

HONORABLE BARBARA JACOBS ROTHSTEIN

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

GLACIAL CRYOTHERAPY LLC,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

EVANSTON INSURANCE COMPANY,
Defendant.

NO. 2:21-cv-00266-BJR

DEFENDANT’S MOTION TO DISMISS
COMPLAINT

Oral Argument Requested

Certificate of Conferral

Prior to filing this motion, the undersigned conferred with the attorneys representing Plaintiff Glacial Cryotherapy LLC (hereafter “Plaintiff” or “Glacial”). The parties were not able to reach a satisfactory resolution of the dispute and request that this Court rule upon the issues addressed in this motion and the supporting memorandum.

Motion

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Evanston Insurance Company (“Evanston”) hereby moves to dismiss all claims asserted herein, with prejudice, for failure to state a claim upon which relief may be granted.

DEFENDANT’S MOTION TO DISMISS
COMPLAINT– 1

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1 **Introduction and Summary**

2 Plaintiff asserts that Evanston denied coverage for business income losses plaintiff
3 suffered as a result of the closure of its business allegedly in response to the COVID-19 virus
4 and government orders issued in response to the pandemic. The policy at issue, however,
5 contains the same language as the policies at issue in the pending cases identified in plaintiffs'
6 notice of related cases, and for the same reasons asserted in currently pending motions to
7 dismiss in those related cases, plaintiff's complaint fails to state a claim, and must be dismissed.

8 First, Evanston's policy covers business income lost as a result of "direct physical loss
9 of or damage to" to property. This policy language has been addressed by an extraordinary
10 number of courts over the past year, and almost every court that has addressed this issue has
11 held that the COVID-19 virus does not result in "direct physical loss or damage" to insured
12 property. Accordingly, plaintiff's complaint fails to state a claim under provisions of the policy
13 requiring "direct physical loss of or damage to" property.

14 Second, Evanston's policy also covers business income lost "by action of civil authority
15 that prohibits access" to the insured premises, when a "covered cause of loss" causes damage
16 to other property. The orders at issue did not prohibit access to the insured premises, and no
17 covered cause of loss caused damage to other property. Again, many other courts have
18 considered this coverage, and found that COVID-19, and government orders issued in response
19 to the pandemic, do not provide coverage under these policy provisions.

20 Third, the Evanston policy expressly excludes coverage for any "loss or damage caused
21 by or resulting from any virus, bacterium or other microorganism that induces or is capable of
22 inducing physical distress, illness or disease." COVID-19 is a virus, and courts have uniformly
23 held that policies with this or similar language do not provide coverage for business interruption
24 allegedly caused by or resulting from COVID-19 or government orders issued in relation to the
25 pandemic.

DEFENDANT'S MOTION TO DISMISS
COMPLAINT- 2

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1 Accordingly, plaintiff’s complaint fails to state a claim upon which relief may be
2 granted, and must be dismissed. Given the policy language and the case law authority, no
3 amendment can cure the defects, and thus this action must be dismissed with prejudice, without
4 leave to amend.

Plaintiff’s Allegations and The Policy At Issue

5
6 Plaintiff’s complaint asserts claims for breach of contract and declaratory relief, based
7 on Evanston’s denial of plaintiff’s insurance claim for lost business income and extra expenses
8 incurred as a result of the COVID-19 pandemic and the response to that pandemic by state and
9 local authorities, under a policy of insurance issued to plaintiff by Evanston, and covering the
10 period from July 23, 2019, to July 23, 2020 (the “Policy”). A certified copy of the Evanston
11 policy is attached to this motion as Exhibit A.¹

12 Plaintiff alleges that its claim is covered under two provisions of the policy, the
13 “business interruptions” coverage, and the “civil authority” coverage. The insuring clause for
14 the “business interruption” coverage is in the “Business Income (and Extra Expense) Coverage
15 Form” of the Evanston policy:

16 We will pay for the actual loss of Business Income you sustain due to the
17 necessary “suspension” of your “operations” during the “period of restoration.”
18 **The “suspension” must be caused by direct physical loss of or damage to
19 property at premises** which are described in the Declarations and for which a
20 Business Income Limit Of Insurance is shown in the Declarations. The loss or
21 damage must be caused by or result from a Covered Cause of Loss. [Ex. A., p. 34
22 (emphasis added).]

23 Like most of the policies at issue in the related cases noted by plaintiff, coverage under this
24 provision requires “direct physical loss of or damage to property.” Like most of the complaints
25

¹ The policy is incorporated by reference into the respective complaints and hence is properly before the Court. *E.g.*,
Parrino v. FHP, Inc., 146 F.3d 699, 705-06 (9th Cir. 1998) (insurance policy is incorporated by reference into
complaint when plaintiff’s claims are premised on the policy; court’s consideration does not convert defendant’s
motion to dismiss into a motion for summary judgment), *superseded by statute on other grounds as stated in City
of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020).

DEFENDANT’S MOTION TO DISMISS
COMPLAINT– 3

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1 in those related cases, plaintiff has not alleged any physical loss of property, nor has it alleged
2 any physical damage to property. Indeed, plaintiff admits and alleges that no COVID-19 virus
3 has been detected on the property, and does not allege that it has incurred any property repair
4 or replacement costs for the insured premises. Moreover, plaintiff does not allege any “period
5 of restoration,” the time period to which covered loss is limited. Rather, plaintiff instead alleges
6 that the general COVID-19 pandemic, and government response to the pandemic, constitute
7 “direct physical loss of or damage to property.”

8 The insuring clause for the “civil authority” coverage also is in the same “Business
9 Income (and Extra Expense) Coverage Form” of the Evanston policy:

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

- 15 (1) **Access to the area immediately surrounding the damaged property is**
16 **prohibited by civil authority as a result of the damage**, and the described
17 premises are within that area but are not more than one mile from the
18 damaged property; and
- 19 (2) The action of civil authority is taken in response to dangerous physical
20 conditions resulting from the damage or continuation of the Covered Cause
21 of Loss that caused the damage, or the action is taken to enable a civil
22 authority to have unimpeded access to the damaged property. [Ex. A, p. 35
23 (emphasis added).]

24 Again like most of the policies at issue in the related cases noted by plaintiff, this coverage
25 requires damage to other property, and an order prohibiting access to an area around the
damaged property, within which the covered property is located. Again like most of the
complaints in those related cases, plaintiff does not allege any actual damage to other property.
Rather, plaintiff instead alleges only that the pandemic, and the government proclamations and
orders in response to the pandemic, satisfy the requirements for this coverage. Moreover, the

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1 proclamations and orders cited by plaintiff do not prohibit access to any “area” within which
2 plaintiff’s premises was situated.

3 The Evanston policy also contains several exclusions that apply even if plaintiff’s claim
4 falls within either of the two coverage provisions. First, and again like many other policies in
5 the related cases noted by plaintiff, the Evanston policy expressly excludes all coverage for loss
6 or damage caused by or resulting from a virus. The provision is set out in the endorsement
7 entitled “Exclusion of Loss Due to Virus or Bacteria”:

8 B. We will not pay for loss or damage caused by or resulting from any virus,
9 bacterium or other microorganism that induces or is capable of inducing physical
10 distress, illness or disease. [Ex. A., p. 45.]

11 Further, the language makes clear that this exclusion applies to the business interruption and
12 civil authority coverages in the policy:

13 The exclusion set forth in Paragraph B. applies to all coverage under all forms and
14 endorsements that comprise this Coverage Part or Policy, including but not
15 limited to forms or endorsements that cover property damage to buildings or
16 personal property and forms or endorsements that cover business income, extra
expense or action of civil authority. [*Id.*]

17 Plaintiff’s complaint concedes that COVID-19 is caused by a virus (Complaint ¶ 22), and the
18 civil authority actions alleged in the complaint were all caused by and in response to the
19 COVID-19 pandemic (Complaint, ¶ 38).

20 The Evanston policy also contains a second, separate exclusion for loss or damage
21 caused by “organic pathogen.” The policy defines “organic pathogens” as any “organic irritant
22 or contaminant including, but not limited to, ... virus[.]” The policy excludes loss or damage
23 “caused directly or indirectly” by “the presence, growth, proliferation, spread or any activity of
24 ‘organic pathogens.’” The exclusion applies to any loss or damage regardless of whether there
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1 is direct physical loss or damage to covered property, or loss of use, occupancy or functionality
2 of covered property. [Ex. A., p. 83.]

3 The gravamen of plaintiff's complaint is that government orders and proclamations
4 interfered with the use of its covered premises. But like other policies in the related cases, the
5 Evanston policy also expressly excludes any loss or damage caused by compliance with any
6 ordinance or law regulating the use of any property. The "Causes of Loss – Special Form"
7 provides as follows:

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

11 a. **Ordinance Or Law**

The enforcement of or **compliance with any ordinance or law:**

- 12 (1) **Regulating the construction, use or repair of any property** [Ex.
A.. p. 46.]

13 Like the complaints in the related cases, plaintiff's alleged loss falls squarely within this
14 "Ordinance or Law" exclusion. The Policy also excludes "Acts or decisions, including the
15 failure to act or decide, of any person, group, organization or governmental body." (*Id.* at 49
16 subpt. 3.b.) Additionally, the Policy excludes from coverage "loss or damage caused by or
17 resulting from" "[d]elay, loss of use or loss of market." (*Id.* at 48 subpt. 2.b.) All three of these
18 exclusions would bar coverage for plaintiff's claim, even if the insuring language covered the
19 loss, and the virus exclusions did not apply.

20 **Relevant Procedural History**

21 The same day plaintiff filed its complaint in this action, plaintiff also filed a notice of
22 related cases pursuant to LCR 3(g)(4)(B), asserting that the cases were related because "all of
23 the actions assert claims for business interruption coverage, each involves common or
24 materially identical insuring forms, and it appears likely that there will be an unduly
25 burdensome duplication of labor and expense or the potential for conflicting results if the cases

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1 are conducted before different judges.”² [ECF 2, p. 1] This action, and all of the related cases,
 2 have been assigned to the Hon. Barbara J. Rothstein. Prior to the filing of this action, the Court
 3 had entered orders in the related cases, setting a common schedule for briefing motions to
 4 dismiss, and urging counsel to coordinate and incorporate arguments by reference where
 5 possible, to avoid duplication of effort.³ The briefing on motions to dismiss in the related cases
 6 was complete by the time this action was served on Evanston. Accordingly, this brief in support
 7 of Evanston’s motion hereby incorporates by reference the moving papers and the omnibus
 8 reply filed in support of the motions to dismiss which are currently pending in the related cases.
 9 The balance of this brief in support will (a) focus on any issues unique to Evanston, (b)
 10 incorporate relevant briefs in the related cases on each issue, and (c) cite applicable cases which
 11 have been decided since the briefing in the related cases was completed.

Legal Analysis

I. PLAINTIFF’S COMPLAINT FAILS TO STATE A CLAIM FOR “BUSINESS INTERRUPTION” COVERAGE UNDER THE EVANSTON POLICY.

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 13
 14
 15 The insuring clause for the “business interruption” coverage under the Evanston policy
 16 is similar to the language in policies at issue in the related cases. In particular, as to the
 17 discussion of pleading standards and Washington insurance policy interpretation, Evanston

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² The cases listed in plaintiff’s notice were *Jennifer B. Nguyen, et al. v. Travelers Casualty Insurance Company of America, et al.*, Case No. 2:20-cv-00597-BJR; *Mario D. Chorak, DMD, P.S., et al. v. Hartford Casualty Insurance Company, et al.*, Case No. 2:20-cv-00627-BJR; *Mark Germack DDS v. The Dentists Insurance Company*, Case No. 2:20-cv-00661-BJR; *Pacific Endodontics, P.S., et al. v. The Ohio Casualty Insurance Company, et al.*, Case No. 2:20-cv-00620-BJR; *Carlos O. Caballero DDS, MS, PS, d/b/a Master Orthodontics v. Massachusetts Bay Insurance Company*, Case No. 3:20-cv-05437-BJR; *La Cocina de Oaxaca LLC v. Tri-State Insurance Company of Minnesota*, Case No. 2:20-cv-01176-BJR; *Wade K. Marler, DDS, et al. v. Aspen American Insurance Company*, Case No. 2:20-cv-00616-BJR; *Kara McCulloch DMD MSD PLLC, et al. v. Valley Forge Insurance Company, et al.*, Case No. 2:20-cv-00809-BJR; *Cadeceus LLC d/b/a Cafe Racer v. Scottsdale Insurance Company*, Case No. 2:21-cv-00050-BJR; and *Wellington Athletic Club, LLC d/b/a Soul Fitness v. Allied World Surplus Lines Insurance Company*, Case No. 2:21-cv-00256-BJR.

³ Scheduling Order filed Nov. 10, 2020 in *Mario D. Chorak, DMD, P.S., et al. v. Hartford Casualty Ins. Co., et al.*, Case No. 2:20-cv-00627-BJR.

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1 refers the Court to, and incorporates herein by reference, Sections III.A and III.B of the brief
2 filed by Valley Forge Insurance Company in *McCulloch v. Valley Forge Ins. Co.*, No. 2:20-cv-
3 00809-BJR, Docket No. 50 (January 15, 2021). As to the substantive law demonstrating that
4 plaintiff’s complaint fails to state a claim for business interruption coverage under Evanston’s
5 policy, Evanston refers the Court to, and incorporates herein by reference, Section I of the brief
6 filed by Hartford Casualty Insurance Company in *Chorak v. Hartford Cas. Ins. Co.* No. 2:20-
7 cv-00627-BJR, Docket No. 56 (January 15, 2021).

