

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

ROSA ANA QUESADA,

Plaintiff,

CASE NO.

LIMITED FUND CLASS ACTION  
COMPLAINT

v.

CHAMPLAIN TOWERS SOUTH  
CONDOMINIUM ASSOCIATION, INC.,  
GREAT AMERICAN INSURANCE  
COMPANY, JAMES RIVER INSURANCE  
COMPANY, PHILADELPHIA INDEMNITY  
INSURANCE COMPANY, FIREMAN'S FUND  
INSURANCE COMPANY, and QBE  
INSURANCE CORPORATION,

Defendants.

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**LIMITED FUND CLASS ACTION COMPLAINT**

Plaintiff, ROSA ANA QUESADA ("Plaintiff"), sues Defendants, CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. (the "Association"), GREAT AMERICAN INSURANCE COMPANY ("GAIC"), JAMES RIVER INSURANCE COMPANY ("JRIC"), PHILADELPHIA INDEMNITY INSURANCE COMPANY ("PIIC"), and FIREMAN'S FUND INSURANCE COMPANY ("FFIC") (collectively, "Defendants"), and states as follows:

## **INTRODUCTION**

1. Plaintiff brings this class action on behalf of herself and the property owners who owned units at the Champlain Towers South condominium building, wherein the building, and the units, were destroyed when the building collapsed during the early morning hours of June 24, 2021.

2. This Complaint seeks certification for declaratory relief, pursuant to Chapter 86 of the Florida Statutes, for purposes of establishing that Plaintiff and a similarly situated class of individuals have rights and obligations under the policies of insurance issued by Defendants, GAIC, PIIC, JRIC, and FFIC, and which insure the Defendant, the Association.

3. Specifically, Plaintiff and the Class are in doubt as to the rights and obligations of all parties regarding distribution of the insurance proceeds resulting from the insurance policies that insure the Association and, in turn, Plaintiff and the Class as third-party beneficiaries on the date that the Champlain Towers South building collapsed because of the limited funds that Defendants have to compensate Plaintiff and the Class.

4. A *bona fide* present controversy exists between Plaintiff's and the Class' respective rights under the insurance policies that insure the Association, and Defendants' obligations thereunder and Plaintiff and the Class, therefore, seek a declaration from this Court regarding the parties' respective rights and, otherwise, applicable law, including, but not limited, to an explanation of Defendants' affirmative duty to tender insurance proceeds under the policies in question, obligations under the policies in question, and a proper distribution of the insurance proceeds to Plaintiff and the Class.

5. If a declaratory action is not granted, Plaintiff and other class members run the risk of a disproportionate distribution of insurance proceeds and will suffer losses by receiving less compensation from the insurance policies that each should receive.

6. Plaintiff is the owner of unit 111 located at the Champlain Towers South condominium building located at 8777 Collins Avenue, Surfside, Florida 33154. However, she is no longer in physical possession of her condominium unit because of a catastrophic event that occurred on June 24, 2021, which destroyed her unit in its entirety causing the loss of her unit as well as personal property contained therein.

7. At all relevant times hereto, the Champlain Towers South condominium building was managed by the Association.

8. The Association was responsible for hiring competent contractors, inspectors, engineers, and other appropriate persons and corporations to perform its required maintenance and repair duties of the Champlain Towers South condominium building, if it was not performing the activities itself. The Association was also tasked with making sure that the Association's buildings and surrounding structures were properly insured, and that each owner was sufficiently covered in case of total loss.

9. As such, the Association was insured by several insurance policies that were issued by Defendants. For instance,

- a. GAIC insured the Association for commercial property and commercial liability insurance (the "GAIC Policy"). *See Exhibit "A," Great American Insurance Policy.*
- b. JRIC and PIIC insured the Association, as demonstrated by a Certificate of Liability (the "JRIC/PIIC Policy"). *See Exhibit "B," JRIC / PIIC Certificate of Liability Insurance.*
- c. FFIC insured the Association for lead insurance, and QBE Insurance insured the Association for Excess/Umbrella Insurance (the "Certificate of

Coverage Umbrella and Excess Liability Insurance”). *See Exhibit “C,” FFI / QBE Policy.*

10. On June 24, 2021, at approximately 1:30 a.m., the Champlain Towers South condominium building suffered a catastrophic structural failure and collapsed. The devastation from the collapse resulted in 32 confirmed deaths, and many people are still missing and feared to be buried in the rubble as of the time of this filing. Some of the deceased also owned units. The estates of those that perished, as well as the survivors as per Florida’s Wrongful Death Statute and others that may be entitled to portions of the estate of those that died have a stake in the ultimate outcome of available insurance proceeds.

### **JURISDICTION, PARTIES AND VENUE**

11. This is a class action pursuant to Florida Rule of Civil Procedure 1.220(b), seeking declaratory relief under Chapter 86, Florida Statutes.

12. At all times material hereto, the Plaintiff, Rosa Ana Quesada, was an adult resident of Miami-Dade County, Florida, who owned the Champlain Towers South Condominium, Unit 111.

13. At all times material hereto, Defendants insured the Association and, in turn, the Champlain Towers South Condominium building.

14. Defendant, GAIC, has its principal place of business in Cincinnati, Ohio. GAIC was authorized to do or otherwise engage in business within the State of Florida and did in fact offer insurance policies within the State of Florida. As such, GAIC is subject to this Court’s jurisdiction because it: 1) operated, conducted, engaged in, or carried in business in Florida; 2) insured property located in Florida, specifically in Miami-Dade County, Florida; and 3) engaged in substantial and not isolated activity in Florida. Moreover, GAIC has the Chief Financial Officer of the State of Florida as its registered agent.

15. Defendant, PIIC, has its principal place of business in Bala Cynwyd, PA. PIIC was authorized to do or otherwise engage in business within the State of Florida and did in fact offer insurance policies within the State of Florida. As such, PIIC is subject to this Court's jurisdiction because it: 1) operated, conducted, engaged in, or carried in business in Florida; 2) insured property located in Florida, specifically in Miami-Dade County, Florida; and 3) engaged in substantial and not isolated activity in Florida. Moreover, PIIC has the Chief Financial Officer of the State of Florida as its registered agent.

16. Defendant, JRIC, has its principal place of business in Columbus, Ohio. JRIC was authorized to do or otherwise engage in business within the State of Florida and did in fact offer insurance policies within the State of Florida. As such, JRIC is subject to this Court's jurisdiction because it: 1) operated, conducted, engaged in, or carried in business in Florida; 2) insured property located in Florida, specifically in Miami-Dade County, Florida; and 3) engaged in substantial and not isolated activity in Florida. Moreover, JRIC has the Chief Financial Officer of the State of Florida as its registered agent, as it is licensed by the Florida Department of Insurance. Defendant, FFIC, has its principal place of business in Chicago, IL. FFIC was authorized to do or otherwise engage in business within the State of Florida and did in fact offer insurance policies within the State of Florida. As such, FFIC is subject to this Court's jurisdiction because it: 1) operated, conducted, engaged in, or carried in business in Florida; 2) insured property located in Florida, specifically in Miami-Dade County, Florida; and 3) engaged in substantial and not isolated activity in Florida. Moreover, FFIC has the Chief Financial Officer of the State of Florida as its registered agent.

17. Defendant, QBE, has its principal place of business in Sun Prairie, WI. QBE was authorized to do or otherwise engage in business within the State of Florida and did in fact offer

insurance policies within the State of Florida. As such, QBE is subject to this Court's jurisdiction because it: 1) operated, conducted, engaged in, or carried in business in Florida; 2) insured property located in Florida, specifically in Miami-Dade County, Florida; and 3) engaged in substantial and not isolated activity in Florida. Moreover, QBE has the Chief Financial Officer of the State of Florida as its registered agent.

18. Defendant, Champlain Towers South Condominium Association, Inc., was authorized to do and/or doing business within the jurisdiction of this Court, duly organized, created and existing under and by virtue of the laws of the State of Florida with its principal place of business located at: 8777 Collins Avenue, Surfside, Florida, 33154. At all times material to this cause of action, the Association is a Florida corporation organized under Florida law with its home office and principal place of business in Florida. The Association is an indispensable party in this action to secure full relief, as it is the owner of common elements with potential interest in any recovery from the insurance proceeds at issue. Therefore, the res is in this venue constituting the common fund.

19. Venue of this action properly lies in this Court pursuant to Florida law, as the cause of action accrued in Miami-Dade County, Florida and the Champlain Towers South Condominium building is located in Miami-Dade County, Florida.

20. All conditions precedent to the institution and maintenance of this action have been performed, excused, waived, or have otherwise occurred.

#### **GENERAL ALLEGATIONS**

21. Champlain Towers South is a 12 story and 136 unit beachside residential tower located at 8777 Collins Avenue, Surfside, Florida 33154.

22. Champlain Towers South was a residential condominium building built in 1981.

23. Since 2011, Plaintiff, Rosa A. Quesada, owned Unit 111 at the Champlain Towers South Condominium.

24. On June 24, 2021, at approximately 1:30 a.m., half of Champlain Towers South suffered a catastrophic failure and collapsed, resulting in the deaths of at least 32 people, trapping many others, and destroying fifty-five condominium units, rendering the rest inhabitable.

25. To protect against such catastrophic property damage, the Association carried insurance policies from the Defendants to insure the building.

26. As per Section 13.1 of the Certificate of Amendment to the Declaration of Condominium of Champlain Towers South Condominium and the By-Laws and Articles of Incorporation of Champlain Towers South Condominium Association, Inc. (the “Condo Declaration”)<sup>1</sup>, “[a]ll insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear.” *See Exhibit “E,” Condo Declaration*. As such, Plaintiff and the Class, as unit owners, are third-party beneficiaries of any and all insurance policies purchased by the Association.

27. Moreover, pursuant to Section 14 of the Condo Declaration, if any part of the Condominium Property shall be damaged by casualty or covered cause of loss under the Association's applicable insurance policy, whether or not it shall be reconstructed or repaired, shall be determined in the following manner:

14.1 Common Elements. If the damaged improvement is any of the Common Elements, the damaged Common Elements shall be reconstructed or repaired, unless the Condominium is to be terminated as provided elsewhere herein.

14.2 The Building.

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<sup>1</sup> The Association must follow the Condo Declaration and the Association’s bylaws, which in turn provide Plaintiff and the Class with rights under said documents.

(a) Lesser Damage. If the damage renders less than fifty percent (50%) of the Units in the Condominium uninhabitable<sup>2</sup>, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property shall be reconstructed or repaired.

(b) Major Damage. If the damage renders more than fifty percent (50%) of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless seventy-five percent (75%) of the entire Voting Interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the casualty or covered cause of loss under the Association's applicable insurance policy, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed three (3) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

(c) Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building or any approved alterations thereto.

*See Exhibit "E," Condo Declaration, p. D30-31.*

28. Since the Champlain Towers South Condominium was rendered uninhabitable by virtue of the collapse and as defined by the Condo Declaration, Section 15.5 of the Condo Declaration provides that the distribution of the insurance funds would be allows:

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<sup>2</sup> Pursuant to Section 14.2(d) of the Condo Declaration, uninhabitable "shall mean that the Board of Directors has concluded that the Condominium Property which the Association is required to insure cannot be restored to the condition (or a better condition) in which it existed prior to the casualty or covered cause of loss under the Association's applicable insurance policy through available insurance proceeds, plus a special assessment against each Unit Owner not to exceed ten percent (10%) of the average fair market value of the Units prior to the casualty or covered cause of loss, as determined by the Board. This calculation shall not include costs affiliated with those items the Unit Owner is obligated to repair or replace, at the Unit Owner's expense. A governmental agency's declaration or order that the Condominium Property may not be occupied for a defined period of time due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are "habitable," a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law." *See Exhibit "E," Condo Declaration, p. D31.*



(a) Payment of Award. The awards shall be paid first to any Institutional First Mortgagees who have submitted a mortgagee endorsement to the Association in amounts sufficient to pay off their mortgages in connection with each Unit which is made uninhabitable; second, to the Association for any unpaid Assessments and other charges; and third, jointly to the affected Unit Owners and other mortgagees of their Units who have submitted a mortgagee endorsement to the Association.

(b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the board of directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required in Section 8 hereof.

(c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Units. This shall be effected by restating the shares of continuing Unit Owners as follows:

(i) Add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Section 15.4(c) hereof (the "Percentage Balance"); and

(ii) Divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Section 15.4(c) hereof, by the Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

*See Exhibit "E," Condo Declaration, p. D35-36.*

29. GAIC insured the building under Policy Number: MAC E6583590000 (the "Policy"). *See Exhibit "A," Great American Insurance Policy.*

30. The policy period covered under the Policy was from December 28, 2020, through December 28, 2021. *See Exhibit "A," Great American Insurance Policy.* Therefore, GAIC insured the building on the date of the accident, June 24, 2021.

31. GAIC insured the building for commercial property and commercial liability insurance for a total of \$30,172,900.00 (limit of insurance), wherein this insurance coverage was intended to be primary. *See Exhibit "A," Great American Insurance Policy.*

The signature shown below complies with the countersignature laws and regulations of the State shown:	
<b>Policy Number:</b>	MAC E658359 00 00
<b>State:</b>	FL
<b>Named Insured:</b>	<b>Agent's Name And Address:</b>
Champlain Towers South Condominium Association, Inc.	AmWINS Brokerage of Florida 1227 S Patrick Dr Ste 101 Satellite Beach FL 32937

32. Pursuant to the GAIC Policy, it “provided coverage for a catastrophic ground cover collapse that [would] result in the property being condemned and uninhabitable.” *See Exhibit "A," Great American Insurance Policy.* The coverage requires payment(s) because of a covered loss. The amount of insurance available is insufficient to provide full compensation for all those unit owners and other claimants that have rights under the Policy.

33. The GAIC Policy also contained a Select Business Policy Plus policy, wherein the Association was insured, and insurance is provided only for those coverages for which a limit of insurance has been inserted:

	Newly Acquired or Constructed Locations	At any other location	In transit, in or on any one conveyance unit
Building	\$ 500,000	\$ 50,000	\$ NOT COVERED
Business Personal Property	\$ 250,000	\$ 50,000	\$ 5,000
Business Income	\$ NOT COVERED	\$ NOT COVERED	\$ NOT COVERED
Extra Expense	\$ 10,000	\$ 10,000	\$ NOT COVERED

*See Exhibit "A," Great American Insurance Policy.*

34. The GAIC Policy includes the following supplementary coverages:

\$	25,000	Accounts Receivables
\$	10,000	Debris Removal
		Electronic Data Processing
\$	25,000	Equipment
\$	25,000	Data, Programs, Media
\$	5,000	Extra Expense
\$	25,000	Extra Expense
\$	5,000	Fire Department Service Charge
\$	2,500	Fire Protection Device Recharge
\$	5,000	Loss Data Preparation Costs
\$	5,000	Personal Effects
\$	10,000	Pollutant Clean Up and Removal
\$	10,000	Valuable Papers

*See Exhibit "A," Great American Insurance Policy.*

35. Plaintiff and the Class have standing to pursue their claims under the GAIC Policy as an intended third-party beneficiary to the policy by virtue of being an owner of a unit in the building managed by the Association, who is an insured in the policy.

