

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

1 S.A.N.T., INC. (a/k/a 1 SAINT, INC.) d/b/a TOWN & COUNTRY and d/b/a GATHERINGS BANQUET & EVENT CENTER, individually, and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Lawrence  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Carlson Lynch LLP  
1133 Penn Avenue, 5th Floor, Pittsburgh, PA 15222  
412-322-9243

**DEFENDANTS**

**BERKSHIRE HATHAWAY, INC.; and NATIONAL FIRE & MARINE INSURANCE COMPANY,**

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332

Brief description of cause:  
Class action related to COVID-19 insurance coverage

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

06/11/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Gary F. Lynch

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS 44AREVISED June, 2009

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

**PART A**

This case belongs on the ( ☐ Erie ☐ Johnstown ☒ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

**PART B** (You are to check ONE of the following)

1. ☐ This case is related to Number \_\_\_\_\_ . Short Caption \_\_\_\_\_.
2. ☒ This case is not related to a pending or terminated case.

## DEFINITIONS OF RELATED CASES:

**CIVIL:** Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit  
**EMINENT DOMAIN:** Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

**HABEAS CORPUS & CIVIL RIGHTS:** All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

**PART C**

## I. CIVIL CATEGORY (Select the applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas corpus
4. ☐ Civil Rights
5. ☐ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☐ All other federal question cases
8. ☐ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☒ Insurance indemnity, contract and other diversity cases.
10. ☐ Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: 6/11/2020/s/ Gary F. Lynch

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH FORMS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**1 S.A.N.T., INC. (a/k/a 1 SAINT, INC.) d/b/a  
TOWN & COUNTRY and d/b/a  
GATHERINGS BANQUET & EVENT  
CENTER, individually and on behalf of all  
others similarly situated,**

**Plaintiff,**

**vs.**

**BERKSHIRE HATHAWAY, INC.; and  
NATIONAL FIRE & MARINE  
INSURANCE COMPANY,**

**Defendants.**

**Case No.** 20-862

**CLASS ACTION COMPLAINT**

Plaintiff, 1 S.A.N.T., INC. (a/k/a 1 SAINT, INC.) d/b/a TOWN & COUNTRY and d/b/a GATHERINGS BANQUET & EVENT CENTER, brings this Class Action Complaint, individually, and on behalf of all others similarly situated (the “Class”), against Defendants, BERKSHIRE HATHAWAY, INC. and NATIONAL FIRE & MARINE INSURANCE COMPANY (together, “Berkshire” or “Defendant”), alleging as follows:

**NATURE OF THE CASE**

1. This is a civil class action for declaratory relief and breach of contract arising from Plaintiff’s contract of insurance with the Defendant.
2. At the direction of local, state, and/or federal authorities, Plaintiff was forced to temporarily suspend its dine-in and bar service at its restaurant, tavern and banquet hall beginning on March 17, 2020, causing an interruption to and loss of Plaintiff’s business income.

3. Plaintiff and the Class purchased and paid for an “all-risk” Commercial Property Coverage insurance policy from Defendant, which provides broad property insurance coverage for all non-excluded, lost business income, including the losses asserted here.

4. Plaintiff submitted timely notice of its claim to Defendant, but Defendant has refused to provide the purchased coverage to its insured.

5. Defendant has similarly refused to, or will refuse to, honor its obligations under the “all-risk” policy(ies) purchased by Plaintiff and the other members of the putative Class of insureds.

### **PARTIES**

6. Plaintiff 1 S.A.N.T., INC. (a/k/a 1 SAINT, INC.) d/b/a TOWN & COUNTRY and d/b/a GATHERINGS BANQUET AND EVENT CENTER, is a Pennsylvania corporation, with headquarters in New Castle, Pennsylvania, and is a citizen of Pennsylvania. Plaintiff operates a restaurant and tavern business out of its location at 2552 Ben Franklin Hwy, New Castle, Pennsylvania 16102 (“Covered Property”).

7. Defendant BERKSHIRE HATHAWAY INC. is a Delaware corporation with its principal place of business in Omaha, Nebraska, and is a citizen of Nebraska. It owns subsidiaries, directly and indirectly, that issue, among other things, commercial property insurance.

8. Defendant NATIONAL FIRE & MARINE INSURANCE COMPANY (“NATIONAL FIRE”) is a corporation with its principal place of business in Omaha, Nebraska, and is a citizen of Nebraska. NATIONAL FIRE is a subsidiary of BERKSHIRE HATHAWAY INC. and a member of the Berkshire Hathaway Primary Group of insurance companies. According to Defendants’ 10-K filed with the Securities and Exchange Commission for the fiscal year ended

on December 31, 2019, the Berkshire Hathaway Primary Group had earned premiums of approximately \$9.1 Billion.

### **JURISDICTION**

9. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d), the Class Action Fairness Act, which affords federal courts with original jurisdiction over cases where any member of the plaintiff class is a citizen of a state different from any defendant (*i.e.*, so-called “minimum diversity of citizenship,”) and where the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. Here, there exists minimal diversity of citizenship because Plaintiff (as well as some members of the Class) and Defendant are citizens of different states, and the aggregated claims of the putative Class members exceed \$5,000,000, exclusive of interest and costs.

10. The Court has personal jurisdiction over Defendant because at all relevant times it has engaged in substantial business activities in Pennsylvania. At all relevant times, Defendant transacted, solicited, and conducted business in Pennsylvania through its employees, agents, and/or sales representatives, and derived substantial revenue from such business in Pennsylvania.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, in this District.

### **FACTUAL BACKGROUND**

#### **Plaintiff Purchased an “All-Risk” Policy of Property Insurance That Broadly Provides Coverage for Loss of Business Income, Among Other Things**

12. Plaintiff purchased a contract of insurance from Defendant, whereby Plaintiff agreed to make payments (in the form of premiums) to Defendant in exchange for Defendant’s

promise to indemnify Plaintiff for losses at the Covered Property, including, but not limited to, business income losses.

13. Plaintiff's contract of insurance with Defendant bears Policy Number 12PRM049566-02 (the "Policy") and is effective for the period of June 1, 2019 to June 1, 2020 (the "Policy Term"). The Policy is attached hereto as **Exhibit A**.

14. Plaintiff paid all premiums owed to Defendant under the Policy, and Defendant accepted all such premiums from Plaintiff.

15. The Policy is a form policy issued by Defendant.

16. The Policy is an "all-risk" policy, which provides the broadest property insurance coverage available.

17. The Policy provides coverage for "direct physical loss of or damage to Covered Property . . . caused by or resulting from any Covered Cause of Loss."

18. The Policy does not define the phrase "direct physical loss of or damage to . . . ."

19. However, the use of the disjunctive "or" in the phrase "direct physical loss of or damage to" means that coverage is triggered if either a physical loss of property or damage to property occurs. The concepts are separate and distinct and cannot be conflated.

20. Physical loss of, or damage to, property may be reasonably interpreted to occur when a covered cause of loss threatens or renders property unusable or unsuitable for its intended purpose or unsafe for normal human occupancy and/or continued use.

21. The Policy provides Plaintiff with, *inter alia*, various business income and extra expense coverages during the Policy Term.

22. Under the Policy, Defendant agrees to pay: **"the actual loss of Business or Rental Income you sustain due to the necessary 'suspension' of your 'operations' during the 'period**

of ‘restoration.’ The ‘suspension’ must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations.” The Policy describes the covered premises as “2552 Ben Franklin Hwy, New Castle, Pennsylvania 16102,” the Covered Property, and coverage is listed for “Business Income and Extra Expense” with a Limit of Insurance of “\$250,000.”

23. Additional coverage is provided under the Policy for business income losses resulting from an “action of civil authority” which prohibits access to the Covered Property, related to a “Covered Cause of Loss” at property other than the Covered Property: **“We will pay for the actual loss of Business or Rental Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.”**

24. Members of the Class also purchased a policy of insurance from Defendant providing for the same business income coverage, and using the same form policy provisions.

**In Response to Covid-19, Pennsylvania and Other State Governments Issue Sweeping Orders Shutting Down “Non-Essential” Businesses**

25. Severe acute respiratory syndrome coronavirus 2 (“COVID-19”) has spread, and continues to spread, rapidly across the United States and has been declared a pandemic by the World Health Organization. See <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center> (last accessed May 6, 2020).

26. The global COVID-19 pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials for many days.



27. According to a study published in *The New England Journal of Medicine*, COVID-19 is widely accepted as a cause of real physical loss and damage. It remains stable and transmittable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last accessed May 6, 2020).

28. Another study, published in the *Journal of Hospital Infection*, found: “Human coronaviruses can remain infectious on inanimate surfaces at room temperature for up to 9 days. At a temperature of 30°C or more the duration of persistence is shorter.” See <https://www.inverse.com/science/coronavirus-4-studies-explain-how-covid-19-sticks-to-surfaces> (last accessed May 6, 2020).

29. In response to the Covid-19 pandemic, on March 6, 2020, the Governor of Pennsylvania declared a “Disaster Emergency” throughout the Commonwealth of Pennsylvania. Thereafter, on March 16, 2020, the Governor of Pennsylvania ordered that, starting on March 17, 2020, all restaurants and bars were to close their dine-in facilities, limiting their business to carry-out, delivery, and drive-through, and prohibiting all eating and drinking inside restaurants and bars. And finally, on March 19, 2020, the Governor of Pennsylvania issued an Executive Order closing all non-essential businesses. Specifically, the Executive Order, which became effective immediately upon its issuance, mandated that:

No person or entity shall operate a place of business in the Commonwealth that is not a life sustaining business regardless of whether the business is open to members of the public.

Governor Wolf, “Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses that are not Life Sustaining,” (Mar. 19, 2020) <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf> (“Executive Order”).

30. The Executive Order continued the dine-in prohibition for restaurants and bars.

31. Most other states, including those in which the putative Class members reside and/or do business, have issued similar compulsory shut-down orders for “non-essential” businesses, or businesses deemed not to be “life sustaining.”

32. The closure of all “non-life-sustaining businesses” evidences an awareness on the part of both state and local governments that COVID-19 causes loss of or damage to property. This is particularly true in places of business open to the public, as the contact and interaction necessarily incident to such businesses causes a heightened risk of the property becoming contaminated.

33. For example, a New York City Executive Order entered on March 16, 2020 specifically acknowledged that: “[COVID-19] physically is causing property loss and damage.” See <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf> (last accessed May 6, 2020).

34. Similarly, in a March 16, 2020 proclamation, the City of New Orleans acknowledged COVID-19’s “propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances.” See <https://nola.gov/mayor/executive-orders/emergency-declarations/03162020-mayoral-proclamation-to-promulgate-emergency-orders-during-the-state-of-emergency-due-to-co/> (last accessed May 6, 2020).

35. In upholding the Governor of Pennsylvania’s Proclamation of a state-wide disaster and the Executive Orders mandating the closure of businesses within Pennsylvania, the Pennsylvania Supreme Court noted the significant risk of the spread of the COVID-19 virus, even in locations where the disease has not been detected:

Covid-19 does not spread because the virus is “at” a particular location. Instead it spreads because of person-to-person contact, as it has an incubation period of up to

fourteen days and that one in four carriers of the virus are asymptomatic. Respondents' Brief at 4 (citing Coronavirus Disease 2019, "Symptoms," CDC, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last accessed 4/9/2020)). The virus can live on surfaces for up to four days and can remain in the air within confined areas and structures. *Id.* (citing National Institutes of Health, "Study suggests new coronavirus may remain on surfaces for days," (Mar. 27, 2020) <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days> (last accessed 4/9/2020) and Joshua Rabinowitz and Caroline Bartman, "These Coronavirus Exposures Might be the Most Dangerous," The New York Times (Apr. 1, 2020) <https://www.nytimes.com/2020/04/01/opinion/coronavirus-viral-dose.html>).

*Friends of DeVito v. Wolf*, \_\_\_ A. 3d \_\_\_, 2020 WL 1847100, \*15-16 (Pa. April 13, 2020).

36. Because the COVID-19 virus can survive on surfaces for up to fourteen days, the Pennsylvania Supreme Court ultimately concluded that "any location . . . where two or more people can congregate is within the disaster area."

**Plaintiff Submits a Claim Under Its "All-Risk" Policy, and Defendant Wrongly Fails and Refuses To Honor Its Obligations Respecting Same**

37. As a result of the orders governing Plaintiff, the Covered Property closed on March 17, 2020 and remains closed to this day, except for take-out service.

38. Plaintiff has incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

39. Plaintiff provided timely notice to Defendant of its claim for the interruption to its business.

40. Defendant denied Plaintiff's claim by letter dated June 4, 2020, attached hereto as **Exhibit B**. In its letter, Defendant posited, *inter alia*, that coverage under the Policy may not be afforded because: (i) Plaintiff's losses do not arise from "physical loss or damage" (seemingly ignoring that coverage can be triggered under the Policy by either "physical loss of" or "damage to" property); and (ii) Plaintiff's claim is barred by the policy's so-called "Virus" Exclusion.

**Contrary To Defendant's Position, Plaintiff's Losses Arise From Direct Physical Loss Or Damage**

41. Plaintiff's Covered Property suffered "direct physical loss or damage" due to the Governor of Pennsylvania's Order (and other local governmental orders) mandating that Plaintiff discontinue its primary use of the Covered Property as a dine-in eating and drinking establishment. The Governor's Order, in and of itself, constitutes a Covered Cause of Loss within the meaning of the Policy.

42. Alternatively, and to the extent the Governor's Order does not constitute a Covered Cause of Loss within the meaning of the Policy, the COVID-19 pandemic and the ubiquitous nature of the COVID-19 virus caused a direct physical loss of or damage to Plaintiff's Covered Property.

