies whether the loss results from:
  - a. An ordinance or law that is enforced even if the property has not been damaged; or
  - b. The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property. But if loss or damage is solely a result of one or more Covered Causes of Loss, we will pay for your compliance with such ordinance or law, subject to all other provisions of this policy, including those listed below, as follows:
    - (1) In the event of a partial loss, if the building is insured under Replacement Cost Coverage, we will pay for your compliance but only with respect to the damaged portion of the building.
    - (2) In the event of a total loss or constructive total loss, we will pay for your compliance with respect to the entire building.
    - (3) We will not pay under this provision for the costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".
    - (4) Any valuation provision (including Replacement Cost) or loss payment condition which excludes the increased cost attributable to an ordinance or law is hereby revised to include such cost to the extent that coverage is provided above in this Ordinance or Law exclusion. But in no event will we pay more than the applicable Limit of Insurance.
- 3. This exclusion applies except to the extent that coverage is provided within the Ordinance or Law Additional Coverage. The coverage afforded under the Ordinance or Law Additional Coverage does not reduce the coverage provided under the exceptions to the Ordinance or Law exclusion as presented above.

- 11. The Deductible will not apply to the total loss of a building.
- 12. The Transfer Of Rights Of Recovery Against Others To Us condition of the policy is deleted and replaced by the following:

**Transfer Of Rights Of Recovery Against Others To Us**

- 1. If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. However, our rights do not apply against:
  - a. An insured; or
  - b. Any person or organization insured under another policy which was issued by us and responds to the same loss;
 provided the loss was not intentionally caused by such insureds.
- 2. You may waive your rights against another party in writing:
  - a. Prior to a loss to your Covered Property or Covered Income.
  - b. After a loss to your Covered Property or Covered Income only if, at the time of loss, that party is one of the following:
    - (1) Someone insured by this insurance, unless the loss was caused intentionally by such insured;
    - (2) A business firm:
      - (a) Owned or controlled by you; or
      - (b) That owns or controls you; or
    - (3) Your tenant.

**MISSISSIPPI CHANGES**

It is agreed that:

- 1. The Legal Action Against Us Condition of the policy is deleted and replaced by the following:

**LEGAL ACTION AGAINST US**

- No one may bring a legal action against us under this policy unless:
  - 1. There has been full compliance with all of the terms of this policy; and
  - 2. The action is brought within 3 years after the date on which the direct physical loss or damage occurred.

**MISSOURI CHANGES**

It is agreed that:

- 1. If partial loss ("loss") or damage to Covered Property is caused by or results from fire, the Loss Payment Loss Condition of the policy is amended by deleting the part concerning partial loss from fire and replacing it with the following:
 

**LOSS PAYMENT**

In the event of partial loss ("loss") or damage caused by or resulting from fire, and covered by this Policy, at your option, we will either:

  - 1. Pay you an amount of money equal to the damage done; or
  - 2. Repair the damage, so that the property is in as good a condition as before the fire.

But we will not pay more than the Limit of Insurance.
- 2. The Loss Payment Loss Condition is amended by deleting the part concerning notice from us and replacing it with the following:
 

In the event of loss ("loss") or damage covered under this policy, we will give you notice, within 15 working days after we receive a properly executed proof of loss, that we:

  - 1. Accept your claim;
  - 2. Deny your claim; or
  - 3. Need more time to determine whether your claim should be accepted or denied.

- If we deny your claim, such notice will be in writing, and will state any policy provision, condition or exclusion used as a basis for the denial.
- If we need more time to determine whether your claim should be accepted or denied, the written notice will state the reason(s) why more time is needed.
- If we have not completed our investigation, we will notify you again in writing, within 45 days after the date the initial notice is sent informing you that we need more time to determine whether your claim should be accepted or denied and thereafter every 45 days. The written notice shall state why more time is needed to investigate your claim.
- 3. Except as provided in section 4 of this endorsement, the Appraisal condition of the policy is deleted and replaced by the following:

**APPRAISAL**

If we and you disagree on the value of the property or the amount of loss ("loss"), either may make written demand for an appraisal of the loss ("loss"). In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of the written demand for appraisal. The two appraisers will select an umpire. If they cannot agree upon an umpire within 15 days, we or you may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss ("loss"). If they fail to agree, they will submit their differences to the umpire. The umpire shall make an award within 30 days after the umpire receives the appraisers' submissions of their differences. A decision agreed to by any two will be binding.

Each party will:

- 1. Pay its chosen appraiser; and
  - 2. Bear the other expenses of the appraisal and umpire equally.
- If there is an appraisal, we will still retain our right to deny the claim.
- 4. The Appraisal condition in any Business Income (And Extra Expense) Coverage Form or endorsement, or Business Income (Without Extra Expense) Coverage Form or endorsement, that is made part of this policy is replaced by the following:

**APPRAISAL**

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of the written demand for appraisal. The two appraisers will select an umpire. If they cannot agree upon an umpire within 15 days, we or you may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or the amount of loss. If they fail to agree, they will submit their differences to the umpire. The umpire shall make an award within 30 days after the umpire receives the appraisers' submissions of their differences. A decision agreed to by any two will be binding. Each party will:

- 1. Pay its chosen appraiser; and
  - 2. Bear the other expenses of the appraisal and umpire equally.
- If there is an appraisal, we will still retain our right to deny the claim.
- 5. The Legal Action Against Us condition of the policy is deleted and replaced by the following:

**LEGAL ACTION AGAINST US**

- No one may bring a legal action against us under this policy unless:
  - 1. There has been full compliance with all of the terms of this policy; and
  - 2. The action is brought within 10 years after the date on which the direct physical loss ("loss") or damage occurred.

**6. The following is added to the policy:  
Missouri Property And Casualty Insurance Guaranty Association Coverage Limitations**

- 1. Subject to the provisions of the Missouri Property and Casualty Insurance Guaranty Association Act (to be referred to as the Act), if we are a member of the Missouri Property and Casualty Insurance Guaranty Association (to be referred to as the Association), the Association will pay claims covered under the Act if we become insolvent.
- 2. The Act contains various exclusions, conditions and limitations that govern a claimant's eligibility to collect payment from the Association and affect the amount of any payment. The following limitations apply subject to all other provisions of the Act:
  - a. Claims covered by the Association do not include a claim by or against an insured of an insolvent insurer, if the insured has a net worth of more than \$25 million on the later of the end of the insured's most recent fiscal year or the December thirty-first of the year next preceding the date the insurer becomes insolvent; provided that an insured's net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its affiliates as calculated on a consolidated basis.
  - b. Payments made by the Association for covered claims will include only that amount of each claim which is less than \$300,000.

However, the Association will not:

- (1) Pay an amount in excess of the applicable limit of insurance of the policy from which a claim arises; or
  - (2) Return to an insured any unearned premium in excess of \$25,000.
- These limitations have no effect on the coverage we will provide under this Policy.
- 7. The following exclusion and related provisions are added to the exclusion section of the policy:

- 1. We will not pay for loss or damage arising out of any act an insured commits or conspires to commit with the intent to cause a loss. In the event of such loss, no insured is entitled to coverage, even insureds who did not commit or conspire to commit the act causing the loss.
- 2. However, this exclusion will not apply to deny coverage to an innocent co-insured who did not cooperate in or contribute to the creation of the loss, provided the loss is otherwise covered under this policy and the loss arose out of domestic violence. Such coverage will be provided only if the innocent co-insured files a police report and completes a sworn affidavit indicating both:
  - a. The cause of the loss; and
  - b. A pledge to cooperate in any criminal prosecution of the person committing the act causing the loss.
- 3. If we pay a claim pursuant to part 2. above., our payment to the innocent co-insured will be limited to that insured's ownership interest in the property as reduced by any payment to a mortgagee or other secured interest; however, we shall not be required to make any subsequent payment for any loss for which the innocent co-insured has received payment. In no event will we pay more than the Limit of Insurance.
- 8. The following is added to the Transfer Of Rights Of Recovery Against Others To Us condition of the policy:
 

If we pay an innocent co-"insured" for loss ("loss") arising out of an act of domestic violence by another "insured", the rights of the innocent co-"insured" to recover damages from the abuser are transferred to us to the extent of our payment. Following

the loss ("loss"), the innocent co-"insured" may not waive such rights to recover against the abuser.