8 Washington state appellate courts have found that “direct physical loss of or physical
9 damage to” requires actual physical alteration to property or be physically lost. *Wolstein v.*
10 *Yorkshire Insurance Co. Ltd.*, 97 Wash. App. 201 (1999); *Fujii v. State Farm Fire & Casualty*
11 *Co.*, 71 Wash. App. 248 (1993). Decisions in other courts since completion of briefing in the
12 related cases are in accord.. *E.g.*, *Daneli Shoe Co. v. Valley Forge Ins. Co.*, No. 20-CV-1195 at
13 *3, 2021 WL 1112710 (S.D. Cal. Mar. 17, 2021) (physical loss or damage only occurs when
14 property undergoes a distinct, demonstrable, physical alteration); *Bridal Expressions LLC v.*
15 *Owners Ins. Co.*, No. 1:20 CV 833 at *9, (N.D. Ohio Mar. 23, 2021) (applying a common sense
16 reading of the phrase ‘physical loss of or damage to’ property, [a] tangible harm to property
17 would be necessary to invoke coverage); *Monarch Ballroom, LLC v. Farmers Ins. Co., Inc.*,
18 No. 2:20-cv-5493-ODW at *6, (C.D. Cal. Mar. 18, 2021) (finding that “where an insurance
19 policy conditions recovery on ‘direct physical loss or damage,’ economic business impairments
20 caused by COVID-19 safety orders do not fall within the scope of coverage.”), *St. Julian Wine*
21 *Co., Inc. v. Cincinnati Ins. Co.*, No. 1:20-cv-374 at *1, 2021 WL 1049875 (W.D. Mich. Mar.
22 19, 2021) (insurance against ‘physical loss’ and ‘physical damage’ does not cover economic
23 losses stemming from the pandemic). Additionally, “[t]he presence of COVID-19 on surfaces
24 does not “physically alter” the property, as understood in the ordinary sense.” *Daneli*, 2021 WL
25 1112710 at *3. Further, courts have found that “[t]he term ‘period of restoration’ indicates that

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1 the parties contemplated there must be tangible damage to the property, which would need to
 2 be repaired or restored to its original condition, thereby requiring a ‘period of restoration.’”
 3 *Three Won Three, Corp. v. Property-Owners Ins. Co.*, No. 20-011994-CB at *9, (Mich. Cir. Ct.
 4 Mar. 17, 2021). Thus, “‘direct physical loss’ refers to a loss that requires the insured to repair,
 5 rebuild, or replace property that has been tangibly, physically altered – not the insured's loss of
 6 use of that property.” *MHG Hotels, LLC v. Emcasco Ins. Co.*, No. 1:20-cv-01620-RLY-TAB at
 7 *11, (S.D. Ind. Mar. 8, 2021).⁴

8 ⁴ *Accord, Mangia Restaurant Corp. v. Utica First Ins. Co.*, No. 713847/2020 at *6 (N.Y. Sup. Ct. Mar. 31, 2021)
 9 (the “direct physical damage or loss” criteria of the policy was not triggered when the insured were forced to clean
 10 surfaces of virus contaminants); *Bel Air Auto Auction, Inc. v. Great Northern Ins. Co.*, 2021 WL 1400891, at *7-12
 11 (D. Md. Apr. 14, 2021) (holding that “[d]irect physical loss or damage’ to property does not include loss of use”
 12 and that “[c]ontamination’ by the COVID-19 virus does not constitute ‘direct physical loss or damage’ to
 13 property”); *Am. Food. Sys., Inc. v. Fireman’s Fund Ins. Co.*, No. 20-cv-11487-RGS at *7-8 (D. Mass. Mar. 24, 2021)
 14 (the phrase “direct physical loss of or damage” does not encompass transient phenomena of no lasting effect, the
 15 terms require some enduring impact to the actual integrity of the property at issue); *Zajas, Inc. v. Badger Mut. Ins.*
 16 *Co.*, No. 20-cv-1055-DWD (S.D. Ill. Mar. 23, 2021) (COVID-19 virus does not cause “direct physical loss or
 17 damage to” covered property under a business income loss policy); *Jeffrey M. Dressel, D.D.S., P.C. v. Hartford Ins.*
 18 *Co. of the Midwest, Inc.*, No. 20-CV-2777 (KAM) (VMS) at *3, 2021 WL 1091711 (E.D.N.Y. Mar. 22, 2021)
 19 (physical loss of property does not mean a loss of the ability to run a business); *Smeez, Inc. v. Badger Mut. Ins. Co.*,
 20 No. 3:20-cv-01132-DWD (S.D. Ill. Mar. 22, 2021) (an alteration in appearance constitutes physical, tangible
 21 damage, which is required to give rise to coverage, and intangible, diminutions in value are not physical losses); *Out*
 22 *W. Rest. Grp. Inc. v. Affiliated FM Ins. Co.*, No. 3:20-cv-06786 at *4, 2021 WL 1056627 (N.D. Cal. Mar. 19, 2021)
 23 (detrimental economic impact such as without a distinct, demonstrable, physical alteration of the property is
 24 insufficient to claim a “direct physical loss.”) *appeal filed*, No. 21-15585 (9th Cir. Apr. 1, 2021); *Bluegrass Oral*
 25 *Health Center, PLLC v. Cincinnati Ins. Co.*, 2021 WL 1069083, at *3-4 (W.D. Ky. Mar. 18, 2021) (“physical loss”
 applies to property “destroyed” by some force; “interpreting ‘direct physical loss’ to ‘direct physical loss of use’ ...
 makes no sense”); *FS Food Grp. LLC v. Cincinnati Ins. Co.*, No. 3:20-cv-00588-RJC-DSC at *13 (W.D.N.C. Mar.
 18, 2021) (COVID-19 and related executive orders do not cause physical damage or loss to property); *Sharde*
Harvey, DDS, PLLC v. Sentinel Ins. Co., Ltd., No. 20-CV-3350 (PGG) (RWL) at *6, 2021 WL 1034259 (S.D.N.Y.
 Mar. 18, 2021) (business interruption coverage that refers to “direct physical loss of or damage to” property require
 the insured’s property to suffer direct physical damage); *Manhattan Partners, LLC v. Am. Guar. & Liability Ins.*
Co., No. 2:20-cv-14342 (SDW) (LDW) at *2, 2021 WL 1016113 (D.N.J. Mar. 17, 2021) (general statements that
 COVID-19 was on surfaces and in the air is insufficient to show property loss or damage); *Minute Order at 8,*
VStyles Inc. v. Cont’l Cas. Co., No. RIC2003415 (Cal. Super. Ct. Mar. 17, 2021) (losses from inability to use
 property do not amount to “direct physical loss of or damage to property”); *Bachman’s Inc. v. Florists’ Mut. Ins.*
Co., No. 20-cv-2399 (MJD/DTS) at *4, 2021 WL 981246 (D. Minn. Mar. 16, 2021) (actual presence of the virus
 would not be sufficient to trigger coverage for physical damage or physical loss to the property); *Rest. Grp. Mgmt.,*
LLC v. Zurich Am. Ins. Co., No. 1:20-cv-4782-TWT at 14 (N.D. Ga. Mar. 16, 2021) (reduction in capacity does not
 demonstrate a direct physical loss of property, and property contamination due to the virus does not alone indicate
 “direct physical loss of or damage to” the property); *Selery Fulfillment, Inc. v. Colony Ins. Co.*, No. 4:20-cv-853 at
 *7, 2021 WL 963742 (E.D. Tex. Mar. 15, 2021) (no coverage exists because COVID-19 does not cause “physical
 damage or loss” to property); *DZ Jewelry, LLC v. Certain Underwriters at Lloyds London*, No. 4:20-cv-3606 at *11
 (S.D. Tex. Mar. 12, 2021) (lack of any alleged need for remediation shows that COVID-19 does not cause “direct
 physical loss of or damage to” property); *Ind. Repertory Theatre, Inc. v. Cincinnati Cas. Co.*, No. 49D01-2004-PL-

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1 **II. PLAINTIFF’S COMPLAINT FAILS TO STATE A CLAIM FOR “CIVIL**
 2 **AUTHORITY” COVERAGE UNDER THE EVANSTON POLICY.**

3 The insuring clause for the “civil authority” coverage under the Evanston policy is
 4 similar to the language in policies at issue in the related cases. As to the substantive law
 5 demonstrating that plaintiff’s complaint fails to state a claim for civil authority coverage under
 6 Evanston’s policy language, Evanston refers the Court to, and incorporates herein by reference,
 7 Section III.C.2 of the brief filed by Valley Forge Insurance Company in *McCulloch v. Valley*
 8 *Forge Ins. Co.*, No. 2:20-cv-00809-BJR, Docket No. 50 (January 15, 2021). Recent decisions
 9 since the completion of briefing in the related cases are in accord. *Dakota Girls, LLC v. Phila.*
 10 *Indem. Ins. Co.*, No. 2:20-cv-2035, 2021 at *7, WL 858489 (S.D. Ohio Mar. 8, 2021) (COVID-
 11 19 conditions that occur without material or perceptible destruction or alteration of property do
 12 not implicate the “direct physical loss or damage” needed for civil authority coverage); *ABT*
 13 *Performing Arts Ass’n Inc. v. Cincinnati Ins. Co.*, No. 20-cv-10495 at *5, (Super. Ct. Maricopa
 14 Cty., Ariz. Mar. 22, 2021) (if the virus does not cause physical loss to property or physical

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 16
 17 013137 at *25 (Ind. Com. Ct. Mar. 12, 2021) (loss of use is not a “direct physical loss” to property); *Arash Emami,*
 18 *M.D., P.C., Inc. v. CNA & Transp. Ins. Co.*, No. 2:20-cv-18792 (SDW) (LDW) at *3 (D.N.J. Mar. 11, 2021) (“direct
 19 physical loss of and damage to” property requires “actual damage” and limited access or restricted services causing
 20 loss of income is not enough to trigger coverage); *Lemontree Acad., LLC v. Utica Mut. Ins. Co.*, No. 3:20-cv-126
 21 (CDL) at *6 (M.D. Ga. Mar. 11, 2021) (the mere presence of COVID-19 would not constitute the “direct physical
 22 damage” necessary to trigger coverage); *Skilletts, LLC v. Colony Ins. Co.*, No. 3:20-cv-678-HEH at *5, 2021 WL
 23 926211 (E.D. Va. Mar. 10, 2021) (there is no coverage for loss of business due to COVID-19 when policies require
 24 “direct physical loss of or damage to” property) appeal filed, No. 21-1268 (4th Cir. Mar. 11, 2021); *Kamakura, LLC*
 25 *v. Greater N.Y. Mut. Ins. Co.*, No. 20-cv-11350-FDS at *18 (D. Mass. Mar. 9, 2021) (the threat or presence of
 coronavirus does not constitute “direct physical loss of or damage to” property); *B Street Grill and Bar LLC v.*
Cincinnati Ins. Co., 2021 WL857361, at *5 (D. Ariz. Mar. 8, 2021) (economic loss from closure order and actual
 presence of virus on property did not constitute “accidental physical loss or physical damage” because it is not a
 “physical” loss or damage to property); *JD Cinemas Inc. v. Northfield Ins. Co.*, No. 609919/2020 at *9 (N.Y. Sup.
 Ct. Mar. 8, 2021) (actual physical damages are required for coverage needing “direct physical loss of or damage to”
 property); *Food for Thought Caterers Corp. v. Sentinel Ins. Co.*, No. 20-cv-3418 at *5, 2021 WL 860345 (S.D.N.Y.
 Mar. 6, 2021) (contamination of the premises by a virus does not constitute a “direct physical loss” if the virus can
 be eliminated by routine cleaning and disinfecting); *Legal Sea Foods, LLC v. Strathmore Ins. Co.*, No. 20-cv-10850-
 NMG at *3, 2021 WL 860345 (D. Mass. Mar. 5, 2021) (COVID-19 does not impact the structural integrity of
 property and therefore does not constitute “direct physical loss of and damage to” property).

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1 damage to property at the insured’s premises, the same is true for other property).⁵ As these
 2 authorities demonstrate, there is no civil authority coverage because there is no damage to other
 3 property, no order by a civil authority caused by damage to other property, and no prohibition
 4 of access.

5 **III. THE VIRUS EXCLUSIONS IN THE EVANSTON POLICY BAR PLAINTIFF’S**
 6 **CLAIM AS A MATTER OF LAW.**

7 The language of the virus exclusions in Evanston’s policy is of the same effect as that
 8 in policies at issue in related cases. As to the substantive law demonstrating that these
 9 exclusions bar plaintiff’s claim as a matter of law, Evanston refers the Court to, and incorporates
 10 herein by reference, Section III of the brief filed by Ohio Casualty Insurance Company in
 11 *Pacific Endodontics v. Ohio Cas. Ins. Co.*, No. 2:20-cv-00620 BJR, Docket No. 46 (January
 12 15, 2021). Recent decisions since the completion of briefing in the related cases are in accord.
 13 *Body Physics v. Nationwide Ins.*, No. 20-CV-9231-RMB at *6, 2021 WL 912815 (D.N.J. Mar.

14 ⁵ *Accord, Mohawk Gaming Ents., LLC v. Affiliated FM Ins. Co.*, No. 8:20-cv-701 at *5, 2021 WL 1419782
 15 (N.D.N.Y. Apr. 15, 2021) (finding an unambiguous requirement of tangible damage or physical harm in order to
 16 trigger civil authority coverage); *Paradigm Care and Enrichment Ctr., LLC v. West Bend Mut. Ins. Co.*, No. 20-cv-
 17 720-JPS at *16-17 (E.D. Wis. Mar. 26, 2021) (a civil authority must prohibit access as a result of damage to a non-
 18 covered property to trigger coverage); *Dressel*, No. 20-CV-2777 (KAM) (VMS) at *5 (civil authority coverage only
 19 applies when access is restricted as the direct result of a Covered Cause of Loss to property in the immediate area
 20 of the insured premises); *FS Food Grp.*, No. 3:20-cv-00588-RJC-DSC at *14 (civil authority coverage requires
 21 orders that prohibit (not limit) access to the insured premises due to direct physical damage to another property);
 22 *Harvey*, No. 20-CV-3350 (PGG) (RWL) at *14, (the action of the civil authority must ‘prohibit access’ to the
 23 premises); *Rest. Grp. Mgmt.*, No. 1:20-cv-4782-TWT at *15 (N.D. Ga. Mar. 16, 2021) (civil authority provisions
 24 require a loss of or damage to a nearby property); *Selery*, No. 4:20-cv-853 at *8 (claims of civil authority coverage
 25 are not plausible without property damage); *DZ Jewelry*, No. 4:20-cv-3606 at *12 (civil authority orders closing or
 limiting capacity do not meet civil authority coverage criteria); *Lemontree*, No. 3:20-cv-126 at *8 (civil authority
 coverage requires that access to “described premises” be prohibited because of damage to another property); *Skillet*,
 No. 3:20-cv-678-HEH at *7 (the presence of COVID-19 is not the “direct physical loss” needed for civil authority
 coverage to apply) *appeal filed*, No. 21-1268 (4th Cir. Mar. 11, 2021); *JD Cinemas, No. 609919/2020* at *9-10 (civil
 authority provisions are not implicated by executive orders mandating business closures); *Kamakura*, No. 20-cv-
 11350-FDS at *24 (claims for civil authority coverage fail if the orders did not prohibit access to the insured’s
 property); *Food*, No. 20-cv-3418 at *5, (the insured must show that “complete access” to their premises was
 “specifically prohibited” due to “direct physical loss” to another property in the immediate area); *Legal*, No. 20-cv-
 10850-NMG at *5 (civil authority orders must expressly and completely prohibit access to the designated premises
 rather than limit access); *Wakonda Club v. Selective Ins. Co. of Am.*, No. LACL-148208 (Iowa Dist. Ct. Mar. 3,
 2021) (civil authority coverage requires a civil authority prohibit access to the insured’s property due to damage on
 another property).