36. JRIC and PIIC insured the Association, as demonstrated by the JRIC/PIIC Policy under Policy No. 000985321. *See Exhibit "B," JRIC / PIIC Certificate of Liability Insurance; see also Exhibit "C," Policy.*

37. The JRIC/PIIC Policy insured the Association from December 28, 2020, through December 28, 2021. *See Exhibit "B," JRIC / PIIC Certificate of Liability Insurance.* Therefore, JRIC and PIIC insured the building on the date of the accident, June 24, 2021.

38. It should be noted that JRIC insured the Association for Commercial General Liability, and Commercial Automobile Liability, while PIIC insured the Association for Directors and Officers Liability. *See Exhibit "D," FFI / QBE Policy.*

39. As per the JRIC / PIIC Policy, the Association was covered for Commercial General Liability by occurrence, wherein each occurrence is limited to \$1,000,000.00. *See Exhibit “B,” JRIC / PIIC Certificate of Liability Insurance.*

40. The JRIC / PIIC Policy included the following limits by occurrence:

LIMITS	
EACH OCCURRENCE	\$ 1,000,000
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
MED EXP (Any one person)	\$ Excluded
PERSONAL & ADV INJURY	\$ 1,000,000
GENERAL AGGREGATE	\$ 2,000,000
PRODUCTS - COMP/OP AGG	\$ 2,000,000
	\$

*See Exhibit “B,” JRIC / PIIC Certificate of Liability Insurance.*

41. Plaintiff and the Class have standing to pursue their claims under the JRIC/PIIC Policy as an intended third-party beneficiary to the policy by virtue of being an owner of a unit in the building managed by the Association, who is an insured in the policy.

42. As per the Certificate of Coverage Umbrella and Excess Liability Insurance, FFI insured the Association for lead insurance, and QBE Insurance insured the Association for Excess<sup>3</sup>/Umbrella Insurance<sup>4</sup>. *See Exhibit “D,” FFI / QBE Policy.*

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<sup>3</sup> With respect to the excess insurance, an insured is considered “[a]ny person or organization shown in the Named Insured section of our Declarations.” *See Exhibit “D,” FFI / QBE Policy.*

<sup>4</sup> With respect to the umbrella insurance, an insured is “[a]ny person or organization shown in the Named Insured section of our Declarations and . . . (2) If you are a partnership or joint venture, you, your members, your partners and their spouses are **Insureds**, but only with respect to the conduct of your business. (3) If you are a limited liability company, your members are **Insureds**, but only with respect to the conduct of your business. Your managers are **Insureds**, but only with respect to their duties as your managers. (4) If you are an organization other than a partnership, joint venture or limited liability company, your executive officers and directors are **Insureds**, but only with respect to their duties as your officers or directors. Your stockholders are **Insureds**, but

43. FFI insured the Association for lead insurance under Policy No. USL00656920U, as Umbrella and Excess Liability Insurance. *See Exhibit “D,” FFI / QBE Policy.* The limits of insurance are:

<b>Limit of Insurance</b>	
\$10,000,000	Each Occurrence
\$10,000,000	General Aggregate (where applicable)
\$10,000,000	Products/Completed Operations

44. QBE insured the Association for excess/umbrella insurance under Policy No. HRP2020, as Umbrella and Excess Liability Insurance. *See Exhibit “D,” FFI / QBE Policy.*

\$5,000,000	Each Occurrence and Aggregate Excess of \$10,000,000
	Each Occurrence and Aggregate Excess of

45. Plaintiff and the Class have standing to pursue their claims under the GAIC Policy as an intended third-party beneficiary to the policy by virtue of being an owner of a unit in the building managed by the Association, who is an insured in the policy.

46. As of June 24, 2021, the Champlain Towers South building catastrophically collapsed, which resulted in Plaintiff’s and the class members’ units being destroyed and uninhabitable. Along with the units, Plaintiff’s and the class members’ personal possessions were destroyed.

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only with respect to their liability as stockholders. (5) If you are a trust, your trustees are Insureds, but only with respect to their duties as trustees.” *See Exhibit “D,” FFI / QBE Policy.*

## **CLASS ALLEGATIONS**

### **Class Definitions:**

47. Plaintiff brings this action on behalf of themselves and the following classes, pursuant to the provisions of 1.220(b)(1)(B) of the Florida Rule of Civil Procedure:

**Class:** All person(s) or entity(es) owning one or more unit(s) at the Champlain Towers South Condominium building, located at 877 Collins Avenue, Surfside, Florida 33154 on June 24, 2021, who are covered under the policies of insurance within the limits of insurance available for all claimants under the applicable insurance policies, whose unit(s) were destroyed as a result of the Champlain Towers South Condominium building collapse.

The number of the Class is 136.

48. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

49. Excluded from the Class are Defendants, its employees, agents and assigns, any members of the judiciary to whom this case is assigned, their respective court staff, and the parties' counsel in the litigation. Given the discrete geographic and temporal nature of the claims at issue in this lawsuit, members of the above-defined class can be informed of the pendency of this action by published, internet, and broadcast notice, and can be ascertained through self-identification.

50. Plaintiff reserves the right to modify, amend and/or expand the definition of the proposed class before the Court determines whether certification is appropriate.

### **Numerosity of the Class – Rule 1.220(a)(1).**

51. The members of the Class are so numerous that individual joinder is impracticable. While Plaintiff is informed and believe that there are no less than over a hundred members of the Class, the precise number of Class members is unknown to Plaintiff but may be ascertained from Defendants' records.

52. On June 24, 2021, 55 of the tower's 136 units collapsed and were destroyed with the rest rendered uninhabitable. As of the time of this filing, the rest of the partially collapsed condominium building was demolished, wherein 32 people have been confirmed dead and many are still missing. Class members may be notified of the pendency of this action by recognized, court-approved notice dissemination methods, which may be disseminated via U.S. Mail, email, Internet postings, radio and television commercials, and print notice.

**Commonality – Rule 1.220(a)(2).**

53. This action involves common questions of law and fact.

54. Plaintiff and the Class have suffered losses in a similar if not identical manner, as their units were destroyed, which included any and all of their personal belongings.

55. Plaintiff's claims raise questions of law and fact that are common to the claims of each member of the class. Such questions include, but are not limited to, the following:

Whether Plaintiff and the Class are entitled to any and all policy limits and/or policy coverages as a result of Defendant being a named insured in numerous insurance policies triggering each insurance company to pay under the terms of each policy. And if so, how should those proceeds be distributed.

**Typicality – Rule 1.220(a)(3).**

56. Plaintiff's claims are typical of other Class members' claims, as Plaintiff possesses the same interest as the Class, such that there is a sufficient nexus between Plaintiff's claims and those of the Class.

57. Moreover, Plaintiff and the Class owned units at the Champlain Towers South Condominium building, which was managed by the Association and, in turn, insured by Defendants.

### **Adequacy of Representation – Rule 1.220(a)(4)**

58. Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

59. Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity. Plaintiff will fairly and adequately protect the interests of the Class and have no interests that are adverse to, or which materially and irreconcilably conflict with, the interests of the other members of the Class.

60. The self-interests of Plaintiff are co-extensive with and not antagonistic to those of absent Class members. Plaintiff will undertake to represent and protect the interests of absent Class members.

61. Plaintiff has engaged the services of counsel indicated below who are experienced in complex class litigation matters, will adequately prosecute this action, and will assert and protect the rights of and otherwise represent Plaintiff and the putative Class members. Plaintiff's counsel has had a number of recent successes in not only effectively litigating class action lawsuits to favorable resolution before this Court and around the country, but in helping to rework the landscape in which those cases are litigated.

62. Plaintiff is an adequate Class representative because her interests do not conflict with the interests of other members of the Class. Plaintiff intends to prosecute this action vigorously. Plaintiff has retained John H Ruiz, Esq. of MSP Recovery Law Firm, Gonzalo Dorta, Esq. of Dorta Law., and J. Alfredo Armas, Esq. of Armas Bertran Zincone.

63. Moreover, MSP Recovery Law Firm is equipped to manage the litigation because it has access to very sophisticated IT Platforms, which includes software to manage the entire litigation from claims involving property damage and/or injury claims. MSP Recovery Law Firm



can design any application that will disseminate data and other information to all those with an interest in the matter or as otherwise directed by the Court.

64. The Class' interests will be fairly and adequately protected by Plaintiff and their counsel. All three law firms are substantially experienced. The law firm of Armas Bertran Pieri has been involved in the FIU Bridge Collapse case from early on. Moreover, John H. Ruiz and Gonzalo Dorta represented half of the estates of the individuals in the Chalks Airline Disaster back in 2005. In the Chalks case, the insurer tendered its policy limits, which was insufficient to compensate all the deceased estates. Mr. Ruiz and Mr. Dorta handled all the preliminary hearings in the case. Shortly after requiring the defendant to turn over its records of the accident plane as well as others in its fleet, the insurer tendered its policy limits. Mr. Ruiz and Mr. Dorta had requested a tender of the policy. As such, this matter will have very similar, if not, identical legal issues. In the Chalks case, Mr. Ruiz filed the first suit as a limited fund class action.

65. Plaintiff's counsel is sufficiently experienced and will adequately represent the interests of the class, such that the Court should appoint them as Class Counsel and eventually certify class. Moreover, Plaintiff's counsel has the financial resources to fund the litigation.

66. As explained above, Plaintiff's counsel readily satisfies these requirements, such that the Court should appoint them as interim lead class counsel to conduct the Champlain Towers South collapse litigation.

#### **Requirements of Rule 1.220(b)(1).**

67. The prosecution of separate actions by individual members of the Class on the claims and issues herein would create an immediate risk of inconsistent or varying adjudications with regard the rights under the policies and the disbursement of funds from Class member to Class member. These varying adjudications would be prejudicial to members of the Class and Defendant

and would establish incompatible standards of conduct. Individual litigation would increase the delay and expense to all parties and the court system and could undermine public confidence and trust in that system. Piecemeal adjudications would also, as a practical matter, be dispositive of the interests of those Class members not parties to such adjudications, and substantially impair or impede their ability to protect their interests, thereby making class certification of this action appropriate under Rule 1.220(b)(1)(A) and (B).

68. By contrast, class treatment, as requested in this Complaint, presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, exercise of equity jurisdiction and comprehensive supervision by a single court, in order to achieve justice and proportionality, and determine the answers to the common questions raised by the unique circumstances of this case. Class treatment best ensures that all class members and defendants (including those ultimately joined into this lawsuit as determined through discovery) know their rights and obligations under the applicable policies of insurance.

69. The best means to conduct this litigation is under Florida Rule of Civil Procedure 1.220(b)(1)(B) since the funds to pay all Class members is limited. Specifically, Defendant's insurance coverage for this matter is minimal. Therefore, there are not sufficient funds to pay the damages Plaintiff and the Class Members have suffered as a result of the Champlain Towers South's catastrophic collapse. A class action under subsection (b)(1)(B) of Florida Rule of Civil Procedure will permit that the limited proceeds be fairly distributed among the Class members.

**COUNT I**  
**DECLARATORY ACTION AGAINST ALL DEFENDANTS**

Plaintiff realleges paragraphs 1 through 69 of this Complaint, as though more fully set forth herein:

70. This is an action against Defendants for declaratory relief, pursuant to Chapter 86 of the Florida Statutes.

71. This Court has jurisdiction pursuant to Section 86.011, of the Florida Statutes.

72. The Plaintiff and the Class have fully complied with and have fully performed all conditions precedent to bringing this Petition for Declaratory Relief.

73. Plaintiff and the Class are in doubt as to their rights and obligations as well as those of the Defendants under the applicable insurance policies whose coverages were triggered by the collapse of Champlain Towers South, and the limited funds that Defendants have to compensate Plaintiff, and the Class resulting from the collapse. A bona fide present controversy exists between Plaintiff's and the Class' respective rights under the Policy, and Defendants' obligations under the same policies and, therefore, Plaintiff seeks a declaration from this Court regarding declaring the parties' respective rights and obligations under the subject insurance policies issued by GAIC, PIIC, JRIC, and FFIC, and otherwise applicable law, including, but not limited, to an explanation of Defendants' affirmative duty to tender insurance proceeds under the policies in question, obligations under the policies in question, and a proper distribution of the insurance proceeds to Plaintiff and the Class.

74. If a declaratory action is not granted, Plaintiff and other class members run the risk of a disproportionate adjudication of rights and obligations under the applicable policies regarding distribution of the limited insurance proceeds and will suffer losses by receiving less compensation from the insurance policies that each should receive.

75. As such, the total of the aggregated claims and the funds available to satisfy them are inadequate to pay all claims, the whole of the inadequate fund is to be devoted to the overwhelming claims, and the Plaintiff and the Class must be treated equally, among themselves.

76. There is an actual controversy, and the class is not merely seeking an advisory opinion.

77. Plaintiff has retained the undersigned counsel to prosecute this action and are entitled to recover reasonable attorneys' fees and costs, pursuant to Section 627.428, Florida Statutes.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for a judgment and the following relief against Defendants certifying this action, pursuant to Rule 1.220(b), appointing Plaintiff to represent the Class defined herein, and appointing the undersigned law firm as class counsel along with other lawyers already in the case at the discretion of the Court, and for:

- a. a declaratory judgment under Count I declaring the parties' respective rights and obligations under the insurance policies at issue, and otherwise applicable law, including, but not limited, to an explanation of Defendants' affirmative duty to tender insurance proceeds under the policies in question, Defendants' obligations under the policies in question, and a proper distribution of the insurance proceeds to Plaintiff and the Class;
- b. an award of attorneys' fees and costs entered in favor of Plaintiff and the Class, pursuant to Section 627.428; and
- c. such other relief as the Court deems just and reasonable.

### **DEMAND FOR JURY TRIAL**

Plaintiff and the Class request a jury trial for any and all Counts for which a trial by jury is permitted.

Dated: July 6, 2021

Respectfully submitted,

**MSP RECOVERY LAW FIRM**

2701 S. LeJeune Rd., 10th Floor

Miami, Florida 33134

Telephone: (305) 614-2222

By: /s/ John H. Ruiz

John H. Ruiz, Fla. Bar No. 928150

serve@msprecoverylawfirm.com

jruiz@msprecoverylawfirm.com

**DORTA LAW**

334 Minorca Ave

Coral Gables, Florida 33134

By: /s/ Gonzalo Dorta

Gonzalo Dorta, Fla. Bar No. 650269

grd@dortalaw.com

**ARMAS BERTRAN ZINCONE**

2701 S. LeJeune Road, 10th Floor

Coral Gables, FL 33134

Telephone: (305) 461-5100

By: /s/ J. Alfredo Armas

J. Alfredo Armas, Fla. Bar No. 360708

alfred@armaslaw.com

# EXHIBIT A

301 E. Fourth St., Cincinnati, OH 45202

Your Great American Insurance Policy<sup>®</sup>



**GREATAMERICAN<sup>®</sup>**  
INSURANCE GROUP

Property & Inland Marine

for all the *great* you do<sup>SM</sup>

## Policyholder Notice Regarding Claims

### Claims Handling Procedures

An important value of your insurance coverage is the insurer's ability and reputation for responding and handling a claim. Great American's Property & Inland Marine's Division is dedicated to offering excellent claims service to insureds.

Notices of each incident, claim, or suit must be immediately sent to the address, fax or email listed below.