- When the Replacement Cost Optional Coverage applies, applies, the following is added with respect to those provisions and relates only to the requirement to notify us of your intent to submit an additional claim (for the difference between the actual cash value and replacement cost) within 180 days after the loss or damage occurs:  
If you fail to notify us of your intent within the 180-day timeframe, such failure will not invalidate the claim unless such failure operates to prejudice our rights.
- The Transfer Of Your Rights And Duties Under This Policy condition of the policy is deleted and replaced by the following:

#### Transfer of Your Rights and Duties Under This Policy

- Transfer By Beneficiary Deed**  
If you convey real property insured under this policy to a person (known as a grantee beneficiary) designated under a beneficiary deed, which has been properly recorded prior to your death, that person will have your rights and duties with respect to the insured real property, but only for the period from the date of your death until the first of the following occurs:
  - A period of 30 days from the date of your death;
  - The date that alternative coverage is obtained on your property; or
  - The end of the policy period as shown in the Declarations.
- Transfer By Other Means Following Death**  
If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties, but only with respect to that property. Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

#### MONTANA CHANGES – CONCEALMENT, MISREPRESENTATION OR FRAUD

It is agreed that:

The Concealment, Misrepresentation or Fraud condition of the policy is deleted and replaced by the following:

#### CONCEALMENT, MISREPRESENTATION OR FRAUD

We will not pay for loss ("loss") or damage in a case of:

- Concealment or misrepresentation of a material fact; or
- Fraud;  
committed by you or any other insured ("insured") , whether before or after the loss ("loss") and relating to coverage of the loss ("loss") under this policy.

We will not pay for any loss ("loss") or damage in any case if:

- Concealment or misrepresentation of a material fact; or
- Fraud;  
is committed by you or any other insured ("insured") in the application for this policy.

#### NEBRASKA CHANGES – APPRAISAL

It is agreed that:

- Except as provided in section 2. of this endorsement, the Appraisal condition of the policy is deleted and replaced by the following:

#### APPRAISAL

If we and you disagree on the value of the property or the amount of loss ("loss"), both parties may agree in writing to an appraisal of the loss ("loss") and to be bound by the results of that appraisal. If both parties so agree, then each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss ("loss") . If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

- The Appraisal condition in any Business Income Coverage Form (And Extra Expense) or endorsement, or Business Income Coverage Form (Without Extra Expense) or endorsement, that is part of this policy is deleted and replaced with the following:

#### APPRAISAL

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, both parties may agree in writing to an appraisal of the loss and to be bound by the results of that appraisal. If both parties so agree, then each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss.

If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

#### NEBRASKA CHANGES

It is agreed that:

- The following is added to the Valuation Loss condition of the policy:  
When this policy is written to insure any real property in Nebraska against loss by fire, tornado, windstorm, lightning or explosion and the property insured shall be wholly destroyed, without criminal fault on the part of you or your assignee, the amount of the insurance written on such real property shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages.
- The Concealment, Misrepresentation or Fraud condition of this policy is deleted and replaced by the following:

#### MISREPRESENTATION OR BREACH OF CONDITION OR WARRANTY

- A misrepresentation or warranty made by you or on your behalf in the negotiation of or application for this policy will void this policy if:
  - It is material;
  - It is made with the intent to deceive;
  - We rely on it; and
  - We are deceived to our injury.
- A breach of warranty or condition will void the policy if such breach exists at the time of loss and contributes to the loss.
- The following exclusion is added to the exclusions section of the policy:

We will not pay for loss or damage arising out of any act committed:

- By or at the direction of any insured; and

- With the intent to cause a loss.

However, this exclusion does not apply to deny coverage to an innocent insured to the extent of that insured's legal interest (but not exceeding the applicable Limit of Insurance) in Covered Property that has sustained damage if the damage arises out of abuse of the innocent insured by a current or former family member or household member and is otherwise covered under this policy. We may apply reasonable standards of proof to claims for such damage.

- The Transfer Of Rights Of Recovery Against Others To Us condition of the policy is amended by adding the following:

If we pay an innocent coinsured subject of abuse for loss arising out of abuse by another insured who is a current or former family member or household member, the rights of the innocent coinsured to recover damages from the abuser are transferred to us to the extent of our payment. The innocent coinsured may not waive such rights to recover against the abuser.

- In Paragraphs 2. and 3. above, abuse means attempting to cause or intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another person, including a minor child.
- The following is added to the Loss Payment Loss Condition of the policy and supersedes any provision to the contrary:

**LOSS PAYMENT**  
We will give you notice, within 15 days after we receive settlement information or a properly executed proof of loss, that we:

- Accept your claim;
- Deny your claim; or
- Need more time to investigate your claim.

If we deny your claim, the denial will be given to you in writing.

If we need more time to investigate your claim, we will provide an explanation for our need for more time. We will continue to notify you again in writing, at least every 30 days, of the status of the investigation and of the continued time needed for the investigation. However, if the claim is in litigation, the requirements pertaining to notice of the status of our investigation do not apply.

#### NEBRASKA CHANGES – FRAUD OR MISREPRESENTATION

It is agreed that the Concealment, Misrepresentation or Fraud condition of the policy is deleted and replaced by the following:

#### MISREPRESENTATION OR BREACH OF CONDITION OR WARRANTY

- A misrepresentation or warranty made by you or on your behalf in the negotiation of or application for this policy will void this policy if:
  - It is material;
  - It is made with the intent to deceive;
  - We rely on it; and
  - We are deceived to our injury.
- A breach of warranty or condition will void the policy if such breach exists at the time of loss and contributes to the loss.

#### NEVADA CHANGES – CONCEALMENT, MISREPRESENTATION OR FRAUD

It is agreed that the Concealment, Misrepresentation or Fraud condition of the policy is deleted and replaced with the following:

#### CONCEALMENT, MISREPRESENTATION OR FRAUD

We will not pay for any loss ("loss") or damage in any case of:

- Concealment or misrepresentation of a material fact; or
- Fraud;  
committed by an insured ("insured") at any time and relating to a claim under this policy.

#### NEW HAMPSHIRE CHANGES – CONCEALMENT, MISREPRESENTATION OR FRAUD

It is agreed that the Concealment, Misrepresentation or Fraud condition of the policy is deleted and replaced by the following:

#### CONCEALMENT, MISREPRESENTATION OR FRAUD

We do not provide coverage to one or more insureds ("insureds") who, at any time:

- Intentionally concealed or misrepresented a material fact;
- Engaged in fraudulent conduct; or
- Made a false statement;  
relating to this insurance.