43. Further, and as an additional basis for coverage under the Policy, the ubiquitous nature of the COVID-19 virus caused direct physical loss of or damage to property other than Plaintiff's Covered Property, and such loss or damage resulted in an "action by civil authority" prohibiting access to Plaintiff's Covered Property, within the meaning of the Policy.

**Contrary To Defendant's Position, The Virus Exclusion Does Not Apply**

44. The Policy contains a coverage exclusion for "loss or damage caused by or resulting from any virus, bacterium or other microorganism" (Form CP 01 40 07 06) (the "Virus Exclusion").

45. The Virus Exclusion does not preclude coverage for Plaintiff's claim under the Policy.

46. First, to the extent that the governmental orders, in and of themselves, constitute direct physical loss of or damage to Plaintiff's Covered Property, the Virus Exclusion simply does not apply.

47. Further, to the extent that the coverage under the policy derives from direct physical loss or damage caused by the COVID-19 virus, either to Plaintiff's Covered Property or to property other than Plaintiff's Covered property, Defendant should be estopped from enforcing the Virus Exclusion, on principles of regulatory estoppel, as well as general public policy.

48. In 2006, two insurance industry trade groups, Insurance Services Office, Inc. ("ISO") and the American Association of Insurance Services ("AAIS"), represented hundreds of insurers in a national effort to seek approval from state insurance regulators for the adoption of the Virus Exclusion.<sup>1</sup>

49. In their filings with the various state regulators (including Pennsylvania), on behalf of the insurers, ISO and AAIS represented that the adoption of the Virus Exclusion was only meant to "clarify" that coverage for "disease-causing agents" has never been in effect, and was never intended to be included, in the property policies.

50. Specifically, in its "ISO Circular" dated July 6, 2006 and entitled "New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria," ISO represented to the state regulatory bodies that:

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage to create sources of recovery for such losses, contrary to policy intent.

51. Similarly, AAIS, in its "Filing Memorandum" in support of the Virus Exclusion, represented:

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<sup>1</sup> In addition to Form CP 01 40 07 06, which was submitted for approval in most states, the insurance industry also sought approval for Form CP 01 75 07 06 in Alaska, District of Columbia, Louisiana, New York and Puerto Rico, which contained slightly different language related to a mold exclusions that was previously adopted in other states.

Property policies have not been, nor were they intended to be, a source of recovery for loss, cost or expense caused by disease-causing agents. With the possibility of a pandemic, there is concern that claims may result in efforts to expand coverage to create recovery for loss where no coverage was originally intended . . .

This endorsement clarifies that loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress is excluded . . .

52. The foregoing representations made by the insurance industry were false. By 2006, the time of the state applications to approve the Virus Exclusion, courts had repeatedly found that property insurance policies covered claims involving disease-causing agents, and had held on numerous occasions that any condition making it impossible to use property for its intended use constituted “physical loss or damage to such property.”

53. The foregoing assertions by the insurance industry (including Defendant), made to obtain regulatory approval of the Virus Exclusion, were in fact misrepresentations and for this reason, among other public policy concerns, insurers should now be estopped from enforcing the Virus Exclusion to avoid coverage of claims related to the COVID-19 pandemic.

54. In securing approval for the adoption of the Virus Exclusion by misrepresenting to the state regulators that the Virus Exclusion would not change the scope of coverage, the insurance industry effectively narrowed the scope of the insuring agreement without a commensurate reduction in premiums charged. Under the doctrine of regulatory estoppel, the Court should not permit the insurance industry to benefit from this type of duplicitous conduct before the state regulators.

55. Upon information and belief, Defendant has denied, or will deny, other Class members’ claims for coverage under their “all-risk” property damage policies issued by Defendant.

56. Defendant's denial of lost business income claims has left Plaintiff and the Class without vital coverage acquired to ensure the survival of their businesses during this temporary suspension of operations.

### **CLASS ACTION ALLEGATIONS**

57. Plaintiff brings this action individually and as a class action on behalf of the Class, defined as follows:

All policyholders in the United States who purchased commercial property coverage, including business or interruption income (and extra expense) coverage from Defendant and who have been denied coverage under their policy for lost business income after being ordered by a governmental entity, in response to the COVID-19 pandemic, to shut down or otherwise curtail or limit in any way their business operations.

58. Excluded from the Class are Defendant and its officers, directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from the Class are any judicial officer presiding over this matter, members of their immediate family, and members of their staff.

59. The members of the Class are so numerous and geographically dispersed that joinder would be impracticable. Class members are readily identifiable from information and records in Defendant's possession, custody, or control.

60. There is a well-defined community of interest in the common questions of law and fact affecting the Class members. These common legal and factual questions include, but are not limited to:

- a. whether Defendant owed coverage to Plaintiff and the Class;
- b. whether any exclusions to coverage apply;
- c. whether Plaintiff and members of the Class are entitled to damages and, if so, the measure of such damages; and

d. whether Plaintiff and members of the Class are entitled to equitable, declaratory and/or other relief, and if so, the nature of such relief.

61. Plaintiff's claims are typical of the claims of the absent class members and have a common origin and basis. Plaintiff and absent Class members are all injured by Defendant's refusal to afford the purchased coverage. Plaintiff's claims arise from the same practices and course of conduct giving rise to the claims of the absent Class members and are based on the same legal theories, namely the refusal to provide insurance coverage for the loss. If prosecuted individually, the claims of each Class member would necessarily rely upon the same material facts and legal theories and seek the same relief. Plaintiff's claims arise from the same practices and course of conduct that give rise to the other Class members' claims and are based on the same legal theories.

62. Plaintiff will fully and adequately assert and protect the interests of the absent Class members and has retained Class counsel who are experienced and qualified in prosecuting class action cases similar to this one. Neither Plaintiff nor Plaintiff's attorneys has any interests contrary to or conflicting with the interests of absent Class members.

63. The questions of law and fact common to all Class members predominate over any questions affecting only individual class members.

64. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the absent Class members' claims is economically infeasible and procedurally impracticable. Class members share the same factual and legal issues and litigating the claims together will prevent varying, inconsistent, or contradictory judgments, and will prevent delay and expense to all parties and the court system through litigating multiple trials on the same legal and factual issues. Class treatment will also permit Class members to litigate their claims where it would otherwise be too expensive or inefficient to do so. Plaintiff



knows of no difficulties in managing this action that would preclude its maintenance as a class action.

65. Additionally, the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendant. Such individual actions would create a risk of adjudications that would be dispositive of the interests of other Class members and impair their interests. Defendant, through its uniform conduct, acted or refused to act on grounds generally applicable to the Class as a whole, making declaratory relief appropriate to the Class as a whole.

**COUNT I**  
**DECLARATORY RELIEF**

66. Plaintiff incorporates by reference each and every allegation set forth above.

67. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in “a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

68. An actual controversy has arisen between Plaintiff and the Defendant as to the rights, duties, responsibilities and obligations of the parties in that Plaintiff contends and Defendant disputes and denies that the Policy provides coverage to Plaintiff for any current and future lost business income, subject to the limit of liability, for the temporary suspension of Plaintiff’s operations.

69. The Policy provides coverage for “direct physical loss of or damage to” the Covered Property.

70. Plaintiff's loss of use, loss of access, and loss of functionality of the Covered Property when government shutdown orders made it unlawful for Plaintiff to fully access, use, and operate its business at the Covered Property, constitutes a direct physical loss of the Covered Property under the Policy. Alternatively, the ubiquitous nature of the COVID-19 virus caused direct physical loss or damage to the Covered Property by preventing Plaintiff from using the Covered Property for its intended purpose.

71. Additionally, the government shutdown orders or, alternatively, the ubiquitous nature of the COVID-19 virus, caused direct physical loss of or damage to property other than the Covered Property, thereby invoking coverage under the Policy's "Civil Authority" provision for "actual loss of Business or Rental Income . . . caused by action of civil authority that prohibits access to the described premises."

72. The Policy constitutes a valid and binding agreement obligating the Defendant to indemnify Plaintiff for covered losses.

73. Plaintiff has substantially performed or otherwise satisfied all conditions precedent to bringing this action and obtaining coverage pursuant to the Policy and applicable law, or alternatively, Plaintiff has been excused from performance by Defendant's acts, representations, conduct, or omissions.

74. Defendant has failed to indemnify Plaintiff for its covered losses.

75. No exclusion to coverage, including the Virus Exclusion, applies.

76. Plaintiff has suffered and continues to suffer a covered loss under the Policy.

77. Plaintiff, individually and on behalf of the Class, seeks a Declaratory Judgment that there is coverage for its business interruption losses under the Policy.

**COUNT II**  
**BREACH OF CONTRACT**

78. Plaintiff incorporates by reference each and every allegation set forth above.

79. Plaintiff and Defendant entered into a contract of insurance; here, the Policy.

80. The Class members entered into a substantially identical policy with Defendant.

81. Under the Policy, Defendant agreed to indemnify Plaintiff and the Class for their business losses as a result of a covered loss.

82. Plaintiff and the Class members suffered a covered loss under the Policy.

83. Plaintiff and the Class members timely submitted a notice of claim and satisfied all conditions precedent to receiving the coverage it purchased from Defendant.

84. Defendant breached its contract with Plaintiff and the Class members by failing and refusing to provide the contracted for coverage.

85. Defendant's breach of the contract has caused Plaintiff and the Class to suffer damages in the amount of their unreimbursed business losses or their limits of liability, whichever is lower.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff herein prays as follows:

- 1) For a declaration that there is coverage under the Policy for the interruption to Plaintiff's business and the associated business income lost therefrom;
- 2) For damages, costs and attorney's fees; and
- 3) For such other relief as the Court may deem proper.

**TRIAL BY JURY IS DEMANDED**

Date: June 11, 2020

Respectfully submitted,

*/s/ Gary F. Lynch*

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Gary F. Lynch

R. Bruce Carlson

Kelly K. Iverson

**CARLSON LYNCH LLP**

1133 Penn Avenue

5th Floor

Pittsburgh, PA 15222

P (412) 322-9243

F. (412) 231-0246

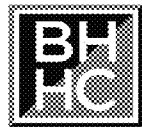
glynch@carlsonlynch.com

bcarlson@carlsonlynch.com

kiverson@carlsonlynch.com

*Counsel for Plaintiff*

# **Exhibit A**



**Berkshire Hathaway**  
HOMESTATE COMPANIES

1314 Douglas Street, Suite 1300 • Omaha, NE 68102

May 28, 2019

1 SAINT, INC. TOWN & COUNTRY  
C/O TONY CARBONE  
1319 W STATE ST.  
NEW CASTLE, PA 16101

Policyholder Name	<b>1 SAINT, INC. TOWN &amp; COUNTRY</b>	<u>Claim reporting:</u>
Renewal Policy Number	<b>12PRM049566-02</b>	<b>1-800-356-5750</b>
Expiring Policy Number	<b>12PRM049566-01</b>	24 hours a day
		7 days a week
Renewal Policy Term	<b>6/1/2019 12:01:00AM to 6/1/2020 12:01:00AM</b>	

The above referenced policy has been placed with National Fire & Marine Insurance Company, which has the highest financial strength rating in the insurance industry.

We have enclosed for your records a copy of all policy documents.

We appreciate your business. If you have questions or would like to request changes to the policy, please contact your agent.

Regards,

National Fire & Marine Insurance Company

POLICY NUMBER: 12PRM049566-02

ILM 0313 05 13

# NATIONAL FIRE & MARINE INSURANCE COMPANY

1314 DOUGLAS ST, SUITE 1400  
OMAHA, NE 68102  
(402) 393-7255

A STOCK COMPANY

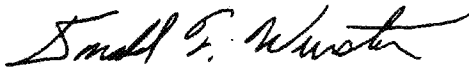
Report ALL Claims To:

**1-800-356-5750**

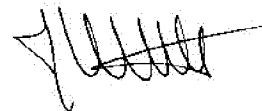
24 Hour

Toll Free

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.



President



Secretary

---

THESE POLICY PROVISIONS WITH THE DECLARATIONS PAGES, COVERAGE FORMS  
AND ENDORSEMENTS, IF ANY, COMPLETE THIS POLICY. THIS POLICY IS A LEGAL  
CONTRACT BETWEEN THE POLICY OWNER AND THE COMPANY.

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PLEASE READ YOUR POLICY CAREFULLY

---

# National Fire & Marine Insurance Company

## COMMERCIAL LINES POLICY

### COMMON POLICY DECLARATIONS

Policy Number: 12PRM049566-02

**Named Insured and Mailing Address:**

1 SAINT, INC. TOWN & COUNTRY  
C/O TONY CARBONE  
1319 W STATE ST.  
NEW CASTLE, PA 16101

**Producing Agent: H01465**

W. N. Tuscano Agency, Inc.  
PO Box 1027  
Greensburg, PA 15601

Policy Period: From: 06/01/2019 To: 06/01/2020 at 12:01 A.M., Standard Time at your mailing address shown above.

Business Description: TAVERN AND BANQUET HALL

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

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

	PREMIUM
Commercial Property Coverage Part	\$ 6,858
Commercial General Liability Coverage Part	\$
Commercial Crime Coverage Part	\$
Commercial Inland Marine Coverage Part	\$
Commercial Automobile Coverage Part	\$
Workers Compensation	\$
Businessowners	\$
Contractors Package/Motel/Lessor's Risk Only	\$
Umbrella	\$
Errors and Omissions	\$
Terrorism Coverage "Certified Acts"	\$
Annual Premium (may include balance to meet minimum premium)	\$ 6,858

FORM(S) AND ENDORSEMENTS(S) MADE A PART OF THIS POLICY AT THE TIME OF ISSUE.\*

Refer To Form Schedule

\*Omits applicable Forms and Endorsements if shown in specific Coverage Part/Coverage Form Declarations.