### Claims Mailing Address

Great American Insurance Group  
301 E. Fourth Street, 21st Floor  
Cincinnati, OH 45202-4201  
Toll-Free: 800-584-0835  
Fax: 800-811-4751  
pimclaims@gaig.com

Great American Insurance Group  
Property & Inland Marine Claims  
P.O. Box 5440  
Cincinnati, OH 45201-5440

### Property & Inland Marine After Hours Claim Services (USA only)

Claims Alert Hotline  
Crawford and Company  
866-354-0148 - Code 15797

### After Hours Emergency Restorations/Clean-Up (USA only)

ServiceMaster  
800-737-7663

A Claims Department representative will contact you directly to confirm receipt of the notice and to discuss further details of handling the claim.

### Built on Relationships. Focused on Solutions.®

Service Minded. Solution Driven. Specialty Focused.

That's what we are, and what you can count on to help write more business. We're not your run-of-the-mill insurance company - we're one of the few carriers with a dedicated Property & Inland Marine Division, and in the industry segments we cover, we believe in our experience, so you'll work with individuals who only write these coverages and know them inside and out.

Great American Insurance Group, 301 E. Fourth St., Cincinnati, OH 45202. Policies are underwritten by Great American Insurance Company, Great American Assurance Company, Great American Alliance Insurance Company and Great American Insurance Company of New York, authorized insurers in all 50 states and the DC. The Great American Insurance Group eagle logo and the word marks Great American®, Great American Insurance Group®, and Built on Relationships. Focused on Solutions.® are registered service marks of Great American Insurance Company.

5586-PIM (01/18)



**DATE:** 12/28/2020

**FROM:**

GREAT AMERICAN INSURANCE COMPANY  
CENTRAL ASSEMBLY DEPARTMENT

**TO:**

AmWINS Brokerage of Florida  
1227 S Patrick Dr  
Ste 101  
Satellite Beach FL 32937

**RE:** COUNTERSIGNATURE

In order to comply with the laws of the policy state, a countersignature of a licensed agent is required.

Please execute the enclosed countersignature endorsement form. As the agent of record, you should maintain a signed copy pursuant to the record retention requirements in the producer agreement or for five years, whichever is longer.

Thank you for providing this countersignature service for Great American policies.

If you have any questions concerning the enclosed materials or our countersignature procedures, please contact the Great American branch office.

**POLICYHOLDER NOTICE**  
**CERTAIN COMPUTER-RELATED LOSSES**

**(Applicable to Commercial Fire, Commercial Inland Marine, and Crime Policies)**

**NO COVERAGE IS PROVIDED BY THIS POLICYHOLDER NOTICE NOR CAN IT BE CONSTRUED TO REPLACE ANY PROVISION OF YOUR POLICY. YOU SHOULD READ YOUR POLICY AND REVIEW YOUR DECLARATIONS PAGE FOR COMPLETE INFORMATION ON THE COVERAGES YOU ARE PROVIDED. IF THERE IS ANY CONFLICT BETWEEN THE POLICY AND THIS SUMMARY, THE PROVISIONS OF THE POLICY SHALL PREVAIL.**

An exclusion has been added to your policy to explicitly state that coverage is not provided for loss caused by a computer's inability, or that of computerized or other electronic equipment, to properly recognize a particular date or time. An example of this is a loss caused by the inability of the computer to recognize the year 2000 (Y2K). However, coverage is provided under certain circumstances: if the computer's inability to recognize a date or time results in a covered cause of loss - - for example, fire - - the loss resulting from that fire will be covered.

### **Policyholder Notice**

#### **Jurisdictional Inspections for Boilers and Pressure Vessels**

This notice is to provide information regarding Equipment Breakdown Coverage.

If your policy includes breakdown coverage for boilers or certain other pressure vessels, jurisdictional inspections may be required by law. You, the Insured, can request this jurisdictional inspection and/or get help with technical questions regarding all of the equipment directly from Hartford Steam Boiler Company by contacting:

#### **Hartford Steam Boiler's Inspection Hotline**

**Telephone:** 1-800-333-INSP  
**Fax:** 1-484-582-1811  
**E-mail:** NSCINSP\_HOTLINE@hsb.com

**Inspections will be scheduled promptly!**

**IMPORTANT NOTICE  
FLORIDA**

**TO OBTAIN INFORMATION OR TO MAKE A COMPLAINT**

This notice is to advise you that should any complaints arise regarding this insurance, you may contact Great American Insurance Companies at the following address:

Great American Insurance Group  
Administrative Offices  
301 East 4th Street  
Cincinnati, OH 45202

Or you may call the following toll-free telephone number to present inquiries, obtain information about coverage or to gain assistance in resolving complaints:

**1-800-972-3008**

If you (a) need the assistance of the governmental agency that regulates insurance; or (b) have a complaint you have been unable to resolve with your insurer you may contact the Department of Financial Services by mail, telephone or email:

Florida Department of Financial Services  
200 East Gaines Street  
Tallahassee, FL 32399-0300  
(850) 413-3100

Consumer Hotline: 1-877-MY-FL-CFO (1-877-693-5236)

Complaints can be filed electronically at [www.fldfs.com](http://www.fldfs.com)

**ATTACH THIS NOTICE TO YOUR POLICY**

This notice is for information only and does not become a part or condition of the attached document.

**SINKHOLE LOSS EXCLUSION - FLORIDA  
ADVISORY NOTICE TO POLICYHOLDERS**

No coverage is provided by this notice nor can it be construed to replace any provision of your policy. You should read your policy and review your Declarations Page for complete information on the coverages you are provided. If there is any conflict between the policy and this Advisory Notice to Policyholders, **THE PROVISIONS OF THE POLICY SHALL PREVAIL.**

**YOUR POLICY PROVIDES COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE, YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES.**

**YOU MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN ADDITIONAL PREMIUM.**

IF YOU DECIDE TO REQUEST COVERAGE FOR SINKHOLE LOSSES, THE STRUCTURE MUST FIRST QUALIFY FOR COVERAGE BASED UPON UNDERWRITING ELIGIBILITY REQUIREMENTS. SUCH REQUIREMENTS MAY INCLUDE AN ACCEPTABLE PRE-INSPECTION OF THE STRUCTURE AND SURROUNDING PREMISES.

IF A PRE-INSPECTION IS REQUIRED THEN IT MUST BE PERFORMED BY A VENDOR APPROVED BY US. THE COST OF THE PRE-INSPECTION IS NON-REFUNDABLE AND WILL BE SHARED EQUALLY BETWEEN YOU AND US. THE PRE-INSPECTION RESULTS MUST BE FORWARDED TO US FOR REVIEW AND WE WILL THEN DETERMINE COVERAGE ACCEPTABILITY.

**ELECTRONICALLY DELIVERED POLICIES**  
**ADVISORY NOTICE TO POLICYHOLDERS**

This Notice does not form part of your policy. No coverage is provided by this Notice nor can it be construed to replace any provision of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided. If there is any conflict between the Policy and this Notice, **THE PROVISIONS OF THE POLICY SHALL PREVAIL.**

Carefully read your policy, including the endorsements attached to your policy.

This Notice provides information concerning a method by which to obtain copies of your electronically delivered policy, including policies posted to our website, if applicable. You may obtain paper or electronic copies of the policy by contacting your agent and requesting a copy.

**Policy No.** MAC E658359 00 00  
**Renewal Of**

**POLICY COMMON DECLARATIONS**

<b>NAMED INSURED</b> Champlain Towers South Condominium Association, Inc. <b>AND ADDRESS:</b> 8777 Collins Ave Surfside, FL 33154	
<b>IN RETURN FOR PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.</b>	<b>AGENT'S NAME AND ADDRESS:</b> AmWINS Brokerage of Florida 1227 S Patrick Dr Ste 101 Satellite Beach, FL 32937
Insurance is afforded by the Company named below, a Capital Stock Corporation: Great American Insurance Company	
<b>POLICY PERIOD:</b> From 12/28/2020 To 12/28/2021 12:01 A.M. Standard Time at the address of the Named Insured	

This policy consists of the following Coverage Parts for which a premium is indicated. This premium may be subject to adjustment.

	Premium
Commercial Property	\$ 33,003.00
Commercial General Liability	
Commercial Crime and Fidelity	
Commercial Inland Marine	
Commercial Equipment Breakdown	\$ 1,414.00
Commercial Auto	
Commercial Umbrella	
Florida Commercial Property Fire Assessment	\$ 33.00
Florida Property Trust Fund - Commercial	\$ 4.00
<b>Total</b>	<b>\$ 34,454.00</b>

**FORMS AND ENDORSEMENTS** applicable to all Coverage Parts and made part of this Policy at time of issue are listed on the attached Forms and Endorsements Schedule IL 88 01 (11/85).

**POLICY ALTERNATE MAILING ADDRESS:**

## FORMS AND ENDORSEMENTS SCHEDULE

It is hereby understood and agreed the following forms and endorsements are attached to and are a part of this policy:

	<b>Form and Edition</b>		<b>Date Added * or Date Deleted</b>	<b>Form Description</b>
1.	IL7001	10-07		BusinessPRO Policy Common Declarations
2.	IL0017	11-98		Common Policy Conditions
3.	IL0175	09-07		Florida Changes - Legal Action Against Us
4.	IL0255	03-16		Florida Changes - Cancellation and Nonrenewal
5.	IL0935	07-02		Exclusion of Certain Computer-Related Losses
6.	IL0952	01-15		Cap On Losses From Certified Acts Of Terrorism
7.	IL7268	09-09		In Witness Clause
8.	IL7273	08-08		Loss Prevention Services
9.	IL7324	08-12		Economic And Trade Sanctions Clause
10.	IL7363	12-14		Florida Changes - Appraisal
11.	IL7368	04-15		Disclosure Pursuant To Terrorism Risk Insurance Act
12.	IL7381	09-15		Agent Countersignature

\* If not at inception



## 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 con-

sent except in the case of death of an individual named insured.

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

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

**FLORIDA CHANGES - LEGAL ACTION AGAINST US**

This endorsement modifies insurance provided under the following:

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

The following replaces the second paragraph of the **Legal Action Against Us** Condition:

**Legal Action Against Us**

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

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IL 01 75 (Ed. 09/07) XS

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

**FLORIDA CHANGES - CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

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

**A. Paragraph 2. of the **Cancellation** Common Policy Condition is replaced by the following:**

**2. Cancellation For Policies In Effect 90 Days Or Less**

**a.** If this policy has been in effect for 90 days or less, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation, accompanied by the specific reasons for cancellation, at least:

**(1)** 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

**(2)** 20 days before the effective date of cancellation if we cancel for any other reason, except we may cancel immediately if there has been:

**(a)** A material misstatement or misrepresentation; or

**(b)** A failure to comply with underwriting requirements established by the insurer.

**b.** We may not cancel:

**(1)** On the basis of property insurance claims that are the result of an act of God, unless we can demonstrate, by claims frequency or otherwise, that you have failed

to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property; or

**(2)** Solely on the basis of a single property insurance claim which is the result of water damage, unless we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.

**B. Paragraph 5. of the **Cancellation** Common Policy Condition is replaced by the following:**

**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. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will mail the refund within 15 working days after the date cancellation takes effect, unless this is an audit policy.

If this is an audit policy, then, subject to your full cooperation with us or our agent in securing the necessary data for audit, we will return any premium refund due within 90 days of the date cancellation takes effect. If our audit is not completed within this time limitation, then we shall

accept your own audit, and any premium refund due shall be mailed within 10 working days of receipt of your audit.

The cancellation will be effective even if we have not made or offered a refund.

**C. The following is added to the Cancellation Common Policy Condition:**

**7. Cancellation For Policies In Effect For More Than 90 Days**

**a.** If this policy has been in effect for more than 90 days, we may cancel this policy only for one or more of the following reasons:

- (1)** Nonpayment of premium;
- (2)** The policy was obtained by a material misstatement;
- (3)** In the event of failure to comply, within 90 days after the effective date of coverage, with underwriting requirements established by us before the effective date of coverage;
- (4)** There has been a substantial change in the risk covered by the policy;
- (5)** The cancellation is for all insureds under such policies for a given class of insureds;
- (6)** On the basis of property insurance claims that are the result of an act of God, if we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property;
- (7)** On the basis of a single property insurance claim which is the result of water damage, if we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property; or

**(8)** The cancellation of some or all of our policies is necessary to protect the best interests of the public or policyholders and such cancellation is approved by the Florida Office of Insurance Regulation.

**b.** If we cancel this policy for any of these reasons, we will mail or deliver to the first Named Insured written notice of cancellation, accompanied by the specific reasons for cancellation, at least:

- (1)** 10 days before the effective date of cancellation if cancellation is for nonpayment of premium;
- (2)** 45 days before the effective date of cancellation if:
  - (a)** Cancellation is for one or more of the reasons stated in Paragraphs **7.a.(2)** through **7.a.(7)** above, and this policy does not cover a residential structure or its contents; or
  - (b)** Cancellation is based on the reason stated in Paragraph **7.a.(8)** above;
- (3)** 120 days before the effective date of cancellation if:
  - (a)** Cancellation is for one or more of the reasons stated in Paragraphs **7.a.(2)** through **7.a.(7)** above; and
  - (b)** This policy covers a residential structure or its contents.

**c.** If this policy has been in effect for more than 90 days and covers a residential structure or its contents, we may not cancel this policy based on credit information available in public records.

**D. The following is added:**

**Nonrenewal**

1. If we decide not to renew this policy, we will mail or deliver to the first Named Insured written notice of nonrenewal, accompanied by the specific reason for nonrenewal, at least:

a. 45 days prior to the expiration of the policy if this policy does not cover a residential structure or its contents, or if nonrenewal is for the reason stated in Paragraph **D.5.**; or

b. 120 days prior to the expiration of the policy if this policy covers a residential structure or its contents.

2. Any notice of nonrenewal will be mailed or delivered to the first Named Insured at the last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

3. We may not refuse to renew this policy:

a. On the basis of property insurance claims that are the result of an act of God, unless we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property;

b. On the basis of filing of claims for sinkhole loss. However, we may refuse to renew this policy if:

(1) The total of such property insurance claim payments for this policy equals or exceeds the policy limits in effect on the date of loss for property damage to the covered building; or

(2) You have failed to repair the structure in accordance with the engineering recommendations upon which any loss payment or policy proceeds were based; or

c. Solely on the basis of a single property insurance claim which is the result of water damage, unless we can demonstrate that you have failed to take

action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.

4. Notwithstanding the provisions of Paragraph **D.3.**, we may refuse to renew this policy if this policy includes Sinkhole Loss coverage. If we nonrenew this policy for purposes of removing Sinkhole Loss coverage, pursuant to section 627.706, Florida Statutes, we will offer you a policy that includes catastrophic ground cover collapse coverage.

5. Notwithstanding the provisions of Paragraph **D.3.**, we may refuse to renew this policy if nonrenewal of some or all of our policies is necessary to protect the best interests of the public or policyholders and such nonrenewal is approved by the Florida Office of Insurance Regulation.

#### **E. Limitations On Cancellation And Non-renewal In The Event Of Hurricane Or Wind Loss - Residential Property**

1. The following provisions apply to a policy covering a residential structure or its contents, if such property has sustained damage as a result of a hurricane or windstorm that is the subject of a declaration of emergency by the Governor and filing of an order by the Commissioner of Insurance Regulation:

a. Except as provided in Paragraph **E.1.b.**, we may not cancel or nonrenew the policy until at least 90 days after repairs to the residential structure or its contents have been substantially completed so that it is restored to the extent that it is insurable by another insurer writing policies in Florida. If we elect to not renew the policy, we will provide at least 100 days' notice that we intend to nonrenew 90 days after the substantial completion of repairs.

b. We may cancel or nonrenew the policy prior to restoration of the structure or its contents for any of the following reasons:

(1) Nonpayment of premium;

(2) Material misstatement or fraud related to the claim;

(3) We determine that you have unreasonably caused a delay in the repair of the structure; or

(4) We have paid the policy limits.