#### NEW JERSEY CHANGES

It is agreed that:

- The following exclusion and related provisions are added:
  - We will not pay for loss or damage arising out of any act committed:
    - By or at the direction of any insured; and
    - With the intent to cause a loss.
  - However, this exclusion will not apply to deny payment to a co-insured who did not cooperate in or contribute to the creation of the loss if the loss arose out of domestic violence.
  - If we pay a claim pursuant to part 2. above, our payment to the insured is limited to that insured's insurable interest in the property. In no event will we pay more than the Limit of Insurance.
  - To the extent that the Concealment, Misrepresentation or Fraud Condition conflicts with the provisions of part 2. above, the provisions of part 2. will apply.
- The following is added to the TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition of the policy:

If we pay a co-insured for loss arising out of an act of domestic violence by another insured, the rights of the co-insured, who did not cooperate in or contribute to the creation of the loss, to recover damages from the perpetrator of domestic violence.

#### NEW JERSEY CHANGES

It is agreed that:

- The following exclusion and related provisions are added to the policy:
  - We will not pay for loss or damage arising out of any act committed:
    - By or at the direction of any insured; and
    - With the intent to cause a loss.
  - However, this exclusion will not apply to deny payment to a co-insured who did not cooperate in or contribute to the creation of the loss if the loss arose out of domestic violence.
  - If we pay a claim pursuant to Paragraph 2. above, our payment to the insured is limited to that insured's insurable interest in the property. In no event will we pay more than the Limit of Insurance.

**NORTH CAROLINA CHANGES**

To the extent that the Concealment, Misrepresentation Or Fraud Condition conflicts with the provisions of Paragraph 2. above, the provisions of 2. will apply.

- The following is added to the Transfer of Rights of Recovery Against Others To Us Condition of the policy:  
If we pay a co-insured for loss arising out of an act of domestic violence by another insured, the rights of the co-insured, who did not cooperate in or contribute to the creation of the loss, to recover damages from the perpetrator of domestic violence are transferred to us to the extent of our payment. Following the loss, the co-insured who did not cooperate in or contribute to the loss may not waive such rights to recover against the perpetrator of domestic violence.

**NEW YORK CHANGES – FRAUD**

It is agreed that:

- The Concealment, Misrepresentation or Fraud condition of the policy is deleted and replaced by the following:

**FRAUD**

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

**NEW YORK CHANGES**

It is agreed that:

- If this policy covers the interest of the owner of any of the following types of buildings or structures:  
A. Residential (except 1 or 2 family buildings or structures);  
B. Commercial; or  
C. Industrial;  
the following provision is added:  
Before payment to you for loss or damage to the above buildings or structures caused by or resulting from fire, we will:

(1) Deduct from your payment the claim of any tax district that issues a certificate of lien in accordance with the Insurance Law; and

(2) Pay directly to the tax district the amount of the claim.

When we pay that claim, we will have no obligation to pay the amount of that claim to you. Our payment of that claim within 30 days of our receipt of the certificate of lien will be a conclusive presumption that the claim was valid and properly paid.

- The following is added with respect to any condition of this policy which requires you to notify us of loss or to notify us of an accident, claim or "suit":  
A. Notice given by or on your behalf; or  
B. Written notice by or on behalf of any claimant;  
to any of our agents in New York State, which adequately identifies you, will be the same as notice to us.

- The Examination Of Your Books And Records condition of this policy is deleted and replaced by the following:

**EXAMINATION OF YOUR BOOKS AND RECORDS**

1. Except as provided in 2. below, we may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

2. We will conduct an audit to determine the final premium due or to be refunded, for coverage for which an advance or deposit premium was paid based on estimated exposure. But the audit may be waived if:

- The total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1,500; or
- The policy requires notification to the insurer with the specific identification of any additional exposure units (e.g., buildings) for which coverage is requested.

If the audit is not waived, it must be completed within 180 days after:

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

- Except as provided in section 5 of this endorsement, the Appraisal condition of the policy is deleted and replaced by the following:

**APPRAISAL**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand. The two appraisers will select an umpire. If they cannot agree within 15 days upon such umpire, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

- The Appraisal condition in any Business Income (And Extra Expense) Coverage Form or endorsement, or Business Income (Without Extra Expense) Coverage Form or endorsement, that is a part of this policy is deleted and replaced by the following:

**APPRAISAL**

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand. The two appraisers will select an umpire. If they cannot agree within 15 days upon such umpire, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

- The following condition is added to the policy:  
**ESTIMATION OF CLAIMS**  
Upon request, we will furnish you or your representative with a written estimate of damages to real property specifying all deductions, provided such an estimate has been prepared by us or has been prepared on our behalf for our own purposes. This estimate will be provided within thirty days after your request or its preparation, whichever is later.

All other terms and conditions of this policy remain unchanged

It is agreed that:

- The Legal Action Against Us condition of the policy is deleted and replaced by the following:

**LEGAL ACTION AGAINST US**

- No one may bring a legal action against us under this policy unless:
  - There has been full compliance with all of the terms of this policy; and
  - The action is brought within 3 years after the date on which the direct physical loss or property damage occurred.
- The Optional Coverage for Replacement Cost, if any, of this policy is amended by deleting the part concerning when we will not pay on a replacement cause basis and replacing it with the following:  
We will not pay on a replacement cost basis for any loss or damage:
  - Until the lost or damaged property is actually repaired or replaced:
    - On the described premises; or
    - At some other location in the State of North Carolina; and
  - Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
 With respect to tenants' improvements and betterments, if covered, the following also apply:
  - If the conditions in 1) and d) 2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Condition of this policy; and
  - We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- The Appraisal condition of the policy is deleted and replaced by the following:

**APPRAISAL**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. You and we must notify the other of the appraiser selected within 20 days of the written demand for appraisal. The two appraisers will select an umpire. If the two appraisers do not agree on the selection of an umpire within 15 days, they must request selection of an umpire by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their difference to the umpire. A decision agreed to by any two will be the appraised value of the property or amount of loss. If you make a written demand for an appraisal of the loss, each party will:

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

**NORTH DAKOTA CHANGES – EXAMINATION OF YOUR BOOKS AND RECORDS**

It is agreed that:

- The Examination of Your Books and Records condition of the policy is deleted and replaced by the following:

**EXAMINATION OF YOUR BOOKS AND RECORDS**

- Except as provided in 2. below, we may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.
- Any audit conducted to determine the premium due or to be refunded must be completed within 180 days after:
  - The expiration date of the policy; or
  - The anniversary date, if this is a continuous policy or a policy written for a term longer than one year;
 unless you agree in writing to extend the audit period.

**NORTH DAKOTA CHANGES**

It is agreed that:

- The Legal Action Against Us Section is replaced by the following:

**LEGAL ACTION AGAINST US**

- No one may bring a legal action against us under this Policy unless:
  - There has been full compliance with all of the terms of this Policy; and
  - The action is brought within 3 years after the date on which the direct physical loss or damage occurred.
- The policy is amended by adding the following to clause pertaining to Valuation:

**VALUED POLICIES**

- When this Policy is written to insure any real property in North Dakota against loss caused by or resulting from any Covered Cause Of Loss, and the property is wholly or completely destroyed by any Covered Cause Of Loss without fraud on the part of the "insured" or assignee, the amount of insurance written on such real property shall be taken to be the true value of the property insured and the true amount of loss and measure of damages, subject to the exceptions and conditions in parts 2., 3., and 4. below and in the policy section pertaining to Other Insurance.
- If a covered loss occurs within 90 days after:
  - The Policy was initially issued; or
  - The amount of insurance applying to the real property was increased by 25% or more at the insured's request;
 We will pay no more than the least of the following:
  - The Limit of Insurance under this Policy that applies to the real property;
  - The actual cash value of that part of the real property damaged; or
  - The cost to repair or replace the damaged real property after application of deductible and without deduction for depreciation.