\_\_\_\_\_  
Countersignature Date

\_\_\_\_\_  
Authorized Representative

CD24 (0703)

The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Property and Casualty Insurance Guaranty Association. Placed by: W.N. Tuscano Agency, 950 Highland Ave., Greensburg, PA 15601

**Premium: \$ 6,858.00**  
**SLTax: \$ 205.74**  
**StampFee: \$ 20.00**  
**PolicyFee: \$ 250.00**  
**Total: \$ 7,333.74**



POLICY NUMBER: 12PRM049566-02  
EFFECTIVE DATE: 6/1/2019 12:01AM

ILS 0001 05 13

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

## **COMMON POLICY FORMS SCHEDULE**

<b>Form Number</b>	<b>Edition Date</b>	<b>Form Title</b>
ILM0313	5/2013	COMMERCIAL POLICY JACKET
CD24	7/2003	COMMON POLICY DECLARATIONS
ILS 0001	5/2013	COMMON POLICY FORMS SCHEDULE
IL 0017	11/1998	COMMON POLICY CONDITIONS
ILM0325	3/2012	NOTICE OF SERVICE OF SUIT PENNSYLVANIA
ILB0285	5/2013	MINIMUM EARNED PREMIUM
ILB 5821	8/2015	EXCLUSION FOR WAR, NUCLEAR RISK (INCLUDING RADIOACTIVE), AND BIOLOGICAL RISK (INCLUDING CHEMICAL)
IL 0022	5/1987	EFFECTIVE TIME CHANGES - REPLACEMENT OF 12 NOON
IL 0246	9/2007	PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL
IL 0910	7/2002	PENNSYLVANIA NOTICE

## COMMON POLICY CONDITIONS

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

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

## NOTICE OF SERVICE OF SUIT PENNSYLVANIA

It is agreed that in the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer hereon, at the request of the Insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court. However, nothing in this provision constitutes a waiver of the Insurer's right to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States of America or of any state of the United States.

It is further agreed that service of process in such suit may be made upon the Insurance Commissioner of this State and that in any suit instituted under this contract the Insurer will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

President  
National Fire & Marine Insurance Company  
1314 Douglas St, Suite 1400  
Omaha, NE 68102

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

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

All other terms, conditions and agreements of the policy shall remain unchanged.

Company Name  <b>National Fire &amp; Marine Insurance Company</b>	Policy Number <b>12PRM049566-02</b>
Named Insured <b>1 SAINT, INC. TOWN &amp; COUNTRY</b>	Endorsement Effective <b>6/1/2019 12:01:00AM</b>
	Countersigned by

(Authorized Representative)

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)



POLICY NUMBER: 12PRM049566-02

ILB 0285 05 13

## MINIMUM EARNED PREMIUM

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART

Minimum Earned Premium Percentage 25% (25% if left blank)

Paragraph **A.5.** of the **Cancellation** Common Policy Condition is deleted in its entirety and replaced with the following:

**A. Cancellation**

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 insured cancels, the refund may be less than pro rata. It is agreed, in the event the policy cancels at the request of the insured or due to non-payment of premium, the minimum premium total retained by the company (minimum earned) will be not less than the Minimum Earned Premium Percentage of the total policy premium as of the inception date of the policy.

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

## **EXCLUSION FOR WAR, NUCLEAR RISK (INCLUDING RADIOACTIVE), AND BIOLOGICAL RISK (INCLUDING CHEMICAL)**

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 COMMERCIAL LIABILITY UMBRELLA COVERAGE PART  
 ERRORS & OMISSIONS COVERAGE PART  
 LAW ENFORCEMENT WRONGFUL ACTS COVERAGE PART  
 COMMERCIAL INLAND MARINE COVERAGE PART  
 COMMERCIAL CRIME COVERAGE PART

Notwithstanding any other provision of this Policy, this insurance does not apply to any loss or damages directly or indirectly arising out of, caused by, or resulting from "war", "nuclear risk " (including radioactive), or "biological risk" (including chemical). Such loss or damage is excluded regardless of (i) whether any other cause or event contributed to such loss or damage in any way or at any time or (ii) whether such loss or damage is accidental or intentional. "War" is defined as a declared, undeclared, or civil war or any act or condition incident to war; warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or insurrection, rebellion, revolution, or usurped power or action taken by governmental authority in hindering or defending against any of these. "Nuclear risk" is defined as nuclear detonation, reaction, or radiation or radioactive contamination. "Biological risk" is defined as the intentional release of or exposure to biological, chemical, or germ agents or disease or intentional contamination or infection of any food source or supply, water source or supply, air supply, or atmosphere.

In any proceeding seeking coverage under this Policy, the person seeking coverage shall have the burden of proving that the claim or "suit" is not excluded under this Endorsement.

All other terms, conditions and agreements of the policy remain unchanged.

Company Name National Fire & Marine Insurance Company	Policy Number 12PRM049566-02
	Endorsement Effective
Named Insured 1 SAINT, INC. TOWN & COUNTRY	Countersigned by

(Authorized Representative)

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

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

## **EFFECTIVE TIME CHANGES - REPLACEMENT OF 12 NOON**

This endorsement modifies the COMMON POLICY DECLARATIONS.

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



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

## **PENNSYLVANIA CHANGES – CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

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

- A.** The **Cancellation** Common Policy Condition is replaced by the following:

### **CANCELLATION**

1. The first Named Insured shown in the Declarations may cancel this policy by writing or giving notice of cancellation.

2. **Cancellation Of Policies In Effect For Less Than 60 Days**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least 30 days before the effective date of cancellation.

3. **Cancellation Of Policies In Effect For 60 Days Or More**

If this policy has been in effect for 60 days or more or if this policy is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. You have made a material misrepresentation which affects the insurability of the risk. Notice of cancellation will be mailed or delivered at least 15 days before the effective date of cancellation.

- b. You have failed to pay a premium when due, whether the premium is payable directly to us or our agents or indirectly under a premium finance plan or extension of credit. Notice of cancellation will be mailed at least 15 days before the effective date of cancellation.

- c. A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become known during the policy period. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

- d. Loss of reinsurance or a substantial decrease in reinsurance has occurred, which loss or decrease, at the time of cancellation, shall be certified to the Insurance Commissioner as directly affecting in-force policies. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

- e. Material failure to comply with policy terms, conditions or contractual duties. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- f. Other reasons that the Insurance Commissioner may approve. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

This policy may also be cancelled from inception upon discovery that the policy was obtained through fraudulent statements, omissions or concealment of facts material to the acceptance of the risk or to the hazard assumed by us.

- 4. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. Notice of cancellation will state the specific reasons for cancellation.
- 5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- 6. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata and will be returned within 10 business days after the effective date of cancellation. If the first Named Insured cancels, the refund may be less than pro rata and will be returned within 30 days after the effective date of cancellation. The cancellation will be effective even if we have not made or offered a refund.

- 7. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.

**B. The following are added and supersede any provisions to the contrary:**

**1. Nonrenewal**

If we decide not to renew this policy, we will mail or deliver written notice of nonrenewal, stating the specific reasons for nonrenewal, to the first Named Insured at least 60 days before the expiration date of the policy.

**2. Increase Of Premium**

If we increase your renewal premium, we will mail or deliver to the first Named Insured written notice of our intent to increase the premium at least 30 days before the effective date of the premium increase.

Any notice of nonrenewal or renewal premium increase will be mailed or delivered to the first Named Insured's last known address. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.



## PENNSYLVANIA NOTICE

An Insurance Company, its agents, employees, or service contractors acting on its behalf, may provide services to reduce the likelihood of injury, death or loss. These services may include any of the following or related services incident to the application for, issuance, renewal or continuation of, a policy of insurance:

1. Surveys;
2. Consultation or advice; or
3. Inspections.

The "Insurance Consultation Services Exemption Act" of Pennsylvania provides that the Insurance Company, its agents, employees or service contractors acting on its behalf, is not liable for damages from injury, death or loss occurring as a result of any act or omission by any person in the furnishing of or the failure to furnish these services.

The Act does not apply:

1. If the injury, death or loss occurred during the actual performance of the services and was caused by the negligence of the Insurance Company, its agents, employees or service contractors;
2. To consultation services required to be performed under a written service contract not related to a policy of insurance; or
3. If any acts or omissions of the Insurance Company, its agents, employees or service contractors are judicially determined to constitute a crime, actual malice, or gross negligence.

### Instruction to Policy Writers

Attach the Pennsylvania Notice to all new and renewal certificates insuring risks located in Pennsylvania.

POLICY NUMBER: 12PRM049566-02

COMMERCIAL PROPERTY  
CPD 0001 04 13**COMMERCIAL PROPERTY COVERAGE PART  
DECLARATIONS****Agency Name:** W. N. Tuscano Agency, Inc.**Agency Number:** H01465**DESCRIPTION OF PREMISES****Premises Number:** 1**Building Number:** 1**Building Description:****Address:** 2552 BEN FRANKLIN HWY, NEW CASTLE, PA 16102**Protection Class:** 9**Construction:** Joisted Masonry**Occupancy:** 0541 TAVERN**COVERAGES PROVIDED**

Insurance at the above described premises applies only for coverages for which a limit of insurance is shown or for which an entry is made.

<b>Coverage</b>	<b>Limit Of Insurance</b>	<b>Coinsurance</b>	<b>Covered Causes Of Loss</b>	<b>Deductible</b>	<b>Premium</b>
Building	\$1,000,000	80%	SPECIAL INCL THEFT	\$2,500	\$4,572
Business Income and Extra Expense	\$250,000		SPECIAL INCL THEFT		\$1,033
Business Personal Property other than Stock & TIB	\$150,000	80%	SPECIAL INCL THEFT	\$2,500	\$1,253

**OPTIONAL COVERAGES**

<b>Coverage</b>	<b>Agreed Value</b>		<b>Replacement Cost (X)</b>	<b>Inflation Guard (%)</b>
	<b>Amount</b>	<b>Expiration Date</b>		
Building			X	
Business Personal Property other than Stock & TIB			X	

**OPTIONAL BUSINESS INCOME COVERAGES**

<b>Agreed Value</b>		<b>Monthly Limit Of Indemnity (Fraction)</b>	<b>Maximum Period Of Indemnity (X)</b>	<b>Extended Period Of Indemnity (Days)</b>
<b>Amount</b>	<b>Expiration Date</b>			

1/6

POLICY NUMBER: 12PRM049566-02  
EFFECTIVE DATE: 6/1/2019 12:01AM

CPS 0001 05 13

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

## **COMMERCIAL PROPERTY COVERAGE PART FORMS SCHEDULE**

<b>Form Number</b>	<b>Edition Date</b>	<b>Form Title</b>
CPD 0001	4/2013	COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS
CPS 0001	5/2013	COMMERCIAL PROPERTY COVERAGE PART FORMS SCHEDULE
CP 0010	6/2007	BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CPM2030	6/2011	BUSINESS OR RENTAL INCOME (AND EXTRA EXPENSE) COVERAGE FORM
CP 1030	6/2007	CAUSES OF LOSS - SPECIAL FORM
IL 0166	9/2007	PENNSYLVANIA CHANGES - ACTUAL CASH VALUE
IL 0172	9/2007	PENNSYLVANIA CHANGES
CP 0090	7/1988	COMMERCIAL PROPERTY CONDITIONS
CP 0140	7/2006	EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA
CP 0411	10/2012	PROTECTIVE SAFEGUARDS
CP 1032	8/2008	WATER EXCLUSION ENDORSEMENT
CP 1211	10/2000	BURGLARY AND ROBBERY PROTECTIVE SAFEGUARDS
CPB 2026	4/2013	EQUIPMENT BREAKDOWN ENHANCEMENT ENDORSEMENT
CPM0002	8/2012	PROPERTY EXTENSIONS
CPM1121	9/2012	PER BUILDING DEDUCTIBLE - NO AGGREGATE
IL 0935	7/2002	EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES
IL 0953	1/2015	EXCLUSION OF CERTIFIED ACTS OF TERRORISM
IL 0995	1/2007	CONDITIONAL EXCLUSION OF TERRORISM

## BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

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

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

### A. Coverage

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

#### 1. Covered Property

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

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

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

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

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

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

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

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

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

**2. Property Not Covered**

Covered Property does not include:

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

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

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
- (c) Rowboats or canoes out of water at the described premises; or
- (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers;

q. The following property while outside of buildings:

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

### 3. Covered Causes Of Loss

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

### 4. Additional Coverages

#### a. Debris Removal

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
  - (a) Extract "pollutants" from land or water; or
  - (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
  - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
  - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.
- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

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

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

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

#### (5) Examples

The following examples assume that there is no Coinsurance penalty.

##### EXAMPLE #1

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

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

##### EXAMPLE #2

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

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

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

**b. Preservation Of Property**

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

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

**c. Fire Department Service Charge**

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

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

No Deductible applies to this Additional Coverage.

**d. Pollutant Clean-up And Removal**

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

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

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

**e. Increased Cost Of Construction**

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.
- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.

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

- (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the same premises.

- (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the new premises.

- (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

- (9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in **e.(6)** of this Additional Coverage, is not subject to such limitation.

**f. Electronic Data**

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.



- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

## 5. Coverage Extensions

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

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

### a. Newly Acquired Or Constructed Property

#### (1) Buildings

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

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
  - (i) Similar use as the building described in the Declarations; or
  - (ii) Use as a warehouse.