If we cancel or nonrenew for non-payment of premium, we will give you 10 days' notice. If we cancel or nonrenew for a reason listed in Paragraph **b.(2),b.(3)** or **b.(4)**, we will give you 45 days' notice.

2. With respect to a policy covering a residential structure or its contents, any cancellation or nonrenewal that would otherwise take effect during the duration of a hurricane will not take effect until the end

of the duration of such hurricane, unless a replacement policy has been obtained and is in effect for a claim occurring during the duration of the hurricane. We may collect premium for the period of time for which the policy period is extended.

3. With respect to Paragraph **E.2.**, a hurricane is a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service (hereafter referred to as NHC). The hurricane occurrence begins at the time a hurricane watch or hurricane warning is issued for any part of Florida by the NHC and ends 72 hours after the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the NHC.

**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 the 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 microprocessors;
- (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.



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

**CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EQUIPMENT BREAKDOWN COVERAGE PART  
FARM COVERAGE PART  
STANDARD PROPERTY POLICY

**A. Cap On Certified Terrorism Losses**

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

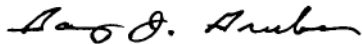
If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**B. Application Of Exclusions**

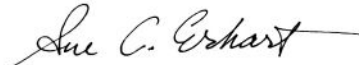
The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War and Military Action Exclusion.

**IN WITNESS CLAUSE**

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



PRESIDENT



SECRETARY

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

## **LOSS PREVENTION SERVICES**

This endorsement modifies insurance provided under the following:

### **COMMON POLICY CONDITIONS**

The following is added to the **Common Policy Conditions**

#### **G. Loss Prevention Services**

At our cost, we may provide or recommend a broad range of loss prevention services designed to improve the acceptability of an insured. These services may require your co-operation to make them effective.

We provide these services based on need as indicated by the size, hazard and experience of your operation. We may elect to provide these services through another entity.

In addition to inspections and surveys, referenced in **D. Inspections and Surveys**, these services may include, but are not limited

to, safety and prevention training, consultations, safety devices, health screenings and analyses of accident causes.

We are not obligated to provide any loss prevention services and 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.

This endorsement does not change any other provision of the Policy.

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

**ECONOMIC AND TRADE SANCTIONS CLAUSE**

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance.

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

**FLORIDA CHANGES - APPRAISAL**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART**

This endorsement replaces any and all other provisions regarding appraisal.

If we and you disagree on the value of the property or the amount of loss, either party may request, in writing, an appraisal of the value of the property and/or the amount of loss. An appraisal may then take place only if the other party agrees in writing to participate in the appraisal process pursuant to terms of a written agreement between the parties. At a minimum, the written agreement between the parties will specify a protocol for the selection of competent and impartial appraisers, the inspection of the property by the appraisers, the selection of an umpire, communications between and among the appraisers and umpire, specific itemization of each item in dispute, and an award form. If the parties cannot agree on a written agreement specifying the protocol, an appraisal will not take place.

If appraisal moves forward, 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. Specific itemization of each item in dispute is required, including, but not limited to, building-by-building, floor-by-floor, unit-by-unit, and area-by-area allocation. If the appraisers 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 the umpire's fee equally.

In connection with the appraisal proceeding, neither the appraisers nor the umpire shall have authority to decide questions of law. Neither the appraisers nor the umpire shall attempt to resolve any issue of insurance coverage, policy exclusions, compliance with the policy terms and conditions, or any issues concerning the Limits of Insurance available under the Policy.

At any time after the request for appraisal, we will retain our right to demand compliance with all applicable Duties in the Event of Loss as described in this Policy. We may require completion of any of the Duties in the Event of Loss, or any other policy condition, prior to continuance of the appraisal proceeding.

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

By voluntarily agreeing to the appraisal process, both parties acknowledge that there are irreconcilable differences that exist regarding the value of the property and/or the amount of loss. Since appraisal is voluntary, you are not required to submit to, or participate in, any appraisal of the loss as a precondition to action against us.

**All other terms and conditions remain unchanged.**

**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

**DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT**

**Schedule**

**Schedule - Part I**

Terrorism Premium (Certified Acts) \$ 0.00

This premium is the total Certified Acts premium attributable to the following Coverage Part(s), Coverage Form(s) and/or Policy(ies): MAC E658359 00 00

Additional information, if any, concerning the terrorism premium:

**Schedule - Part II**

<b>Federal share of terrorism losses</b>	<b>85% Year: 2015</b>
(Refer to Paragraph B. in this endorsement.)	<b>84% Year: 2016</b>
	<b>83% Year: 2017</b>
	<b>82% Year: 2018</b>
	<b>81% Year: 2019</b>
	<b>80% Year: 2020</b>

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

**A. Disclosure of Premium**

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown in the Schedule of this endorsement or in the policy Declarations.

**B. Disclosure of Federal Participation in Payment of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals a percentage (as shown in Part II of the Schedule of this endorsement) of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

**C. Cap on Insurer Participation in Payment of Terrorism Losses**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

## AGENT COUNTERSIGNATURE

The signature shown below complies with the countersignature laws and regulations of the State shown:

**Policy Number:** MAC E658359 00 00

**State:** FL

**Named Insured:**

Champlain Towers South Condominium Association, Inc.

**Agent's Name And Address:**

AmWINS Brokerage of Florida  
1227 S Patrick Dr  
Ste 101  
Satellite Beach FL 32937

**Date of Countersignature:** \_\_\_\_\_

\_\_\_\_\_  
**Countersigning Agent**

Policy No. MAC E658359 00 00

**SELECT BUSINESS POLICY PLUS**

<b>NAMED INSURED:</b> Champlain Towers South Condominium Association, Inc.	<b>POLICY PERIOD:</b> 12/28/2020 to 12/28/2021
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<b>TOTAL PROPERTY PREMIUM:</b>	\$ 33,003.00
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**DEDUCTIBLE AMOUNTS:**

\$ 2,500	EDP Mechanical breakdown	\$ 2,500	In transit
\$ 2,500	All other		

**NOT AT A DESCRIBED PREMISES:**

Insurance is provided only for those coverages for which a Limit of Insurance has been inserted:

	<b>Newly Acquired or Constructed Locations</b>	<b>At any other location</b>	<b>In transit, in or on any one conveyance unit</b>
Building	\$ 500,000	\$ 50,000	\$ NOT COVERED
Business Personal Property	\$ 250,000	\$ 50,000	\$ 5,000
Business Income	\$ NOT COVERED	\$ NOT COVERED	\$ NOT COVERED
Extra Expense	\$ 10,000	\$ 10,000	\$ NOT COVERED

**DESCRIBED PREMISES:**

At the locations specified below, insurance is provided for those coverages for which a Limit of Insurance has been inserted:

Location:	Building:	Address:
	See SB8118	

<b>BUILDING:</b>	Limit \$	Valuation
<b>BUSINESS PERSONAL PROPERTY:</b>	Limit \$	Valuation
<b>BUSINESS INCOME INCLUDING EXTRA EXPENSE:</b>	Limit \$	

**MORTGAGEHOLDER:**



**SUPPLEMENTARY COVERAGES**

The coverages below apply per location. If you purchase additional limits for any of these coverages at a specific location, the Limits of Insurance shown at that location will reflect your total limits, including the Limits of Insurance shown below.

- A.** The Limits of Insurance shown below are provided for the Coverages listed and apply separately at each of your premises. If there is no separate deductible indicated, the Property Deductible will apply.

\$	25,000	Accounts Receivables
\$	10,000	Debris Removal
		Electronic Data Processing
\$	25,000	Equipment
\$	25,000	Data, Programs, Media
\$	5,000	Extra Expense
\$	25,000	Extra Expense
\$	5,000	Fire Department Service Charge
\$	2,500	Fire Protection Device Recharge
\$	5,000	Loss Data Preparation Costs
\$	5,000	Personal Effects
\$	10,000	Pollutant Clean Up and Removal
\$	10,000	Valuable Papers

- B.** When Business Income Coverage is included in the Declarations, the following Limits of Insurance below are provided for the Coverages listed and apply separately at each of your premises.

\$	NOT COVERED	Dependent Property Business Income
\$	NOT COVERED	Unfinished Stock in Transit

- C.** When Business Income Coverage is included in the Declarations, the following coverages are provided up to the Business Income Limit of Insurance. These are extensions of coverage, not additional Limits of Insurance:

Utility Services (including Overhead Power Transmission Lines)

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**FORMS AND ENDORSEMENTS** applicable to this Coverage Part and made a part of this Policy at the time of issue are listed on the attached Forms and Endorsements Schedule, SB 88 01 (11/85).

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**SELECT BUSINESS POLICY  
SCHEDULE OF ADDITIONAL PROPERTY LOCATIONS**

**Described Locations:** At the locations specified below, insurance is provided only for those coverages for which a Limit of Insurance has been inserted.

**Schedule of Locations**

<b>Loc No.</b>	<b>Bldg. No.</b>	<b>Address</b>	<b>C</b>	<b>V</b>	<b>Coin/BI Opt</b>	<b>Limit of Insurance</b>
1	1	8777 Collins Ave, Surfside, FL 33154 Condo	BLDG	RC	NONE	\$ 30,172,900
			BPP	RC	NONE	\$ 160,000
	2	8777 Collins Ave, Surfside, FL 33154 Pool	BLDG	RC	NONE	\$ 85,000
	3	8777 Collins Ave, Surfside, FL 33154 Whirlpool	BLDG	RC	NONE	\$ 20,000
	4	8777 Collins Ave, Surfside, FL 33154 Pool Awning	BLDG	RC	NONE	\$ 8,000
	5	8777 Collins Ave, Surfside, FL 33154 Pool Fence	BLDG	RC	NONE	\$ 25,000
	6	8777 Collins Ave, Surfside, FL 33154 Deck Pavers	BLDG	RC	NONE	\$ 65,000
	7	8777 Collins Ave, Surfside, FL 33154 Exterior Walls	BLDG	RC	NONE	\$ 150,000
	8	8777 Collins Ave, Surfside, FL 33154 St Lighting	BLDG	RC	NONE	\$ 9,000
	9	8777 Collins Ave, Surfside, FL 33154 Barbeques	BLDG	RC	NONE	\$ 2,000
	10	8777 Collins Ave, Surfside, FL 33154 Monument	BLDG	RC	NONE	\$ 8,000

For additional locations, if any, see the Select Business Policy Schedule of Additional Property Locations attached to this Coverage Part.

**All other terms and conditions of this Policy remain unchanged.**

**SELECT BUSINESS POLICY**  
**DECLARATIONS PAGE AND LOCATION SCHEDULE ABBREVIATIONS KEY**

<b><u>C</u></b>	Coverage Type	<b><u>BI OPTS</u></b>	Business Income Coverage Options
<b><u>V</u></b>	Valuation	<b><u>LIMIT</u></b>	Limit of Insurance
<b><u>COIN</u></b>	Coinsurance	<b><u>INCL BLNKT</u></b>	Include in Blanket

**C - COVERAGE TYPES**

<b>BLDG</b>	Building
<b>BPP</b>	Business Personal Property
<b>STK</b>	Stock
<b>PPO</b>	Personal Property of Others
<b>BI &amp; EE</b>	Business Income with Extra Expense
<b>BI</b>	Business Income without Extra Expense
<b>EE</b>	Extra Expense Only

**V - VALUATION**

<b>RC</b>	Replacement Cost
<b>ACV</b>	Actual Cash Value
<b>FRC</b>	Functional Replacement Cost

**C - COINSURANCE**

<b>80</b>	80% Coinsurance
<b>90</b>	90% Coinsurance
<b>100</b>	100% Coinsurance
<b>AA</b>	Agreed Amount
<b>NONE</b>	No Coinsurance

**BI OPTS - BUSINESS INCOME COVERAGE OPTIONS**

<b>ALS</b>	Actual Loss Sustained
<b>AV</b>	Agreed Value
<b>MPI</b>	Maximum Period of Indemnity
<b>ML 1/3</b>	Monthly Limit of Indemnity 1/3
<b>ML 1/4</b>	Monthly Limit of Indemnity 1/4
<b>ML 1/6</b>	Monthly Limit of Indemnity 1/6
<b>70</b>	70% Coinsurance
<b>80</b>	80% Coinsurance
<b>90</b>	90% Coinsurance
<b>100</b>	100% Coinsurance
<b>125</b>	125% Coinsurance
<b>EPI 60</b>	60 Day Extended Period of Indemnity
<b>EPI 120</b>	120 Day Extended Period of Indemnity
<b>EPI 150</b>	150 Day Extended Period of Indemnity
<b>EPI 180</b>	180 Day Extended Period of Indemnity
<b>EPI 270</b>	270 Day Extended Period of Indemnity
<b>EPI 365</b>	365 Day Extended Period of Indemnity
<b>EPI 450</b>	450 Day Extended Period of Indemnity
<b>EPI 540</b>	540 Day Extended Period of Indemnity
<b>EPI 630</b>	630 Day Extended Period of Indemnity
<b>100/100/100</b>	Extra Expense Only Monthly Percent 100/100/100
<b>40/80/100</b>	Extra Expense Only Monthly Percent 40/80/100
<b>35/70/100</b>	Extra Expense Only Monthly Percent 35/70/100

**All other terms and conditions of the Policy remain unchanged.**

## SELECT BUSINESS POLICY FORMS AND ENDORSEMENTS EXTENSION SCHEDULE

It is hereby understood and agreed the following forms and endorsements are attached to and are a part of this policy:

	<b>Form and Edition</b>		<b>Date Added * or Date Deleted</b>	<b>Form Description</b>
1.	SB8696	11-97		Select Business Policy Plus
2.	SB8118	05-16		Select Business Policy Schedule of Additional Property Locations
3.	SB8139	10-10		Select Business Policy Declarations Page And Location Schedule Abbreviations Key
4.	SB8601	07-02		Select Business Policy Conditions
5.	SB8602	07-02		Select Business Policy Building and Personal Property Coverage Form
6.	SB8607	07-02		Select Business Policy Extra Expense Coverage Form
7.	CP7354	09-14		Data Compromise Coverage
8.	SB8650	02-16		Protective Safeguards
9.	SB8802	01-88		Select Business Policy - General Endorsement - Deductible Amount By Cause Of Loss
10.	SB8123	04-09		Select Business Policy - Water Exclusion Endorsement
11.	SB8172	06-13		Select Business Policy - Exclusion Of Loss Due To Virus Or Bacteria
12.	SB8236	06-14		Florida Changes
13.	SB8698	11-97		Select Business Policy - Condominium Association Coverage Amendments
14.	SB8712	07-02		Select Business Policy Accounts Receivable Extension
15.	SB8768	04-04		Windstorm or Hail Exclusion

\* If not at inception

**SELECT BUSINESS POLICY CONDITIONS**

This Coverage Part is subject to the following conditions:

**GENERAL CONDITIONS****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 A 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 or more than the actual amount of loss or damage.

**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 the 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.

#### **J. Mortgageholders**

1. The term "mortgageholder" includes trustee.
2. 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.
3. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
4. 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:

- a. pays any premium due under this Coverage Part if you have failed to do so;
- b. submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- c. has notified us if 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.