However, if this Policy contains a provision which adjusts the Policy's Limit of Insurance for inflation, we will pay in accordance with part 1. above.

- Builders' risk policies of insurance covering property in the process of being constructed shall be valued and settled according to the actual value of that portion of the construction completed at the time of the loss.
- The Valued Policy Provisions in parts .1., 2., and 3. above and in the policy section pertaining to Other Insurance, do not apply to any claim for loss to an appurtenant or separate structure, unless the appurtenant or separate structure is individually described in the Policy and a value has been assigned to the appurtenant or separate structure before the loss.
- When such Valued Policy Provisions do not apply, the claim for loss to an appurtenant or separate structure will be settled for actual cash value or replacement cost, depending on the Policy provisions applicable to that structure.
- The following is added to policy Section pertaining to Other Insurance and supersedes any provisions to the contrary:

Valued Policies – Other Insurance

With respect to valued policies, if two or more policies are written upon the same property interest and cover the loss, each insurer will pay only that proportion of the cost of the loss that the limit of insurance under its policy bears to the total amount of insurance covering the loss.

6. The following exclusion and related provisions are added to section \_\_\_\_\_. Exclusions:
1. We will not pay for loss or damage arising out of any act committed:
    - a. By or at the direction of any insured; and
    - b. With the intent to cause a loss.
  2. However, this exclusion will not apply to deny coverage to an innocent co-insured who did not cooperate in or contribute to the creation of the loss, provided the loss is otherwise covered under this Policy and:
    - a. The loss arose out of domestic violence; and
    - b. The perpetrator of the loss is criminally prosecuted for the act causing the loss.
  3. If we pay a claim pursuant to part 2. above, our payment to the insured is limited to that insured's ownership interest in the property less any payments we first made to a mortgagee or other party with a legal secured interest in the property. In no event will we pay more than the Limit of Insurance.

3. The policy is amended by adding the following to the clause pertaining to Transfer Of Rights Of Recovery Against Others:

If we pay an innocent co-insured victim of domestic violence for loss arising out of an act of domestic violence by another insured, the rights of the innocent co-insured to recover damages from the perpetrator of the domestic violence are transferred to us to the extent of our payment. Following the loss, the innocent co-insured may not waive such rights to recover against the perpetrator of the domestic violence.

#### OHIO CHANGES

It is agreed that:

1. The following is added to the Loss Payment Loss Condition and supersedes any provision to the contrary:

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

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

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

#### OKLAHOMA CHANGES – APPRAISAL

It is agreed that:

1. Except as provided in section 2. of this endorsement, the Appraisal condition in the policy is deleted and replaced by the following:

##### APPRAISAL

If we and you disagree on the value of the property or the amount of loss ("loss"), either party may make written demand for an appraisal of the loss. In this event, only the party which demanded the appraisal will be bound by the results of that appraisal.

Each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days after the written demand for an appraisal has been made. The two appraisers will select an umpire. If they cannot agree upon an umpire within 15 days, then, at the request of either you or us, and after notice of hearing to the non-requesting party by certified mail, selection of the umpire will be made by a judge of a district court in the county where the loss ("loss") occurred. The appraisers will state separately the value of the property and amount of loss ("loss"). If the appraisers submit a written report of agreement to us, the amounts agreed upon will be the value of the property and the amount of loss ("loss") and will be binding on the party which demanded the appraisal. If the appraisers fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding on the party which demanded the appraisal. Each party will:

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

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

2. The Appraisal Condition in the Business Income Coverage Form (And Extra Expense) or endorsement, or Business Income Coverage Form (Without Extra Expense) or endorsement, if a part of this policy, are replaced by the following:

##### APPRAISAL

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either party may make written demand for an appraisal of the loss. In this event, only the party which demanded the appraisal will be bound by the results of that appraisal.

Each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days after the written demand for an appraisal has been made. The two appraisers will select an umpire. If they cannot agree upon an umpire within 15 days, then, at the request of either you or us, and after notice of hearing to the non-requesting party by certified mail, selection of the umpire will be made by a judge of a district court in the county where the loss occurred. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If the appraisers submit a written report of agreement to us, the amounts agreed upon will be the value of the property and the amount of loss and will be binding on the party which demanded the appraisal. If the appraisers fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding on the party which demanded the appraisal. Each party will:

- (1) Pay its chosen appraiser; and
- (2) Bear the other expenses of the appraisal and umpire equally.

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

#### COMMON POLICY CONDITIONS – (INCLUDES RESTRICTIONS OR ABRIDGEMENTS) – OREGON

It is agreed that:

1. The Cancellation condition of the policy is deleted and replaced by the following:

CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.

3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

6. If notice is mailed, proof of mailing will be sufficient proof of notice. The following condition is added to the policy:

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.
3. The Examination of Your Books and Records, Inspections and Surveys, Premiums, and Transfer of Your Rights and Duties Under This Policy conditions of the policy are deleted and replaced by the following:

##### EXAMINATION OF YOUR BOOKS AND RECORDS

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

##### INSPECTIONS AND SURVEYS

1. We have the right to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

##### PREMIUMS

The first Named Insured shown in the Declarations:

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

##### TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

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

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

#### OREGON CHANGES

It is agreed that:

1. The Concealment, Misrepresentation or Fraud condition of the policy is deleted and replaced by the following:

##### CONCEALMENT, MISREPRESENTATION OR FRAUD

1. Subject to Paragraphs 2. and 3. below, this entire policy will be void if, whether before or after a loss, you have willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject of it, or your interest in it, or in case of any fraud or false swearing by you relating to it.
2. All statements made by you or on your behalf, in the absence of fraud, will be deemed representations and not warranties. No such statements that arise from an error in the application will be used in defense of a claim under this policy unless:
  - a. The statements are contained in a written application; and
  - b. A copy of the application is endorsed upon or attached to this Policy when issued.
3. In order to use any representation made by you or on your behalf in defense of a claim under the policy, we must show that the representations are material and that we relied on them.

2. Except as provided in section 3. of this endorsement, the Appraisal condition of the policy is deleted and replaced by the following:

##### APPRAISAL

If we and you disagree on the value of the property or the amount of loss ("loss") both parties may agree to an appraisal of the loss and to be bound by the results of that appraisal. If both parties so agree, then each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss ("loss"). If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
  2. Bear the other expenses of the appraisal and umpire equally.
- If there is an appraisal, we will still retain our right to deny the claim.

3. The Appraisal Condition in any Business Income Coverage Form (And Extra Expense) or endorsement, or Business Income Coverage Form (Without Extra Expense) or endorsement, to this policy is deleted and replaced by the following:

##### APPRAISAL

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, both parties may agree to an appraisal of the loss and to be bound by the results of that appraisal. If both parties so agree, then each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
  - b. Bear the other expenses of the appraisal and umpire equally.
- If there is an appraisal, we will still retain our right to deny the claim.

4. The Loss Conditions of the policy are amended by deleting the part concerning providing is with a proof of loss; and any Duties if You Incur Extra Expense condition in any Extra

Expense coverage form or endorsement is amended by deleting the provision requiring a signed, sworn proof of loss with the following; and replacing both provisions with the following:

Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 90 days after you receive the necessary forms from us.