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

#### (2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
  - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
  - (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
  - (iii) Business personal property that you newly acquire, located at the described premises.

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

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

**(3) Period Of Coverage**

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

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

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

**b. Personal Effects And Property Of Others**

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

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

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

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

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

**d. Property Off-premises**

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
  - (a) Temporarily at a location you do not own, lease or operate;
  - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
  - (c) At any fair, trade show or exhibition.

- (2) This Extension does not apply to property:
  - (a) In or on a vehicle; or
  - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

**e. Outdoor Property**

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

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

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

**f. Non-owned Detached Trailers**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
  - (a) The trailer is used in your business;
  - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
  - (c) You have a contractual responsibility to pay for loss or damage to the trailer.

- (2) We will not pay for any loss or damage that occurs:
  - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
  - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

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

**B. Exclusions And Limitations**

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

**C. Limits Of Insurance**

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

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

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

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

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

**D. Deductible**

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

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

**EXAMPLE #1**

(This example assumes there is no Coinsurance penalty.)

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

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

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

\$ 60,000
– 250
<hr/>
\$ 59,850 Loss Payable – Building #1

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

Total amount of loss payable:

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

**EXAMPLE #2**

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

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

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

**E. Loss Conditions**

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

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

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

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

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

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

- a.** You must see that the following are done in the event of loss or damage to Covered Property:
- (1)** Notify the police if a law may have been broken.
  - (2)** Give us prompt notice of the loss or damage. Include a description of the property involved.
  - (3)** As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4)** Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
  - (5)** At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
  - (6)** As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.  
  
Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
  - (7)** Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8)** Cooperate with us in the investigation or settlement of the claim.
- b.** We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

**4. Loss Payment**

- a.** In the event of loss or damage covered by this Coverage Form, at our option, we will either:
- (1)** Pay the value of lost or damaged property;
  - (2)** Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
  - (3)** Take all or any part of the property at an agreed or appraised value; or
  - (4)** Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.
- We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b.** The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
  - c.** We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
  - d.** We will not pay you more than your financial interest in the Covered Property.
  - e.** We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
  - f.** We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
  - g.** We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
    - (1)** We have reached agreement with you on the amount of loss; or
    - (2)** An appraisal award has been made.

**h.** A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

## **5. Recovered Property**

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

## **6. Vacancy**

### **a. Description Of Terms**

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

**(a)** When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

**(b)** When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

- (i)** Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
- (ii)** Used by the building owner to conduct customary operations.

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

### **b. Vacancy Provisions**

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

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

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

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

## **7. Valuation**

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

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

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

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

- (1) Awnings or floor coverings;
  - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
  - (3) Outdoor equipment or furniture.
  - c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
  - d. Glass at the cost of replacement with safety-glazing material if required by law.
  - e. Tenants' Improvements and Betterments at:
    - (1) Actual cash value of the lost or damaged property if you make repairs promptly.
    - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
      - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
      - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.
- If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- (3) Nothing if others pay for repairs or replacement.

#### F. Additional Conditions

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

#### 1. Coinsurance

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

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

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

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

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

#### EXAMPLE #1 (UNDERINSURANCE)

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

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

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

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

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

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



**EXAMPLE #2 (ADEQUATE INSURANCE)**

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

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

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

**EXAMPLE #3**

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

**Step (1):** \$250,000 x 90% = \$225,000  
(the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

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

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

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

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

**2. Mortgageholders**

- a.** The term mortgageholder includes trustee.
- b.** We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c.** The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d.** If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - (1)** Pays any premium due under this Coverage Part at our request if you have failed to do so;
  - (2)** Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
  - (3)** Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.
- e.** If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1)** The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2)** The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.
- f.** If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (1)** 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
  - (2)** 30 days before the effective date of cancellation if we cancel for any other reason.



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

#### G. Optional Coverages

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

##### 1. Agreed Value

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

##### 2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
  - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

#### EXAMPLE

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

##### 3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
  - (1) Personal property of others;
  - (2) Contents of a residence;
  - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
  - (4) "Stock", unless the Including "Stock" option is shown in the Declarations.
 Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.
- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
  - (1) Until the lost or damaged property is actually repaired or replaced; and
  - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

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

- (3) If the conditions in **d.(1)** and **d.(2)** above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
  - (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e.** We will not pay more for loss or damage on a replacement cost basis than the least of **(1)**, **(2)** or **(3)**, subject to **f.** below:
- (1) The Limit of Insurance applicable to the lost or damaged property;
  - (2) The cost to replace the lost or damaged property with other property:
    - (a) Of comparable material and quality; and
    - (b) Used for the same purpose; or
  - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.
- If a building is rebuilt at a new premises, the cost described in **e.(2)** above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.
- f.** The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

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

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

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

#### **H. Definitions**

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

# BUSINESS OR RENTAL INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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

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

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

## A. Coverage

We will pay for the actual loss of Business or Rental Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to Covered Property under this policy at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

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

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

### 1. Business Income

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or "rental value";
- b. Continuing normal operating expenses incurred; and
- c. "Ordinary payroll expenses." But in no event will we pay "ordinary payroll expenses" for more than 90 days following the date of direct physical loss or damage.

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

### 2. Rental Income

Rental Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned from tenant occupancy of the premises described in the Declarations as furnished and equipped by you.
- b. Continuing normal operating expenses incurred; and
- c. "Ordinary payroll expenses." But in no event will we pay "ordinary payroll expenses" for more than 90 days following the date of direct physical loss or damage.

### 3. Covered Causes Of Loss

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

### 4. Additional Coverages

#### a. Extra Expense

Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to Covered Property caused by or resulting from a Covered Cause of Loss.

- (1) We will pay any Extra Expense to avoid or minimize the "suspension" of business and to continue "operations":
  - (a) At the described premises; or
  - (b) At replacement premises or at temporary locations, including:
    - (i) Relocation expenses; and
    - (ii) Costs to equip and operate the replacement or temporary locations.
- (2) We will pay any Extra Expense to minimize the "suspension" of business if you cannot continue "operations".
- (3) We will pay any Extra Expense to:
  - (a) Repair or replace any property; or
  - (b) Research, replace or restore the lost information on damaged valuable papers and records;

to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

**b. Civil Authority**

We will pay for the actual loss of Business or Rental Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

The coverage for Business or Rental Income will begin 72 hours after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins.

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

- (1) 3 consecutive weeks after the time of that action; or
- (2) When your Business or Rental Income coverage ends; whichever is later.

**c. Alterations And New Buildings**

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

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

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

**d. Extended Business or Rental Income**

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

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

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

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

**5. Coverage Extension**

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

**Newly Acquired Locations**

- a. You may extend your Business or Rental Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay under this Extension, for the sum of Business or Rental Income loss and Extra Expense incurred, is \$100,000 at each location.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:
  - (1) This policy expires;
  - (2) 30 days expire after you acquire or begin to construct the property; or
  - (3) You report values to us.

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

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

#### **B. Exclusions And Limitations**

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

#### **C. Limits Of Insurance**

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

The limit applicable to the Coverage Extension is in addition to the Limit of Insurance.

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

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

#### **D. Loss Conditions**

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

##### **1. Appraisal**

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

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

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

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

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

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

- (1) Notify the police if a law may have been broken.

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

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

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (7) Cooperate with us in the investigation or settlement of the claim.
  - (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.
- #### **3. Limitation - Electronic Media And Records**
- We will not pay for any loss of Business or Rental Income caused by direct physical loss of or damage to Electronic Media and Records after the longer of:
- a. 60 consecutive days from the date of direct physical loss or damage; or

- b. The period, beginning with the date of direct physical loss or damage, necessary to repair, rebuild or replace, with reasonable speed and similar quality, other property at the described premises due to loss or damage caused by the same occurrence.

Electronic Media and Records are:

- (1) Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells;
- (2) Data stored on such media; or
- (3) Programming records used for electronic data processing or electronically controlled equipment.

This limitation does not apply to Extra Expense.

**Example No. 1:**

A Covered Cause of Loss damages a computer on June 1. It takes until September 1 to replace the computer, and until October 1 to restore the data that was lost when the damage occurred. We will only pay for the Business or Rental Income loss sustained during the period June 1 - September 1. Loss during the period September 2 - October 1 is not covered.

**Example No. 2:**

A Covered Cause of Loss results in the loss of data processing programming records on August 1. The records are replaced on October 15. We will only pay for the Business or Rental Income loss sustained during the period August 1 - September 29 (60 consecutive days). Loss during the period September 30 - October 15 is not covered.

**4. Loss Determination**

- a. The amount of Business or Rental Income loss will be determined based on:
- (1) The Net Income of the business or tenancy before the direct physical loss or damage occurred;
  - (2) The likely Net Income of the business or tenancy if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
  - (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and

- (4) Other relevant sources of information, including:
  - (a) Your financial records and accounting procedures;
  - (b) Bills, invoices and other vouchers; and
  - (c) Deeds, liens or contracts.

- b. The amount of Extra Expense will be determined based on:

- (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
  - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
  - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
- (2) All necessary expenses that reduce the Business or Rental Income loss that otherwise would have been incurred.

**c. Resumption Of Operations**

We will reduce the amount of your:

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

**5. Loss Payment**

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

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

**E. Additional Condition****Coinsurance**

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

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

- a. The Coinsurance percentage shown for Business Income in the Declarations; times
- b. The sum of:
  - (1) The Net Income (Net Profit or Loss before income taxes), and
  - (2) Operating expenses, including payroll expenses, that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

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

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

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

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

1. Prepaid freight - outgoing;
2. Returns and allowances;
3. Discounts;
4. Bad debts;
5. Collection expenses;
6. Cost of raw stock and factory supplies consumed (including transportation charges);
7. Cost of merchandise sold (including transportation charges);

8. Cost of other supplies consumed (including transportation charges);
9. Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
10. Power, heat and refrigeration expenses that do not continue under contract (if Form **CP 15 11** is attached);
11. All ordinary payroll expenses or the amount of payroll expense excluded (if Form **CP 15 10** is attached); and
12. Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion - not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

**Example No. 1 (Underinsurance):**

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been \$ 400,000

The Coinsurance percentage is 50%  
 The Limit of Insurance is \$ 150,000  
 The amount of loss is \$ 80,000

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

Step 2:  $\$150,000 / \$200,000 = .75$

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

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

**Example No. 2 (Adequate Insurance):**

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been \$ 400,000

The Coinsurance percentage is 50%  
 The Limit of Insurance is \$ 200,000  
 The amount of loss is \$ 80,000



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

We will pay:	
Days 1-30	\$ 30,000
Days 31-60	\$ 20,000
Days 61-90	<u>\$ 30,000</u>
	\$ 80,000

The remaining \$10,000 is not covered.

This condition does not apply to the Extra Expense Additional Coverage.

## F. Optional Coverages

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

### 1. Maximum Period Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for the total of Business or Rental Income loss and Extra Expense is the lesser of:
  - (1) The amount of loss sustained and expenses incurred during the 120 days immediately following the beginning of the "period of restoration"; or
  - (2) The Limit of Insurance shown in the Declarations.

### 2. Monthly Limit Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for loss of Business or Rental Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:
  - (1) The Limit of Insurance, multiplied by
  - (2) The fraction shown in the Declarations for this Optional Coverage.

#### Example:

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

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

The most we will pay for loss in each period of 30 consecutive days is:  
 $\$120,000 \times 1/4 = \$30,000$

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

Days 1-30	\$ 40,000
Days 31-60	20,000
Days 61-90	<u>30,000</u>
	\$ 90,000

## 3. Business or Rental Income Agreed Value

### a. To activate this Optional Coverage:

- (1) A Business or Rental Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":
  - (a) During the 12 months prior to the date of the Work Sheet; and
  - (b) Estimated for the 12 months immediately following the inception of this Optional Coverage.
- (2) The Declarations must indicate that the Business or Rental Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:
  - (a) The Coinsurance percentage shown in the Declarations; multiplied by
  - (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.

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

- (1) 12 months after the effective date of this Optional Coverage; or
- (2) The expiration date of this policy; whichever occurs first.

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

- (1) Within 12 months of the effective date of this Optional Coverage; or
- (2) When you request a change in your Business Income Limit of Insurance.

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

- (1) The Business Income Limit of Insurance; divided by
- (2) The Agreed Value.



**Example:**

When: The Limit of Insurance  
           is \$ 100,000  
           The Agreed Value is \$ 200,000  
           The amount of loss is \$ 80,000  
 Step (a):  $\$100,000 / \$200,000 = .50$   
 Step (b):  $.50 \times \$80,000 = \$40,000$

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

**4. Extended Period Of Indemnity**

Under Paragraph A.3.d., Extended Business or Rental Income, the number "30" in Subparagraphs (1)(b) and (2)(b) is replaced by the number shown in the Declarations for this Optional Coverage.

**G. Definitions**

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

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

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

2. "Operations" means :
  - a. Your business activities occurring at the described premises; and
  - b. The tenantability of the described premises, but only with respect to Rental Income.
3. "Ordinary payroll expenses" means payroll expenses for all your employees except:
  - a. Officers;
  - b. Executives;
  - c. Department managers;
  - d. Employees under contract; and
  - e. Additional Exemptions, shown in the Schedule or in the Declarations as:
    - (1) Job Classification; or
    - (2) Employees.

"Ordinary payroll expenses" include:

- a. Payroll;
- b. Employee benefits, if directly related to payroll;
- c. FICA payments you pay;
- d. Union dues you pay; and
- e. Worker's compensation premiums.

4. "Period of Restoration" means the period of time that:

- a. Begins:

- (1) 72 hours after the time of direct physical loss or damage for Business or Rental Income coverage; or
- (2) Immediately after the time of direct physical loss or damage for Extra Expense coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and

- b. Ends on the earlier of:

- (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
- (2) The date when business is resumed at a new permanent location.