DEFENDANT’S MOTION TO DISMISS
 COMPLAINT– 11

Case: 2:21-cv-00266-BJR

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1 10, 2021) (virus exclusion excludes losses caused by COVID-19); *J&H Landmark, Inc. v. Twin*
 2 *City Fire Ins. Co.*, No. 5:20-CV-333-DCR at *5, 2021 WL 922057 (E.D. Ky. Mar. 10, 2021)
 3 (same); *Siren Salon, Inc. v. Liberty Mut. Ins. Co.*, No. 1:20-cv-3108 at *3 (N.D. Ill. Mar. 23,
 4 2021) (same); *Three Won Three, supra*, No. 20-011994-CB at *14-15 (same).⁶

5 In *Colby Rest. Grp., Inc. v. Utica Nat'l Ins. Grp.*, No. 1:20-cv-5927-RMB (D.N.J. Mar.
 6 12, 2021), the court applied Washington, New Jersey, and Florida law to multiple plaintiffs'
 7 respective policies and came to the same result. *Colby*, No. 1:20-cv-5927-RMB at *1. With no
 8 dispute among the parties "that the law of all three states is uniform for the purposes of [the]
 9 motion", the District Court laid out three key rules. "First, the interpretation of an insurance
 10 policy is a question of law." *Id.* at *2. "Second, an insurance policy will be enforced as written
 11 when its terms are unambiguous." *Id.* at *3. "And third, the Court will not consider extrinsic
 12 evidence in interpreting the contract if the language of the contract is unambiguous." *Id.* The
 13 court held that, "the Virus Exclusions' language is unambiguous" and "the language is explicit

14 ⁶ *Accord, Podiatry Foot and Ankle Institute P.A. v. Hartford Ins. Co. of the Midwest*, No. 20-20057 at *2, 2021 WL
 15 1326975 (D.N.J. Apr. 9, 2021) (the virus exclusion bars all forms of coverage and is also broad enough to bar
 16 coverage if the virus was an indirect or sequential cause); *Transcript of Motion at 18, Savage City Strength, L.L.C.*
 17 *v. Covington Specialty Ins. Co.*, No. SOM-L-831-20 (N.J. Super. Ct Law Div. Apr. 8, 2021) (the virus exclusion is
 18 clear and unambiguous); *Quakerbridge Early Learning LLC v. Selective Ins. Co. of New England*, No. 20-7798 at
 19 *4, 2021 WL 1214758 (D.N.J. Mar. 31, 2021) (the clear and unambiguous virus exclusion bars coverage), *appeal*
 20 *filed*, No. 21-1719 (3rd Cir. Apr. 20, 2021); *Benamax Ice, LLC v. Merchant Mut. Ins. Co.*, No. 20-8069 at *9 (D.N.J.
 21 Mar. 29, 2021) (the virus exclusion alone is a complete defense to coverage); *Chester C. Chianese DDS LLC v.*
 22 *Travelers Cas. Ins. Co. of Am.*, No. 20-5702 at *6 (D.N.J. Mar. 27, 2021) (the clear and unambiguous virus exclusion
 23 bars coverage); *Carpe Diem Spa, Inc. v. Travelers Cas. Ins. Co. of Am.*, No. 20-14860 at *3-4 (D.N.J. Mar. 26, 2021)
 24 (the virus exclusion precludes coverage under the Business Income, the Civil Authority, and the Extra Expense);
 25 *Dezine Six, LLC v. Fitchburg Mut. Ins. Co.*, No. 3:20-cv-07964-BRM-DEA at *9 (D.N.J. Mar. 25, 2021) (the virus
 exclusion can exclude coverage under the Business Income, the Civil Authority, and the Extra Expense provisions
 to the fullest extent); *Downs Ford, Inc. v. Zurich Am. Ins. Co.*, No. 3:20-cv-08595-BRM-ZNQ at *18 (D.N.J. Mar.
 25, 2021) (the clear language of the virus exclusion bars coverage and should not be overridden by an insured's
 reasonable expectation or public policy); *Pane Rustica, Inc. v. Greenwich Ins. Co.*, No. 8:20-cv-01783 at *3, 2021
 WL 1087219 (M.D. Fla. Mar. 19, 2021) (finding that the virus exclusion applies to all forms and endorsements
 under the policy including Business Income, the Civil Authority, and the Extra Expense); *Westside Head & Neck v.*
Hartford Fin. Servs. Grp., No. 2:20-cv-06132 JFW (JCx) at *3, 2021 WL 1060230 (C.D. Cal. Mar. 19, 2021) (the
 virus exclusion precludes recovery for loss or damage caused directly or indirectly by a virus); *Garmany of Red*
Bank, Inc. v. Harleysville Ins. Co., No. 20-cv-8676-FLW at *9, 2021 WL 1040490 (D.N.J. Mar. 18, 2021) (the virus
 exclusion is enforceable and clearly bars Plaintiff's claim for coverage) *appeal filed*, No. 21-1755 (3rd Cir. Apr. 19,
 2021); *Windber Hosp. v. Travelers Prop. Cas. Co. of Am.*, No. 3:20-cv-80, 2021 at *7, WL 1061849 (W.D. Pa. Mar.
 18, 2021) (the virus exclusion bars coverage under any and all provisions of the policy).

DEFENDANT'S MOTION TO DISMISS
 COMPLAINT– 12

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1 and plainly excludes from coverage any loss caused by ‘any virus . . . that induces or is capable
2 of inducing physical distress, illness or disease.’” *Id.* at 5. Evanston’s policy contains the same
3 language, and accordingly, plaintiff’s complaint fails to state a claim as a matter of law.

4 Evanston’s policy also includes a separate organic pathogen exclusion, which also bars
5 coverage. In *L&L Logistics and Warehousing Inc. v. Evanston Insurance Co.*, No. 3:20-cv-324
6 at *14 (E.D. Va. Apr. 13, 2021), the court examined the same language in another Evanston
7 policy, and held that the organic pathogen exclusion barred claims even if COVID-19 was only
8 an indirect cause of claimed loss, even under a narrow interpretation. Other courts have reached
9 the same result. In *Boxed Foods Co., LLC v. California Capital Ins. Co.*, No. 20-CV-04571,
10 2020 WL 6271021 (N.D. Cal. Oct. 26, 2020), the court dismissed a complaint for business
11 interruption and civil authority coverage based on a similar pathogenic organism exclusion,
12 holding that COVID-19 was the “efficient proximate cause” of the insured’s losses. *Id.* at *4.
13 As the court explained, the government closure orders “would not exist absent the presence of
14 COVID-19,” and it was therefore the virus “that predominate[d] and set the other cause of loss
15 in motion.” *Id.*; *see also Franklin EWC, Inc. v. Hartford Fin. Servs. Grp., Inc.*, No. 20-CV-
16 04434 JSC, 2020 WL 5642483, at *2 (N.D. Cal. Sept. 22, 2020) (“Thus, as the loss was caused
17 directly or indirectly by the virus, the Virus Exclusion applies under its plain and unambiguous
18 language”); *Founder Inst. Inc. v. Hartford Fire Ins. Co.*, No. 20-CV-04466-VC at *1, 2020 WL
19 6268539 (N.D. Cal. Oct. 22, 2020) (A “claim for loss of business income due to the shelter-in-
20 place orders . . . clearly falls within the virus exclusion” and thus fails as a matter of law).

21 **IV. OTHER EXCLUSIONS IN THE EVANSTON POLICY ALSO BAR**
22 **COVERAGE OF PLAINTIFF’S CLAIM.**

23 The Ordinance or Law, Loss of Use, and Acts and Decisions exclusions use the same
24 language as in other policies in the related cases. As to the substantive law demonstrating that
25 these exclusions bar plaintiff’s claim as a matter of law, Evanston refers the Court to, and

DEFENDANT’S MOTION TO DISMISS
COMPLAINT– 13

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1 incorporates herein by reference, Section IV.C of the brief filed by Aspen American Insurance
 2 Company in *Marler v. Aspen Amer. Ins. Co.*, No. 2:20-cv-00616 BJR, Docket No. 51 (January
 3 15, 2021), and Section V.B and C of the Omnibus Reply filed in the related cases, including in
 4 *Nguyen v. Travelers Cas. Ins. Co.*, No. 2:20-cv-00597-BJR, Docket No. 67 (March 5, 2021).

5 **Conclusion and Reservation of Other Defenses**

6 For the foregoing reasons, plaintiff’s complaint fails to state a claim upon which relief
 7 may be granted, and must be dismissed. Given the policy language and the case law authority,
 8 no amendment can cure the defects, and thus this action must be dismissed with prejudice,
 9 without leave to amend.

10 Evanston’s policy contains other exclusions which may bar plaintiffs’ claims, but in
 11 light of the clear authority on the foregoing grounds, and the Court’s order requesting briefing
 12 only “to address common questions of coverage and exclusions”⁷ and to defer consideration of
 13 class certification⁸ issues, Evanston does not raise them here but reserves the right to assert any
 14 other defenses, should the matter for any reason proceed beyond determination of this motion.

15 Finally, by this response, Evanston does not waive its objection or otherwise consent to
 16 personal jurisdiction in this Court as to the claims of putative class members that are not
 17 Washington residents. See *Bristol- Myers Squibb v. Super. Ct. of Cal.*, 137 S. Ct. 1773 (2017).
 18 While there exists a split of authority among the federal courts as to whether Bristol-Myers
 19 Squibb applies in the context of class actions, the better-reasoned decisions compel a finding
 20 that this Court lacks jurisdiction over claims of non-resident, absent class members. See, e.g.,
 21 *Carpenter v. PetSmart, Inc.*, 441 F. Supp. 3d 1028, 1035 (S.D. Cal. 2020). Plaintiffs also lack
 22 standing to assert claims on behalf of non-Washington putative class members. *Id.* at 1041.

23 ///

24 _____
 25 ⁷ E.g., *Chorak v. Hartford Cas. Ins. Co.*, No. 2:30-cv-00627-BJR, Docket No. 39.

⁸ *Id.*, Docket No. 55.

DEFENDANT’S MOTION TO DISMISS
 COMPLAINT– 14

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1 DATED this 26th day of April, 2021.

2 Respectfully submitted,

3 REED McCLURE

4 By /s/ Marilee C. Erickson

5 Marilee C. Erickson, WSBA #16144
6 *Attorney for Defendant Evanston Insurance*
7 *Company*
8 1215 Fourth Avenue, Suite 1700
9 Seattle, WA 98161-1087
10 merickson@rmlaw.com

11 DICKINSON WRIGHT PLLC
12 P. Bruce Converse
13 1850 N. Central Ave., Ste. 1400
14 Phoenix, AZ 85004
15 *Attorneys for Defendant*
16 *Evanston Insurance Company*

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DEFENDANT'S MOTION TO DISMISS
COMPLAINT- 15

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EXHIBIT A



CERTIFICATION

I, **Melissa Pleasants**, as representative of **Evanston Insurance Company**, certify that the attached documents are a true and correct copy of Policy Number **1DA5040**.

Signature: Melissa Pleasants

Title: **Lead, Policy Services**

Date: **03/10/2021**

SUBSCRIBED and SWORN TO before me on this 10th day of March, 2021



Laurie A Gleason

Notary Public in and for the
State of Virginia
City of Richmond

My commission expires: April 30, 2023

A STOCK COMPANY



EVANSTON INSURANCE COMPANY

Ten Parkway North
Deerfield, IL 60015

INSURANCE POLICY

Coverage afforded by this policy is provided by the Company (Insurer) and named in the Declarations.

In **Witness Whereof**, the company (insurer) has caused this policy to be executed and attested and countersigned by a duly authorized representative of the company (insurer) identified in the Declarations.

Handwritten signature of Kathleen Anne Sturgeon in cursive script.

Secretary

Handwritten signature of Barry W. Jones in cursive script.

President



PRIVACY NOTICE

We are committed to safeguarding your privacy. We understand your concerns regarding the privacy of your nonpublic personal information. No nonpublic personal information is required to be collected when you visit our websites; however, this information may be requested in order to provide the products and services described. We do not sell nonpublic personal information to non-affiliated third parties for marketing or other purposes. We only use and share this type of information with non-affiliated third parties for the purposes of underwriting insurance, administering your policy or claim and other purposes as permitted by law, such as disclosures to insurance regulatory authorities or in response to legal process. Notwithstanding the foregoing, we may use this information for the purpose of marketing our own products and services to you.

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and/or
- Information we receive from consumer reporting agencies and inspection reports.

We do not disclose any nonpublic personal information about our customers/claimants or former customers/claimants to anyone, except as permitted by law.

We may disclose nonpublic personal information about you to the following types of third parties:

- Service providers, such as insurance agents and/ or brokers and claims adjusters; and/or
- Other non-affiliated third parties as permitted by law.

We restrict access to nonpublic personal information about our customers/claimants to those individuals who need to know that information to provide products and services to our customers/claimants or as permitted by law. We maintain physical, electronic, and procedural safeguards to guard your nonpublic personal information.

Residents of California:

You may request to review and make corrections to recorded non-public personal information contained in our files. A more detailed description of your rights and practices regarding such information is available upon request. Please contact your agent/broker for instructions on how to submit a request to us.



HOW TO REPORT A CLAIM

How to report a new claim:

- **Email:** newclaims@markelcorp.com
- **FAX:** (855) 662-7535
- ***Phone:** (800) 362-7535
- **Mail:** P.O. Box 2009, Glen Allen, VA 23058-2009

Please complete the appropriate ACORD form in detail and include the name and phone number of the contact person at the location of the reported incident. If possible, please attach a copy of the facility incident report. When reporting an auto claim, please identify the unit # on the schedule along with the VIN#. If the loss/claim involves a building or damage to property, please provide the physical address of the property.

***Please refer to your specific policy language for new claim reporting requirements. Some policies require you to report all claims in writing only.**

How to send Supplemental Information / Questions on an existing claim:

- **Email:** markelclaims@markelcorp.com
- **FAX:** (855) 662-7535
- **Phone:** (800) 362-7535
- **Mail:** P.O. Box 2009, Glen Allen, VA 23058-2009

If you have questions about a claim, please call 1-800-362-7535.

Inquiries may also be faxed to 1-855-662-7535.



EVANSTON INSURANCE COMPANY

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

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

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

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

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

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

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



EVANSTON INSURANCE COMPANY

COMMON POLICY DECLARATIONS

POLICY NUMBER: 1DA5040

RENEWAL OF POLICY: 1DA1321

Named Insured and Mailing Address (No., Street, Town or City, County, State, Zip Code)

GLACIAL CRYOTHERAPY LLC

17171 BOTHELL WAY NE SPACE 16B

LAKE FOREST PARK

WA

98155

Policy Period: From 07/23/2019 to 07/23/2020, at 12:01 A.M. Standard Time at your mailing address shown above.

BUSINESS DESCRIPTION: COLD WATER THERAPY TREATMENT

FORM OF BUSINESS				
<input type="checkbox"/> Individual	<input type="checkbox"/> Partnership	<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Trust	<input type="checkbox"/> Corporation
<input checked="" type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Other Organization:			

Audit Period: Annual unless otherwise stated: NON-AUDITABLE

FTZ Code:

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

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PART(S), BUT ONLY FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.	
Commercial Property Coverage Part	\$ 1,293.00
Commercial General Liability Coverage Part	\$ NOT COVERED
Commercial Inland Marine Coverage Part	\$ NOT COVERED
Commercial Ocean Marine Coverage Part	\$ NOT COVERED
Commercial Professional Liability Coverage Part	\$ NOT COVERED
Commercial Automobile Liability Coverage Part	\$ NOT COVERED
Liquor Liability Coverage Part	\$ NOT COVERED
Crime Coverage Part:	\$ NOT COVERED
Other Coverages: Terrorism	\$ NOT COVERED
	\$
Premium Total	\$ 1,293.00
Other Charges: AMWINS SERVICE FEE	\$ 175.00
STATE TAX	\$ 29.36
STAMPING FEE	\$ 1.47
	\$
State Surplus Lines License # 828344	GRAND TOTAL \$ 1,498.83

THIS CONTRACT IS REGISTERED AND DELIVERED AS A SURPLUS LINE COVERAGE UNDER THE INSURANCE CODE OF THE STATE OF WASHINGTON, TITLE 48 RCW. IT IS NOT PROTECTED BY ANY WASHINGTON STATE GUARANTY ASSOCIATION LAW.

SIGNATURE OF SURPLUS LINES BROKER

Producer Number, Name and Mailing Address

08010
AmWINS Access Insurance Services, LLC
435 N. Pacific Coast Hwy #200

Redondo Beach

CA 90277

Inspection Ordered: Yes No

Program Code:

ENDORSEMENTS

Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue:

SEE SCHEDULE OF FORMS ATTACHED.

These declarations, together with the Policy Conditions and Coverage Form(s) and any Endorsement(s), complete the above numbered policy.