5. The Mortgageholders condition is deleted and replaced by the following:  
**MORTGAGEHOLDERS**

- a. Oregon law states as follows:
  - (1) "If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured ('insured'), such interest in this policy may be canceled by giving to such mortgagee a 10 days' written notice of cancellation".
  - (2) "If the insured ('insured') fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing".
- b. The term mortgageholder includes trustee.
- c. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- d. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- e. If we deny your claim because of your acts or because you have failed to comply with the terms of this insurance, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - (1) Pays any premium due under this insurance at our request if you have failed to do so;
  - (2) Submits a signed, sworn proof of loss in accordance with Paragraph a.(2) above; and
  - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.
 All the terms of the affected insurance will then apply directly to the mortgageholder.
- f. If we cancel this policy, we will give written notice to the mortgageholder:
  - (1) In accordance with Paragraph a.(1) above; or
  - (2) At least:
    - (a) 10 days before the effective date of the cancellation if we cancel for your nonpayment of premium; or
    - (b) 30 days before the effective date of cancellation if we cancel for any other reason other than provided for in Paragraph a.(1) above.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

**PENNSYLVANIA CHANGES**

It is agreed that:

1. The Transfer Of Your Rights And Duties Under This Policy condition is deleted and replaced by the following:  
**Transfer Of Your Rights And Duties Under This Policy**  
 Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.  
 If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.  
 If you die, this policy will remain in effect as provided in 1. or 2. below, whichever is later:
  1. For 180 days after your death regardless of the policy period shown in the Declarations, unless the insured property is sold prior to that date; or
  2. Until the end of the policy period shown in the Declarations, unless the insured property is sold prior to that date.

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

2. The following is added to the Loss Payment condition of the policy and supersedes any provision to the contrary:

**NOTICE OF ACCEPTANCE OR DENIAL OF CLAIM**

1. Except as provided in 3. below, we will give you notice, within 15 working days after we receive a properly executed proof of loss, that we:
  - a. Accept your claim;
  - b. Deny your claim; or
  - c. Need more time to determine whether your claim should be accepted or denied.

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

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

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

**RHODE ISLAND CHANGES**

It is agreed that:

1. The Transfer Of Rights Of Recovery Against Others To Us condition of the policy is amended by adding the following:  
 When an insurer or its agents recover payment on a casualty loss from a third party through subrogation, the insurer must first pay the insured the deductible portion of the

casualty loss, less the prorated share of subrogation expenses and thereafter retain any funds in excess of the deductible portion of the recovery.

2. The following provision is added to the policy:

**DIRECT LIABILITY OF INSURERS**

We will be directly liable for those sums the insured becomes legally obligated to pay as damages to the injured party to which this insurance applies. In the event of that injured party's death, we will be directly liable for those sums the insured becomes legally obligated to pay as damages to the party entitled to sue as a result of the injured party's death, and to which this insurance applies.

**RHODE ISLAND CHANGES**

It is agreed that:

1. The Appraisal condition of the policy is amended by deleting the sentence stating that, if we and you disagree on the values of the property or the amount of loss, either may make written demand for an appraisal of the loss.
2. The following provisions are added to the Appraisal condition of the policy and supersede any provision to the contrary:  
 You and we must notify the other of the appraiser selection within 20 days of the written demand for appraisal.  
 If the appraisers do not agree on the selection of an umpire within 15 days, they must request selection of an umpire by a judge of a court having jurisdiction.
3. The Vacancy loss condition of the policy is deleted and replaced by the following:

**VACANCY AND UNOCCUPANCY**

- a. We will not pay for loss or damage if the building where loss or damage occurs has been "vacant" or "unoccupied" for more than:
  - (1) 30 consecutive days before the loss or damage occurs, if caused by Vandalism (if it is a covered cause of loss);
  - (2) 30 consecutive days after a local building inspector issues an order stating that the building is in violation of the State Building Code, if the loss or damage is caused by fire or lightning; or
  - (3) 60 consecutive days before the loss or damage occurs, if caused by any other covered cause of loss;
 whether or not such vacancy or unoccupancy begins before the inception of this policy.  
 But with respect to (1) and (3) above, we will pay if the building is "unoccupied" due to circumstances that are usual or incidental to the described occupancy.
- b. With respect to a.(1) and a.(3) above, this condition does not apply if a Vacancy Permit Endorsement is part of this policy.
- c. With respect to a.(1) and a.(3) above, 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.
- d. Buildings under construction or renovation are not considered "vacant" or "unoccupied".

4. The following is added to the policy:  
 No provision, stipulation or forfeiture will be held to be waived by any requirement or proceeding on our part relating to appraisal or to any examination provided for in this policy.

5. The following is added when this Policy applies to loss or damage to buildings by fire or explosion, other than owner-occupied 1- to 4-family dwellings:

1. We will not pay for a loss that is more than \$10,000 unless we receive from you a certificate issued by the taxing jurisdiction official that shows:
  - a. That no lien exists for the benefit of the taxing jurisdiction; or
  - b. The amount of any such lien that exists;

against the building or structure.

The \$10,000 limit shown above may be adjusted yearly for inflation by the Insurance Department.

2. Under the following conditions, we will put our payment for loss or damage into an interest-bearing escrow account:
  - a. The taxing jurisdiction official certifies that a lien exists. We will not put more than the amount of that lien into the account.
  - b. You do not receive a certificate from the taxing jurisdiction official within 30 days after you file a statement of loss with us. In this case, we will put the entire loss payment into the account.
3. But, if you can prove to us that:
  - a. You have requested the certificate by certified mail; and
  - b. The taxing jurisdiction official has not provided it to you within 15 days after your request;
 We will make our payment directly to you as soon as possible.
4. Also, if the taxing authority certifies that it has received proof that you will repair or rebuild on the same premises where the loss or damage occurred, we can then pay you directly for the loss or damage.

6. The Legal Action Against Us condition of the policy is deleted and replaced by the following:

**LEGAL ACTION AGAINST US**

1. No one may bring a legal action against us under this policy unless there has been full compliance with all of the terms of this policy.
2. Subject to Paragraph 1. above, any action on this policy for the recovery of any claim for direct loss or damage by fire and lightning must be brought within 2 years after the date on which such direct loss or damage occurred.
7. The following is added to the Mortgageholders condition of the policy and supercedes any provision to the contrary:  
 The Mortgagee shall not be entitled to payment of a claim under this policy for loss or damage to a covered building when such loss or damage is less than \$3,500, and for which said Mortgagee is otherwise entitled to payment, unless no liability exists as to the mortgagor.

**SOUTH CAROLINA CHANGES – VALUATION**

It is agreed that the following is added to the Valuation loss condition of the policy:

For loss or damage to buildings caused by or resulting from fire or lightning, you and we agree that:

- a. The value of buildings described in this policy; and
- b. The total amount of insurance to be carried on the buildings, including this policy; are the amounts shown in the SCHEDULE below.

**SCHEDULE\***

Prem #	Bldg #	Agreed Value of Buildings	Total Amount of Insurance to be Carried


\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations or separate endorsement.

**SOUTH DAKOTA CHANGES – APPRAISAL**

It is agreed that the Appraisal condition of the policy is deleted and replaced by the following:  
APPRAISAL

If we and you disagree on the value of the property or the amount of the loss both parties may agree to an appraisal of the loss. If both parties so agree, then each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and the amount of loss. If they fail to agree, they will submit their differences to the umpire. Any outcome of the appraisal will not be binding on either party. Each party will:

1. Pay its chosen appraiser; and
  2. Bear the other expenses of the appraisal and umpire equally.
- If we submit to an appraisal, we will retain our right to deny the claim.