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

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

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

5. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
6. "Suspension" means the slowdown or cessation of your business activities. For purposes of Rental Income, "suspension" means that a part or all of the described premises is rendered untenable.

## CAUSES OF LOSS - SPECIAL FORM

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

### A. Covered Causes Of Loss

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

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

### B. Exclusions

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

#### a. Ordinance Or Law

The enforcement of any ordinance or law:

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

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

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

#### b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

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

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

- (5) Volcanic eruption, explosion or effusion.

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

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

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

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

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

#### c. Governmental Action

Seizure or destruction of property by order of governmental authority.

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

**d. Nuclear Hazard**

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

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

**e. Utility Services**

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

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

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

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

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

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

**f. War And Military Action**

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

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not;
  - (c) Doors, windows or other openings.

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

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

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

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

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

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

2. We will not pay for loss or damage caused by or resulting from any of the following:
  - a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:
    - (1) Electrical or electronic wire, device, appliance, system or network; or
    - (2) Device, appliance, system or network utilizing cellular or satellite technology.

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

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

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

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.

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

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
  - (1) You do your best to maintain heat in the building or structure; or
  - (2) You drain the equipment and shut off the supply if the heat is not maintained.
- h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:
  - (1) Acting alone or in collusion with others; or
  - (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.

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

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

This exclusion, k., does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage - Collapse; or
- (b) To collapse caused by one or more of the following:
  - (i) The "specified causes of loss";
  - (ii) Breakage of building glass;
  - (iii) Weight of rain that collects on a roof; or
  - (iv) Weight of people or personal property.

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

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

- m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.
3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.
- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
- c. Faulty, inadequate or defective:
  - (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance; of part or all of any property on or off the described premises.

#### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

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

We will not pay for:

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

This exclusion does not apply to Extra Expense.
- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

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

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

(5) Any other consequential loss.

**b. Leasehold Interest Coverage Form**

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

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

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

**c. Legal Liability Coverage Form**

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

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

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

**(a) Contractual Liability**

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

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

**(b) Nuclear Hazard**

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

**5. Additional Exclusion**

The following provisions apply only to the specified property.

**LOSS OR DAMAGE TO PRODUCTS**

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

**C. Limitations**

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

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
  - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
  - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
  - d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft. However, this limitation does not apply to:
    - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
    - (2) Business Income Coverage or Extra Expense Coverage.
  - e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
  - f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
  - a. Animals, and then only if they are killed or their destruction is made necessary.
  - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
    - (1) Glass; or
    - (2) Containers of property held for sale.
  - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property. However, this limitation does not apply:
    - (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
    - (2) To Business Income Coverage or to Extra Expense Coverage.
3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
  - a. \$2,500 for furs, fur garments and garments trimmed with fur.
  - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - c. \$2,500 for patterns, dies, molds and forms.
  - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

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

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



4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:

- a. Results in discharge of any substance from an automatic fire protection system; or
- b. Is directly caused by freezing.

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

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

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

1. For the purpose of this Additional Coverage - Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.
2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:
  - a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
  - b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
  - c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
  - d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
    - (1) A cause of loss listed in **2.a.** or **2.b.**;
    - (2) One or more of the "specified causes of loss";
    - (3) Breakage of building glass;
    - (4) Weight of people or personal property; or
    - (5) Weight of rain that collects on a roof.

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

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

4. With respect to the following property:

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

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

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

5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
- b. The personal property which collapses is inside a building; and
- c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

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



- 6. This Additional Coverage - Collapse does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- 7. This Additional Coverage - Collapse will not increase the Limits of Insurance provided in this Coverage Part.
- 8. The term Covered Cause of Loss includes the Additional Coverage - Collapse as described and limited in **D.1.** through **D.7.**

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

- 1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
  - a. A "specified cause of loss" other than fire or lightning; or
  - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
- 2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
  - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
  - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
  - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

- 3. The coverage described under **E.2.** of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.
- 4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

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

- 5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph **F.2.** (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage - Collapse.
- 6. The following, **6.a.** or **6.b.**, applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form.

- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

#### F. Additional Coverage Extensions

##### 1. Property In Transit

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

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

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

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

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

##### 3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

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

#### G. Definitions

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.

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

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

## **PENNSYLVANIA CHANGES - ACTUAL CASH VALUE**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
STANDARD PROPERTY POLICY

The following is added to any provision which uses the term actual cash value:

The actual cash value of the lost or damaged property may be significantly less than its replacement cost.

Actual cash value is calculated as the amount it would cost to repair or replace Covered Property, at the time of loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to valuation of Covered Property regardless of whether that property has sustained partial or total loss or damage.

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

## **PENNSYLVANIA CHANGES**

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART

**A. For insurance provided under the:**

Capital Assets Program (Output Policy) Coverage Part  
Commercial Inland Marine Coverage Part  
Commercial Property Coverage Part  
Crime And Fidelity Coverage Part  
Equipment Breakdown Coverage Part

The **TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY** Common Policy Condition is replaced by the following:

**F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

If you die, this Coverage Part will remain in effect as provided in 1. or b 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.

**B. For insurance provided under the:**

Capital Assets Program (Output Policy) Coverage Part  
Commercial Inland Marine Coverage Part  
Commercial Property Coverage Part  
Farm Coverage Part

The following is added to the **LOSS PAYMENT** Loss Condition 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.

## COMMERCIAL PROPERTY CONDITIONS

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

### A. CONCEALMENT, MISREPRESENTATION OR FRAUD

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

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

### B. CONTROL OF PROPERTY

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

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

### C. INSURANCE UNDER TWO OR MORE COVERAGES

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

### D. LEGAL ACTION AGAINST US

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

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

### E. LIBERALIZATION

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

### F. NO BENEFIT TO BAILEE

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

### G. OTHER INSURANCE

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

### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

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

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

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

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

This will not restrict your insurance.



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

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

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

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



POLICY NUMBER:12PRM049566-02

COMMERCIAL PROPERTY

CP 04 11 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PROTECTIVE SAFEGUARDS**

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY**SCHEDULE**

Premises Number	Building Number	Protective Safeguards Symbols Applicable
1	1	P-1, P-2, P-5

Describe Any "P-9":

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. The following is added to the Commercial Property****Conditions:****Protective Safeguards**

1. As a condition of this insurance, you are required to maintain the protective devices or services listed in the Schedule above.

2. The protective safeguards to which this endorsement applies are identified by the following symbols:

**"P-1" Automatic Sprinkler System**, including related supervisory services.

Automatic Sprinkler System means:

- a. Any automatic fire protective or extinguishing system, including connected:
  - (1) Sprinklers and discharge nozzles;
  - (2) Ducts, pipes, valves and fittings;
  - (3) Tanks, their component parts and supports; and
  - (4) Pumps and private fire protection mains.
- b. When supplied from an automatic fire protective system:
  - (1) Non-automatic fire protective systems;
 and

- (2) Hydrants, standpipes and outlets.

**"P-2" Automatic Fire Alarm**, protecting the entire building, that is:

- a. Connected to a central station; or
- b. Reporting to a public or private fire alarm station.

**"P-3" Security Service**, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.**"P-4" Service Contract** with a privately owned fire department providing fire protection service to the described premises.**"P-5" Automatic Commercial Cooking Exhaust And Extinguishing System** installed on cooking appliances and having the following components:

- a. Hood;
- b. Grease removal device;
- c. Duct system; and
- d. Wet chemical fire extinguishing equipment.

**"P-9"**, the protective system described in the Schedule.

**B.** The following is added to the **Exclusions** section of:

Causes Of Loss – Basic Form

Causes Of Loss – Broad Form

Causes Of Loss – Special Form

Mortgageholders Errors And Omissions Coverage Form

Standard Property Policy

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you:

1. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or

2. Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

If part of an Automatic Sprinkler System or Automatic Commercial Cooking Exhaust And Extinguishing System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.

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

## **WATER EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

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

**B. Water**

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

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

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

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

POLICY NUMBER:12PRM049566-02

COMMERCIAL PROPERTY

CP 12 11 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BURGLARY AND ROBBERY PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

Premises No.	SCHEDULE* Building No.	Protective Safeguards Symbols Applicable
1	1	BR-1

\*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

**A. The following is added to the **Commercial Property** Conditions:**

**BURGLARY AND ROBBERY PROTECTIVE  
SAFEGUARDS**

1. As a condition of this insurance, you are required to maintain the protective devices and/or services listed in the Schedule above.
2. The protective safeguard(s) to which this endorsement applies are identified by the following symbols:
  - a. "BR-1" Automatic Burglary Alarm, protecting the entire building, that signals to:
    - (1) An outside central station; or
    - (2) A police station.
  - b. "BR-2" Automatic Burglary Alarm, protecting the entire building, that has a loud sounding gong or siren on the outside of the building.

- c. "BR-3" Security Service, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

- d. "BR-4" The protective safeguard described in the Schedule.

**B. The following is added to the **Exclusions** section of the Causes Of Loss – Special Form:**

**BURGLARY AND ROBBERY PROTECTIVE  
SAFEGUARDS**

We will not pay for loss or damage caused by or resulting from theft if, prior to the theft, you:

1. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
2. Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EQUIPMENT BREAKDOWN ENHANCEMENT

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
 VACANT BUILDING PROPERTY COVERAGE FORM  
 CAUSES OF LOSS – BASIC FORM  
 CAUSES OF LOSS – BROAD FORM  
 CAUSES OF LOSS – SPECIAL FORM

### SCHEDULE

Additional Coverages	Limit of Insurance
Perishable Goods	\$ 250,000
Pollutant Clean-up And Removal For Equipment Breakdown	\$ 250,000
Refrigerant Contamination	\$ 250,000
<b>Equipment Breakdown Deductible:</b> \$ SEE CPD 0001 (04/13) The deductible for direct damage to Covered Property caused by an "equipment breakdown" is the applicable deductible shown in the Declarations for the damaged property unless an Equipment Breakdown Deductible is otherwise indicated in this Schedule.	

### SECTION I – BUILDING AND PERSONAL PROPERTY COVERAGE FORM AND VACANT BUILDING PROPERTY COVERAGE FORM

The Building And Personal Property Coverage Form and Vacant Building Property Coverage Form are modified as follows:

A. The following Additional Coverages are added to Paragraph A.4., Additional Coverages and are added as a part of and not in addition to the limit per loss:

#### 1. CFC Refrigerants

We will pay for the additional cost to repair or replace Covered Property due to an "equipment breakdown" because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances. Additional costs mean those in excess of what would have been required to repair or replace Covered Property if no CFC refrigerant had been involved. We will also pay for additional loss, as described under the Perishable Goods Additional Coverage provided by this endorsement, caused by the presence of a refrigerant containing CFC substances. This Additional Coverage is limited to the lesser of the following:

- The cost to repair the damaged property and replace any lost CFC refrigerant;

- The cost to repair the damaged property, retrofit the system to accept non-CFC refrigerant, and charge the system with a non-CFC refrigerant; or
- The cost to replace the system with one using a non-CFC refrigerant.

#### 2. Electronic Data Processing Equipment And Electronic Data Processing Media

We will pay for loss or damage to your "electronic data processing equipment" and "electronic data processing media" caused by an "equipment breakdown". The amount payable under this Additional Coverage is additional insurance.

#### 3. Expediting Expenses

If you have a loss to Covered Property caused by an "equipment breakdown", we will pay "reasonable expediting expenses" to expedite temporary or permanent repairs of the equipment or to replace the equipment.

#### 4. Perishable Goods

We will pay for loss of "perishable goods" due to spoilage resulting from lack of power, light, heat, steam or refrigeration caused by an "equipment breakdown" of the types of property covered by this policy that are:

- Located on or within 1,000 feet of your described premises; and

- b. Owned by you, the building owner at your described premises, or owned by a public utility.

However, we will not pay for any loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of the following causes of loss:

Fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water, water damage, earth movement or flood.

The most we will pay for loss or damage under this Additional Coverage is the Limit of Insurance indicated on the Schedule of this endorsement.

#### **5. Pollutant Clean-up And Removal For Equipment Breakdown**

We will pay for the cost of "pollutant" clean-up and removal for losses resulting from an "equipment breakdown". The most we will pay for "pollutant" clean-up and removal caused by an "equipment breakdown" is the Limit of Insurance indicated on the Schedule of this endorsement.

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

#### **6. Refrigerant Contamination**

We will pay the loss to your Covered Property that is damaged by contamination from a refrigerant used in any refrigerating, cooling or humidity control equipment at the described premises, provided the contamination occurred as a result of an "equipment breakdown". For purposes of this section, refrigerant includes ammonia.

The most we will pay for loss or damage under this Additional Coverage is the Limit of Insurance indicated on the Schedule of this endorsement.

### **B. The following conditions are added to Section F., Additional Conditions:**

#### **1. Suspension**

Whenever Covered Property is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss to that Covered Property for the perils covered by this endorsement. Coverage can be suspended

and possibly reinstated by delivering or mailing a written notice of suspension / coverage reinstatement to:

- a. Your last known address; or
  - b. The address where the property is located.
- If we suspend your insurance, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

#### **2. Jurisdictional Inspections**

If any Covered Property under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf. We do not warrant that conditions are safe or healthful.

#### **3. Environmental, Safety And Efficiency Improvements**

If Covered Property requires replacement due to an "equipment breakdown", we will pay your additional cost to replace the Covered Property with equipment that is better for the environment, safer, or more efficient than the Covered Property being replaced.

However, in no event will we pay more than 125% of what the cost would have been to repair or replace the Covered Property with like kind and quality. This Condition does not apply to any property to which Actual Cash Value applies.