Countersigned: _____

Date 08/20/2019

By: _____

KJ/RR


AUTHORIZED REPRESENTATIVE



EVANSTON INSURANCE COMPANY

FORMS SCHEDULE

Form Number

Form Name

Forms Applicable - INTERLINE

MJIL 1000 08 10	POLICY JACKET
MPIL 1007 03 14	PRIVACY NOTICE
MPIL 1041 02 12	HOW TO REPORT A CLAIM
MPIL 1083 04 15	U.S. TREASURY DEPT OFFICE OF FOREIGN ASSETS CONTROL NOTICE
MDIL 1000 08 11	COMMON DECLARATIONS
MDIL 1001 08 11	FORMS SCHEDULE
IL 00 17 11 98	COMMON POLICY CONDITIONS
MEIL 1200 10 16	SERVICE OF SUIT
MIL 1214 09 17	TRADE OR ECONOMIC SANCTIONS

Forms Applicable - PROPERTY

MDCP 1000 02 13	COMMERCIAL PROPERTY COVERAGE PART DEC
IL 09 35 07 02	EXCL OF CERTAIN COMPUTER
IL 09 53 01 15	EXCLUSION OF CERTIFIED ACTS OF TERRORISM
CP 00 10 10 12	BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CP 00 30 10 12	BUSINESS INCOME EXTRA EXPENSE COV FORM
CP 00 90 07 88	COMMERCIAL PROPERTY CONDITIONS
CP 01 40 07 06	EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA
CP 10 30 10 12	CAUSES OF LOSS - SPECIAL FORM
MECP 1222 09 14	COMMERCIAL PROPERTY VALUE ENHANCEMENT
MECP 1227 02 11	EQUIPMENT BREAKDOWN ENHANCEMENT ENDT
MECP 1292 02 18	DEDUCTIBLE OPTIONS
MECP 1310 09 14	EXCL - POLLUTION ORGANIC PATHOGENS AND ASBESTOS
MECP 1311 09 14	EXCLUSION - SINKHOLE COLLAPSE
MECP 1312 09 14	EXCLUSION - VOLCANIC ERUPTION
MEIL 1205 03 18	PROTECTIVE SAFEGUARDS
MEIL 1211 06 10	MINIMUM EARNED PREMIUM AMENDMENT ENDORSEMENT

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.



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT

Except with respect to any policy issued in any state in which the Insurer is licensed as an admitted insurer to transact business, it is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States 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. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, 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 or of any state in the United States. It is further agreed that service of process in such suit may be made upon Secretary, Legal Department, Markel Service, Incorporated, Ten Parkway North, Deerfield, Illinois 60015, and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other official specified for that purpose in the statute, or his/her successor or 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 Named Insured or any beneficiary hereunder arising out of this policy, 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.



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TRADE OR ECONOMIC SANCTIONS

The following is added to this policy:

Trade Or Economic Sanctions

This insurance does not provide any coverage, and we (the Company) shall not make payment of any claim or provide any benefit hereunder, to the extent that the provision of such coverage, payment of such claim or provision of such benefit would expose us (the Company) to a violation of any applicable trade or economic sanctions, laws or regulations, including but not limited to, those administered and enforced by the United States Treasury Department's Office of Foreign Assets Control (OFAC).

All other terms and conditions remain unchanged.



EVANSTON INSURANCE COMPANY

COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

POLICY NUMBER: 1DA5040

"X" If Supplemental Declarations Is Attached

DESCRIPTION OF PREMISES							
Prem. No.	Bldg No.	Location Address	No. of Stories	Year Built	Occupancy	Construction	
1	1	17171 BOTHELL WAY NE SPACE 16B LAKE FOREST PARK WA 98155	1	2005	RETAIL LOCATION	Frame	
Class Code		Class Description:					
0936		HEALTH OR EXERCISE CLUBS					

Prem. No.	Bldg No.	Location Address	No. of Stories	Year Built	Occupancy	Construction	
Class Code		Class Description:					

COVERAGES PROVIDED – Insurance at the described premises applies only for coverages for which a limit of insurance is shown.										
Prem. No.	Bldg. No.	Coverage	Limit Of Insurance	Covered Causes Of Loss	Valuation*	Coinsurance**	Rates	Rate Term		
1	1	TENANT IMPROVEMENTS	\$ 40,000	Special	RC	90%	0.419	an		
1	1	Building	\$ 40,000	Special	RC	90%	0.437	an		
1	1	Bus. Income w/EE	\$ 100,000	Special	SEE CP0030	80%	0.437	an		
1	1	Bus. Pers. Property	\$ 150,000	Special	RC	90%	0.437	an		
			\$							
			\$							
			\$							
			\$							
			\$							
			\$							
			\$							
			\$							

*AA-Agreed Amount *ACV-Actual Cash Value **If Extra Expense Coverage, Limits On Loss Payment
 *RC-Replacement Cost

OPTIONAL COVERAGES – Applicable only when entries are made in the schedule below.										
Prem. No.	Bldg. No.	Coverage	Limit Of Insurance	Covered Causes Of Loss	Valuation*	Coinsurance**	Rates	Rate Term		
1	1	Equipment Breakdown	\$				25.000	flat		
			\$							
			\$							
			\$							
			\$							
			\$							
			\$							
			\$							
			\$							

*AA-Agreed Amount *ACV-Actual Cash Value **If Extra Expense Coverage, Limits On Loss Payment
 *RC-Replacement Cost

MORTGAGEHOLDERS

Prem. No.	Bldg. No.	Mortgageholder Name And Mailing Address
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DEDUCTIBLE

\$See MECP1292 Per occurrence Per Location Per Building Exceptions:

These declarations, together with the Common Policy Conditions and Coverage Form(s) and any Endorsement(s), complete the above numbered policy.

FORMS AND ENDORSEMENTS: SEE FORMS SCHEDULE – MDIL 1001

TOTAL PREMIUM FOR THIS COVERAGE PART: \$ 1,293.00

IL 09 35 07 02

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: 1DA5040

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
CA, ME, MO, OR, WI	Commercial Property Coverage Part Commercial Inland Marine Coverage Part (Only applies if coverage is included in this policy.)
GA, HI, IL, IA, NJ, NY, NC, RI, WA, WV	Commercial Property Coverage Part (Only applies if coverage is included in this 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.

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

consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater:

- (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 or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater.

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 (other than lawns which are part of a vegetated roof);
- 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, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
- 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; or
- 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 trees, shrubs or plants which are "stock" or are part of a vegetated roof), 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 (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris 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 of direct physical loss or damage.
 - (2) Debris Removal does not apply to costs to:
 - (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
 - (b) Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
 - (c) Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;
 - (d) Remove property of others of a type that would not be Covered Property under this Coverage Form;
 - (e) Remove deposits of mud or earth from the grounds of the described premises;
 - (f) Extract "pollutants" from land or water; or
 - (g) 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. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.
- (4) We will pay up to an additional \$25,000 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)** applies, 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 \$25,000.

(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:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

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

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph **(4)**, because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph **(4)**. Thus, the total payable for debris removal expense in this example is \$35,500; \$4,500 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 for service at each premises described in the Declarations, unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to 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 the minimum standards 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 or compliance with 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 or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

- (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced at the same or another premises; and
 - (ii) Unless the repair or replacement is 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 or compliance with 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. This Additional Coverage does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
 - (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 (unless a higher limit is shown in the Declarations) 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; or
 - (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.

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

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

(3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for 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 trees, shrubs or plants which are "stock" or are part of a vegetated roof), 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.

Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

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.

g. Business Personal Property Temporarily In Portable Storage Units

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the building or structure described in the Declarations or within 100 feet of the premises described in the Declarations, whichever distance is greater.

- (2) If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
- (a) Will end 90 days after the business personal property has been placed in the storage unit;
 - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.
- (4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.
- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself.

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

B. Exclusions And Limitations

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

C. Limits Of Insurance

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

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

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

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

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

D. Deductible

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

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

Example 1

(This example assumes there is no Coinsurance penalty.)

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

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

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

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

\$ 59,850 Loss Payable – Building 1

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

Total amount of loss payable:
 \$59,850 + \$80,000 = \$139,850

Example 2

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

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

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

E. Loss Conditions

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

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

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

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

3. Duties In The Event Of Loss Or Damage

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

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

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

4. Loss Payment

- a.** In the event of loss or damage covered by this Coverage Form, at our option, we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b.** The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with 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 sublessee and used by the lessee or sublessee 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 or compliance with 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): $\$100,000 \div \$200,000 = .50$

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

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

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

Example 2 (Adequate Insurance)

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

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ($\$250,000 \times 80\%$). 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>
	<u>\$ 250,000</u>

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:	\$ 20,000
	<u>\$ 50,000</u>

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

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

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

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

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

2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

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

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

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

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
 - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.

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

G. Optional Coverages

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

1. Agreed Value

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
 - (1) On or after the effective date of this Optional Coverage; and
 - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

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

Example

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

3. Replacement Cost

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

- (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

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

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

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

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

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

A. Coverage

1. Business Income

Business Income means the:

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

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

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

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

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

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

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

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

- (a) The portion of the building which you rent, lease or occupy;
- (b) The area within 100 feet of the building or within 100 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- (c) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

2. Extra Expense

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

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

- (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.

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

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

3. Covered Causes Of Loss, Exclusions And Limitations

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

4. Additional Limitation – Interruption Of Computer Operations

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

5. Additional Coverages

a. Civil Authority

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

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

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

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

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

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

b. Alterations And New Buildings

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

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

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

c. Extended Business Income**(1) Business Income Other Than "Rental Value"**

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

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
 - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
 - (ii) 60 consecutive days after the date determined in (1)(a) above.

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

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

(2) "Rental Value"

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

- (a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- (b) Ends on the earlier of:
 - (i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
 - (ii) 60 consecutive days after the date determined in (2)(a) above.

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

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

d. Interruption Of Computer Operations

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.

- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss. However, we will not provide coverage under this Additional Coverage when the Additional Limitation – Interruption Of Computer Operations does not apply based on Paragraph **A.4.d.** therein.
- (3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Interruption Of Computer Operations.
 - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Interruption Of Computer Operations, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (5) This Additional Coverage, Interruption Of Computer Operations, does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

6. Coverage Extension

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

Newly Acquired Locations

- a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$100,000 at each location, unless a higher limit is shown in the Declarations.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:
 - (1) This policy expires;

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

(3) You report values to us.

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

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

B. Limits Of Insurance

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

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

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

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

C. Loss Conditions

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

1. Appraisal

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

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

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

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

2. Duties In The Event Of Loss

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

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

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (7) Cooperate with us in the investigation or settlement of the claim.
- (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.

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

3. Loss Determination

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

c. Resumption Of Operations

We will reduce the amount of your:

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

4. Loss Payment

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

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

D. Additional Condition

COINSURANCE

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

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

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

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

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

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

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

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

Example 1 (Underinsurance)

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

The Coinsurance percentage is: 50%

The Limit of Insurance is: \$ 150,000

The amount of loss is: \$ 80,000

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

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

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

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

Example 2 (Adequate Insurance)

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

The Coinsurance percentage is: 50%

The Limit of Insurance is: \$ 200,000

The amount of loss is: \$ 80,000

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

This condition does not apply to Extra Expense Coverage.

E. Optional Coverages

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

1. Maximum Period Of Indemnity

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

b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:

- (1) The amount of loss sustained and expenses incurred during the 120 days immediately 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 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: \$ 30,000
 (\$120,000 x 1/4 = \$30,000)
 If, in this example, the actual amount of loss is:

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

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.

3. Business Income Agreed Value

- a.** To activate this Optional Coverage:
 - (1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":
 - a)** During the 12 months prior to the date of the Work Sheet; and

(b) Estimated for the 12 months immediately following the inception of this Optional Coverage.

- (2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:
 - (a) The Coinsurance percentage shown in the Declarations; multiplied by
 - (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.

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

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

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

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

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

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

Example

When: The Limit of Insurance is: \$ 100,000
 The Agreed Value is: \$ 200,000
 The amount of loss is: \$ 80,000
 Step (1): \$100,000 ÷ \$200,000 = .50
 Step (2): .50 x \$80,000 = \$40,000

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

4. Extended Period Of Indemnity

Under Paragraph A.5.c., **Extended Business Income**, the number 60 in Subparagraphs (1)(b) and (2)(b) is replaced by the number shown in the Declarations for this Optional Coverage.

F. Definitions

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

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

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

2. "Operations" means:
- a. Your business activities occurring at the described premises; and
 - b. The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.
3. "Period of restoration" means the period of time that:
- a. Begins:
 - (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
 - (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and
 - b. Ends on the earlier of:
 - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent location.

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

- (1) Regulates the construction, use or repair, or requires the tearing down, of any property; or

- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

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

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

COMMERCIAL PROPERTY

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 micro-organism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
- C.** With respect to any loss or damage subject to the exclusion in Paragraph **B.**, such exclusion supercedes 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.

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 direct physical loss unless the loss is excluded or limited in this policy.

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 or compliance with 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 tremors and aftershocks and 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.

With respect to coverage for Volcanic Action as set forth in **(5)(a)**, **(5)(b)** and **(5)(c)**, 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.

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.

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 (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).

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 result 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 result from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage, Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria, with respect to loss or damage by a cause of loss other than fire or lightning.

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

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

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

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

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

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

- (5) Nesting or infestation, or discharge or release of waste products or secretions, by 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 (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion:

- (1)** Applies whether or not an act occurs during your normal hours of operation;
- (2)** Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives 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.
- g. Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:
 - (1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
 - (2) Changes in or extremes of temperature;
 - (3) Disease;
 - (4) Frost or hail; or
 - (5) Rain, snow, ice or sleet.
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 (unless a higher limit is shown in the Declarations):

- a.** \$2,500 for furs, fur garments and garments trimmed with fur.
- b.** \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious 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 are the result of one or more of the following causes that occur 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.

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

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 continue to be present or active, or recur, 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 cause 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:

- (1) 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; and
- (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the described premises and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear.

But water damage does not include loss or damage otherwise excluded under the terms of the Water Exclusion. Therefore, for example, there is no coverage under this policy in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe which was caused by or related to weather-induced flooding, even if wear and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the Water Exclusion, there is no coverage for loss or damage caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear.

To the extent that accidental discharge or leakage of water falls within the criteria set forth in **c.(1)** or **c.(2)** of this definition of "specified causes of loss," such water is not subject to the provisions of the Water Exclusion which preclude coverage for surface water or water under the surface of the ground.



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL PROPERTY VALUE ENHANCEMENT

This endorsement modifies insurance provided under the following:

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

The following coverages and extensions with a Limit Of Insurance are added to this policy as detailed below. Any coverages and extensions without an applicable Limit Of Insurance do not apply.

These coverages and extensions apply separately to each of your premises described in the Declarations. As respects any coverage provided by this endorsement, if higher limits are provided on any other Schedule, Declarations or endorsement attached to this policy, then the limits and coverage provided by this endorsement would not apply for that coverage.

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible, shown in the Schedule below, which applies to each coverage provided by this endorsement. The Deductible applies to the Limit Of Insurance or the amount of the claim, whichever is less. Deductibles do not reduce the amount of insurance. If a separate windstorm/hail Deductible is shown on this policy; then that windstorm Deductible will also apply to the below coverages for the peril of windstorm/hail.

SCHEDULE OF COVERAGES	LIMIT OF INSURANCE
Electronic Data Processing Equipment	\$ 25,000
Electronic Data And Media	\$ 5,000
Electronic Data Extra Expense Including Civil Authority	\$ 5,000
Duplicate Or Back-up Electronic Data And Media	\$ 1,250
Accounts Receivable	\$ 5,000
Money And Securities – On Premises	\$ 2,500
Money And Securities – Off Premises	\$ 2,500
Refrigerated Goods Spoilage	\$ 10,000
Valuable Papers And Records (Other Than Electronic Data)	\$ 5,000
Outdoor Signs	\$ 5,000

Deductible: \$ 250 or Deductible on Property Declarations

Premium: \$ INCLUDED

If two or more of this endorsement's Additional Coverages apply to the same loss, the most that we will pay for that loss is the actual amount of loss or damage, but no more than the highest Limit Of Insurance for the Additional Coverages that applies.