5. 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:
  - a. the mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - b. the mortgageholder's rights 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.

6. If we cancel this policy, we will give written notice to the mortgageholder at least:
  - a. 10 days before the effective date of cancellation if we cancel for your nonpayment or premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
7. 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.

**LOSS CONDITIONS****A. Abandonment**

There can be no abandonment of any property to us.

**B. Appraisal**

If we and you disagree on the value of the property, 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 value of the property, the amount of Net Income and operating expense, or the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

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

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

1. You must see that the following are done in the event of loss or damage to Covered Property:
  - a. Notify the police if a law may have been broken.
  - b. Give us prompt notice of the loss or damage. Include a description of the property involved.
  - c. As soon as possible, give us a description of how, when, and where the loss or damage occurred.
  - d. Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss, and keep a record of your expenses necessary to protect the Covered Property from such a loss, for consideration in the settlement of the

claim. 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 damaged property aside and in the best possible order, for examination.

- e. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- f. 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.
- g. 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.
- h. Cooperate with us in the investigation or settlement of the claim.
- i. If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.

2. 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 claim, including an Insured's books and records. In the event of an examination, an Insured's answers must be signed.

**D. Loss Payment**

1. In the event of direct physical loss or damage covered by this Coverage Part, at our option, we will either:
  - a. pay the value of lost or damaged property;

- b. pay the cost of repairing or replacing the lost or damaged property, subject to **2.** below;
- c. take all or any part of the property at an agreed or appraised value; or
- d. repair, rebuild or replace the property with other property of like kind and quality subject to **2.** 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 Part or any applicable provision which amends or supercedes the **Valuation** Condition.

2. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
3. The amount of Business Income loss will be determined based on:
  - a. the Net Income of the business before the direct physical loss or damage occurred;
  - b. the likely Net Income of the business if no physical loss or damage 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;
  - c. 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
  - d. other relevant sources of information, including:
    - (1) your financial records and accounting procedures;
    - (2) bills, invoices and other vouchers; and
    - (3) deeds, liens, or contracts.
4. The amount of Extra Expense will be determined based on:
  - a. 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:
    - (1) the salvage value that remains of any property bought for temporary use during the "period of restoration," once "operations" are resumed; and
    - (2) 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
  - b. Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.
5. We will give notice of our intentions within 30 days after we receive the sworn statement of loss.
6. We will not pay you more than your financial interest in the Covered Property.
7. 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.
8. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
9. 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:
  - a. we have reached agreement with you on the amount of loss; or
  - b. an appraisal award has been made.



**E. Recovered Property**

1. 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.
2. If branded or labeled merchandise that is Covered Property is damaged by a Covered Cause of Loss, we may take all or any part of the property at an agreed or appraised value. If so, you may, at your own expense:
  - a. stamp "salvage" on the merchandise or its containers, if the stamp will not physically damage the merchandise; or
  - b. remove the brands or labels, if doing so will not physically damage the merchandise. You must relabel the merchandise or its containers to comply with the law.

**F. Resumption Of Operations**

1. We will reduce the amount of your:
  - a. 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.
  - b. Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
2. If you do not resume "operations," or do not resume "operations" as quickly as possible, we will pay losses based on the length of time it would have taken to resume "operations" as quickly as possible.

**G. Vacancy****1. Description of Terms**

- a. As used in the **Vacancy** Condition, the

term building and the term vacant have the meaning set forth in (1) and (2) below:

- (1) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means that 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.
- (2) 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:
  - (a) rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
  - (b) used by the building owner to conduct customary operations.

- b. Buildings under construction or renovation are not considered vacant.

**2. 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:

- a. We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
  - (1) vandalism;
  - (2) sprinkler leakage, unless you have protected the system against freezing;
  - (3) building glass breakage;
  - (4) water damage;
  - (5) theft; or

(6) attempted theft.

- b. With respect to Covered Causes of Loss other than those listed in **2.(a)(1)** through **2.(a)(6)** above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

#### H. Valuation

1. If actual cash value is indicated in the Declarations as the method of 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. through g. below.
- b. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- c. Finished "stock" you have manufactured at the selling price, as if no loss or damage occurred, 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. Tenant's Improvements and Betterments at:

(1) Actual cash value of the loss 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 in-

stallation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration date 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. Exhibitions and displays at your cost.

g. Patterns, molds, models, and dies at replacement cost if actually replaced. Otherwise at actual cash value.

2. If replacement cost is indicated in the Declarations as the method of valuation we will determine the value of Covered Property in the event of loss or damage as follows:

a. At replacement cost (without deduction for depreciation) as of the time of loss or damage except as provided in b. through l. below:

b. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

c. Finished "stock" you have manufactured at the selling price, as if no loss or damage occurred, 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. Tenant's Improvements and Betterments at:

(1) Replacement cost of the loss 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;
    - (c) 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. Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:
    - (1) blank materials for reproducing the records; and
    - (2) labor to transcribe or copy the records when there is a duplicate.
  - g. Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac at actual cash value.
  - h. 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 that replacement cost coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
  - i. We will not pay on a replacement cost basis for any loss or damage:
    - (1) until the lost or damaged property is actually repaired or replaced; and
    - (2) unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
  - j. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3) subject to k. 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 (2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.
- k. The cost of repair or replacement does not include any increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
  - l. 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.

Tenants' Improvements and Betterments are not considered to be the personal property of others.

**I. Limitation - Electronic Media and Records**

We will not pay for any loss of Business Income caused by direct physical loss of or damage to Electronic Media and Records after the longer of:

1. 60 consecutive days from the date of direct physical loss or damage; or
2. the period, beginning with the date of direct physical loss or damage, necessary to repair, rebuild or replace, with reasonable speed and similar quality, other property at the described premises due to loss or damage caused by the same occurrence.

Electronic Media and Records are:

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

This limitation does not apply to Extra Expense.

**J. Definitions**

1. **"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.

## SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights and duties and what is and what 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 J. - **Definitions.**

### A. Coverage

We will pay for direct physical loss of or damage to Covered Property shown 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 and signs;
- (3) permanently installed:
  - (a) machinery;
  - (b) equipment; and
  - (c) foundations of machinery, tanks and their component parts, including all connections thereto which are below the undersurface of the lower basement floor, or

where there is no basement, below the surface of the ground.

(4) personal property owned by you that is used to maintain or service the building or structure or its premises, including but not limited to:

- (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 1000 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. **Your Business Personal Property** as shown in the Declarations consisting of the following:

- (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;
  - (8) signs, including signs attached to building, provided there is no coverage for the sign under the Building Covered Property.
- c. Personal Property of Others** that is in your care, custody or control as shown in the Declarations.

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, deeds, 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, or boilers if their foundations are below:
  - (1) the lowest basement floor; or
  - (2) the surface of the ground, if there is no basement;
- h. land (including land on which the property is located), water, growing crops or lawns;
- i. personal property while airborne or waterborne (other than while on regular ferries or railroad car floats);
- 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 except as provided under **A.1.a.(3)(c)**;
- n. electronic data except as provided under **Additional Coverages - Electronic Data**. Electronic Data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic

data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph n. does not apply to your "stock" of prepackaged software.

- o. the cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawing 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 as provided in the Coverage Extensions;

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

- q. the following property while outside of buildings:

- (1) grain, hay, straw or other crops;

- (2) trees, shrubs or plants, (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

## B. Covered Causes Of Loss

Covered Causes of Loss means **Risks Of Direct Physical Loss** unless loss is:

- 1. Excluded in Section **C. Exclusions**; or
- 2. Limited in Section **D. Limitations**;

that follow.

## C. Exclusions

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

### a. Ordinance or Law

The enforcement of any ordinance or law:

- (1) regulating 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:

- (1) an ordinance or law that is enforced even if the property has not been damaged; or
- (2) 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 direct physical loss to that property.

### b. Earth Movement

- (1) earthquake, including any earth sinking, rising or shifting related to such event;

- (2) landslide, including any earth sinking, rising or shifting related to such event;
- (3) mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- (4) earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of reality. 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 that resulting 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 shockwaves;
- (b) ash, dust or particulate matter; or
- (c) lava flow.

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

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

This exclusion does not apply to Covered Personal Property in due course of transit.

#### **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 that loss or damage caused by the fire.

#### **e. Utility Services**

The failure of power or other utility service supplied to the described premises however caused, if the failure occurs away from the described premises. Failure includes lack of sufficient capacity and reduction in supply.

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

#### **f. War and Military Action**

- (1) War, including undeclared or civil war;
- (2) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or



- (3) insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.
- (2) Mudslide or mudflow.

But if Water, as described in **g.(1)** and **g.(2)** above results in fire, explosion, theft or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion, theft or sprinkler leakage.

This exclusion does not apply to Covered Personal Property in due course of transit.

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

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

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

This exclusion does not apply:

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

Exclusions **C.1.a.** through **C.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 current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if artificially generated electrical current results in fire, 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, spoilage, 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 insect, 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 the loss or damage caused by or resulting from the explosion of gases or fuel within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
  - (1) you do your best to maintain heat in the building or structure; or
  - (2) you drain the equipment and shut off the supply if the heat is not maintained.
- h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose.

- (1) acting alone or in collusion with others; or
- (2) whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.
- k. Collapse, except as provided below in the Additional Coverage for Collapse. 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.
- 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 have 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.

#### D. Limitations

1. We will pay for direct physical loss or damage to Covered Personal Property which is in due course of transit at your risk if the Covered Personal Property is:

- a. in the custody of a carrier or bailee for hire; or
- b. on vehicles you own or operate; but

only up to the Transit Limit of Insurance shown in the Declarations and subject to the Transit deductible shown in the Declarations.

2. We will not pay for loss or damage to any of the following types of property if the loss or damage occurs at an unnamed location or while in transit:

- a. Musical Instruments;
- b. Contractors' Equipment, including Cranes.

This limitation does not apply to musical instruments or contractors equipment you manufacture, process or hold for sale.

3. We will not pay for loss of or damage to:

- 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. 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 building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form.

- d. 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.
- e. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

4. We will not pay more than \$10,000 for loss or damage to the interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- a. 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
- b. the loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

5. We will only pay for loss of or damage to animals if the loss or damage is caused by any of the "specified causes of loss" or building glass breakage, and then only if they are killed or their destruction is made necessary.

6. The special limit shown for each category, a. through c., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:

- a. \$2,500 for furs, fur garments and garments trimmed with fur.
- b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
- c. \$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.

7. 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 any automatic fire protection system; or
  - b. is directly caused by freezing.

## E. Additional Coverages

### 1. Collapse

The term Covered Cause of Loss includes the Additional Coverage - Collapse as described and limited in 1.a. through 1.e. below.

- a. With respect to buildings:

- (1) 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) a building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
  - (3) a part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
  - (4) a building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- b. We will pay for direct physical loss or damage to Covered Property, caused by 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 the collapse is caused by one or more of the following:
- (1) the "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
  - (2) decay that is hidden from view, unless the presence of such decay is known to an Insured prior to collapse;
  - (3) insect or vermin damage that is hidden from view, unless the presence of such damage is known to an Insured prior to collapse;
  - (4) weight of people or personal property;
  - (5) weight of rain that collects on a roof;
  - (6) use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the

construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in **1.b(1)** through **1.b.(5)**, we will pay for the loss or damage even if use of defective material or methods, in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in **1.a.(1)** through **1.a.(4)** do not limit the coverage otherwise provided under this Coverage Form for the causes of loss listed in **1.b.(1)**, **1.b.(4)** and **1.b.(5)**.

**c. With respect to the following property:**

- (1) outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- (2) awnings, gutters and downspouts;
- (3) yard fixtures;
- (4) outdoor swimming pools;
- (5) fences;
- (6) piers, wharves and docks;
- (7) beach or diving platforms or appurtenances;
- (8) retaining walls; and
- (9) walks, roadways and other paved surfaces;

if the collapse is caused by a Cause of Loss listed in **b.(2)** through **b.(6)**, we will pay for loss or damage to that property only if:

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

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

- (1) the collapse was caused by a Cause of Loss listed in **b.(1)** through **b.(6)** above;
- (2) the personal property which collapses is inside a building; and
- (3) the property which collapses is not of a kind listed in **c.** above, regardless of whether that kind of property is considered to be personal property or real property.

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

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

**e. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.**

**2. Limited Coverage for "Fungus," Wet Rot, Dry Rot And Bacteria**

**a. The coverage described in 2.b. only applies when the "fungus," wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.**

- (1) a "specified cause of loss" other than fire or lightning; or
- (2) flood, if the Flood Coverage Endorsement applies to the affected premises.

- b. 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:

- (1) 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;
- (2) 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
- (3) the cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus," wet or dry rot or bacteria are present.

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

- d. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus," wet or dry rot or bacteria, and other loss or damage, we will not pay more for the total of all loss or damage than the applicable Limit of Insurance on the affected Covered Property.

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

- e. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph **F.6.** (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this form or under the Additional Coverage - Collapse.

### 3. Debris Removal

- a. Subject to Paragraphs **c.** and **d.**, we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the direct physical loss or damage.

- b. Debris Removal does not apply to costs to:

- (1) extract "pollutants" from land or water; or
- (2) remove, restore or replace polluted land or water.

- c. Subject to the exception in Paragraph **d.**, the following provisions apply:

- (1) 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.
- (2) Subject to (1) 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.

d. We will pay up to the limit shown for Debris Removal on the Declarations for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

- (1) 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.
- (2) 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 **d.(1)** and/or **d.(2)** apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage plus the limit shown for Debris Removal on the Declarations for each location in any one occurrence under the Debris Removal Additional Coverage.

#### e. Examples

The following examples assume that there is no coinsurance penalty and the limit shown under Debris Removal Additional Coverage on the Declarations page equals \$10,000.

##### 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 c.

##### Example #2

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 80,000
Amount of Loss Payable	\$ 79,500
	(\$ 80,000 - \$500)
Debris Removal Expense	\$ 30,000
Debris Removal Expense Payable	\$ 20,500
	Basic Amount \$ 10,500
	Additional Amount \$ 10,000

The basic amount payable for debris removal expense under the terms of Paragraph c. 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 (\$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 d., because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is limited to \$10,000, which is equal to the limit shown on the Declarations page, as stated under Paragraph d. Thus, the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

#### 4. 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 the limit specified in the Declarations for this Additional Coverage for your liability for fire department service charges:

- a. assumed by contract or agreement prior to loss; or

b. required by local ordinance.

No Deductible applies to this Additional Coverage.

#### **5. Fire Protection Device Recharge**

We will pay, up to the limit listed in the Declarations for this Additional Coverage, to recharge or refill your fire protective devices that are permanently installed in buildings at the described premises.

This Additional Coverage only applies when such devices have been discharged while being used to combat a covered fire.

#### **6. Loss Data Preparation**

We will pay, up to the limit listed in the Declarations for this Additional Coverage, for reasonable costs you incur in preparing loss data required by policy conditions after a loss covered by this Coverage Part. This includes the cost of taking inventory, making appraisals and preparing other data to determine the extent of your loss. This does not include public adjusters fees.

#### **7. Pollutant Clean Up and Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the release, discharge, seepage, migration, escape or dispersal 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 for each location under this Additional Coverage is stated in the Declarations for the sum of all cov-

ered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this Policy.

No Deductible applies to this Additional Coverage.