#### **4. Green Environmental And Efficiency Improvements**

If Covered Property requires repair or replacement due to an "equipment breakdown", we will pay:

- a. The lesser of the reasonable and necessary additional cost incurred by you to repair or replace physically damaged Covered Property with equipment of like kind and quality which qualifies as "green". Like kind and quality includes similar size and capacity.
- b. The additional reasonable and necessary fees incurred by you for an accredited professional certified by a "green authority" to participate in the repair or replacement of physically damaged Covered Property as "green".
- c. The additional reasonable and necessary cost incurred by you for certification or recertification of the repaired or replaced Covered Property as "green".

- d. The additional reasonable and necessary cost incurred by you for "green" in the removal, disposal or recycling of damaged Covered Property.
- e. The business interruption (if covered within the policy to which this Equipment Breakdown Enhancement – Green Environmental And Efficiency Improvements is attached) loss during the additional time required for repair or replacement of Covered Property, consistent with "green", in the coverages above.

We will not pay more than 125%, to a maximum limit of \$100,000, of what the cost would have been to repair or replace with equipment of like kind and quality inclusive of fees, costs, and any business interruption loss incurred as stated above.

Green Environmental And Efficiency Improvements does not cover any of the following:

- a. Covered Property does not include stock, raw materials, finished goods, "production machinery", merchandise, "electronic data processing equipment" not used in the functional support of the real property, process water, molds and dies, property in the open, property of others for which you are legally liable, or personal property of others.
- b. Any loss adjusted on any valuation basis other than a repair or replacement basis as per the valuation section of this policy.
- c. Any loss covered under any other section of this policy.
- d. Any cost incurred due to any law or ordinance with which you were legally obligated to comply prior to the time of the "equipment breakdown".

These Additional Conditions will be part of, and not an addition to, the limit of liability per loss or any other sublimits of this policy.

**C. The following definitions are added to Section H., Definitions:**

- 1. "Electronic data processing equipment" means data processing systems, component parts and related peripheral equipment including air conditioning and fire protection equipment used solely for data processing operations. "Electronic data processing equipment" does include electronic systems that control "production machinery" or the "production machinery" itself.

- 2. "Electronic data processing media" means punch cards, tapes, discs, drums, cells or other magnetic recording or storage devices, including the information recorded on the media. It also includes the original source material used to enter data and/or programs.
- 3. "Equipment breakdown" means physical loss or damage both:
  - a. Originating within:
    - (1) Boilers, fire or unfired pressure vessels, vacuum vessels, and pressure piping, all normally subject to vacuum or internal pressure other than static pressure of contents, excluding:
      - (a) waste disposal piping;
      - (b) any piping forming part of a fire protective system;
      - (c) furnaces; and
      - (d) any water piping other than:
        - (i) boiler feed water piping between the feed pump and the boiler;
        - (ii) boiler condensate return piping; or
        - (iii) water piping forming part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes.
    - (2) All mechanical, electrical, electronic or fiber optic equipment; and
  - b. Caused by, resulting from, or consisting of:
    - (1) Mechanical breakdown;
    - (2) Electrical or electronic breakdown; or
    - (3) Rupture, bursting, bulging, implosion, or steam explosion.

However, "equipment breakdown" does not mean physical loss or damage caused by or resulting from any of the following:

- a. Wear and tear;
- b. Rust or other corrosion, decay, deterioration, hidden or latent defect, mold or any other quality in property that causes it to damage or destroy itself;
- c. Smog;
- d. Settling, cracking, shrinking or expansion;
- e. Nesting or infestation, or discharge or release of waste products or secretions, by birds, rodents or other animals;



- f. Any accident, loss, damage, cost, claim, or expense, whether preventative, remedial, or otherwise, directly or indirectly arising out of or relating to the recognition, interpretation, calculation, comparison, differentiation, sequencing, or processing of data by any computer system including any hardware, programs or software;
- g. The following causes of loss to personal property:
  - (1) dampness or dryness of atmosphere;
  - (2) marring or scratching.
- h. Loss, damage, cost or expense used by, contributed to, by or resulting from, in whole or in part, any of the following:  
Fire, lightning, combustion explosion, windstorm or hail, weight of snow, ice or sleet, falling objects, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sinkhole collapse, volcanic action, leakage from fire extinguishing equipment, water, water damage, earth movement or flood.  
However, if loss or damage not otherwise excluded results, then we will pay for such resultant damage.
- 4. "Green" as used herein means products, materials, methods and processes certified by a "green authority" that conserve natural resources, reduce energy or water consumption, avoid toxic or other polluting emissions or otherwise minimize environmental impact.
- 5. "Green authority" as used herein means an authority on "green" buildings, products, materials, methods or processes certified and accepted by Leadership in Energy and Environmental Design (LEED®), Green Building Initiative Green Globes®, Energy Star rating system or any other recognized "green" rating system.
- 6. "Perishable goods" means personal property maintained under controlled conditions for its preservation and susceptible to loss or damage if the controlled conditions change.
- 7. "Production machinery" as used herein means any machine which processes, forms, shapes, or transports raw materials, materials in process, waste materials or finished products.
- 8. "Reasonable expediting expenses" include overtime and the costs of express or other rapid means of transportation.

**SECTION II – CAUSES OF LOSS – BASIC FORM**

The Causes Of Loss – Basic Form is modified as follows:

- A. The following is added to Paragraph A., Covered Causes Of Loss:  
When Basic is shown in the Declarations, Covered Causes of Loss also means "equipment breakdown".
- B. The Exclusions in Paragraphs B.2.a., B.2.d., and B.2.e. do not apply.
- C. The following is added to the Exclusion in Paragraph B.1.g., Water:  
However, if electrical Covered Property requires drying out because of the above, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and deductible for building or business personal property, whichever applies.

**SECTION III – CAUSES OF LOSS – BROAD FORM**

The Causes Of Loss – Broad Form is modified as follows:

- A. The following is added to Paragraph A., Covered Causes Of Loss:  
When Broad is shown in the Declarations, Covered Causes of Loss also means "equipment breakdown".
- B. The Exclusions in Paragraphs B.2.a., B.2.b., and B.2.c. do not apply.
- C. The following is added to the Exclusion in Paragraph B.1.g., Water:  
However, if electrical Covered Property requires drying out because of the above, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and deductible for building or business personal property, whichever applies.

**SECTION IV – CAUSES OF LOSS – SPECIAL FORM**

The Causes Of Loss – Special Form is modified as follows:

- A. The Exclusions in Paragraphs B.2.a., B.2.d.(6), and B.2.e. do not apply.
- B. The following is added to the Exclusion in Paragraph B.1.g., Water:  
However, if electrical Covered Property requires drying out because of the above, we will pay for the direct expenses of such drying out, subject to the applicable Limit of Insurance and deductible for building or business personal property, whichever applies.

- C. The Limitations in Paragraphs C.1.a. and C.1.b. do not apply.
- D. The following is added to the definition of “specified causes of loss” in Paragraph G.2.:  
“Specified causes of loss” also means “equipment breakdown”.

All other terms and conditions of this policy remain unchanged.

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

## PROPERTY EXTENSIONS

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

Except as modified below, all other terms and conditions of the above-referenced policies remain unchanged.

**SECTION I** – The following modifications are made to the Building and Personal Property Coverage Form.

**A.** The following are added to Paragraph 4.

Additional Coverages of SECTION A.  
COVERAGE:

**g. Arson Reward**

When fire by arson damages Covered Property, we will pay up to a \$5,000 reward to any person or persons who provide information leading to an arson conviction. This Limit of Insurance applies per occurrence regardless of the number of persons providing information or the number of persons convicted. If more than one person provides such information, the \$5,000 reward shall be split among the qualifying persons. No deductible applies to this Additional Coverage.

**h. Lock Replacement**

We will pay your expense to repair or replace the exterior or interior door locks of Covered Property if it is necessary because:

- (1) Your keys were stolen in a covered theft loss; or
- (2) Your property was damaged and your keys were stolen by the burglars.

The most we will pay in any one occurrence for this Additional Coverage is \$500. No deductible applies to this Additional Coverage.

**i. Fire Extinguisher Recharge**

We will pay the expense you incur to recharge any Underwriters Laboratories (UL) listed hand-held or portable fire extinguisher, or any UL listed fixed fire extinguishing system using carbon dioxide

or dry chemical agents. The discharge must have occurred:

- (1) In fighting a fire threatening covered property during the policy period; or
- (2) As the result of a Covered Cause of Loss.

The expense we will pay include only the following:

- (1) Reasonable shipping expense incurred, but only if incurred for the purpose of having the extinguisher(s) recharged; or
- (2) The amount actually charged by the fire extinguisher service company for recharging the extinguisher or replacing fusible links.

However, we will not pay more than:

- (1) \$50 per hand-held or portable fire extinguisher;
- (2) \$150 per fixed extinguishing system;
- (3) \$500 per occurrence, regardless of the number of extinguishers or extinguishing systems recharged.

No deductible applies to this Additional Coverage.

**B.** Paragraph 5.b. Personal Effects and Property of Others of SECTION A. COVERAGE is replaced by the following:

**b. Personal Effects and Property of Others**

The insurance that applies to Your Business Personal Property is extended to apply to:

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

The most we will pay for loss or damage for paragraphs (1) and (2) under this Extension is \$25,000 at each described premises, but not more than \$2,500 to any one person in any one loss. This is subject to the deductible applicable in this endorsement. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

- (3) Damages you are legally liable to pay because of loss or destruction of or damage to property belonging to your guests or located in guest rooms while not in your care, custody or control

The most we will pay for loss or damage for paragraph (3) under this Extension is \$25,000 at each described premises, but not more than \$1,000 to any one person in any one loss. This is subject to the deductible applicable in this endorsement.

- C. Paragraph 5.c. Valuable Papers and Records (Other Than Electronic Data) of SECTION A. COVERAGE provides coverage of \$2,500. We will pay at each described premises up to an additional \$22,500 subject to the deductible applicable to this endorsement.
- D. Paragraph 5.d. Property Off-Premises of SECTION A. COVERAGE provides coverage of \$10,000. We will pay up to an additional \$5,000 for loss or damage subject to the deductible applicable in this endorsement.
- E. Paragraph 5.e. Outdoor Property of SECTION A. COVERAGE provides coverage of \$1,000 for loss or damage to trees, shrubs or plants, but no more than \$250 for any one tree, shrub or plant. We will pay up to \$5,000 for loss or damage to trees, shrubs or plants, but no more than \$500 for any one tree, shrub or plant. This extension is subject to the deductible applicable in this endorsement.
- F. The following extensions are added to Paragraph 5. Coverage Extensions of SECTION A. COVERAGE:

**g. Money and Securities**

- (1) We will pay for loss of money and securities used in your business while at a bank savings institution, at the described premises or in transit between any of these places, resulting directly from:
- (a) Theft, meaning any act of stealing;
  - (b) Disappearance; or
  - (c) Destruction.
- (2) In addition to the Limitations and Exclusions applicable to personal

property coverage, we will not pay for loss:

- (a) Resulting from accounting or arithmetical errors or omissions;
  - (b) Due to the giving or surrendering of property in any exchange or purchase; or
  - (c) Of property contained in any money-oriented device unless the amount of money deposited in it is recorded by a continuous recording instrument in the device.
- (3) The most we will pay for loss in any one occurrence is:
- (a) \$10,000 Inside the Premises for money and securities while:
    - (i) In or on the described premises; or
    - (ii) Within a bank or savings institution; and
  - (b) \$10,000 Outside the Premises for money and securities while anywhere else.
- (4) We will not pay for loss of money and securities in any one occurrence until the amount of loss exceeds the deductible applicable in this endorsement.
- (5) All loss:
- (a) Caused by one or more persons; or
  - (b) Involving a single act or series of related acts;
- is considered one occurrence.
- (6) You must keep records of all money and securities so we can verify the amount of any loss or damage.
- (7) In the event of loss or damage we will determine the values as follows:
- (a) Money at its face value; and
  - (b) Securities at their face value at the close of business on the day the loss is discovered.

**h. Property of Others Off-Premises**

This insurance applies to damage arising from your negligence which results in direct physical loss to property of others in your care, custody or control away from the described premises. This insurance also applies to damage resulting in direct physical loss to property of others on which you or any contractors or subcontractors working directly or indirectly on your behalf

are performing "operations", provided the damage arises out of negligence in the performance of such "operations". This extension of coverage is subject to the following:

- (1) The most we will pay for loss or damage under this extension of coverage is a maximum of \$1,000 for any one occurrence and \$10,000 in the aggregate;
- (2) This coverage extension does not apply to reimbursement for your labor costs to restore, repair or replace the damaged property;
- (3) Reimbursement for the cost of all parts and materials used to restore, repair or replace the damaged property shall be made at your cost;
- (4) This coverage extension shall only apply to the extent of your legal liability to the owner of the damaged property ; and
- (5) This coverage extension does not apply to damage to your work or to your product.

Our payment for loss or damage property of others will only be for the account of the owner of the property. We may pay any part or all of your deductible amount to effect settlement of any claim and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible which has been paid by us. We will not pay for loss of property of others in your care, custody or control off premises in any one occurrence until the amount of loss exceeds a \$250 deductible.

#### **i. Employee Dishonesty**

- (1) We will pay for direct loss of or damage to Business Personal Property and "money" and "securities" resulting from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you or your partner) with the manifest intent to:
  - (a) Cause you to sustain loss or damage; and also
  - (b) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions, or other employee benefits earned in the normal course of employment) for:
    - (i) Any employee; or
    - (ii) Any other person or organization.