**TEXAS CHANGES**

It is agreed that:

1. The following exclusion is added to the policy and supersedes any provision to the contrary:  
We will not pay for loss or damage caused by or resulting from continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

2. The Appraisal condition of the policy is deleted and replaced by the following:

**Appraisal**

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within 20 days of such demand. The two appraisers will select an umpire. If they cannot agree within 15 days upon such umpire, either may request that selection be made by a judge of a court having jurisdiction. Each appraiser will state the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding as to the amount of loss. Each party will:

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

If there is an appraisal:

- a. You will still retain your right to bring a legal action against us, subject to the provisions of the Legal Action Against Us condition; and
- b. We will still retain our right to deny the claim.

3. The following is added to the Duties In The Event Of Loss Or Damage condition of the policy:  
Send us a signed, sworn proof of loss containing the above information. You must do this within 91 days after our request.

4. The provisions pertaining to notice of our intentions and the time period for payment of claims in the Loss Payment condition of the policy are deleted and replaced by the following, which supersede any provisions to the contrary:

**Claims Handling**

- a. Within 15 days after we receive written notice of claim, we will:
  - (1) Acknowledge receipt of the claim. If we do not acknowledge receipt of the claim in writing, we will keep a record of the date, method and content of the acknowledgment;
  - (2) Begin any investigation of the claim; and
  - (3) Request a signed, sworn proof of loss, specify the information you must provide and supply you with the necessary forms. We may request more information at a later date, if during the investigation of the claim such additional information is necessary.
- b. We will notify you in writing as to whether:
  - (1) The claim or part of the claim will be paid;
  - (2) The claim or part of the claim has been denied, and inform you of the reasons for denial;
  - (3) More information is necessary; or
  - (4) We need additional time to reach a decision. If we need additional time, we will inform you of the reasons for such need.
- c. We will provide notification, as described in b.(1) through b.(4) above, within:
  - (1) 15 business days after we receive the signed, sworn proof of loss and all information we requested; or
  - (2) 30 days after we receive the signed, sworn proof of loss and all information we requested, if we have reason to believe the loss resulted from arson.

If we have notified you that we need additional time to reach a decision, we must then either approve or deny the claim within 45 days of such notice.
- d. We will pay for covered loss or damage within 5 business days after:
  - (1) We have notified you that payment of the claim or part of the claim will be made and have reached agreement with you on the amount of loss; or
  - (2) An appraisal award has been made.

However, if payment of the claim or part of the claim is conditioned on your compliance with any of the terms of this policy, we will make payment within 5 business days after the date you have complied with such terms.

5. The following provisions are added to the Loss Payment condition of the policy:

**Catastrophe Claims**

If a claim results from a weather related Catastrophe or a Major Natural Disaster, the claim handling and claim payment deadlines described above are extended for an additional 15 days.

Catastrophe or Major Natural Disaster means a weather related event which:

- a. Is declared a disaster under the Texas Disaster Act of 1975; or
- b. Is determined to be a catastrophe by the State Board of Insurance.

6. The following is added to the Valuation Loss Condition of the policy:

Article 6.13. Policy A Liquidated Demand. A fire insurance policy, in case of total loss by fire of property insured, shall be held and considered to be a liquidated demand against the insurer for the full amount of such policy. The provisions of this Article shall not apply to personal property.

7. The parts of the Mortgageholders Additional Condition of the policy concerning the mortgageholder's right to receive loss payment if the claim is denied and notice of cancellation are deleted and replaced by the following:

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

- (1) Pays any premium due under this policy at our request if you have failed to do so;
- (2) Submits a signed, sworn proof of loss within 91 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

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

If this policy is cancelled, we will give the mortgageholder named in the Declarations written notice of cancellation.

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

- (1) 14 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

If you cancel the policy, we will give the mortgageholder notice of cancellation to be effective on the date stated in the notice. The date of cancellation cannot be before the 10th day after the date we mail the notice.

**UTAH CHANGES**

It is agreed that:

1. The Concealment, Misrepresentation Or Fraud condition of the policy is deleted and replaced by the following:

**FRAUD OR MISREPRESENTATION**

This policy may be voided in the event of fraud or misrepresentation by you relating to:

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

subject to the following provisions of Utah Code Section 31A-21-105:

- a. No statement, representation, or warranty made by any person representing us in the negotiation for an individual insurance contract affects our obligations under this policy unless the statement, representation, or warranty is stated:
  - (1) In this policy; or
  - (2) In a written application signed by you.

No person, except you or another person by your written consent, may alter the application, other than for administrative purposes in a way which is clearly not ascribable to you.

- b. You, your assignee and the loss payee, mortgagee or lienholder, if any, under property insurance, may request, in writing, from us a copy of the application, if:
  - (1) This policy or a copy of the application has not been received; or
  - (2) This policy has been reinstated or renewed without the attachment of a copy of the original application.

If we do not deliver or mail a copy of the application, within 30 days after receipt of the request by us or our agent, nothing in the application affects our obligations under this policy to the person making the request.

- c. Except as provided in f. below, no misrepresentation or breach of an affirmative warranty affects our obligations under this policy unless:
  - (1) We rely on it and it is either material or is made with intent to deceive; or
  - (2) The fact misrepresented or falsely warranted contributes to the loss.

- d. No failure of a condition prior to the loss, and no breach of a promissory warranty, affects our obligations under this policy unless it:
  - (1) Exists at the time of the loss; and
  - (2) Either:
    - (a) Increases the risk at the time of the loss; or
    - (b) Contributes to the loss.

However, this Paragraph d. does not apply to nonpayment of premium.

- e. Nondisclosure of information not requested by us is not a defense to an action against us. Failure to correct within a reasonable period of time any representation that becomes incorrect because of changes in circumstances is misrepresentation, not nondisclosure.

- f. If, after we issue this policy, we acquire knowledge of sufficient facts to constitute a general defense to all claims under this policy, the defense is only available if, within 60 days after acquiring such knowledge we notify the insured of our intention to defend against a claim if one should arise. However, in order to continue this policy, we and the insured may both agree to endorse it to include specific exceptions or modifications.

For purposes of this part f., we are to be considered as having acquired knowledge only if the information alleged to give rise to such knowledge was disclosed to us or to our agent in connection with communications or investigations associated with the policy under which the subject claim arises.

- g. No trivial or transitory:
  - (1) Breach of; or
  - (2) Noncompliance with;
 any of the above provisions is a basis for avoiding this policy.

2. The Other Insurance condition of the policy is amended by adding the following provision, which supersedes any conflicting provision in such condition:

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

3. The Legal Action Against Us condition of the policy is deleted and replaced by the following:

**Legal Action Against Us**

No one may bring legal action against us under this policy unless the action is brought within 3 years after the date on which the direct physical loss or damage occurred.

4. The Duties In The Event Of Loss Or Damage condition of the policy is amended as follows:

- A. The provision requiring notice of loss or damage is replaced by the following:
 

Give prompt notice of the loss or damage to us or our agent. Include a description of the property involved.

One means you may use to fulfill this requirement is mailing the notice to us, postage prepaid, through first class mail deposited in a United States Post Office.
- B. The provision requiring signed, sworn proof of loss is replaced by the following:



Any provision of this policy (including endorsements which modify the policy) that is in conflict with a Wisconsin statute or rule is hereby amended to conform to that statute or rule.