#### **8. Electronic Data**

a. Under this Additional Coverage, electronic data has the meaning described under Property Not Covered - Electronic Data.

b. 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.

c. The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage - Electronic Data, subject to the following:

(1) Coverage under this Additional Coverage - Electronic Data is limited to the "specified causes of loss" and Collapse as defined in this form.

(2) If the policy 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.

(3) 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.

- d. The most we will pay under this Additional Coverage - Electronic Data is \$2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

## F. 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 1,000 feet of the described premises.

### 1. Newly Acquired or Constructed Property

#### a. Buildings

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

- (1) your new buildings while being built on the described premises; and
- (2) buildings you acquire at locations, other than the described premises, intended for:
  - (a) similar use as the building described in the Declarations; or
  - (b) use as a warehouse.

The most we will pay for loss or damage under this Extension is the Limit of Insurance for this Coverage Extension, shown in the Declarations.

### b. Your Business Personal Property

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

The most we will pay for loss or damage under this Extension is the Limit of Insurance for this Coverage Extension, shown in the Declarations.

- (2) This extension does not apply to:

- (a) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
- (b) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

### c. Period of Coverage

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

- (1) this policy expires;

- (2) 90 days expire after you acquire the property or begin construction on that part of the building that would qualify as covered property; or

- (3) you report values to us.

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

- d. If the coverage provided by this extension has expired due to Item c. above, the Limit of Insurance shown in the Declarations for "At Any Other Location" will apply.

## 2. Personal Effects

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

The most we will pay for loss or damage under this Extension is stated in the Declarations for this Extension per 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.

No Deductible applies to this Coverage Extension.

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

- a. 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.
- b. Coverage under this Extension is limited to the "specified causes of loss" and Collapse as defined in this form.

- c. 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.

## 4. Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your trees, shrubs and plants (other than "stock" of trees, shrubs or plants), piers, wharves, docks or retaining walls (not attached to buildings), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- a. fire;
- b. lightning;
- c. explosion;
- d. riot or Civil Commotion; or
- e. aircraft.

## 5. Non-Owned Detached Trailers

- a. 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:
  - (1) the trailer is used in your business;
  - (2) the trailer is in your care, custody or control at the premises described in the Declarations; and
  - (3) you have a contractual responsibility to pay for loss or damage to the trailer.

- b. We will not pay for loss or damage that occurs:

- (1) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
- (2) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.

- c. The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- d. This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

#### **6. 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.

#### **7. 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.

Each of these Extensions is additional insurance, except for **6. Water Damage, Other Liquids, Powder or Molten Material Damage** and **7. Glass**.

Payments under the following Extensions will not increase the applicable limit of insurance:

- (1) **Water Damage, Other Liquids, Powder or Molten Material Damage**
- (2) **Glass.**

The **Additional Condition, Coinsurance**, does not apply to these Extensions.

#### **G. 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 limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

#### **H. 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 a Coinsurance Condition. 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.

#### **I. Optional Coverages**

##### **1. 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

and the annual percentage increase is 8%

The number of days since the beginning of the policy year (or last change) is 146

The amount of increase is  
 $\$100,000 \times .08$   
 $\times 146 \div 365 = \$3,200$

**2. Ordinance or Law**

- a. Each of the Coverages - Coverage **A**, Coverage **B** and Coverage **C** - applies only if that Coverage(s) is chosen by entry in the Declarations and then only with respect to the Building property identified for that Coverage(s) in the Declarations.

**b. Application of Coverage**

The coverage provided by this Optional Coverage applies only if both (1) and (2) are satisfied and then subject to the qualifications set forth in (3).

- (1) The ordinance or law:

- (a) regulates the demolition, construction or repair of buildings, or establishes

zoning or land use requirements at the described premises; and

- (b) is in force at the time of loss.

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

- (2) (a) The building sustains direct physical damage that is covered under this policy and such damage results in enforcement of the ordinance or law; or
- (b) The building sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and the building damage in its entirety results in enforcement of the ordinance or law.
- (c) But if the building sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no coverage under this Optional Coverage even if the building has also sustained covered direct physical damage.
- (3) In the situation described in (2)(b) above, we will not pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B** and/or **C** of this Optional Coverage. Instead, we will pay a proportion of such loss; meaning the proportion that the covered direct physical damage bears to the total direct physical damage.

However, if the covered direct physical damage, alone, would have resulted in enforcement of the ordinance or law, then we will pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B** and/or **C** of this Optional Coverage.

c. We will not pay under Coverages **A**, **B** and/or **C** of this Optional Coverage for:

- (1) Enforcement of any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus," wet or dry rot or bacteria; or
- (2) The costs associated with the enforcement of any ordinance or law which requires any Insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants," "fungus," wet or dry rot or bacteria.

**d. Coverage**

**(1) Coverage A - Coverage for Loss to the Undamaged Portion of the Building**

With respect to the building that has sustained covered direct physical damage, we will pay under Coverage **A** for the loss in value of the undamaged portion of the building as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building.

Coverage **A** is included within the Limit of Insurance shown in the Declarations as applicable to the covered building. Coverage **A** does not increase the Limit of Insurance.

**(2) Coverage B - Demolition Cost Coverage**

With respect to the building that has sustained covered direct physical damage, we will pay the cost to demolish and clear the site of undamaged parts of the same building, as a consequence of enforcement of an ordinance or law that requires demolition of such undamaged property.

If attached, the Coinsurance Additional Condition Endorsement does not apply to Demolition Cost Coverage.

**(3) Coverage C - Increased Cost of Construction Coverage**

(a) With respect to the building that has sustained covered direct physical damage, we will pay the increased cost to:

- (i) repair or reconstruct damaged portions of that Building property; and/or
- (ii) reconstruct or remodel undamaged portions of that Building property, whether or not demolition is required;

when the increased cost is a consequence of enforcement of the minimum requirements of the ordinance or law.

However:

- (i) This coverage applies only if the restored or remodeled property is intended for similar occupancy as the current property, unless such occupancy is not permitted by zoning or land use ordinance or law.

- (ii) We will not pay for the increased cost of construction if the building is not repaired, reconstructed or remodeled.

If attached, the Coinsurance Additional Condition Endorsement, does not apply to Increased Cost of Construction Coverage.

- (b) When a building is damaged or destroyed and Coverage **C** applies to that building in accordance with (3)(a) above, coverage for the increased cost of construction also applies to repair or reconstruction of the following, subject to the same conditions stated in (3)(a):

- (i) the cost of excavations, grading, backfilling and filling;
- (ii) foundation of the building;
- (iii) pilings; and
- (iv) underground pipes, flues and drains.

The items listed in (b)(i) through (b)(iv) above are deleted from Property Not Covered, but only with respect to the coverage described in this Provision (3)(b).

#### **e. Loss Payment**

- (1) All following loss payment Provisions **e.(2)** through **e.(4)**, are subject to the apportionment procedures set forth in Section **b.(3)** of this Optional Coverage.
- (2) When there is a loss in value of an undamaged portion of a building, to which Coverage **A** applies, the loss payment for that building, including damaged and undamaged portions, will be determined as follows:

- (a) If the replacement cost valuation applies, and the property is being repaired or replaced, on the same or another premises, we will not pay more than the lesser of:

- (i) the amount you would actually spend to repair, rebuild or reconstruct the Building property, but not for more than the amount it would cost to restore the Building property on the same premises and to the same height, floor area, style and comparable quality of the original property insured; or

- (ii) the Limit of Insurance shown in the Declarations as applicable to the covered Building property.

- (b) If the replacement cost valuation applies and the property is **not** repaired or replaced, or if the replacement cost valuation does **not** apply, we will not pay more than the lesser of:

- (i) the actual cash value of the Building property at the time of loss; or

- (ii) the Limit of Insurance shown in the Declarations as applicable to the covered Building property.

- (3) Loss payment under Coverage **B** Demolition Cost Coverage will be determined as follows:

We will not pay more than the lesser of the following:

- (a) the amount you actually spend to demolish and clear the site of the described premises; or

- (b) the applicable Limit of Insurance shown for Coverage **B** in the Declarations.

- (4) Loss payment under Coverage **C** - Increased Cost of Construction Coverage will be determined as follows:

- (a) We will not pay under Coverage **C**:

- (i) until the property is actually repaired or replaced, at the same or another premises; and

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

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay under Coverage **C** is the lesser of:

- (i) the increased cost of construction at the same premises; or

- (ii) the applicable Limit of Insurance shown for Coverage **C** in the Declarations.

- (c) If the ordinance or law requires relocation to another premises, the most we will pay under Coverage **C** is the lesser of:

- (i) the increased cost of construction at the new premises; or

- (ii) the applicable Limit of Insurance shown for Coverage **C** in the Declarations.

- f. Under this Optional Coverage we will not pay for loss due to any ordinance or law that:

- (1) you were required to comply with before the loss, even if the building was undamaged; and

- (2) you failed to comply with.

### 3. Utility Services

#### a. Coverage

We will pay for loss of or damage to Covered Property described in the Declarations, caused by the interruption of service to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to the following property, not on the described premise.

#### b. Exception

Coverage under this Optional Coverage does not apply to loss or damage to electronic data, including destruction or corruption of electronic data. The term electronic data has the meaning set forth in this coverage form.

#### c. Utility Services

- (1) **Water Supply Services**, meaning the following types of property supplying water to the described premises:

- (a) pumping stations; and

- (b) water mains.

- (2) **Communication Supply Services**, meaning property supplying communication services, including telephone, radio, microwave or television services to the described premises, such as:

- (a) communication transmission lines, including optic fiber transmission lines;

- (b) coaxial cables; and

- (c) microwave radio relays except satellites.

(3) **Power Supply Services**, meaning the following types of property supplying electricity, steam or gas to the described premises:

- (a) utility generating plants;
- (b) switching stations;
- (c) substations;
- (d) transformers; and
- (e) transmission lines.

d. The Utility Services Limit of Insurance as shown on the Declarations is part of, not in addition to, the Limit of Insurance stated in the Declarations, as applicable to the Covered Property.

## J. 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.

4. **"Specified Causes of Loss"** means the following: Fire; lightning; explosion; wind-storm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

- (1) the cost of filling sinkholes; or
- (2) sinking or collapse of land into man-made underground cavities.

b. Falling objects does not include loss or damage to:

- (1) personal property in the open; or
- (2) the interior of a building or structure, or property inside a building or structure unless the roof or an outside wall of the building or structure is first damaged by a falling object.

c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.



## SELECT BUSINESS POLICY EXTRA EXPENSE COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights and 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 the actual and necessary Extra Expense you sustain due to direct physical loss of or damage to property, at the premises which are described in the Declarations and for which an Extra Expense 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 1000 feet of the site at which the described premises are located.

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

- a. the portion of the building which you rent, lease or occupy; and
- b. any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

### Extra Expense

**Extra Expense** means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to

property. Coverage pertains to expenses (other than the expense to repair or replace property) which are incurred 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.

### B. Covered Causes of Loss, Exclusions and Limitations

**Covered Causes of Loss** means Risks of Direct Physical Loss unless the loss is:

1. excluded in Section **C. Exclusions**, of the **Select Business Policy Building and Personal Property Coverage Form**;
2. limited in Section **D. Limitations** of the **Select Business Policy Building and Personal Property Coverage Form**; or
3. excluded in Section **C. Special Exclusions**, below.

**C. Special Exclusions**

We will not pay for:

1. 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."
2. Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration."
3. Any other consequential loss.
4. Any loss caused by or resulting from damage or destruction of property in transit.

**D. Additional Limitation - Interruption of Computer Operations**

1. 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**.
2. 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.

**E. Additional Coverages****1. Civil Authority**

We will pay for the actual and necessary Extra Expense you incur caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss. This coverage will apply for a period of up to three consecutive weeks from the date of that action.

**2. Alterations and New Buildings**

We will pay for the actual 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:

- a. new buildings or structures, whether completed or under construction;
- b. alterations or additions to existing buildings or structures; and
- c. machinery, equipment, supplies or building materials located on or within 1000 feet of the described premises and:
  - (1) used in the construction, alterations or additions; or
  - (2) incidental to the occupancy of new buildings.

**3. Interruption of Computer Operations**

- a. Under this Additional Coverage, electronic data has the meaning described under **Additional Limitation - Interruption of Computer Operations**.
- b. Subject to all provisions of their Additional Coverage, you may extend the insurance that applies to 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.

- c. With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:

(1) Coverage under the **Additional Coverage - Interruption of Computer Operations** is limited to the "specified causes of loss" as defined in the **Select Business Policy Building and Personal Property Coverage Form, and Collapse** as set forth in that form.

(2) If the **Select Business Policy Building and Personal Property Coverage 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**.

(3) 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.

- d. The most we will pay under this **Additional Coverage - Interruption of Computer Operations** is \$2,500 for all loss sustained 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 sustained 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 in a subsequent policy year(s), all loss is deemed to be sustained in the policy year in which the interruption began.

- e. This **Additional Coverage - Interruption of Computer Operations** does not apply to loss sustained after the end of the "period of restoration," even if the amount of insurance stated in d. above has not been exhausted.

## F. Coverage Extension

### 1. Newly Acquired Locations

- a. You may extend your Extra Expense Coverage to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay, at each location, for loss under this Extension is the limit shown in the Declarations for this Coverage Extension.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:

- (1) this policy expires;
- (2) 90 days expire after you acquire or begin to construct the property; or
- (3) you notify us of how you want this coverage to apply to that location.

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

This Extension is additional insurance.

**2. Property At Any Other Location**

- a. You may extend your Extra Expense Coverage to apply to property at any location other than described premises or newly acquired locations.
- b. The most we pay, at each location, for loss under this Extension is the limit shown on the Declarations.

- (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.

**G. Limits of Insurance**

The most we will pay for loss in any one occurrence is the applicable Limit of Insurance shown in the Declarations. The limits applicable to the Coverage Extensions are in addition to the Limit of Insurance.

Payments under the Alterations and New Buildings or Civil Authority Additional Coverages will not increase the applicable Limit of Insurance.

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

- a. regulates the construction, use or repair, or requires the tearing down of any property; or
- b. requires 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."

**H. Definitions**

- 1. **"Operations"** means your business activities occurring at the described premises.

- 2. **"Period of Restoration"** means the period of time that:

- a. begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. ends on the earlier of:

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

- 3. **"Pollutants"** means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- 4. **"Suspension"** means the slowdown or cessation of your business activities.

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

## **DATA COMPROMISE COVERAGE**

Coverage under this endorsement is subject to the following:

<b>Data Compromise Limit:</b>	\$	50,000	Annual Aggregate
<b>Sublimits</b>			
<b>Named Malware</b>	\$	50,000	
<b>Forensic IT Review:</b>	\$	5,000	
<b>Legal Review:</b>	\$	5,000	
<b>Public Relations Services:</b>	\$	5,000	Any one "Personal Data Compromise"
<b>Data Compromise Deductible:</b>	\$	2,500	Any one "Personal Data Compromise"

The following is added as an Additional Coverage:

### **DATA COMPROMISE COVERED CAUSE OF LOSS**

Coverage under this **Data Compromise Coverage** endorsement applies only if all of the following conditions are met:

1. there has been a "personal data compromise"; and
2. such "personal data compromise" is first discovered by you during the policy period for which this **Data Compromise Coverage** endorsement is applicable; and
3. such "personal data compromise" is reported to us within 60 days after the date it is first discovered by you.