- (2) We will not pay for loss or damage:
  - (a) Resulting from any dishonest or criminal act that you or any of your partners commit whether acting alone or in collusion with other persons.
  - (b) The only proof of which as to its existence or amounts is:
    - (i) An inventory computation; or
    - (ii) A profit and loss computation.
- (3) The most we will pay for loss or damage in any one occurrence is \$10,000.
- (4) All loss or damage:
  - (a) Caused by one or more persons; or
  - (b) Involving a single act or series of related acts;
 is considered one occurrence.
- (5) We will pay only for loss or damage you sustain through acts committed or events occurring during the Policy Period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.
- (6) This coverage extension does not apply to any employee immediately upon discovery by:
  - (a) You; or
  - (b) Any of your partners, officers, or directors not in collusion with the employee;
 of any dishonest act committed by that employee before or after being hired by you.
- (7) We will pay only for covered loss or damage discovered no later than one year from the end of the Policy Period.
- (8) If you sustained loss or damage during the period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this coverage extension, provided:
  - (a) This coverage extension became effective at the time of cancellation or termination of the prior insurance; and
  - (b) The loss or damage would have been covered by this coverage extension had it been in effect when the acts or events causing the loss or

damage were committed or occurred.

- (9) The insurance under paragraph (8) above is part of, not in addition to, the Limit of Insurance applying to this coverage extension and is limited to the lesser of the amount recoverable under:

- (a) This coverage extension as of its effective date; or
- (b) The prior insurance had it remained in effect.

**j. Extra Expense**

We will pay any necessary Extra Expense you incur during the "period of restoration" incurred as a result of direct physical loss or damage to Covered Property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open (or in a vehicle) the described premises include the area within 100 feet of the site at which the described premises are located.

Extra Expense means expense incurred:

- (1) To avoid or minimize the "suspension" of business and to continue operations:
  - (a) At the described premises; or
  - (b) At replacement premises or at temporary locations, including relocation expenses, and costs to temporarily equip and operate the replacement or temporary locations during the "period of restoration", not to exceed 12 consecutive months after the date of direct physical loss or damage.
- (2) To minimize the "suspension" of business if you cannot continue "operations".
- (3) To:
  - (a) Repair or replace any property; or
  - (b) Research, replace or restore the lost information on damaged valuable papers and records;
 to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage.

The most we will pay for this coverage is \$50,000. We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage.

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

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

If any other coverage form or endorsement issued by us provides Extra Expense coverage, this endorsement shall not provide Extra Expense coverage.

**k. Miscellaneous Tools and Equipment**

- (1) We will pay for loss to miscellaneous tools and equipment owned, rented, or leased by you or your employees from any of the Covered Causes of Loss if the loss occurs within the United States of America or Canada.
- (2) If theft is a Covered Cause of Loss, coverage does not apply to theft from any unattended vehicle, unless at the time of the theft its windows, doors and compartments were closed and locked and there are visible signs that the theft was a result of forced entry.
- (3) Covered Property does not include:
  - (a) motor vehicles designed for highway use, including motorcycles; aircraft or watercraft;
  - (b) plans, blueprints, designs, or specifications;
  - (c) property located underground, in caissons, or underwater;
  - (d) waterborne property unless loss is caused by fire;
  - (e) property which has become a permanent part of any structure;
  - (f) dynamos, exciters, lamps, switches, motors, or other electrical appliances or devices, including wiring, if loss is caused by artificially generated current creating a short circuit or other electrical disturbance. But we will pay for direct loss caused by resulting fire.
  - (g) tires or tubes unless loss is caused by:
    - (i) fire

(ii) windstorm

(iii) theft

or unless loss occurs at the same time as the loss which is insured by this policy.

- (4) The most we will pay for this coverage is \$10,000 but not to exceed \$1,000 for any one item, subject to a separate Miscellaneous Tools and Equipment per occurrence deductible of \$1,000.

#### **G. Special Coverages**

The following Special Coverages are added to the Building and Personal Property Coverage Form. These Special Coverages are subject to all of the terms, conditions, exclusions and deductibles applicable to this policy, except where otherwise provided herein. Each of these Special Coverages is additional insurance. The Coinsurance condition does not apply to these Special Coverages.

##### **1. Accounts Receivable**

- a. We will pay for losses that result from Covered Causes of Loss to your records of accounts receivable as described below:
- (1) All amounts due from your customers that you are unable to collect as a consequence of the Covered Cause of Loss;
  - (2) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
  - (3) Collection expenses in excess of your normal collection expenses that are made necessary by the "loss"; and
  - (4) Other reasonable expenses that you incur to re-establish your records of accounts receivable.
- b. The most we will pay in any one occurrence for this Special Coverage is \$25,000.

##### **2. Ordinance or Law Coverage**

- a. If a Covered Cause of Loss occurs to covered building property, we will pay:
- (1) The increased cost to repair, rebuild or construct the property caused by enforcement of building, zoning or land use ordinance or law. If the property is repaired or rebuilt, it must be intended for similar occupancy to the current property, unless otherwise required by zoning or land use ordinance or law; and
  - (2) The cost to demolish and clear the site of undamaged parts of the property

caused by enforcement of the building, zoning or land use ordinance or law; provided that the ordinance or law is in force at the time of the loss.

- b. For this Special Coverage, we will pay the lesser of:
- (1) 25% of actual cash value of the covered building property or 25% of replacement value of the covered building property whichever is applicable; or
  - (2) 25% of the applicable limit of insurance for the covered building property; or
  - (3) Up to \$25,000 under part a.(1) above and up to \$25,000 under part a.(2) above.
- c. We will not pay under this endorsement for:
- (1) 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".
  - (2) The increased costs associated with the enforcement of any ordinance or law regulating air or water quality or air, water or land pollution.
- d. We will not pay for increased construction costs under this endorsement:
- (1) Until the property is actually repaired or replaced, at the same premises or elsewhere; and
  - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed 2 years. We may extend this period in writing during the 2 years.
- e. Exclusion B.1.a. of the Causes of Loss - Special Form does not apply to this coverage.
- ##### **3. Temperature-Humidity Changes**
- a. We will pay for loss of or damage to "stock" at the premises described in the Declarations caused by or resulting from:
- (1) mechanical or electrical breakdown of heating, cooling or humidity control equipment which is owned or used by you; or
  - (2) a power failure beyond your control which causes a change in temperature or humidity.
- b. We will not pay for any loss or damage if you fail to use reasonable care to maintain

all heating, cooling or humidity control equipment in proper operating condition.

- c. The most we will pay for loss or damage in any one occurrence is \$5,000.
- d. Exclusions **B.1.e.** and **B.2.d.(7)** of the Causes of Loss - Special Form do not apply to this special coverage.

#### **4. Electronic Data Processing Equipment Coverage**

- a. We will pay for loss or damage to your Electronic Data Processing Equipment and Electronic Data Processing Media which you own, lease, or rent from others or for which you are legally responsible.
- b. We will pay for loss or damage resulting from or caused by:
  - (1) Short circuit, blowout or other electrical damage or disturbance (except interruption of power supply, power surge, blackout or brown-out if the cause of such occurrence took place more than 100 feet from the insureds location as shown in the policy).
  - (2) Electrical or magnetic injury, disturbance, or erasure of electrical recordings except if damage occurs outside the insureds location or if there is a change in the insured's electrical power supply, such as interruption, power surge or brownout, which originates more than 100 feet from the insureds location as shown in the policy.
- c. The most we will pay for loss to hardware in any one occurrence is \$25,000. The most we will pay for loss to software in any one occurrence is \$5,000.
- d. We will not pay for loss or damage resulting from:
  - (1) Loss to property loaned, leased or rented to others while away from the premises listed in the Declarations.
  - (2) Data or media which cannot be replaced with others of the same kind and quality.
  - (3) Accounts, bills, evidences of debt, valuable papers, records, abstracts, deeds, manuscripts or other documents. But we will cover such property when it is converted to data form and then only in that form.
  - (4) Error or omission in machine programming or incorrect instruction to a machine.

- e. Exclusions **B.2.a.** and **B.2.d.(6)** of the Causes of Loss - Special Form do not apply to this special coverage.

f. "Electronic Data Processing Equipment" means data processing systems, component parts and related peripheral equipment including air conditioning and fire protection equipment used solely for data processing operations. Electronic Data Processing Equipment does not include electronic systems that control production machinery nor the production machinery itself.

g. "Electronic Data Processing Media" means punch cards, tapes, discs, drums, cells or other magnetic recording or storage devices, including the information recorded on the media. It also includes the original source material used to enter data and/or programs.

#### **5. Awnings, Canopies, Pumps and Lights**

- a. We will pay for loss or damage that results from a Covered Cause of Loss to awnings, canopies, pumps and lights unattached to buildings at the premises described in the Declarations.
- b. The most we will pay for loss or damage in any one occurrence under this Special Coverage is \$25,000.

#### **6. Contamination of Petroleum Products**

- a. We will pay for loss or damage that results from contamination by surface water of petroleum products stored in storage tanks at the premises described in the Declarations.
- b. The most we will pay for loss or damage in any one occurrence under this Special Coverage is \$5,000.

#### **7. Food Contamination**

We will pay:

- a. Your cost to clean your equipment per local Board of Health requirements;
- b. Your cost to replace consumable goods declared contaminated by the local Board of Health;
- c. Necessary medical tests and vaccines for affected employees as required by the Board of Health or other governmental body; and
- d. Reimbursement you paid to infected patrons for doctor's care, hospitalization and necessary blood work.



- e. The most we will pay for loss or damage in any one occurrence under this Special Coverage is \$10,000.

H. SECTION C. LIMITS OF INSURANCE: We will pay up to \$10,000 in aggregate at each described premises for outdoor signs attached and unattached to buildings, subject to the deductible applicable in this endorsement.

**SECTION II** – The following modifications are made to the Causes of Loss - Special Form:

A. The following is added to SECTION F.

ADDITIONAL COVERAGE EXTENSIONS:

- 4. **Sewer Back Up.** We will pay for the loss or damage caused by or resulting from water that backs up from a sewer or drain. We will not pay for the cost to repair any defect of a sewer or drain system from which water backs up. The most we will pay is \$2,500 during the policy period, subject to a \$2,500 limit in any one occurrence. This amount is subject to the deductible applicable in this endorsement.

B. Item F. Additional Coverage Extensions, paragraph 1.c. Property In Transit is amended as follows:

- c. The most we will pay for loss or damage under this Extension is \$10,000.

**SECTION III** – The following provisions are applicable to all coverage modifications made by this endorsement unless a modification expressly states otherwise.

**A. Excess Insurance**

The extended coverage provided by this endorsement is excess over any other valid and collectible insurance.

**B. Deductible**

One deductible of \$500 applies to all coverage extensions on this endorsement unless specifically indicated otherwise on this endorsement.

We will not pay for loss or damage in any one occurrence until the amount of loss exceeds \$500.

We will then pay the amount of loss in excess of the deductible up to the limit stated in that particular coverage extension.

This \$500 deductible is in addition to the deductible shown in the Declarations. This deductible will not be used to satisfy the requirements of the deductible shown in the Declarations.

If one occurrence causes losses covered by more than one of the coverage extensions under this endorsement, only one deductible will apply to the coverage extensions under this endorsement.

The deductible that will apply is the highest

deductible under any one of the coverage extensions, with a maximum deductible of \$1,000.

**C. Additional Definitions**

The following definitions are applicable for purposes of this endorsement only.

- 1. "Communicable disease" is defined as bacterial microorganism transmitted through human contact to food.
- 2. "Food contamination" means the occurrence of food poisoning or suspected food poisoning of one or more of your patrons, including food contamination resulting from tainted food purchased by you or "communicable disease" transmitted by one or more of your employees.

3. "Money" means:

- a. Currency, coins, and bank notes in current use and having a face value; and
- b. Travelers checks, register checks, and money orders held for sale to the public.

4. "Period of Restoration" means the period of time that:

- a. Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

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

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

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

5. "Operations" means your business activities occurring at any location scheduled in the Declarations.

6. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or other property and includes:

- a. Tokens, tickets, revenue, and other stamps (whether represented by actual stamps or unused valve in a meter) in current use; and

- b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;  
but does not include "money".

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

## **PER BUILDING DEDUCTIBLE – NO AGGREGATE**

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

The following modifies the **Deductible** section of this policy:

Deductibles will apply on a per-building basis. The per-building deductible shall apply separately to each occurrence and each building scheduled in the Declarations, regardless of the number of occurrences or buildings. For the purposes of the per-building deductible, a residential dwelling with an associated detached garage at the same location will be considered one building.

In the event that more than one Deductible applies to loss or damage to Covered Property as a result of one occurrence, the highest Deductible shown in the Declarations will apply.

The terms of this endorsement do not apply to any Earthquake Deductible or to any Windstorm or Hail Percentage Deductible provided elsewhere in this policy.

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

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

This endorsement modifies insurance provided under the following:

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

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

**1.** The failure, malfunction or inadequacy of:

**a.** Any of the following, whether belonging to any insured or to others:

- (1)** Computer hardware, including micro-processors;
- (2)** Computer application software;
- (3)** Computer operating systems and related software;
- (4)** Computer networks;
- (5)** Microprocessors (computer chips) not part of any computer system; or
- (6)** Any other computerized or electronic equipment or components; or

**b.** Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph **A.1.a.** of this endorsement;

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.

**2.** Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph **A.1.** of this endorsement.

**B.** If an excluded Cause of Loss as described in Paragraph **A.** of this endorsement results:

**1.** In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or

**2.** Under the Commercial Property Coverage Part:

**a.** In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss - Special Form; or

**b.** In a Covered Cause of Loss under the Causes Of Loss - Basic Form or the Causes Of Loss - Broad Form;

we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.