A. The **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** is amended as follows:

1. In Section A.4. Additional Coverages, Paragraph f. Electronic Data is replaced by the following:

f. Electronic Data

(1) We will pay for:

(a) Loss or damage to equipment, meaning:

- (i)** Your electronic data processing, word processing and telecommunications equipment, including their component parts: or
- (ii)** Similar property of others in your care, custody or control for which you are legally responsible.

The loss or damage to equipment must be caused by a Covered Cause Of Loss.

The most we will pay in any one occurrence under this Additional Coverage is the Electronic Data Processing Equipment limit shown in the Schedule of this endorsement.

(b) Loss or damage to software, meaning electronic data, computer programs and media:

- (i)** Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (ii)** Media means the material on which electronic data is recorded.

The loss or damage to software must be caused by a Covered Cause Of Loss.

The most we will pay in any one occurrence under this Additional Coverage is the Electronic Data And Media limit shown in the Schedule of this endorsement.

(c) Extra Expense, meaning necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause Of Loss including:

(i) Extra Expense to:

- i.** Avoid or minimize the "suspension" of business and to continue your normal "operations":
 - (aa)** At the described premises; or
 - (bb)** At replacement premises or at temporary locations, including relocation expenses and costs to equip and operate the replacement or temporary locations;
- ii.** Minimize "suspension" of business if you cannot continue your normal "operations";
- iii.** Repair or replace the lost or damaged electronic data equipment; or
- iv.** 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 Extra Expense coverage.

(ii) The actual and necessary Extra Expense you incur due to direct physical loss of or damage to:

- i.** Electronic data processing equipment, word processing equipment, telecommunications equipment or electronic data and media, which you own, lease or is under your control and is at your described premises or in transit;
- ii.** The building in which the property described in **i.** above is located, provided the building is damaged to an extent which prevents access to the property;
- iii.** The air conditioning system that specifically services your electronic data or word processing operation; or
- iv.** The electrical or telecommunication system that specifically services your electronic data processing equipment, provided the damage to the system occurs inside or within 100 feet of the building housing your electronic data processing equipment.

Extra Expense also includes the actual and necessary Extra Expense you incur when a Covered Cause Of Loss causes damage to property other than property at the described premises and an action of civil authority prohibits access to the described premises, provided that the following apply:

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

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

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end 2 consecutive weeks after the date of that action.

The most we will pay for Electronic Data Extra Expense Including Civil Authority in any one occurrence is the limit shown in the Schedule of this endorsement.

- (d) Loss or damage from a Covered Cause Of Loss to duplicate or back-up electronic data and media which is stored at premises other than the described premises shown in the Declarations.

The most we will pay for the Duplicate Or Back-Up Electronic Data And Media in any one occurrence is the limit shown in the Schedule of this endorsement.

- (2) As respects coverage provided under this Additional Coverage, Covered Property does not include:

- (a) Property you loan, rent or lease while it is away from your described premises;
- (b) Electronic data or media which cannot be replaced with other of the same kind or quality;
- (c) Accounts, bills, evidences of debt, valuable papers, abstracts, records, deeds, manuscripts or other documents, unless converted to electronic data, and then only in that form;
- (d) Your "stock" of prepackaged software; or
- (e) Electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.

- (3) As respects coverage provided under this Additional Coverage:

- (a) If applicable, the **CAUSES OF LOSS – SPECIAL FORM** is amended to delete the following exclusions: **2.a., 2.c., 2.d.(2), 2.d.(3), 2.d.(4), 2.d.(5), 2.d.(6), 2.d.(7)(a), 2.e.** and **2.i.**

- (b) If applicable, the **CAUSES OF LOSS – BROAD FORM** is amended to delete the following exclusions: **2.a., 2.b.** and **2.c.**

- (c) If applicable, the **CAUSES OF LOSS – BASIC FORM** is amended to delete the following exclusions: **2.a., 2.c., 2.d** and **2.e.**

- (d) The following exclusions are added:

- (i) Any change in, or interruption of:

- i. Power supply; or
- ii. Telecommunications service;

if the change originates more than 100 feet away from the premises containing the Covered Property (equipment). But if a loss or damage by fire, explosion or theft results, we will pay for that resulting loss.

- (ii) The failure, malfunction or inadequacy of electronic systems including hardware, software, data, operating systems or networks due to the inability of those products or services to correctly recognize, distinguish, interpret or accept any encoded, abbreviated or encrypted date or time.

- (iii) In addition to the above, we will not pay for any Extra Expense you incur due to:

- i. Programming errors or incorrect machine instructions;
- ii. 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;
- iii. Interference at the described premises by strikers or other persons with repairs to damaged property, or with resumption of normal "operations";
- iv. Mechanical or machinery breakdown of any property not named in the Extra Expense coverage;

v. The suspension, lapse or cancellation of any lease, license or contract beyond the "period of restoration"; or

vi. Any other consequential loss.

(4) Valuation will be determined as follows:

(a) Equipment: We will adjust a loss to equipment on the basis of replacement cost.

The most we will pay is:

(i) The amount necessary to repair the equipment;

(ii) The amount necessary to replace the equipment with material of the same kind or quality; or

(iii) The applicable Limit Of Insurance;

whichever is less.

(b) Software:

We will value electronic data and computer programs at the actual cost of replacing the data. If it is not replaced or reproduced, we will pay the cost of the blank media.

(c) Media:

We will value media at the cost to replace the media with material of the same kind or quality.

If we notify you in writing after we receive your signed, sworn statement of loss, we may take all or part of the damaged property at a value that we will agree upon with you. If we choose, we may also repair the damaged property, or replace it with similar property.

2. The following Additional Coverages are added:

Accounts Receivable

(1) We will pay for loss of or damage to your records of accounts receivable:

(a) At a described premises or in or on a vehicle in transit between described premises; or

(b) If the records must be removed from a described premises to protect them from the threat of a Covered Cause Of Loss, we will pay for the loss while accounts receivable are:

(i) At a safe place away from your described premises; or

(ii) Being taken to and returned from that place.

(2) The amount of your accounts receivable loss includes:

(a) All amounts due from your customers that you are unable to collect;

(b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;

(c) Collection expenses in excess of your normal collection expenses that are made necessary by the loss or damage; and

(d) Other reasonable expenses that you incur to reestablish your records of accounts receivable;

that result from direct physical loss or damage by any Covered Cause Of Loss to your records of accounts receivable, including credit or charge card slips.

(3) We will not pay for loss or damage caused by or resulting from any of the following:

(a) Alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or "other property". This exclusion applies only to the extent of the wrongful giving, taking or withholding;

(b) Loss that requires any audit of records or any inventory computation to prove its factual existence;

(c) Bookkeeping, accounting or billing errors or omissions;

(d) Unauthorized instructions to transfer property to any person or any place; or

- (e) Theft by any person (except "carriers" for hire) to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.
- (4) Accounts receivable loss payment will be determined as follows:
 - (a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage, the following method will be used:
 - (i) Determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and
 - (ii) Adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss or damage occurred or for any demonstrated variance for that month.
 - (b) The following will be deducted from the total amount of accounts receivable, however that amount is established:
 - (i) The amount of the accounts for which there is no loss or damage;
 - (ii) The amount of the accounts that you are able to reestablish or collect;
 - (iii) An amount to allow for probable bad debts that you are normally unable to collect; and
 - (iv) All unearned interest and service charges.
 - (c) You will pay us the amount of all recoveries you receive for a loss paid by us. But any recoveries in excess of the amount we have paid belong to you.

Records of accounts receivable are removed from Property Not Covered to the extent they are covered by this Additional Coverage.

The most we will pay in any one occurrence under this Additional Coverage is the Accounts Receivable limit shown in the Schedule of this endorsement.

Money And Securities

- (1) We will pay for:
 - (a) Loss of "money" and "securities" used in your business while inside the described premises or "financial institution premises":
 - (i) Resulting directly from "theft" committed by a person present inside the described premises or "financial institution premises"; or
 - (ii) Resulting directly from disappearance or destruction.
 - (b) Loss of "money" and "securities" used in your business while outside the described premises in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- (2) We will not pay for:
 - (a) Loss resulting from "theft" or any other dishonest act committed by you or any of your partners or "members", whether acting alone or in collusion with other persons.
 - (b) Loss resulting from "theft" or any other dishonest act committed by any of your "employees", "managers", directors, trustees or authorized representatives:
 - (i) Whether acting alone or in collusion with other persons; or
 - (ii) While performing services for you or otherwise.
 - (c) Loss resulting from accounting or arithmetical errors or omissions.
 - (d) Loss resulting from the giving or surrendering of property in any exchange or purchase.
 - (e) Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.
 - (f) Loss resulting from the disclosure of your or another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists,

financial information, credit card information, health information, or any other type of nonpublic information.

- (g) Loss resulting from the use of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of nonpublic information.
- (h) Fees, costs, fines, penalties and other expenses incurred by you which are related to the access to or disclosure of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.
- (3) You must keep records of all "money" and "securities" so we can verify the amount of any loss or damage.
- (4) All loss or damage caused by one or more persons or 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) We will pay only for covered loss or damage "discovered" no later than 1 year from the end of the policy period.
- (7) If you (or any predecessor in interest) 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 Additional Coverage, provided:

 - (a) This Additional Coverage 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 Additional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.
- (8) The insurance under Paragraph (7) above is part of, not in addition to, the amount of insurance applying to this Additional Coverage and is limited to the lesser of the amount recoverable under:

 - (a) This Additional Coverage as of its effective date; or
 - (b) The prior insurance had it remained in effect.
- (9) Valuation Settlement

We will pay for:

 - (a) Loss of "money" but only up to and including its face value. We may, at our option, pay for loss of "money" issued by any country other than the United States of America:

 - (i) At face value in the "money" issued by that country; or
 - (ii) In the United States of America's dollar equivalent, determined by the rate of exchange published by the Wall Street Journal on the day the loss was "discovered".
 - (b) Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:

 - (i) Pay the value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities";
 - (ii) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the market value of the "securities" at the close of business on the day the loss was "discovered" or the Limit Of Insurance applicable to the "securities".
 - (c) Loss of or damage to "other property" according to the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:

 - (i) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose;

- (ii) The amount you actually spend that is necessary to repair or replace the lost or damaged property; or
- (iii) The Limit Of Insurance applicable to the lost or damaged property.

(10) The most we will pay under this Additional Coverage for loss in any one occurrence is:

- (a) The limit shown in the Schedule of this endorsement for Money And Securities – On Premises if the loss occurs inside the described premises or “financial institution premises”; or
- (b) The limit shown in the Schedule of this endorsement for Money And Securities – Off Premises if the loss occurs outside the described premises.

Money and securities are removed from Property Not Covered to the extent they are covered by this Additional Coverage.

Refrigerated Goods Spoilage

- (1) We will pay for direct physical loss of or damage to “perishable stock” at the described premises owned by you or by others that is in your care, custody or control, caused by spoilage due to change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.
- (2) Section **A. Paragraph 5. Coverage Extensions** does not apply as respects coverage provided under this Additional Coverage.
- (3) Section **B. Exclusions And Limitations of the Coverage Form** as respects coverage provided under this Additional Coverage is amended as follows:
 - (a) Only the following exclusions contained in Paragraph **B.1.** of the Causes Of Loss Form applicable to this Coverage Part apply to this coverage: Earth Movement; Governmental Action; Nuclear Hazard; War And Military Action; and Water.
 - (b) The following exclusions are added:

We will not pay for loss or damage caused by or resulting from:

 - (i) The disconnection of any refrigerating, cooling or humidity control system from the source of power;
 - (ii) The deactivation of electrical power caused by the manipulation of any switch or other device used to control the flow of electrical power or current;
 - (iii) The inability of an electrical utility company or other power source to provide sufficient power due to lack of fuel or governmental order;
 - (iv) The inability of a power source at the described premises to provide sufficient power due to lack of generating capacity to meet demand;
 - (vi) Breaking of any glass that is a permanent part of any refrigerating, cooling or humidity control unit.
- (4) The most we will pay in any one occurrence under this Additional Coverage is the Refrigerated Goods Spoilage limit shown in the Schedule of this endorsement.

3. Valuable Papers And Records (Other Than Electronic Data)

The limit shown in **A. Coverage, 5. Coverage Extensions, c. Valuable Papers And Records (Other Than Electronic Data)** is replaced by the Valuable Papers And Records (Other Than Electronic Data) limit shown in the Schedule of this endorsement.

4. Outdoor Signs

The limit of insurance for outdoor signs in Section **C. Limits Of Insurance** is increased to the Outdoor Signs limit shown in the Schedule above.

B. The following definitions are added as respects this endorsement:

- 1. "Carrier" means a person or organization that provides motor, rail or air transportation for compensation.
- 2. "Money" means:
 - a. Currency, coins and bank notes in current use and having a face value; and
 - b. Travelers' checks and money orders held for sale to the public,

3. "Operations" means your business activities occurring at the described premises and the tenantability of the described premises.
4. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include computer programs, electronic data or any property specifically excluded under this insurance.
5. "Period of restoration" means the period of time that:
 - a. Begins immediately after the time 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 or compliance with any ordinance or law that:

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

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

6. "Perishable stock" means personal property:
 - a. Maintained under controlled conditions for its preservation; and
 - b. Susceptible to loss or damage if the controlled conditions change.
7. "Securities" means negotiable and non-negotiable 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 value 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".
8. "Suspension" means:
 - a. The shutdown or cessation of your business activities; or
 - b. That a part or all of the described premises is rendered untenable.

C. The following definitions are added only as respects Money And Securities:

1. "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this insurance has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

"Discover" or "discovered" also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this insurance.

2. "Employee"
 - a. Means:
 - (1) Any natural person:
 - (a) While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any dishonest act committed by the "employee";
 - (b) Whom you compensate directly by salary, wages or commissions; and
 - (c) Whom you have the right to direct and control while performing services for you;
 - Any natural person who is furnished temporarily to you:

(a) To substitute for a permanent "employee" as defined in Paragraph **2.a.(1)**, who is on leave; or

(b) To meet seasonal or short-term work load conditions;

while that person is subject to your direction and control and performing services for you, excluding, however, any such person while having care and custody of property outside the premises;

(3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary "employee" as defined in Paragraph **a.(2)**;

(4) Any natural person who is:

(a) A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any "employee benefit plan"; or

(b) Your director or trustee while that person is engaged in handling "money", "securities" or "other property" of any "employee benefit plan";

(5) Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained by you as a consultant while performing services for you;

(6) Any natural person who is a guest student or intern pursuing studies or duties;

(7) Any natural person employed by an entity merged or consolidated with you prior to the effective date of this policy;

(8) Any natural person who is your "manager", director or trustee while:

(a) Performing acts within the scope of the usual duties of an "employee"; or

(b) Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on your behalf; and

(9) Any noncompensated natural person:

(a) Other than one who is a fund solicitor, performing acts within the scope of the usual duties of an "employee"; or

(b) Acting as fund solicitor during fund raising campaigns.

b. Does not mean:

Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph **2.a.**

3. "Employee benefit plan" means any welfare or pension benefit plan that you sponsor and that is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.

4. "Financial institution" means:

a. A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution; or

b. An insurance company.

5. "Financial institution premises" means the interior of that portion of any building occupied by a "financial institution".

6. "Manager" means a natural person serving in a directorial capacity for a limited liability company.

7. "Member" means an owner of a limited liability company represented by its membership interest, who, if a natural person, may also serve as a "manager".

8. "Messenger" means you, or your relative, or any of your partners or "members", or any "employee" while having care and custody of property outside the described premises.