### **COVERAGE - SECTION 1**

If the three conditions listed above in **Data Compromise - Covered Cause of Loss** have been met, then we will provide coverage for the following expenses when they arise directly from the covered cause of loss and are necessary and reasonable. Coverages 4 and 5 apply only if there has been a notification of the "personal data compromise" to "affected individuals" as covered under coverage 3.

#### **1. Forensic IT Review**

Professional information technologies review if needed to determine, within the constraints of what is possible and reasonable, the nature and extent of the "personal data compromise" and the number and identities of the "affected individuals."

This does not include costs to analyze, research or determine any of the following:

- a. vulnerabilities in systems, procedures or physical security;

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- b. compliance with PCI or other industry security standards; or
- c. the nature or extent of loss or damage to data that is not "personally identifying information" or "personally sensitive information."

If there is reasonable cause to suspect that a covered "personal data compromise" may have occurred, we will pay for costs covered under Forensic IT Review, even if it is eventually determined that there was no covered "personal data compromise." However, once it is determined that there was no covered "personal data compromise," we will not pay for any further costs.

## **2. Legal Review**

Professional legal counsel review of the "personal data compromise" and how you should best respond to it.

If there is reasonable cause to suspect that a covered "personal data compromise" may have occurred, we will pay for costs covered under Legal Review, even if it is eventually determined that there was no covered "personal data compromise." However, once it is determined that there was no covered "personal data compromise," we will not pay for any further costs.

## **3. Notification to Affected Individuals**

We will pay your necessary and reasonable costs to provide notification of the "personal data compromise" to "affected individuals."

## **4. Services to Affected Individuals**

We will pay your necessary and reasonable costs to provide the following services to "affected individuals."

- a. The following services apply to any "personal data compromise."

### **1) Informational Materials**

A packet of loss prevention and customer support information.

### **2) Help Line**

A toll-free telephone line for "affected individuals" with questions about the "personal data compromise." Where applicable, the line can also be used to request additional services as listed in **b. 1)** and **2)**.

- b. The following additional services apply to "personal data compromise" events involving "personally identifying information."

### **1) Credit Report and Monitoring**

A credit report and an electronic service automatically monitoring for activities affecting an individual's credit records. This service is subject to the "affected individual" enrolling for this service with the designated service provider.

### **2) Identity Restoration Case Management**

As respects any "affected individual" who is or appears to be a victim of "identity theft" that may reasonably have arisen from the "personal data compromise," the services of an identity restoration professional who will assist that "affected individual" through the process of correcting credit and other records and, within the constraints of what is possible and reasonable, restoring control over his or her personal identity.

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## 5. Public Relations Services

Professional public relations firm review of and response to the potential impact of the "personal data compromise" on your business relationships.

This includes costs to implement public relations recommendations of such firm. This may include advertising and special promotions designed to retain your relationship with "affected individuals." However, we will not pay for promotions:

- a. provided to any of your directors or employees; or;
- b. costing more than \$25 per "affected individual."

## LIMITS

The most we will pay under this **Data Compromise Coverage** is the Data Compromise Limit indicated for this endorsement.

The Data Compromise Limit is an annual aggregate limit. This amount is the most we will pay for the total of all loss arising out of all "personal data compromise" events which are first discovered by you during the present annual policy period. This limit applies regardless of the number of "personal data compromise" events discovered by you during that period.

A "personal data compromise" may be first discovered by you in one policy period but cause covered costs in one or more subsequent policy periods. If so, all covered costs arising from such "personal data compromise" will be subject to the Data Compromise Limit applicable to the policy period when the "personal data compromise" was first discovered by you.

The most we will pay under this **Data Compromise coverage** for loss arising from any "malware-related compromise" is the Named Malware sublimit indicated for this endorsement. For the purpose of the Named Malware sublimit, all "malware-related compromises" that are caused, enabled or abetted by the same virus or other malicious code are considered to be a single "personal data compromise."

The most we will pay under Forensic IT Review, Legal Review and Public Relations Services coverages for loss arising from any one "personal data compromise" is the applicable sublimit for each of those coverages indicated for this endorsement. These sublimits are part of, and not in addition to, the Data Compromise Limit. Public Relations Services coverage is also subject to a limit per "affected individual" as described in **5. Public Relations Services**.

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

## DEDUCTIBLE

**Data Compromise Coverage** is subject to the Data Compromise Deductible indicated for this endorsement. You shall be responsible for such deductible amount as respects each "personal data compromise" covered under this endorsement.

## EXCLUSIONS

The following additional exclusions apply to this coverage:

We will not pay for costs arising from the following:

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1. Your intentional or willful complicity in a "personal data compromise."
2. Any criminal, fraudulent or dishonest act, error or omission, or any intentional or knowing violation of the law by you.
3. Any "personal data compromise" occurring prior to the first inception of this **Data Compromise Coverage** endorsement.
4. Any third party liability or defense costs.
5. Costs to research or correct any deficiency. This includes, but is not limited to, any deficiency in your systems, procedures or physical security that may have contributed to a "personal data compromise."
6. Any fines or penalties. This includes, but is not limited to, fees or surcharges from affected financial institutions.
7. Any criminal investigations or proceedings.
8. Any extortion or blackmail. This includes, but is not limited to, ransom payments and private security assistance.
9. Any "personal data compromise" involving data that is being transmitted electronically, unless such data is encrypted to protect the security of the transmission.
10. Your reckless disregard for the security of "personally identifying information" or "personally sensitive information" in your care, custody or control.

#### **ADDITIONAL CONDITIONS**

The following Additional Conditions apply to all coverages under this endorsement.

##### **A. Due Diligence**

You agree to use due diligence to prevent and mitigate costs covered under this endorsement. This includes, but is not limited to, complying with, and requiring your vendors to comply with, reasonable and industry-accepted protocols for:

1. providing and maintaining appropriate physical security for your premises, computer systems and hard copy files;
2. providing and maintaining appropriate computer and Internet security;
3. maintaining and updating at appropriate intervals backups of computer data;
4. protecting transactions, such as processing credit card, debit card and check payments; and
5. appropriate disposal of files containing "personally identifying information" or "personally sensitive information," including shredding hard copy files and destroying physical media used to store electronic data.

##### **B. Legal Advice**

We are not your legal advisor. Our determination of what is or is not covered under this **Data Compromise Coverage** endorsement does not represent advice or counsel from us about what you should or should not do.

##### **C. Pre-Notification Consultation**

You agree to consult with us prior to the issuance of notification to "affected individuals." We assume no responsibility under this **Data Compromise Coverage** for any services promised to "affected individuals" without our

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prior agreement. If possible, this pre-notification consultation will also include the designated service provider(s) as agreed to under Additional Condition **D. Service Providers**. You must provide the following at our pre-notification consultation with you:

1. The exact list of "affected individuals" to be notified, including contact information.
2. Information about the "personal data compromise" that may appropriately be communicated with "affected individuals."
3. The scope of services that you desire for the "affected individuals." For example, coverage may be structured to provide fewer services in order to make those services available to more "affected individuals" without exceeding the available Response Expenses Limit.

#### **D. Service Providers**

1. We will only pay under this **Data Compromise Coverage** for services that are provided by service providers approved by us. You must obtain our prior approval for any service provider whose expenses you want covered under this **Data Compromise Coverage**. We will not unreasonably withhold such approval.
2. Prior to the Pre-Notification Consultation described in Additional Condition **C.** above, you must come to agreement with us regarding the service provider(s) to be used for the Notification to Affected Individuals and Services to Affected Individuals. We will suggest a service provider. If you prefer to use an alternate service provider, our coverage is subject to the following limitations:
  - a. such alternate service provider must be approved by us;
  - b. such alternate service provider must provide services that are reasonably equivalent or superior in both kind and quality to the services that would have been provided by the service provider we had suggested; and
  - c. our payment for services provided by any alternate service provider will not exceed the amount that we would have paid using the service provider we had suggested.

#### **E. Services**

The following conditions apply as respects any services provided to you or any "affected individual" by us, our designees or any service firm paid for in whole or in part under this **Data Compromise Coverage**:

1. The effectiveness of such services depends on your cooperation and assistance.
2. All services may not be available or applicable to all individuals. For example, "affected individuals" who are minors or foreign nationals may not have credit records that can be provided or monitored. Service in Canada will be different from service in the United States and Puerto Rico in accordance with local conditions.
3. We do not warrant or guarantee that the services will end or eliminate all problems associated with the covered events.
4. You will have a direct relationship with the professional service firms paid for in whole or in part under this coverage. Those firms work for you.

#### **DEFINITIONS**

With respect to the provisions of this endorsement only, the following definitions are added:

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1. **"Affected Individual"** means any person who is your current, former or prospective customer, client, member, owner, director or employee and whose "personally identifying information" or "personally sensitive information" is lost, stolen, accidentally released or accidentally published by a "personal data compromise" covered under this endorsement. This definition is subject to the following provisions:
  - a. "Affected individual" does not include any business or organization. Only an individual person may be an "affected individual."
  - b. An "affected individual" must have a direct relationship with your interests as insured under this Policy. The following are examples of individuals who would not meet this requirement:
    - 1) If you aggregate or sell information about individuals as part of your business, the individuals about whom you keep such information do not qualify as "affected individuals." However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of yours.
    - 2) If you store, process, transmit or transport records, the individuals whose "personally identifying information" or "personally sensitive information" you are storing, processing, transmitting or transporting for another entity do not qualify as "affected individuals." However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of yours.
    - 3) You may have operations, interests or properties that are not insured under this Policy. Individuals who have a relationship with you through such other operations, interests or properties do not qualify as "affected individuals." However, specific individuals may qualify as "affected individuals" for another reason, such as being an employee of the operation insured under this Policy.
  - c. An "affected individual" may reside anywhere in the world.
2. **"Identity Theft"** means the fraudulent use of "personally identifying information." This includes fraudulently using such information to establish credit accounts, secure loans, enter into contracts or commit crimes.

"Identity theft" does not include the fraudulent use of a business name, d/b/a or any other method of identifying a business activity.
3. **"Malware-Related Compromise"** means a "personal data compromise" that is caused, enabled or abetted by a virus or other malicious code that, at the time of the "personal data compromise," is named and recognized by the CERT® Coordination Center, McAfee®, Secunia, Symantec or other comparable third party monitors of malicious code activity.
4. **"Personal Data Compromise"** means the loss, theft, accidental release or accidental publication of "personally identifying information" or "personally sensitive information" as respects one or more "affected individuals." If the loss, theft, accidental release or accidental publication involves "personally identifying information," such loss, theft, accidental release or accidental publication must result in or have the reasonable possibility of resulting in the fraudulent use of such information. This definition is subject to the following provisions:
  - a. At the time of the loss, theft, accidental release or accidental publication, the "personally identifying information" or "personally sensitive information" need not be at the insured premises but must be in the direct care, custody or control of:
    - 1) you; or
    - 2) a professional entity with which you have a direct relationship and to which you (or an "affected individual" at your direction) have turned over (directly or via a professional transmission or transportation provider) such information for storage, processing, transmission or transportation of such information.

b. "Personal data compromise" includes disposal or abandonment of "personally identifying information" or "personally sensitive information" without appropriate safeguards such as shredding or destruction, subject to the following provisions:

- 1) the failure to use appropriate safeguards must be accidental and not reckless or deliberate; and
- 2) such disposal or abandonment must take place during the time period for which this **Data Compromise Coverage** endorsement is effective.

c. "Personal data compromise" includes situations where there is a reasonable cause to suspect that such "personally identifying information" or "personally sensitive information" has been lost, stolen, accidentally released or accidentally published, even if there is no firm proof.

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

5. **"Personally Identifying Information"** means information, including health information, that could be used to commit fraud or other illegal activity involving the credit, access to health care or identity of an "affected individual." This includes, but is not limited to, Social Security numbers or account numbers.

"Personally identifying information" does not mean or include information that is otherwise available to the public, such as names and addresses.

6. **"Personally Sensitive Information"** means private information specific to an individual the release of which requires notification of "affected individuals" under any applicable law.

"Personally sensitive information" does not mean or include "personally identifying information."

**All other provisions of this Policy apply.**

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

**SELECT BUSINESS POLICY  
PROTECTIVE SAFEGUARDS**

This endorsement modifies insurance provided under the following:

SELECT BUSINESS POLICY

**Schedule\***

Location Number	Building Number	Protective Safeguards Symbols Applicable
1	1	P-1, P-2
<b>Describe any "P-9":</b>		
*Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

1. The following is added to the:

**Select Business Policy Conditions**

**PROTECTIVE SAFEGUARDS**

- a. As a condition of this insurance, you are required to maintain the protective devices or services listed in the Schedule above.
- b. The protective safeguards to which this endorsement applies are identified by the following symbols:

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

**Automatic Sprinkler System** means:

(1) Any automatic fire protective or extinguishing system, including connected:

- (a) sprinklers and discharge nozzles;
- (b) ducts, pipes, valves and fittings;
- (c) tanks, their component parts and supports; and
- (d) pumps and private fire protection mains.

(2) When supplied from an automatic fire protective system:

(a) non-automatic fire protective systems; and

(b) hydrants, standpipes and outlets.

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

(1) connected to a central station; or

(2) reporting to a public or private fire alarm station.

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

**"P-4" Service Contract** with a privately owned fire department providing fire protection service to the described premises.

**"P-5" Automatic Commercial Cooking Exhaust and Extinguishing System** installed on cooking appliances and having the following components:

(1) hood;

(2) grease removal device;

(3) duct system; and

(4) wet chemical fire extinguishing equipment.

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

2. The following is added to the **Exclusions** Section of:

SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
SELECT BUSINESS POLICY BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FORM  
SELECT BUSINESS POLICY, EXTRA EXPENSE COVERAGE FORM  
SELECT BUSINESS POLICY BUSINESS INCOME (without Extra Expense) COVERAGE FORM

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

- a. knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
- b. failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

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

**SELECT BUSINESS POLICY GENERAL ENDORSEMENT****DEDUCTIBLE AMOUNT BY CAUSE OF LOSS**

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies coverage provided by your:

Select Business Policy Building and Personal Property Coverage Form

**Deductible**

We will pay the amount of your adjusted loss in excess of the deductible amount shown below for the cause of loss listed (if such cause is covered by this policy), up to the applicable Limit of Insurance:

Causes of Loss occurrence)	Deductible Amount (per
Any Covered Water (other than Flood Perils, Surface Water, Mudslide)	\$10,000
All Covered Causes of Loss for which no specific Deductible amount is shown	\$2,500

above ( other than 1. earthquake and volcanic eruption, 2. flood perils 3. shown elsewhere in this policy or coverage part and 4. Additional Coverages in the Coverage Form that specifically state that no deductible applies)

If Earthquake and Volcanic Eruption are Covered Causes of Loss, see the deductible amount shown for Earthquake and Volcanic Eruption Coverage Endorsement attached to your policy.

If two or more deductibles would apply in any one occurrence for direct physical loss, only the largest single deductible will apply and that amount will be deducted.

If this policy covers Time Element Loss as Business Income and/or Extra Expense, the deductible amount or waiting period will apply separately from the deductibles for direct physical loss shown above or elsewhere.

All other terms and conditions remain unchanged.

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

**SELECT BUSINESS POLICY  
WATER EXCLUSION ENDORSEMENT**

The endorsement modifies insurance provided under the following:

**SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM**

Section **C. Exclusions**, paragraph **1.g Water** of the **Select Business Policy Building and Personal Property Coverage Form, SB 86 02**, is deleted in its entirety and replaced by the following:

**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. waterborne material carried or otherwise moved by any of the water referred to in paragraph 1. and 2., or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in paragraphs 1. and 2., 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. and 2., 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).