The term rule means a valid rule promulgated by the Commissioner of Insurance in accordance with the rule-making authority conferred under Wis.Stat. Ann.s. 227.11(2) and published in the Wisconsin Administrative Code.

7. The following is added to the Loss Payment condition of the policy:  
If a municipality, which is a first class city, has elected to apply the provisions of Wis.Stat. Ann.Secs. 632.10 through 632.104, a part of our payment for fire or explosion loss or damage to your covered real property in that municipality will be withheld if the loss or damage is subject to the aforementioned provisions.
  1. The withheld amount will be paid in accordance with the law, to the following:
    - a. The municipality where the covered property is located;
    - b. You and any other interest named in the Declarations; or
    - c. The mortgageholder, if any.However, we will not pay more than the amount of loss payable under this policy.
  2. Within 10 days after withholding the required amount, we will give written notice of the withholding to the following:
    - a. The building inspection official of the municipality where the covered property is located;
    - b. You;
    - c. Any mortgageholder and any other lienholder who has an existing lien against the property and is named in the Declarations; and
    - d. The court in which judgment was entered if the final settlement was determined by judgment.
  3. We will not be liable in any cause of action, nor may any liability be imposed on us, arising from the payment, withholding or transferring of all or any portion of a final settlement in accordance with Wis.Stat. Ann.Secs. 632.10 through 632.104.

8. The following is added to the Valuation condition of the policy:
  1. When this policy insures real property in Wisconsin which is owned and occupied by you primarily as a dwelling, and the property is wholly destroyed, we will pay the limit of insurance that applies to such property, subject to the exceptions and conditions in parts 2. and 3. below.
  2. Builders Risk policies of insurance covering property in the process of being constructed shall be valued and settled according to the actual value of that portion of the construction completed at the time of the loss. The Limit of Insurance on a Builders Risk policy represents the value of the building when it is completed.
  3. The Valued Policy Provision, part 1. above, does not apply to any claim for loss to any building which is insured under a blanket form or endorsement with one Limit of Insurance applicable to two or more buildings. When a building, owned and occupied by you primarily as a dwelling, is wholly destroyed, the loss will be settled at the value stated in the most recent Statement of Values on file with us.

#### WYOMING CHANGES

It is agreed that:

1. The Legal Action against Us condition of the policy is deleted and replaced by the following:  
**LEGAL ACTION AGAINST US**  
No one may bring a legal action against us under this policy unless:
  1. There has been full compliance with all of the terms of this policy; and
  2. The action is brought within 4 years beginning from the date on which the direct physical loss or damage was discovered.

All other terms and conditions of this Policy remain unchanged.

**CALIFORNIA CHANGES – CANCELLATION AND NON-RENEWAL**

Named Insured MSD Partners, L.P.			Endorsement Number 19
Policy Symbol MAU	Policy Number D37870651 001	Policy Period March 11, 2020 to March 11, 2021	Effective Date of Endorsement March 11, 2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

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

The following conditions are hereby added to the Policy, supersede any term or condition to the contrary in the Policy and apply notwithstanding any such contrary term or condition.

**A. Cancellation**

1. The first Named Insured shown in the Declarations may cancel this policy by mailing to the Company advance written notice of cancellation.
2. **All Policies In Effect For 60 Days Or Less**

If this policy has been in effect for 60 days or less, and is not a renewal of a policy the Company has previously issued, the Company may cancel this policy by mailing or delivering to the first Named Insured, at the mailing address shown in the policy, and to the producer of record, advance written notice of cancellation, stating the reason for cancellation, at least:

- a. 10 days before the effective date of cancellation if the Company cancels for:
  - (1) Nonpayment of premium; or
  - (2) Discovery of fraud by:
    - (a) Any insured or his or her representative in obtaining this insurance; or
    - (b) The Insured or the Insured’s representative in pursuing a claim under this policy.
- b. 30 days before the effective date of cancellation if the Company cancels for any other reason.

**3. All Policies In Effect For More Than 60 Days**

- a. If this policy has been in effect for more than 60 days, or is a renewal of a policy the Company has issued, the Company may cancel this policy only upon the occurrence, after the effective date of the policy, of one or more of the following:
  - (1) Nonpayment of premium, including payment due on a prior policy the Company issued and due during the current policy term covering the same risks.
  - (2) Discovery of fraud or material misrepresentation by any insured or his or her representative in obtaining insurance, or by the Insured or the Insured’s representative in pursuing a claim under this Policy.
  - (3) A judgment by a court or an administrative tribunal that the Insured has violated a California or Federal law, having as one of its necessary elements an act which materially increases any of the risks insured against.
  - (4) Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by the Insured or the Insured’s representative, which materially increase any of the risks insured against.
  - (5) Failure by the Insured or the Insured’s representative to implement reasonable loss control requirements, agreed to by the Insureds as a condition of policy issuance, or which were

conditions precedent to the Company's use of a particular rate or rating plan, if that failure materially increases any of the risks insured against.

(6) A determination by the Commissioner of Insurance that the:

(a) Loss of, or changes in, the Company's reinsurance covering all or part of the risk would threaten the Company's financial integrity or solvency; or

(b) Continuation of the policy coverage would:

(i) Place the Company in violation of California law or the laws of the state where the Insured is domiciled; or

(ii) Threaten the Company's solvency.

(7) A change by the Insured or the Insured's representative in the activities or property of the commercial or industrial enterprise, which results in a materially added, increased or changed risk, unless the added, increased or changed risk is included in the policy.

b. The Company will mail or deliver advance written notice of cancellation, stating the reason for cancellation, to the first Named Insured, at the mailing address shown in the policy, and to the producer of record, at least:

(1) 10 days before the effective date of cancellation if the Company cancels for nonpayment of premium or discovery of fraud; or

(2) 30 days before the effective date of cancellation if the Company cancels for any other reason listed in Paragraph 3.a.

4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

5. If this Policy is cancelled, the Company will send the first Named Insured any premium refund due. If the Company cancels, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if the Company has not made or offered a refund

6. If notice is mailed, proof of mailing will be sufficient proof of notice.

7. **Residential Property:** This provision applies to coverage on real property which is used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants' household personal property in a residential unit.

a. If such coverage has been in effect for 60 days or less, and is not a renewal of coverage we previously issued, we may cancel this coverage for any reason, except as provided in b. and c. below.

b. We may not cancel this policy solely because the first Named Insured has:

(1) Accepted an offer of earthquake coverage; or

(2) Cancelled or did not renew a policy issued by the California Earthquake Authority (CEA) that included an earthquake policy premium surcharge.

However, the Company shall cancel this policy if the first Named Insured has accepted a new or renewal policy issued by the CEA that includes an earthquake policy premium surcharge but fails to pay the earthquake policy premium surcharge authorized by the CEA.

c. The Company may not cancel such coverage solely because corrosive soil conditions exist on the premises. This restriction (c.) applies only if loss or damage caused by or resulting from corrosive soil conditions is excluded by the policy.

## B. Nonrenewal

1. If the Company elects not to renew this policy, the Company will mail or deliver written notice, stating the reason for nonrenewal, to the first Named Insured shown in the Declarations, and to the producer of record, at least 60 days, but not more than 120 days, before the expiration or anniversary date.

The Company will mail or deliver notice to the first Named Insured, and to the producer of record, at the mailing address shown in the policy.

2. This provision applies to coverage on real property which is used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants' household personal property in a residential unit.