**C.** We will not pay for repair, replacement or modification of any items in Paragraphs **A.1.a.** and **A.1.b.** of this endorsement to correct any deficiencies or change any features.

POLICY NUMBER: 12PRM049566-02

IL 09 53 01 15

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****EXCLUSION OF CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
 COMMERCIAL INLAND MARINE COVERAGE PART  
 COMMERCIAL PROPERTY COVERAGE PART  
 CRIME AND FIDELITY COVERAGE PART  
 EQUIPMENT BREAKDOWN COVERAGE PART  
 FARM COVERAGE PART  
 STANDARD PROPERTY POLICY

**SCHEDULE**

The **Exception Covering Certain Fire Losses** (Paragraph C) applies to property located in the following state(s), if covered under the indicated Coverage Form, Coverage Part or Policy:

State(s)	Coverage Form, Coverage Part Or Policy
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A.** The following definition is added with respect to the provisions of this endorsement:  
 "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

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

**CERTIFIED ACT OF TERRORISM EXCLUSION**

We 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.

**C. Exception Covering Certain Fire Losses**

The following exception to the exclusion in Paragraph B. applies only if indicated and as indicated in the Schedule of this endorsement. If a "certified act of terrorism" results in fire, we will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements which apply to those forms, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**D. Application Of Other Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

POLICY NUMBER: 12PRM049566-02

IL 09 95 01 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONDITIONAL EXCLUSION OF TERRORISM (RELATING TO DISPOSITION OF FEDERAL TERRORISM RISK INSURANCE ACT)

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
 COMMERCIAL INLAND MARINE COVERAGE PART  
 COMMERCIAL PROPERTY COVERAGE PART  
 EQUIPMENT BREAKDOWN PROTECTION COVERAGE FORM  
 FARM COVERAGE PART  
 STANDARD PROPERTY POLICY

### SCHEDULE

The **Exception Covering Certain Fire Losses** (Paragraph D.) applies to property located in the following state(s), if covered under the indicated Coverage Form, Coverage Part or Policy:

State(s)	Coverage Form, Coverage Part Or Policy
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

#### A. Applicability Of The Provisions Of This Endorsement

1. The provisions of this endorsement become applicable commencing on the date when any one or more of the following first occurs. But if your policy (meaning the policy period in which this endorsement applies) begins after such date, then the provisions of this endorsement become applicable on the date your policy begins.

- a. The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act, has terminated with respect to the type of insurance provided under this Coverage Form, Coverage Part or Policy; or

- b. A renewal, extension or replacement of the Program has become effective without a requirement to make terrorism coverage available to you and with revisions that:
- (1) Increase our statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all certified terrorism losses we must pay in a calendar year, before the federal government shares in subsequent payment of certified terrorism losses.); or
  - (2) Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or
  - (3) Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.
2. If the provisions of this endorsement become applicable, such provisions:
- a. Supersede any terrorism endorsement already endorsed to this policy that addresses "certified acts of terrorism" and/or "other acts of terrorism", but only with respect to loss or damage from an incident(s) of terrorism (however defined) that occurs on or after the date when the provisions of this endorsement become applicable; and
  - b. Remain applicable unless we notify you of changes in these provisions, in response to federal law.
3. If the provisions of this endorsement do NOT become applicable, any terrorism endorsement already endorsed to this policy, that addresses "certified acts of terrorism" and/or "other acts of terrorism", will continue in effect unless we notify you of changes to that endorsement in response to federal law.
- B. The following definition is added and applies under this endorsement wherever the term terrorism is enclosed in quotation marks.

"Terrorism" means activities against persons, organizations or property of any nature:

1. That involve 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.
- C. The following exclusion is added:

#### **EXCLUSION OF TERRORISM**

We will not pay for loss or damage caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or



5. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold is exceeded.

With respect to this Item **C.5.**, the immediately preceding paragraph describes the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form, Coverage Part or Policy.

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

The following exception to the Exclusion Of Terrorism applies only if indicated and as indicated in the Schedule of this endorsement.

If "terrorism" results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements that apply to those coverage forms, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

#### **E. Application Of Other Exclusions**

1. When the Exclusion Of Terrorism applies in accordance with the terms of **C.1.** or **C.2.**, such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form, Coverage Part or Policy.
2. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss or damage which would otherwise be excluded under this Coverage Form, Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

# **Exhibit B**



## National Indemnity group of insurance companies

National Indemnity Company • National Fire & Marine Insurance Company • National Liability & Fire Insurance Company  
Columbia Insurance Company • National Indemnity Company of Mid-America • National Indemnity Company of the South

June 4, 2020

**SENT VIA US MAIL WITH PROOF OF MAILING**

1 SANT INC DBA TOWN & COUNTRY BAR & GRILL  
C/O TONY CARBONE  
1319 W STATE ST  
NEW CASTLE, PA 16101

RE:	Claim Number:	00553387
	Policy Number:	12PRM049566-02
	Insured:	1 SANT INC DBA TOWN & COUNTRY BAR & GRILL
	Claimant:	2552 BEN FRANKLIN HWY, NEW CASTLE, PA 16102
	Date of Loss:	03/24/2020

**DENIAL OF COVERAGE**

Dear Policyholder:

This letter concerns the above-captioned claim (“Claim”) with respect to Commercial Property Policy Number 12PRM049566-02 issued by National Fire & Marine Insurance Company (“the Company”) for the period of June 1, 2019 to June 1, 2020.

Based on our investigation, which included communication with you, we understand the material facts and circumstances regarding the Claim to be as follows:

On about May 4, 2020, you submitted a claim for loss of income due to the novel coronavirus/COVID-19 (hereinafter “COVID-19”). On May 6, 2020 I was able to make contact with Mr. Tony Carbone at 724-652-2551, but was unable to confirm the details of the claim. On May 26, 2020, I was able to confirm the details of your claim. You stated you have sustained a loss of income due to the whole country shutting down, which meant your bar/restaurant had to close. You also stated you have a banquet hall in the back of your building that has also had gathering restrictions put in place and as a result you have sustained further loss of income. You stated you have been able to continue carry-out and delivery services. You stated there is no physical damage to covered property. Also, to your knowledge, you knew of no one with COVID-19 who came into contact with your building. If our understanding of the facts is in any way incorrect, please notify us immediately.

Our investigation of the Claim confirms that on March 15, 2020, Governor Wolf ordered restaurants and bars to close dine-in services. On March 19, 2020, Governor Wolf ordered all non-life sustaining businesses to close throughout the Commonwealth of Pennsylvania to further prevent the spread of COVID-19. Additionally, on March 25, 2020, the Secretary of the Pennsylvania Department of Health issued an Order

Claim Operations • P. O. Box 31361 • Omaha, Nebraska 68131-0361 • Telephone: (402) 916-3800 • Facsimile: (402) 916-3031  
E-mail: [reports@nationalindemnity.com](mailto:reports@nationalindemnity.com)



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advising all individuals residing in Philadelphia County, Pennsylvania to Stay at Home. On April 1, 2020 Governor Wolf issued a similar Order advising all individuals residing in the Commonwealth of Pennsylvania to stay at home except as needed to access, support or provide life sustaining business, emergency or governmental services. This "Stay at Home" order is effective until April 30, 2020 and supersedes all previous Orders directing "Individuals to Stay at Home". On May 29, 2020, Governor Wolf issued an order lifting the restrictions on dine-in services with certain limitations.

The above orders of by Governor Wolf along with the Department of Health order are referred to collectively herein as the "Orders." Again, if you are aware of additional governmental orders or believe our understanding of the Orders is in any way incorrect, please let us know immediately.

For the reasons set forth below, there is no coverage for the Claim under the Policy.

The Policy includes the **Building and Personal Property Coverage Form CP 00 10 06 07**. This coverage form is subject to certain exclusions, limitations, and endorsements which modify the coverage provided. This form reads, in pertinent part:

#### **A. Coverage**

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

#### **H. Definitions**

2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Your Policy also includes the **Business or Rental Income (and Extra Expense) Coverage Form CPM 2030 0611**. Certain provisions in this policy restrict coverage. This form reads, in pertinent part:

#### **A. Coverage**

We will pay for the actual loss of Business or Rental Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to Covered Property under this policy at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.



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#### **4. Additional Coverages**

##### **a. Extra Expense**

Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to Covered Property caused by or resulting from a Covered Cause of Loss.

- (1) We will pay any Extra Expense to avoid or minimize the "suspension" of business and to continue "operations":
  - (a) At the described premises; or
  - (b) At replacement premises or at temporary locations, including:
    - (i) Relocation expenses; and
    - (ii) Costs to equip and operate the replacement or temporary locations.
- (2) We will pay any Extra Expense to minimize the "suspension" of business if you cannot continue "operations".
- (3) We will pay any Extra Expense to:
  - (a) Repair or replace any property; or
  - (b) Research, replace or restore the lost information on damaged valuable papers and records;
 to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

##### **b. Civil Authority**

We will pay for the actual loss of Business or Rental Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

The coverage for Business or Rental Income will begin 72 hours after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins.

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

- (1) 3 consecutive weeks after the time of that action; or
  - (2) When your Business or Rental Income coverage ends;
- whichever is later.

The **Causes of Loss – Special Form CP1030 0607** is also part of this Policy. This coverage form is subject to certain exclusions, limitations, and endorsements which modify the coverage provided. This form reads in pertinent part:



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## **B. Exclusions**

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

- a. **Ordinance or Law**

The enforcement of any ordinance or law:

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

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

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

- c. **Governmental Action**

Seizure or destruction of property by order of governmental authority.

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

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

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

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

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

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

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



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## G. Definitions

2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

The **Exclusion of Loss Due to Virus or Bacteria Form CP 0140 0706** is also part of your Policy. This form reads in pertinent part:

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY

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

The Business or Rental Income Coverage (and Extra Expense) Coverage Form provides coverage for the actual loss of Business or Rental Income (and, where applicable, Extra Expense) you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to Covered Property under this policy at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. Based on the information you provided us, there was no direct physical loss of or damage to Covered Property at the premises shown in the Declarations due to COVID-19, and therefore, the Policy coverage for Business Income does not apply.



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Additionally, the Business or Rental Income (and Extra Expense) coverage requires a Covered Cause of Loss. If the cause of loss is excluded, it is not a Covered Cause of Loss.

Your Policy includes the Exclusion of Loss Due to Virus or Bacteria Form (“Virus Exclusion”) that specifically states, “we will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” During our investigation, you indicated the basis for the claim was a loss of business income due to COVID-19. Thus, the Virus Exclusion precludes coverage for the Claim. Furthermore, other applicable exclusions in the **Causes of Loss – Special Form** include: “Ordinance or Law” (B.1.a.); Governmental Action (B.1.c.); “Acts or decisions...” (B.3.b.); Delay, loss of use or loss of market (B.2.b.); and the “pollution” exclusion (B.2.1.), as noted above.

The Policy has Additional Coverage for loss caused by action of Civil Authority, subject to the other conditions, terms and exclusions of the Policy. Specifically, the Policy states we will pay for the actual loss of Business or Rental Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

One of the requirements of the Civil Authority Additional Coverage is that access to the insured property be prohibited by an action of civil authority “due to” damage to property other than at the insured property. At this time, to the extent the Orders can be considered orders of civil authority prohibiting access to the insured premises, it does not appear that the Orders were issued “due to” any identified physical damage at other properties. Instead, we understand that the Orders were issued principally to reduce person-to-person transmission of COVID-19 infection rates in your community.

Another requirement of the Civil Authority coverage is that the physical damage to other property be caused by a Covered Cause of Loss. As noted, the Policy contains a Virus Exclusion that applies to any loss or damage caused by or resulting from COVID-19. Thus, even if the Orders could be construed as stemming from actual physical contamination at other properties, the cause of the damage is excluded under the Virus Exclusion. Accordingly, we conclude that the Orders were not issued because of damage caused by a Covered Cause of Loss.

Another requirement of the Civil Authority coverage is that the action of civil authority must prohibit access to your property. As customers could access your premises to utilize your carry-out service, access to your premises was not prohibited, and there is no Civil Authority coverage for this loss.

Since the requirements for Civil Authority coverage are not met under the circumstances presented here, we are unable to find coverage for the Claim under this Additional Coverage.

For the reasons stated above, based on the information you provided as well as the applicable facts and circumstances of this Claim, there is no coverage for your Claim under the Policy.





**National Indemnity**  
group of insurance companies

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Other Policy terms, conditions, exclusions, or limitations may apply to the Claim but are not set forth herein. The Company reserves its rights with respect to such terms, conditions, exclusions, or limitations and their absence from this letter is not a waiver or modifications thereof. Furthermore, The Company specifically reserves the rights to seek and obtain a declaration regarding the absence of coverage and to amend this communication.

This letter is based upon the facts and information regarding the Claim, as we presently understand them. In the event you have additional facts or information you contend support a contrary conclusion, or in the event new facts or information regarding the Claim becomes available, please provide such facts or information to us immediately and we will consider them as quickly as possible. If you disagree with the facts as set forth herein, please advise us immediately.

This letter is subject in all respects to the Policy and no term or provision thereof is or is intended to be waived or otherwise modified in any respect.

We are required to inform you any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

We welcome the opportunity to speak with you regarding our determination as described in this letter. Please do not hesitate to contact the undersigned at 402-916-3359 in the event you have any questions. We have now closed our file.

Sincerely,  
National Fire & Marine Insurance Company

Kaitlyn Taylor  
Claim Operations

*It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.*

cc: W. N. Tuscano Agency, Inc.  
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