9. "Theft" means the unlawful taking of property to the deprivation of the insured.

All other terms and conditions remain unchanged.



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EQUIPMENT BREAKDOWN ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
CAUSES OF LOSS – BASIC FORM
CAUSES OF LOSS – BROAD FORM
CAUSES OF LOSS – SPECIAL FORM
BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM
EXTRA EXPENSE COVERAGE FORM

Endorsement Premium: \$ 25.00

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM

A. Coverage

4. Additional Coverages

The following **Additional Coverage** is deleted and replaced with the following:

d. Pollutant Clean Up and Removal

We will pay for the Pollutant Clean Up and Removal for loss resulting from an "Equipment Breakdown". The most we will pay for the Pollutant Clean Up and Removal is \$250,000, unless a higher limit is provided by an endorsement to the property form for which this endorsement is attached. In that case, whichever limit is greater will apply.

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 at your covered location(s).

The following **Additional Coverages** are added:

Expediting Expenses

We will pay for the expediting expense loss resulting from an "equipment breakdown" with respect to your damaged Covered Property. We will pay the "reasonable extra cost" to:

- (1) Make temporary repairs;
- (2) Expedite permanent repairs; and
- (3) Expedite permanent replacement.

“Reasonable extra cost” shall mean the extra cost of temporary repair and of expediting the repair of such damaged equipment of yours, including overtime and the extra cost of express or other rapid means of transportation. This will be a part of and not an addition to the limit per occurrence.

Refrigerant Contamination

We will pay the loss from contamination by refrigerant used in refrigerating, cooling or humidity control equipment at the described premises as a result of an “equipment breakdown”.

The most we will pay for loss or damage under this coverage is \$250,000, unless a higher limit is provided by an endorsement to the property form for which this endorsement is attached. In that case, whichever limit is greater will apply.

Spoilage

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

- (1) Located on or within 1,000 feet of your described premises;
- (2) Owned by you, owned by the building owner at your described premises, or owned by a public utility; and
- (3) Used to supply telephone, electricity, air conditioning, heating, gas water or steam to your described premises.

However, we will not pay for any loss, damage, cost or expense directly 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 coverage is \$250,000, unless a higher limit is provided by an endorsement to the property form for which this endorsement is attached. In that case, whichever limit is greater will apply.

Service Interruption

Any insurance provided for Business Income and Extra Expense is extended to apply to your loss, damage or expense caused by an “equipment breakdown” to equipment that is owned by a utility, landlord or other supplier with whom you have a contract to supply you with any of the following services:

Electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks or data transmission. Loss or damage caused by a surge of power is also covered. The equipment must meet the definition of “equipment breakdown”, except that it is not Covered Property.

However, we will not pay for any loss, damage, cost or expense directly 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.

CFC Refrigerants

We will pay for the "additional cost" to repair or replace Covered Property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances resulting from an "equipment breakdown".

"Additional costs" mean those costs in excess of what would have been required to repair or replace covered property, had no CFC refrigerant been involved. We also pay for additional loss as described under the Spoilage or loss of income coverages provided by this endorsement, caused by the presence of a refrigerant containing CFC substances.

We pay no more than the least of the following:

- (1) The cost to repair the damaged property and replace any lost CFC refrigerant;
- (2) The cost to repair the damaged property, retrofit the system to accept a non-CFC refrigerant, and charge the system with a non-CFC refrigerant; or
- (3) The cost to replace the system with one using a non-CFC refrigerant.

Computer Equipment

We will pay for loss or damage to your "computer equipment" caused by an "equipment breakdown".

"Computer equipment" means Covered Property that is electronic computer or other data processing equipment, including peripherals used in conjunction with such equipment, and electronic media and records.

Media or Data

We will pay for loss or damage to your "media" or "data" caused by an "equipment breakdown". We will pay for your cost to research, replace, restore all forms of electronic and magnetic tapes and disks and "data" and the costs to reprogram instructions for use in any covered electronic computer or electronic data processing equipment.

We will not pay to reproduce:

- (1) Software programs or operating systems that are not commercially available; or
- (2) "Data" that is obsolete, unnecessary or useless to you.

The most we will pay for loss or damage under this coverage for "media" and "data" is \$25,000, unless a higher limit is provided by an endorsement to the property form for which this endorsement is attached. In that case, whichever limit is greater will apply.

If "media" is damaged or "data" is lost or corrupted, we will pay your actual loss of Business Income and Extra Expense during the time necessary to:

- (1) Research, replace or restore the damaged "media" or lost or corrupted "data", and
- (2) Reprogram instructions used in any covered "computer equipment".

There shall be no coverage for any "media" or "data" that we determine is not or cannot be replaced or restored.

Unless a higher limit is shown in the Declarations, we will pay the lesser of your actual loss of Business Income and Extra Expense up to 30 days after the "period of restoration" or \$25,000.

“Media” means material on which “data” is recorded, such as magnetic tapes, hard disks, optical disks or floppy disks.

“Data” means information or instructions used by computers or computerized equipment.

“Restoration period” means the period of time that:

- (1) Begins at the time of the occurrence or 24 hours before we receive notice of occurrence, whichever one is later; and
- (2) Ends 5 consecutive days after the date when the damaged property at the premises described in the Declarations is repaired or replaced with reasonable speed and similar quality.

Environmental, Safety and Energy Efficiency Improvements

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

However, we will not pay more than 125% of what the cost would have been to repair or replace with like-kind and quality. This condition does not apply to any property to which Actual Cash Value applies.

Green Environmental and Efficiency Improvements

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

- (1) 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.
- (2) 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”.
- (3) The additional reasonable and necessary cost incurred by you for certification or recertification of the repaired or replaced Covered Property as “green”.
- (4) The additional reasonable and necessary cost incurred by you for “green” in the removal, disposal or recycling of damaged Covered Property.
- (5) The Business Income and Extra Expense (if covered within the policy to which this Equipment Breakdown Enhancement Endorsement – 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%, up 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 Income and Extra Expense loss incurred as stated above.

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

- (1) 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.
- (2) Any loss adjusted on any valuation basis other than a repair or replacement basis as per the Valuation section of this policy.

- (3) Any loss covered under any other section of this policy.
- (4) 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".

F. Additional Conditions

The following **Additional Conditions** are added:

Suspension

Whenever Covered Property is found to be in, or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance provided by this endorsement against loss or damage to that Covered Property. Coverage can be suspended or reinstated by delivering or mailing a written notice of suspension of coverage or 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.

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.

H. Definitions

The following **Definitions** are added:

"Equipment Breakdown" as used herein means:

- a. Physical loss or damage both originating within:
 - (1) Boilers, fired 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;
- (3) Rupture, bursting, bulging, implosion, or steam explosion; or
- (4) If covered electrical equipment requires drying out as a result of a flood, we will pay for the direct expenses of such drying out.

However, "equipment breakdown" will not mean:

- a. Physical loss or damage caused by or resulting from any of the following; however if loss or damage not otherwise excluded results, then we will pay for such resulting damage:
 - (1) Wear and tear;
 - (2) 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;
 - (3) Smog;
 - (4) Settling, cracking, shrinking or expansion;
 - (5) Nesting or infestation, or discharge or release of waste products or secretions, by birds, rodents or other animals;
 - (6) 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;
 - (7) The following causes of loss to personal property:
 - (a) Dampness or dryness of atmosphere;
 - (b) Marring or scratching.
- b. Loss, damage, cost or expense directly 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.

"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.

"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.

"Perishable goods" means personal property maintained under controlled conditions for its preservation and susceptible to loss or damage if the controlled conditions change.

"Production machinery" as used herein means any machine which processes, forms, shapes, or transports raw materials, materials in process, waste materials or finished products.

**CAUSES OF LOSS - BASIC FORM
CAUSES OF LOSS - BROAD FORM
CAUSES OF LOSS - SPECIAL FORM**

A. Covered Causes Of Loss

The following **Covered Cause of Loss** is added: "equipment breakdown."

B. Exclusions

The following **Exclusions** are deleted from the **CAUSES OF LOSS – BASIC FORM**:

B.2.a., B.2.d., and B.2.e.

The following **Exclusions** are deleted from the **CAUSES OF LOSS – BROAD FORM**:

B.2.a., B.2.b., and B.2.c.

The following **Exclusions** are deleted from the **CAUSES OF LOSS – SPECIAL FORM**:

B.2.a., B.2.d.(6), and B.2.e.

As respects this endorsement only, the last paragraph of **Exclusion B.2.d.** is deleted and replaced with the following:

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

C. Limitations

The following **Limitations** are deleted from the **CAUSES OF LOSS – SPECIAL FORM**:

C.1.a. and C.1.b.

G. Definitions – CAUSES OF LOSS SPECIAL FORM

The following is added to the "Specified Causes of Loss" definition:

"Specified Causes of Loss" also means "equipment breakdown".

All other terms and conditions remain unchanged.



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE OPTIONS

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Premises Number	Building Number	Fixed Dollar Deductible	Covered Cause(s) Of Loss*
1	1	\$ 1,000	(1)
		\$	
		\$	
Premises Number	Building Number	Named Storm Percentage Deductible (Enter 1%, 2%, 3% Or 5%)	
			%
			%
			%
Premises Number	Building Number	Windstorm Or Hail Percentage Deductible	
		% Subject To: \$	Minimum Deductible Each Occurrence
		% Subject To: \$	Minimum Deductible Each Occurrence
		% Subject To: \$	Minimum Deductible Each Occurrence
Premises Number	Building Number	Hawaii Hurricane Percentage Deductible	
			%
			%
			%
Minimum Deductible:		\$	per occurrence

A. The following applies only if a Fixed Dollar Deductible is shown in the Schedule of this endorsement:

*For each Fixed Dollar Deductible shown in the Schedule of this endorsement, enter the number corresponding to the Covered Cause(s) Of Loss to which that deductible applies (or enter the description):

- (1) All Covered Causes Of Loss
- (2) All Covered Causes Of Loss **except** Windstorm Or Hail
- (3) All Covered Causes Of Loss **except** Theft
- (4) All Covered Causes Of Loss **except** Windstorm Or Hail and Theft
- (5) Windstorm Or Hail
- (6) Theft

The following is added to the **Deductible** section:

In the event that loss or damage occurs to Covered Property at more than one building location as a result of one occurrence, the largest applicable deductible for that Covered Cause Of Loss, shown in the Schedule of this endorsement, will apply.

The terms of this provision do not apply to any Windstorm Or Hail Percentage Deductible provided in Paragraph **C.** of this endorsement or elsewhere in this policy.

This policy does not cover Earthquake or Flood unless such causes of loss are added to the policy as covered Causes Of Loss. If Earthquake or Flood are added to this policy as covered Causes Of Loss, the terms of this endorsement do not apply to Earthquake or Flood and corresponding deductibles will be shown elsewhere in this policy and identified as such.

B. The following applies only if a Named Storm Percentage Deductible is shown in the Schedule of this endorsement:

1. A Named Storm is a storm system that has been identified as a tropical storm or hurricane and assigned a name by the National Hurricane Center or the Central Pacific Hurricane Center of the National Weather Service (hereafter referred to as NHC and CPHC). Under the terms of this endorsement, a Named Storm begins at the time a Watch or Warning is issued by the NHC or CPHC for the area in which the affected premises are located, and ends 72 hours after the termination of the last Watch or Warning issued for that area by the NHC or CPHC.
2. The Named Storm Percentage Deductible, shown in the Schedule of this endorsement, applies to covered loss or damage caused directly or indirectly by each Named Storm. If there is covered loss or damage from a windstorm that is not a Named Storm, the applicable deductible is the same deductible that applies to Fire, unless a different deductible is stated elsewhere in this policy for such loss or damage.
3. Nothing in this endorsement implies or affords coverage for any loss or damage that is excluded under the terms of the Water Exclusion or any other exclusion in this policy. If this policy is endorsed to cover Flood under the Flood Coverage Endorsement (or if you have a flood insurance policy), a separate Flood Deductible applies to loss or damage attributable to Flood, in accordance with the terms of that endorsement or policy.
4. As used in this provision, the term:
 - a. "Specific insurance" means insurance that covers each item of insurance (for example, each building or personal property in a building) under a separate limit of insurance. Items of insurance and corresponding limit(s) of insurance are shown in the Declarations.
 - b. "Blanket insurance" means insurance that covers two or more items of insurance (for example, a building and personal property in that building, or two buildings) under a single limit of insurance. Items of insurance and corresponding limit(s) of insurance are shown in the Declarations.
5. **Named Storm Percentage Deductible Calculations**
 - a. **Calculation Of The Named Storm Percentage Deductible – All Policies**
 - (1) A Named Storm Deductible is calculated separately for, and applies separately to:
 - (a) Each building that sustains loss or damage;
 - (b) The personal property at each building at which there is loss or damage to personal property; and
 - (c) Personal property in the open.

If there is damage to both a building and personal property in that building, separate deductibles apply to the building and to the personal property.

- (2) We will not pay for loss or damage until the amount of loss or damage exceeds the applicable deductible. We will then pay the amount of loss or damage in excess of that deductible, up to the applicable limit of insurance, after any reduction required by any of the following: Coinsurance Condition; Agreed Value Optional Coverage; or any provision in a Value Reporting Form relating to full reporting or failure to submit reports.
- (3) When property is covered under the Coverage Extension for Newly Acquired or Constructed Property: In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage of the value(s) of the property at time of loss. The applicable percentage for Newly Acquired Or Constructed Property is the highest Named Storm Percentage Deductible shown in the Schedule of this endorsement for any described premises.

b. Calculation Of The Named Storm Percentage Deductible – Specific Insurance Other Than Builders' Risk

(1) Property Not Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to 1%, 2%, 3% or 5% (as shown in the Schedule of this endorsement) of the limit(s) of insurance applicable to the property that has sustained loss or damage.

(2) Property Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to 1%, 2%, 3% or 5% (as shown in the Schedule of this endorsement) of the value(s) of the property that has sustained loss or damage. The value(s) to be used is the latest value(s) shown in the most recent Report Of Values on file with us.

However:

- (a) If the most recent Report Of Values shows less than the full value(s) of the property on the report dates, we will determine the deductible amount as a percentage of the full value(s) as of the report dates.
- (b) If the first Report Of Values is not filed with us prior to loss or damage, we will determine the deductible amount as a percentage of the applicable limit(s) of insurance.

c. Calculation Of The Named Storm Percentage Deductible – Blanket Insurance Other Than Builders' Risk

(1) Property Not Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to 1%, 2%, 3% or 5% (as shown in the Schedule of this endorsement) of the value(s) of the property that has sustained loss or damage. The value(s) to be used is that shown in the most recent Statement Of Values on file with us.

(2) Property Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for property that has sustained loss or damage, we will deduct an amount equal to 1%, 2%, 3% or 5% (as shown in the Schedule of this endorsement) of the value(s) of that property as of the time of loss or damage.

d. Calculation Of The Named Storm Percentage Deductible – Builders' Risk Insurance

(1) Builders' Risk Other Than Reporting Form

In determining the amount, if any, that we will pay for property that has sustained loss or damage, we will deduct an amount equal to 1%, 2%, 3% or 5% (as shown in the Schedule of this endorsement) of the actual cash value(s) of that property as of the time of loss or damage.

(2) Builders' Risk Reporting Form

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to 1%, 2%, 3% or 5% (as shown in the Schedule of this endorsement) of the value(s) of the property that

has sustained loss or damage. The value(s) to be used is the actual cash value(s) shown in the most recent Report Of Values on file with us.