- a. The Company may elect not to renew such coverage for any reason, except as provided in **b.**, **c.** and **d.** below.
- b. The Company will not refuse to renew such coverage solely because the first Named Insured has accepted an offer of earthquake coverage.

However, the following applies only to insurers who are associate participating insurers as established by Cal. Ins. Code Section 10089.16. The Company may elect not to renew such coverage after the first Named Insured has accepted an offer of earthquake coverage, if one or more of the following reasons applies:

- (1) The nonrenewal is based on sound underwriting principles that relate to the coverages provided by this policy and that are consistent with the approved rating plan and related documents filed with the Department of Insurance as required by existing law;
- (2) The Commissioner of Insurance finds that the exposure to potential losses will threaten our solvency or place us in a hazardous condition. A hazardous condition includes, but is not limited to, a condition in which we make claims payments for losses resulting from an earthquake that occurred within the preceding two years and that required a reduction in policyholder surplus of at least 25% for payment of those claims; or
- (3) The Company has:
  - (a) Lost or experienced a substantial reduction in the availability or scope of reinsurance coverage; or
  - (b) Experienced a substantial increase in the premium charged for reinsurance coverage of our residential property insurance policies; andthe Commissioner has approved a plan for the nonrenewals that is fair and equitable, and that is responsive to the changes in our reinsurance position.
- c. The Company will not refuse to renew such coverage solely because the first Named Insured has cancelled or did not renew a policy, issued by the California Earthquake Authority, that included an earthquake policy premium surcharge.
- d. The Company may not refuse to renew such coverage solely because corrosive soil conditions exist on the premises. This restriction (**d.**) applies only if loss or damage caused by or resulting from corrosive soil conditions is excluded by the policy.

3. The Company is not required to send notice of nonrenewal in the following situations:

- a. If the transfer or renewal of a policy, without any changes in terms, conditions or rates, is between the Company and a member of our insurance group.
- b. If the policy has been extended for 90 days or less, provided that notice has been given in accordance with Paragraph **B.1.**
- c. If the Insured has obtained replacement coverage, or if the first Named Insured has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.
- d. If the policy is for a period of no more than 60 days and the Insured is notified at the time of issuance that it will not be renewed.
- e. If the first Named Insured requests a change in the terms or conditions or risks covered by the policy within 60 days of the end of the policy period.

- f.** If the Company has made a written offer to the first Named Insured, in accordance with the timeframes shown in Paragraph **B.1.**, to renew the policy under changed terms or conditions or at an increased premium rate, when the increase exceeds 25%.

All other terms and conditions remain unchanged.

## SIGNATURES

Named Insured MSD Partners, L.P.			Endorsement Number 20
Policy Symbol MAU	Policy Number D37870651 001	Policy Period March 11, 2020 to March 11, 2021	Effective Date of Endorsement March 11, 2020
Issued By (Name of Insurance Company) ACE American Insurance Company			

THE ONLY SIGNATURES APPLICABLE TO THIS POLICY ARE THOSE REPRESENTING THE COMPANY NAMED ON THE FIRST PAGE OF THE DECLARATIONS.

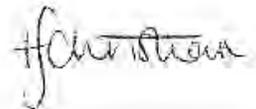
By signing and delivering the policy to you, we state that it is a valid contract.

**INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** (A stock company)  
**BANKERS STANDARD FIRE AND MARINE COMPANY** (A stock company)  
**BANKERS STANDARD INSURANCE COMPANY** (A stock company)  
**ACE AMERICAN INSURANCE COMPANY** (A stock company)  
**ACE PROPERTY AND CASUALTY INSURANCE COMPANY** (A stock company)  
**INSURANCE COMPANY OF NORTH AMERICA** (A stock company)  
**PACIFIC EMPLOYERS INSURANCE COMPANY** (A stock company)  
**ACE FIRE UNDERWRITERS INSURANCE COMPANY** (A stock company)  
**WESTCHESTER FIRE INSURANCE COMPANY** (A stock company)

436 Walnut Street, P.O. Box 1000, Philadelphia, Pennsylvania 19106-3703

  
REBECCA L. COLLINS, Secretary

  
JOHN J. LUPICA, President



Authorized Representative

Chubb. Insured.™

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

MSD PARTNERS, L.P.,

Plaintiff,

v.

ACE AMERICAN INSURANCE  
COMPANY; GUIDEONE NATIONAL  
INSURANCE COMPANY; ENDURANCE  
AMERICAN SPECIALTY INSURANCE  
COMPANY; STEADFAST INSURANCE  
COMPANY; NATIONAL FIRE & MARINE  
INSURANCE COMPANY; IRONSHORE  
SPECIALTY INSURANCE COMPANY;  
EVANSTON INSURANCE COMPANY;  
CONTINENTAL CASUALTY COMPANY;  
PRINCETON EXCESS & SURPLUS LINES  
INSURANCE COMPANY; EVEREST  
INDEMNITY INSURANCE COMPANY;  
HALLMARK SPECIALTY INSURANCE  
COMPANY; HDI GLOBAL SPECIALTY  
SE; WESTERN WORLD INSURANCE  
COMPANY; NAVIGATORS SPECIALTY  
INSURANCE COMPANY; ARCH  
SPECIALTY INSURANCE COMPANY;  
INDIAN HARBOR INSURANCE  
COMPANY; COLONY INSURANCE  
COMPANY; WESTCHESTER SURPLUS  
LINES INSURANCE COMPANY; QBE  
SPECIALTY INSURANCE COMPANY;  
GENERAL SECURITY INDEMNITY  
COMPANY OF ARIZONA; STARSTONE  
SPECIALTY; and CERTAIN  
UNDERWRITERS AT LLOYD'S,  
LONDON,

Defendants.

CIVIL NO. \_\_\_\_\_  
(Declaratory Judgment)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues triable of right to a jury in the above-captioned matter.

DATED: Honolulu, Hawai'i, March 17, 2021.

/s/ William Meheula  
WILLIAM MEHEULA  
NATASHA BALDAUF

Attorneys for Plaintiff  
MSD PARTNERS, L.P.

<b>STATE OF HAWAI'I CIRCUIT COURT OF THE SECOND CIRCUIT</b>		<b>SUMMONS TO ANSWER CIVIL COMPLAINT</b>	
CASE NUMBER		PLAINTIFF'S NAME & ADDRESS, TEL. NO.	
PLAINTIFF MSD PARTNERS, L.P.		WILLIAM MEHEULA (2277) NATASHA L.N. BALDAUF (9620) Pacific Guardian Center, Makai Tower 733 Bishop Street, Suite 2900 Honolulu, Hawai'i 96813 Telephone: (808) 599-9555 Facsimile: (808) 533-2467 meheula@smlhawaii.com; baldauf@smlhawaii.com	
DEFENDANT(S) ACE AMERICAN INSURANCE COMPANY; et al.			

**TO THE ABOVE-NAMED DEFENDANT(S)**

You are hereby summoned and required to filed with the court and serve upon  
WILLIAM MEHEULA, ESQ./NATASHA L.N. BALDAUF, ESQ.; Sullivan Meheula Lee, LLLP, 733 Bishop Street, Suite  
2900, Honolulu, HI 96813

plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within  
20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default  
will be taken against you for the relief demanded in the complaint.

**THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON  
PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED  
COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.**

**A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT  
JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.**

DATE ISSUED March 17, 2021

Effective Date of 28-Oct-2019  
Signed by: /s/ D. Pellazar Clerk,  
2nd Circuit, State of Hawai'i



If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:  
Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.