However:

- (a) If the most recent Report Of Values shows less than the actual cash value(s) of the property on the report date, we will determine the deductible amount as a percentage of the actual cash value(s) as of the report date.
- (b) If the first Report Of Values is not filed with us prior to loss or damage, we will determine the deductible amount as a percentage of the actual cash value(s) of the property as of the time of loss or damage.

Examples – Application Of Named Storm Percentage Deductible

Example 1 – Specific Insurance [B.5.b.(1)]

The amount of loss to the damaged building is \$60,000.

The value of the damaged building at time of loss is \$100,000. The Coinsurance percentage shown in the Declarations is 80%; the minimum limit of insurance needed to meet the Coinsurance requirement is \$80,000 (80% of \$100,000).

The **actual** limit of insurance on the damaged building is \$70,000.

The Deductible is 1%.

Step (1): $\$70,000 \div \$80,000 = .875$

Step (2): $\$60,000 \times .875 = \$52,500$

Step (3): $\$70,000 \times 1\% = \700

Step (4): $\$52,500 - \$700 = \$51,800$

The most we will pay is \$51,800. The remainder of the loss, \$8,200, is not covered due to the Coinsurance penalty for inadequate insurance (Steps (1) and (2)) and the application of the deductible (Steps (3) and (4)).

Example 2 – Specific Insurance [B.5.b.(1)]

The amounts of loss to the damaged property are \$60,000 (building) and \$40,000 (personal property in building).

The value of the damaged building at time of loss is \$100,000. The value of the personal property in that building is \$80,000. The Coinsurance percentage shown in the Declarations is 80%; the minimum limits of insurance needed to meet the Coinsurance requirement are \$80,000 (80% of \$100,000) for the building and \$64,000 (80% of \$80,000) for the personal property.

The **actual** limits of insurance on the damaged property are \$80,000 on the building and \$64,000 on the personal property (therefore, no Coinsurance penalty).

The Deductible is 2%.

Building

Step (1): $\$80,000 \times 2\% = \$1,600$

Step (2): $\$60,000 - \$1,600 = \$58,400$

Personal Property

Step (1): $\$64,000 \times 2\% = \$1,280$

Step (2): $\$40,000 - \$1,280 = \$38,720$

The most we will pay is \$97,120. The portion of the total loss not covered due to application of the deductible is \$2,880.

Example 3 – Blanket Insurance [B.5.c.(1)]

The sum of the values of Building 1 (\$500,000), Building 2 (\$500,000) and Building 3 (\$1,000,000), as shown in the most recent Statement Of Values on file with us, is \$2,000,000.

The Coinsurance percentage shown in the Declarations is 90%; the minimum blanket limit of insurance needed to meet the Coinsurance requirement is \$1,800,000 (90% of \$2,000,000).

The **actual** blanket limit of insurance covering Buildings 1, 2, and 3, shown in the Declarations, is \$1,800,000 (therefore no Coinsurance penalty).

Buildings 1 and 2 have sustained damage; the amounts of loss to these buildings are \$40,000 (Building 1) and \$20,000 (Building 2).

The Deductible is 2%.

Building 1

Step (1): $\$500,000 \times 2\% = \$10,000$

Step (2): $\$40,000 - \$10,000 = \$30,000$

Building 2

Step (1): $\$500,000 \times 2\% = \$10,000$

Step (2): $\$20,000 - \$10,000 = \$10,000$

The most we will pay is \$40,000. The portion of the total loss that is not covered due to application of the deductible is \$20,000.

Example 4 – Blanket Insurance (B.5.c.(1))

The sum of the values of Building 1 (\$500,000), Building 2 (\$500,000), Personal Property at Building 1 (\$250,000) and Personal Property at Building 2 (\$250,000), as shown in the most recent Statement Of Values on file with us, is \$1,500,000.

The Coinsurance percentage shown in the Declarations is 90%; the minimum blanket limit of insurance needed to meet the Coinsurance requirement is \$1,350,000 (90% of \$1,500,000).

The **actual** blanket limit of insurance covering Buildings 1 and 2 and Personal Property at Buildings 1 and 2, shown in the Declarations, is \$1,350,000. Therefore there is no Coinsurance penalty.

Building 1 and Personal Property at Building 1 have sustained damage; the amounts of loss are \$95,000 (Building) and \$5,000 (Personal Property).

The Deductible is 5%.

Building

Step (1): $\$500,000 \times 5\% = \$25,000$

Step (2): $\$95,000 - \$25,000 = \$70,000$

Personal Property

Step (1): $\$250,000 \times 5\% = \$12,500$

The loss, \$5,000, does not exceed the Deductible.

The most we will pay is \$70,000. The remainder of the building loss, \$25,000, is not covered due to application of the Deductible. There is no loss payment for the personal property.

C. The following applies only if a Windstorm Or Hail Percentage Deductible is shown in the Schedule of this endorsement:

1. The Windstorm Or Hail Percentage Deductible shown in the Schedule of this endorsement, applies to covered loss or damage caused directly or indirectly by Windstorm or Hail. This deductible applies to each occurrence of Windstorm or Hail.

Nothing in this endorsement implies or affords coverage for any loss or damage that is excluded under the terms of the Water Exclusion or any other exclusion in this policy. If this policy is endorsed to cover Flood under the Flood Coverage Endorsement (or if you have a flood insurance policy), a separate Flood Deductible applies to loss or damage attributable to Flood, in accordance with the terms of that endorsement or policy.

2. **Windstorm Or Hail Percentage Deductible Calculations**

- a. **Calculation Of The Windstorm Or Hail Percentage Deductible – All Policies**

- (1) A Windstorm Or Hail Percentage Deductible is calculated separately for, and applies separately to:
 - (a) Each building that sustains loss or damage;
 - (b) The personal property at each building at which there is loss or damage to personal property; and
 - (c) Personal property in the open.

If there is damage to both a building and personal property in that building, separate Windstorm Or Hail Percentage Deductibles apply to the building and to the personal property.

If the sum of the Windstorm Or Hail Percentage Deductible amounts resulting from any one occurrence is less than the Minimum Deductible Each Occurrence amount shown in the Schedule of this endorsement, then the Minimum Deductible Each Occurrence will be applied to all loss from that occurrence.

- (2) We will not pay for loss or damage until the amount of loss or damage exceeds the applicable deductible. We will then pay the amount of loss or damage in excess of that deductible, up to the applicable limit of insurance, after any reduction required by any of the following: Coinsurance Condition; Agreed Value Optional Coverage; or any provision in a Value Reporting Form relating to full reporting or failure to submit reports.
- (3) When property is covered under the Coverage Extension for Newly Acquired Or Constructed Property:

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage of the value(s) of the property at time of loss, subject to the Minimum Deductible Each Occurrence shown in the Schedule of this endorsement. The applicable percentage for Newly Acquired Or Constructed Property is the Windstorm Or Hail Percentage shown in the Schedule of this endorsement.

b. Calculation Of The Windstorm Or Hail Percentage Deductible – Other Than Builders' Risk

(1) Property Not Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the Windstorm Or Hail Percentage Deductible shown in the Schedule of this endorsement of the limit(s) Of Insurance applicable to the property that has sustained loss or damage.

(2) Property Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the Windstorm Or Hail Percentage Deductible shown in the Schedule of this endorsement of the value(s) of the property that has sustained loss or damage. The value(s) to be used is the latest value(s) shown in the most recent Report Of Values on file with us.

However:

- (a) If the most recent Report Of Values shows less than the full value(s) of the property on the report dates, we will determine the deductible amount as a percentage of the full value(s) as of the report dates.
- (b) If the first Report Of Values is not filed with us prior to loss or damage, we will determine the deductible amount as a percentage of the applicable limit(s) of insurance.

But in no case will the deductible amount be less than the Minimum Deductible Each Occurrence shown in the Schedule of this endorsement.

c. Calculation Of The Wind Hail Percentage Deductible – Builders' Risk Insurance

(1) Builders' Risk Other Than Reporting Form

In determining the amount, if any, that we will pay for property that has sustained loss or damage, we will deduct an amount equal to the Windstorm Or Hail Percentage Deductible shown in the Schedule of this endorsement of the actual cash value(s) of that property as of the time of loss or damage.

(2) Builders' Risk Reporting Form

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the Windstorm Or Hail Percentage Deductible shown in the Schedule of this endorsement of the value(s) of the property that has sustained loss or damage, subject to the Minimum Deductible Each Occurrence

shown in the Schedule of this endorsement. The value(s) to be used is the actual cash value(s) shown in the most recent Report Of Values on file with us.

However:

- (a) If the most recent Report Of Values shows less than the actual cash value(s) of the property on the report date, we will determine the deductible amount as a percentage of the actual cash value(s) as of the report date.
- (b) If the first Report Of Values is not filed with us prior to loss or damage, we will determine the deductible amount as a percentage of the actual cash value(s) of the property as of the time of loss or damage.

But in no case will the deductible amount be less than the Minimum Deductible Each Occurrence shown in the Schedule of this endorsement.

Examples – Application Of Windstorm Or Hail Percentage Deductible

Example 1:

The amount of loss to the damaged building is \$60,000.

The value of the damaged building at time of loss is \$100,000. The Coinsurance percentage shown in the Declarations is 80%; the minimum limit of insurance needed to meet the Coinsurance requirement is \$80,000 (80% of \$100,000).

The **actual** limit of insurance on the damaged building is \$70,000.

The Windstorm Or Hail Percentage Deductible is 1% subject to a \$5,000 Minimum Deductible Each Occurrence.

Step (1): $\$70,000 \div \$80,000 = .875$

Step (2): $\$60,000 \times .875 = \$52,500$

Step (3): $\$70,000 \times 1\% = \700

Step (4): $\$52,500 - \$5,000$ (Minimum Deductible Each Occurrence) = $\$47,500$

The Minimum Deductible Each Occurrence was applied since the calculation of the deductible based on the percentage did not exceed the Minimum Deductible Each Occurrence.

The most we will pay is \$47,500. The remainder of the loss, \$12,500, is not covered due to the Coinsurance penalty for inadequate insurance (Steps (1) and (2)) and the application of the deductible (Steps (3) and (4)).

Example 2:

The amounts of loss to the damaged property are \$60,000 (Building) and \$40,000 (Personal Property in building).

The value of the damaged building at time of loss is \$100,000. The value of the personal property in that building is \$80,000. The Coinsurance percentage shown in the Declarations is 80%; the minimum limits of insurance needed to meet the Coinsurance requirement are \$80,000 (80% of \$100,000) for the building and \$64,000 (80% of \$80,000) for the personal property.

The **actual** limits of insurance on the damaged property are \$80,000 on the building and \$64,000 on the personal property (therefore, no Coinsurance penalty).

The Windstorm Or Hail Percentage Deductible is 5% subject to a \$5,000 Minimum Deductible Each Occurrence.

Building

Step (1): $\$80,000 \times 5\% = \$4,000$

Step (2): $\$60,000 - \$4,000 = \$56,000$

Personal Property

Step (1): $\$64,000 \times 5\% = \$3,200$

Step (2): $\$40,000 - \$3,200 = \$36,800$

The most we will pay is \$92,800. The portion of the total loss not covered due to application of the deductible is \$7,200.

Example 3:

The amounts of loss to the damaged property are \$60,000 (Building 1) and \$40,000 (Building 2).

The value of each damaged building at time of loss is \$100,000. The Coinsurance percentage shown in the Declarations is 80%; the minimum limits of insurance needed to meet the Coinsurance requirement are \$80,000 per building.

The **actual** limits of insurance on the damaged property are \$80,000 per building (therefore, no Coinsurance penalty).

The Windstorm Or Hail Percentage Deductible is 5% subject to a \$10,000 Minimum Deductible Each Occurrence.

Building 1

Step (1): $\$80,000 \times 5\% = \$4,000$

Step (2): $\$60,000 - \$4,000 = \$56,000$

Building 2

Step (1): $\$80,000 \times 5\% = \$4,000$

Step (2): $\$40,000 - \$4,000 = \$36,000$

Minimum Deductible Each Occurrence: $\$100,000 - \$10,000$ (Minimum Each Occurrence Deductible) = \$90,000

The most we will pay is \$90,000.

The Minimum Deductible Each Occurrence was applied since the calculation of the deductible based on the percentage did not exceed the Minimum Deductible Each Occurrence.

D. The following applies only if a Hawaii Hurricane Percentage Deductible is shown in the Schedule of this endorsement:

1. Under the terms of this endorsement, a hurricane is a storm system that has been declared to be a hurricane by the Central Pacific Hurricane Center, National Hurricane Center, National Weather Service, World Meteorological Organization, or any other generally recognized scientific or meteorological association that provides formal names for public use and reference.

The hurricane occurrence begins at the time a hurricane watch or hurricane warning is issued for any part of Hawaii and ends 72 hours after the termination of the last hurricane watch or hurricane warning issued for any part of Hawaii.

2. The Hawaii Hurricane Percentage Deductible, shown in the Schedule of this endorsement applies to covered loss or damage caused directly or indirectly by each hurricane. This Deductible applies to each occurrence of hurricane.

If there is covered loss or damage caused by windstorm that is not declared to be a hurricane, the applicable deductible is the same deductible that applies to Fire.

3. Nothing in this endorsement implies or affords coverage for any loss or damage that is excluded under the terms of the Water Exclusion or any other exclusion in this policy. If this policy is endorsed to cover Flood under the Flood Coverage Endorsement (or if you have a flood insurance policy), a separate Flood Deductible applies to loss or damage attributable to Flood, in accordance with the terms of that endorsement or policy.

4. As used in this provision, the term:

- a. "Specific insurance" means insurance that covers each item of insurance (for example, each building or personal property in a building) under a separate limit of insurance.
- b. "Blanket insurance" means insurance that covers two or more items of insurance (for example, a building and personal property in that building or two buildings) under a single limit of insurance. Items of insurance and corresponding limit(s) of insurance are shown in the Declarations.

5. Hawaii Hurricane Percentage Deductible Calculations**a. Calculation Of The Hawaii Hurricane Percentage Deductible – All Policies**

(1) A Hawaii Hurricane Percentage Deductible is calculated separately for, and applies separately to:

- (a) Each building that sustains loss or damage;
- (b) The personal property at each building at which there is loss or damage to personal property; and

(c) Personal property in the open.

If there is damage to both a building and personal property in that building, separate deductibles apply to the building and to the personal property.

- (2)** We will not pay for loss or damage until the amount of loss or damage exceeds the applicable deductible, subject to the Minimum Deductible. We will then pay the amount of loss or damage in excess of that deductible up to the applicable limit of insurance, after any reduction required by any of the following: Coinsurance Condition, Agreed Value Optional Coverage, or any provision in a Value Reporting Form relating to full reporting or failure to submit reports.
- (3)** When property is covered under the Coverage Extension for Newly Acquired Or Constructed Property: In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to a percentage of the value(s) of the property at time of loss. The applicable percentage for Newly Acquired Or Constructed Property is the highest percentage shown in the Schedule of this endorsement for any described premises.

b. Calculation Of The Hawaii Hurricane Percentage Deductible – Specific Insurance Other Than Builders Risk

(1) Property Not Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the percentage (as shown in the Schedule of this endorsement) of the limit(s) of insurance applicable to the property that has sustained loss or damage, subject to the Minimum Deductible.

(2) Property Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the percentage (as shown in the Schedule of this endorsement) of the value(s) of the property that has sustained loss or damage, subject to the Minimum Deductible. The value(s) to be used is the latest value(s) shown in the most recent Report Of Values on file with us.

However:

- (a)** If the most recent Report Of Values shows less than the full value(s) of the property on the report dates, we will determine the deductible amount as a percentage of the full value(s) as of the report dates.
- (b)** If the first Report Of Values is not filed with us prior to loss or damage, we will determine the deductible amount as a percentage of the applicable limit(s) of insurance.

c. Calculation Of The Hawaii Hurricane Percentage Deductible – Blanket Insurance Other Than Builders Risk

(1) Property Not Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the percentage (as shown in the Schedule of this endorsement) of the value(s) of the property that has sustained loss or damage, subject to the Minimum Deductible. The value(s) to be used is that shown in the most recent Statement Of Values on file with us.

(2) Property Subject To Value Reporting Forms

In determining the amount, if any, that we will pay for property that has sustained loss or damage, we will deduct an amount equal to the percentage (as shown in the Schedule of this endorsement) of the value(s) of that property as of the time of loss or damage, subject to the Minimum Deductible.

d. Calculation Of The Hawaii Hurricane Percentage Deductible – Builders Risk Insurance

(1) Builders Risk Other Than Reporting Form

In determining the amount, if any, that we will pay for property that has sustained loss or damage, we will deduct an amount equal to the percentage (as shown in the Schedule of this endorsement) of the actual cash value(s) of that property as of the time of loss or damage, subject to the Minimum Deductible.

(2) Builders Risk Reporting Form

In determining the amount, if any, that we will pay for loss or damage, we will deduct an amount equal to the percentage (as shown in the Schedule of this endorsement) of the value(s) of the property that has

sustained loss or damage, subject to the Minimum Deductible. The value(s) to be used is the actual cash value(s) shown in the most recent Report Of Values on file with us.

However:

- (a) If the most recent Report Of Values shows less than the actual cash value(s) of the property on the report date, we will determine the deductible amount as a percentage of the actual cash value(s) as of the report date.
- (b) If the first Report Of Values is not filed with us prior to loss or damage, we will determine the deductible amount as a percentage of the actual cash value(s) of the property as of the time of loss or damage.

Examples – Application Of Hawaii Hurricane Percentage Deductible

Example 1 – Specific Insurance [D.5.b.(1)]

The amount of loss to the damaged building is \$60,000.

The value of the damaged building at time of loss is \$100,000. The Coinsurance percentage shown in the Declarations is 80%; the minimum limit of insurance needed to meet the Coinsurance requirement is \$80,000 (80% of \$100,000).

The **actual** limit of insurance on the damaged building is \$70,000.

The Hawaii Hurricane Percentage Deductible is 1%, subject to a \$1,000 Minimum Deductible Each Occurrence.

Step (1): $\$70,000 \div \$80,000 = .875$

Step (2): $\$60,000 \times .875 = \$52,500$

Step (3): $\$70,000 \times 1\% = \700

Step (4): $\$52,500 - \$1,000$ (Minimum Deductible Each Occurrence) = $\$51,500$

The Minimum Deductible Each Occurrence was applied since the calculation of the deductible based on the percentage did not exceed the Minimum Deductible Each Occurrence.

The most we will pay is \$51,500. The remainder of the loss, \$8,500, is not covered due to the Coinsurance penalty for inadequate insurance (Steps (1) and (2)) and the application of the Deductible (Steps (3) and (4)).

Example 2 – Specific Insurance [D.5.b.(1)]

The amounts of loss to the damaged property are \$60,000 (building) and \$40,000 (personal property in building).

The value of the damaged building at time of loss is \$100,000. The value of the personal property in that building is \$80,000. The Coinsurance percentage shown in the Declarations is 80%; the minimum limits of insurance needed to meet the Coinsurance requirement are \$80,000 (80% of \$100,000) for the building and \$64,000 (80% of \$80,000) for the personal property.

The **actual** limits of insurance on the damaged property are \$80,000 on the building and \$64,000 on the personal property (therefore no Coinsurance penalty).

The Hawaii Hurricane Percentage Deductible is 2%, subject to a \$1,000 Minimum Deductible Each Occurrence.

Building

Step (1): $\$80,000 \times 2\% = \$1,600$

Step (2): $\$60,000 - \$1,600 = \$58,400$

Personal Property

Step (1): $\$64,000 \times 2\% = \$1,280$

Step (2): $\$40,000 - \$1,280 = \$38,720$

The most we will pay is \$97,120. The portion of the total loss not covered due to application of the Deductible is \$2,880.

Example 3 – Blanket Insurance [D.5.c.(1)]

The sum of the values of Building 1 (\$500,000), Building 2 (\$500,000) and Building 3 (\$1,000,000), as shown in the most recent Statement Of Values on file with us, is \$2,000,000.

The Coinsurance percentage shown in the Declarations is 90%; the minimum Blanket limit of insurance needed to meet the Coinsurance requirement is \$1,800,000 (90% of \$2,000,000).

The actual blanket limit of insurance covering Buildings 1, 2 and 3, shown in the Declarations, is \$1,800,000 (therefore, no Coinsurance penalty).

Buildings 1 and 2 have sustained damage; the amounts of loss to these buildings are \$40,000 (Building 1) and \$20,000 (Building 2).

The Deductible is 2%, subject to a \$1,000 Minimum Deductible.

Building 1

Step (1): $\$500,000 \times 2\% = \$10,000$

Step (2): $\$40,000 - \$10,000 = \$30,000$

Building 2

Step (1): $\$500,000 \times 2\% = \$10,000$

Step (2): $\$20,000 - \$10,000 = \$10,000$

The most we will pay is \$40,000. The portion of the total loss not covered due to application of the Deductible is \$20,000.

Example 4 – Blanket Insurance [D.5.c.(1)]

The sum of the values of Building 1 (\$500,000), Building 2 (\$500,000), Personal Property at Building 1 (\$250,000) and Personal Property at Building 2 (\$250,000), as shown in the most recent Statement Of Values on file with us, is \$1,500,000.

The Coinsurance percentage shown in the Declarations is 90%; the minimum blanket limit of insurance needed to meet the Coinsurance requirement is \$1,350,000 (90% of \$1,500,000).

The actual blanket limit of insurance covering Buildings 1 and 2 and Personal Property at Buildings 1 and 2, shown in the Declarations, is \$1,350,000. Therefore, there is no Coinsurance penalty.

Building 1 and Personal Property at Building 1 have sustained damage; the amounts of loss are \$95,000 (Building) and \$5,000 (Personal Property).

The Deductible is 5%, subject to a \$1,000 Minimum Deductible Each Occurrence.

Building

Step (1): $\$500,000 \times 5\% = \$25,000$

Step (2): $\$95,000 - \$25,000 = \$70,000$

Personal Property

Step (1): $\$250,000 \times 5\% = \$12,500$

The loss, \$5,000, does not exceed the Deductible.

The most we will pay is \$70,000. The remainder of the building loss, \$25,000, is not covered due to application of the Deductible. There is no loss payment for the personal property.

All other terms and conditions remain unchanged.



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – POLLUTION, ORGANIC PATHOGENS AND ASBESTOS

This endorsement modifies insurance provided under the following:

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

I. The **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** is amended as follows:

A. The Additional Coverage, Pollutant Clean-up And Removal is deleted in its entirety.

B. The Definitions section is amended as follows:

1. The definition of “pollutants” is replaced with the following:

“Pollutants” means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, toxic or hazardous substances and waste. Waste includes materials to be, or that have been, recycled, reconditioned or reclaimed.

2. The following definition is added:

“Organic pathogen” means:

a. Any organic irritant or contaminant including, but not limited to, “fungus”, wet or dry rot, bacteria, virus or other microorganism of any type, and their by-products such as spores or mycotoxin; or

b. Any disease-causing agent as classified by the Environmental Protection Agency.

II. The **CAUSES OF LOSS – BASIC FORM, CAUSES OF LOSS – BROAD FORM** and **CAUSES OF LOSS – SPECIAL FORM** are amended as follows:

A. The Exclusions section is amended as follows:

1. The following replaces the “Fungus”, Wet Rot, Dry Rot And Bacteria exclusion:

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.

Organic Pathogens

Presence, growth, proliferation, spread or any activity of “organic pathogens”.

This exclusion applies regardless of whether there is any:

a. Direct physical loss or damage to Covered Property;

b. Loss of use, occupancy or functionality or decreased valuation of Covered Property or loss of Business Income;

c. Action required including, but not limited to, testing, repair, replacement, removal, clean-up, abatement, disposal, relocation, or actions taken to address medical or legal concerns; or

d. Suit or administrative proceeding, or action involving the insured.

2. The following replaces Exclusion 2.I. in Section B. Exclusions in the **CAUSES OF LOSS – SPECIAL FORM** and is added to Paragraph 2. in Section B. Exclusions in the **CAUSES OF LOSS – BASIC FORM** and **CAUSES OF LOSS – BROAD FORM**:

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

Pollution

The discharge, dispersal, seepage, migration, release, escape or existence of contaminants or “pollutants”.

This exclusion applies regardless of whether there is any:

- a. Direct physical loss or damage to Covered Property;
 - b. Other cause of loss that contributes concurrently or in any sequence to the existence of a “pollutant”;
 - c. Loss of use, occupancy or functionality or decreased valuation of Covered Property or loss of Business Income;
 - d. Cost of removal, treatment, disposal, decontamination, replacement or restoration of Covered Property which has been contaminated by toxic or hazardous substances, contaminants or “pollutants” and by law or civil authority must be removed, contained, treated, detoxified or neutralized, disposed of, decontaminated, replaced or restored; or
 - e. Suit or administrative proceeding or action involving the insured.
3. The following exclusion is added and is not a Covered Cause Of Loss:

Asbestos

We will not pay for loss or damage arising out of, resulting from, or related in any way to asbestos, asbestos-containing material or any material or substance containing asbestos or that is alleged to have contained asbestos.

We shall have no duty of any kind with respect to any such loss or damage.

- B. The Additional Coverage, Limited Coverage For “Fungus”, Wet Rot, Dry Rot And Bacteria is deleted in its entirety.

All other terms and conditions remain unchanged.



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – SINKHOLE COLLAPSE

This endorsement modifies insurance provided under the following:

CAUSES OF LOSS – BASIC FORM
CAUSES OF LOSS – BROAD FORM
CAUSES OF LOSS – SPECIAL FORM

A. The following is added to the Exclusions section and is therefore not a Covered Cause of Loss:

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

Sinkhole Collapse

Any loss, damage, claim, cost, expense, fine, penalty or other sum caused directly or indirectly by Sinkhole Collapse.

This exclusion applies regardless of whether there is any:

1. Direct physical loss or damage to Covered Property;
2. Other cause of loss that contributes concurrently or in any sequence to the sinkhole collapse;
3. Loss of use, occupancy or functionality or decreased valuation of Covered Property or loss of Business Income; or
4. Suit or administrative proceeding or action involving the insured.

B. In the **CAUSES OF LOSS – BASIC FORM** and **CAUSES OF LOSS – BROAD FORM**:

1. Covered Cause of Loss, Sinkhole Collapse in Section **A.** is deleted in its entirety; and
2. Under Exclusion **B.1.b.** Earth Movement, sinkhole collapse is deleted from paragraph **(4)**.

C. Under Additional Coverage, Collapse, in the **CAUSES OF LOSS – BROAD FORM**, sinkhole collapse is deleted from Paragraph **2.a.**

D. In the **CAUSES OF LOSS – SPECIAL FORM**, Sinkhole Collapse is deleted from the “specified causes of loss”.

E. Under Exclusion **B.1.b.** Earth Movement, In the **CAUSES OF LOSS – SPECIAL FORM**, sinkhole collapse is deleted from paragraph **(4)**.

F. With respect to the Sinkhole Collapse exclusion, sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. Sinkhole collapse does not include:

1. The cost of filling sinkholes; or
2. Sinking or collapse of land into man-made underground cavities.

All other terms and conditions remain unchanged.



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – VOLCANIC ERUPTION

This endorsement modifies insurance provided under the following:

CAUSES OF LOSS – BASIC FORM
CAUSES OF LOSS – BROAD FORM
CAUSES OF LOSS – SPECIAL FORM

A. Paragraph **1.b.(5)** in Section **B.** Exclusions is replaced by the following:

- (5)** Any loss, damage, claim, cost, expense, fine, penalty or other sum caused directly or indirectly by volcanic eruption, explosion, or effusion, including 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.

This exclusion applies regardless of whether:

- (1)** There is any direct physical loss or damage to Covered Property;
- (2)** There is any other cause of loss that contributes concurrently or in any sequence to the volcanic eruption, explosion or effusion, or Volcanic Action;
- (3)** There is any loss of use, occupancy or functionality or decreased valuation of Covered Property or loss of Business Income;
- (4)** There is any suit or administrative proceeding or action involving the insured; or
- (5)** Any of the above, in Paragraphs **(a)**, **(b)**, or **(c)**, is caused by an act of nature or is otherwise caused.

B. Volcanic Action in Section **A.** Covered Causes Of Loss in the **CAUSES OF LOSS – BASIC FORM** and **CAUSES OF LOSS – BROAD FORM** is deleted in its entirety.

All other terms and conditions remain unchanged.



EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
BUSINESSOWNERS COVERAGE FORM

COVERAGE PART

SCHEDULE*

Premises Number	Building Number	Protective Safeguards Symbols Applicable
1	1	A & B & C

Describe Any "J":

*If multiple locations are insured and different clauses apply to each, please indicate all applicable symbols for each location above.
*This endorsement must be attached to change endorsements issued subsequent to the policy effective date.

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 indicated with an "X" below.
2. The protective safeguards to which this endorsement applies are identified by the following symbols:
 - A – Automatic Sprinkler System, including related supervisory services and annual testing by a licensed independent contractor authorized to perform sprinkler testing.

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.

B – 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.

C – Central Station Burglar Alarm protecting all entryways and windows that is:

a. Activated and operational;

b. Reporting to a public or private burglar alarm station; and

c. In the “on” position during all non-working hours or when the insured premises are unoccupied.

D – Automatic Commercial Cooking Exhaust And Extinguishing System installed on cooking appliances having the following components:

a. Hood;

b. Grease removal device;

c. Duct system; and

d. Wet or dry chemical fire extinguishing equipment.

All components must be cleaned and inspected by an outside cleaning service no less than twice a year and all grease filters must also be cleaned on a regular schedule.

E – Security Guard Service, with a recording system or watch clock, which is on the premises 24 hours every day covering the entire building.

F – Underwriters Laboratory (UL) Approved Spray Paint Booth.

G – Dust Abatement Or Collection System.

H – Service Contract with a privately owned fire department providing fire protection service to the described premises.

I – For buildings protected by an automatic fire protective sprinkler system, heat to a minimum of 55° Fahrenheit and you must use reasonable care to continue the water supply; or

For buildings not protected by an automatic fire protective sprinkler system, heat to a minimum of 55° Fahrenheit or all pipes in the building drained and blown out with water shut off. If all pipes are drained and blown out with water shut off, you must submit proof of winterization by a licensed contractor.

J – The protective system described in the Schedule.

B. The following is added to the **Exclusions** section of all applicable Causes Of Loss and Coverage forms:

We will not pay for loss or damage caused by or resulting from any covered cause of loss if, prior to the loss, you:

1. Knew of any suspension or impairment in any protective safeguard indicated above and failed to notify us of that fact; or
2. Failed to maintain any protective safeguard indicated 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.

All other terms and conditions remain unchanged.



INTERLINE

POLICY NUMBER: 1DA5040

EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM EARNED PREMIUM AMENDMENT ENDORSEMENT

The following modifies all coverage forms and coverage parts attached to this policy.

If this insurance policy is cancelled at your request, there will be a Minimum Earned Premium retained by us of \$ _____ or 25 % (percent) of the premium, whichever is the greater. Cancellation for nonpayment of premium is considered a request by the first Named Insured for cancellation of this policy.

All other terms and conditions remain unchanged.