This exclusion does not apply to Covered Personal Property in due course of transit.

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

**SELECT BUSINESS POLICY  
EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

This endorsement modifies insurance provided under the following:

SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
SELECT BUSINESS POLICY BUSINESS INCOME AND EXTRA EXPENSE COVERAGE FORM  
SELECT BUSINESS POLICY BUSINESS INCOME WITHOUT EXTRA EXPENSE COVERAGE FORM  
SELECT BUSINESS POLICY EXTRA EXPENSE COVERAGE FORM

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



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

This endorsement modifies insurance provided under the following:

SELECT BUSINESS POLICY CONDITIONS  
SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM

- A.** The following provision applies when a Co-insurance percentage is shown in the Declarations:

Florida law states as follows:

Coinsurance contract: The rate charged in this Policy is based upon the use of the Coinsurance clause attached to this Policy, with the consent of the Insured.

- B.** The following is added:

If windstorm is a Covered Cause of Loss and loss or damage to Covered Property is caused by or results from windstorm, the following exclusion applies in:

1. Broward County;
2. Dade County;
3. Martin County;
4. Monroe County;
5. Palm Beach County; and
6. all the areas east of the west bank of the Intracoastal Waterway in the counties of:
  - a. Indian River; and
  - b. St. Lucie.

**Windstorm Exterior Paint and Waterproofing Exclusion**

We will not pay for loss or damage caused by windstorm to:

1. paint; or
2. waterproofing material;

applied to the exterior of buildings unless the building to which such loss or damage occurs also sustains other loss or damage by windstorm in the course of the same storm event. But such coverage applies only if windstorm is a Covered Cause of Loss.

When loss or damage to exterior paint or waterproofing material is excluded, we will not include the value of paint or waterproofing material to determine:

- a. the amount of the Windstorm or Hail Deductible; or
- b. the value of covered property when applying the Coinsurance Condition.

- C.** The **Loss Payment** Condition dealing with the number of days within which we must pay for covered loss or damage is replaced by the following:

Provided you have complied with all the terms of this Coverage Part, we will pay for covered loss or damage upon the earliest of the following:

- (1) within 20 days after we receive the sworn proof of loss and reach written agreement with you;
- (2) within 30 days after we receive the sworn proof of loss and:
  - (a) there is an entry of a final judgment; or
  - (b) there is a filing of an appraisal award with us; or
- (3) within 90 days of receiving notice of an initial, reopened or supplemental claim, unless we deny the claim during that time or factors beyond our control reasonably prevent such payment. If a portion of the claim is denied, then the 90-day time period for payment of claim relates to the portion of the claim that is not denied.

Paragraph (3) applies only to the following:

- (a) a claim under a policy covering residential property;
- (b) a claim for building or contents coverage if the Insured structure is 10,000 square feet or less and the Policy covers only locations in Florida; or
- (c) a claim for contents coverage under a tenant's policy if the rented premises are 10,000 square feet or less and the Policy covers only locations in Florida.

#### **D. Sinkhole Collapse Coverage Removed**

Sinkhole Collapse Coverage is removed, as indicated and coverage for Catastrophic Ground Cover Collapse is added instead as set forth in paragraph E.

In the Select Business Policy Building and Personal Property Coverage Form, Sinkhole Collapse is deleted from the "Specified Causes of Loss" and Sinkhole Collapse is no longer an exception to the Earth Movement Exclusion.

Further, this Coverage Form does not insure against Sinkhole Loss as defined in Florida law unless an endorsement for Sinkhole Loss is made part of this Policy. However, if Sinkhole Loss causes Catastrophic Ground Cover Col-

lapse, coverage is provided for the resulting Catastrophic Ground Cover Collapse even if an endorsement for Sinkhole Loss is not made part of this Policy.

- E. The following is added to this Coverage Form as a Covered Cause of Loss. The following is also added as to the "Specified Causes of Loss." However, as a "Specified Cause of Loss," the following does not apply to the Additional Coverage - Collapse.

#### **Catastrophic Ground Cover Collapse**

We will pay for direct physical loss or damage to Covered Property caused by or resulting from catastrophic ground cover collapse, meaning geological activity that results in all of the following:

- 1. the abrupt collapse of the ground cover;
- 2. a depression in the ground cover clearly visible to the naked eye;
- 3. "structural damage" to the building, including the foundation; and
- 4. the Insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.

However, damage consisting merely of the settling or cracking of a foundation, structure or building does not constitute loss or damage resulting from a catastrophic ground cover collapse.

The **Earth Movement** Exclusion and the **Collapse** Exclusion do not apply to coverage for Catastrophic Ground Cover Collapse.

Coverage for Catastrophic Ground Cover Collapse does not increase the applicable Limit of Insurance. Regardless of whether loss or damage attributable to catastrophic ground cover collapse also qualifies as Sinkhole Loss or Earthquake (if either or both of those causes of loss are covered under this Coverage Part), only one Limit of Insurance will apply to such loss or damage.

- F. The following provisions are added to the **Duties in the Event of Loss or Damage** Loss Condition:

- (1) A claim, supplemental claim or reopened claim for loss or damage caused by hurricane or other windstorm is barred unless notice of claim is given to us in accordance with the terms of this Policy within three years after the hurricane first made landfall or a windstorm other than hurricane caused the covered damage. (Supplemental claim or reopened claim means an additional claim for recovery from us for losses from the same hurricane or other windstorm which we have previously adjusted pursuant to the initial claim.)

This provision concerning time for submission of claim, supplemental claim or reopened claim does not affect any limitation for legal action against us as provided in this Policy under the Legal Action Against Us Condition, including any amendment to that condition.

- (2) Any inspection or survey by us, or on our behalf, of property that is the subject of a claim, will be conducted with at least 48 hours' notice to you. The 48-hour notice may be waived by you.

G. The following definition of structural damage is added with respect to the coverage provided under this endorsement:

**"Structural damage"** means a covered building, regardless of the date of its construction, has experienced the following.

1. interior floor displacement or deflection in excess of acceptable variances as defined in ACI 117-90 or the Florida Building Code, which results in settlement related damage to the interior such that the interior building structure or members become unfit for service or represent a safety hazard as defined within the Florida Building Code;
2. foundation displacement or deflection in excess of acceptable variances as defined in ACI 318-95 or the Florida Building Code, which results in settlement related damage to the primary structural members or primary structural systems that prevents those members or systems from supporting the loads and forces they were designed to support to the extent that stresses in those primary structural members or primary structural systems exceed one and one-third the nominal strength allowed under the Florida Building Code for new buildings of similar structure, purpose, or location;
3. damage that results in listing, leaning, or buckling of the exterior load bearing walls or other vertical primary structural members to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base as defined within the Florida Building Code;
4. damage that results in the building, or any portion of the building containing primary structural members or primary structural systems, being significantly likely to imminently collapse because of the movement or instability of the ground within the influence zone of the supporting ground within the sheer plane necessary for the purpose of supporting such building as defined within the Florida Building Code; or
5. damage occurring on or after October 15, 2005, that qualifies as substantial structural damage as defined in the Florida Building Code.

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

**SELECT BUSINESS POLICY  
CONDOMINIUM ASSOCIATION COVERAGE AMENDMENTS**

This endorsement modifies insurance provided under the following:

SELECT BUSINESS POLICY CONDITIONS  
SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM

**I. SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 1. Covered Property, a. Building,** is amended to add the following:

- (6) Any of the following types of property contained within a unit, regardless of ownership, if your Condominium Association Agreement requires you to insure it:

(a) fixtures, improvements and alterations that are a part of the building or structure; and

(b) appliances used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping;

but building does not include personal property owned by, used by or in the care, custody or control of a unit-owner except for personal property listed in Paragraph **A.1.a.(6)** above.

**II. SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE 1. Covered Property, b. Your Business Personal Property,** is amended to add the following:

- (6) Personal property owned indivisibly by all unit-owners.

But your Business Personal Property does not include personal property owned only by a unit-owner

**III. SELECT BUSINESS POLICY CONDITIONS, LOSS CONDITIONS,** is amended as follows:

**A. E. Loss Payments,** Paragraph 9 is deleted and replaced by the following:

9. we will pay for covered loss or damage within 30 days after we receive the sworn statement 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

If you name an insurance trustee, we will adjust losses with you, but we will pay the insurance trustee. If we pay the trustee, the payments will satisfy your claims against us.

**B. The following Conditions are added:**

**L. Unit Owners Insurance**

A unit-owner may have other insurance covering the same property as this insurance. This insurance is intended to be primary, and not to contribute with such other insurance.

**M. Waiver of Rights of Recovery**

We waive our rights to recover payment from any unit-owner of the condominium that is shown in the Declarations.

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

**SELECT BUSINESS POLICY  
ACCOUNTS RECEIVABLE EXTENSION**

This endorsement modifies insurance provided under the following:

ACCOUNTS RECEIVABLE COVERAGE FORM

The **Accounts Receivable Coverage Form** is amended as follows:

1. Accounts receivables includes Credit and Charge Card slips.
2. **Additional Conditions D.3.b., Coinsurance**, is deleted in its entirety.

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

**WINDSTORM OR HAIL EXCLUSION**

This endorsement modifies insurance provided under the following:

SELECT BUSINESS POLICY BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

But if Windstorm or Hail results in fire or explosion, we will pay for the loss or damage caused by such fire or explosion.

**Windstorm or Hail**

We will not pay for loss or damage:

1. caused directly or indirectly by Windstorm or Hail, regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage; or
2. caused by rain, snow, sand or dust, whether driven by wind or not, if that loss or damage would not have occurred but for the Windstorm or Hail.

For example, if the Windstorm or Hail damages a heating system and fire results, the loss or damage attributable to the fire is covered subject to any other applicable policy provisions.

**B.** Under **Definitions**, Windstorm or Hail is deleted from the "specified causes of loss."

**All other terms and conditions remain unchanged.**

**EQUIPMENT BREAKDOWN COVERAGE PART DECLARATIONS NO. 1**

<b>NAMED INSURED:</b> Champlain Towers South Condominium Association, Inc.	<b>POLICY PERIOD:</b> 12/28/2020 to 12/28/2021
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Identification Number:

Issue Date:

These coverages apply to any location listed on the Schedule of Locations for **Equipment Breakdown Coverage Part Declarations No. 1**.

Coverages	Limits
Equipment Breakdown Limit	\$ 30,704,900
Property Damage	\$ 30,704,900
Off Premises Property Damage	\$ 50,000
Business Income	\$ EXCLUDED
Extra Expense	\$ EXCLUDED
Service Interruption	\$ EXCLUDED
Contingent Business Income	\$ EXCLUDED
Perishable Goods	\$ 50,000
Data Restoration	\$ 50,000
Demolition	\$ 50,000
Ordinance or Law	\$ 50,000
Expediting Expense	\$ 50,000
Hazardous Substances	\$ 50,000
Newly Acquired Locations	\$ 50,000
Green	EXCLUDED
Mold	\$ 15,000
Civil Authority	EXCLUDED
Public Relations	\$ 5,000

**Deductibles**

Combined Coverage Policy Deductible: \$ \$ 2,500

Separate Coverage Policy Deductible:

**Other Conditions**

Extended Period of Restoration: 60 days

Newly Acquired Locations: 90 days

Coinsurance - Property Damage: %

Coinsurance - Business Income: %

Total Equipment Breakdown Premium: \$ 1,414.00

**FORMS AND ENDORSEMENTS** applicable to this Coverage Part and made a part of this Policy at the time of issue are listed on the attached Forms and Endorsements Schedule, BM 88 01.

## EQUIPMENT BREAKDOWN COVERAGE FORM

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

Throughout this Policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this Insurance. Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G. - Definitions**. Examples are shown for illustrative purposes only and do not represent predicted or expected outcomes.

### A. Coverage

This Equipment Breakdown Coverage provides insurance for a Covered Cause of Loss as defined in **A.1.** below. In the event of a Covered Cause of Loss, we will pay for loss as described in **A.2.** below.

#### 1. Covered Cause of Loss - "Accident" and "Electronic Circuitry Impairment"

The Covered Cause of Loss for this Equipment Breakdown Coverage is an "accident" or "electronic circuitry impairment." Without an "accident" or "electronic circuitry impairment", there is no Equipment Breakdown Coverage.

#### 2. Coverages Provided

This section lists the coverages that may apply in the event of a Covered Cause of Loss. Each coverage is subject to a specific limit as shown in the Declarations. See paragraph **C.2.** for details.

These coverages apply only to the direct result of a Covered Cause of Loss. For each coverage, we will pay only for that portion of the loss, damage or expense that is solely attributable to the Covered Cause of Loss.

##### a. Property Damage

We will pay for physical damage to "covered property" that is at a location indicated in the Declarations at the time of the Covered Cause of Loss. We will consider "electronic circuitry impairment" to be physical damage to "covered equipment".

### b. Off Premises Equipment Breakdown

- (1) We will pay for physical damage to transportable "covered equipment" that, at the time of the Covered Cause of Loss, is not at a location indicated in the Declarations.
- (2) We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of **b.(1)** above, if such coverage is otherwise applicable under this Policy. This coverage is included within and subject to your Off Premises Equipment Breakdown limit.
- (3) We will also pay for your loss and expense as defined under Data Restoration coverage that is the result of **b.(1)** above, if such coverage is otherwise applicable under this Policy. This coverage is included within and subject to your Off Premises Equipment Breakdown limit.

### c. Business Income

- (1) We will pay your actual loss of "business income" during the "period of restoration" that results directly from the necessary total or partial interruption of your business.
- (2) We will also pay any necessary expenses you incur during the "period of restoration" to reduce



the amount of loss under this coverage. We will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

- (3) We will consider the actual experience of your business before the Covered Cause of Loss and the probable experience you would have had without the Covered Cause of Loss in determining the amount of our payment.

#### **d. Extra Expense**

We will pay the reasonable and necessary "extra expense" to operate your business during the "period of restoration."

#### **e. Service Interruption**

We will pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of an "interruption of service."

#### **f. Contingent Business Income**

We will pay for your loss and expense as defined under Business Income and Extra Expense coverages that results from an:

- (1) "Interruption of supply"; or
- (2) "Accident" at an "anchor location" that has been open for business for at least six months prior to the "accident" and is located within one mile of your scheduled location.

#### **g. Perishable Goods**

- (1) We will pay for physical damage to "perishable goods" due to "spoilage."
- (2) We will also pay for physical damage to "perishable goods" due to "spoilage" that is the result of an "interruption of service."

- (3) We will also pay for physical damage to "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia.

- (4) We will also pay any necessary expenses you incur during the "period of restoration" to reduce the amount of loss under this coverage. We will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this Perishable Goods coverage.

#### **h. Data Restoration**

- (1) We will pay for your reasonable and necessary cost to research, replace or restore lost "data."
- (2) We will pay for your reasonable and necessary cost to research, replace or restore "data" that is lost as the result of an "interruption of service."
- (3) Coverage under **h.(2)** above applies to "data" stored in "covered equipment."
- (4) Coverage under **h.(2)** above also applies to "data" stored in the equipment of a "cloud computing services" provider with whom you have a contract.
- (5) We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of **h.(1)** and **h.(2)** above, if such coverage is otherwise applicable under this Policy. This coverage is included within and subject to your Data Restoration limit.

**i. Demolition**

- (1) This coverage applies if a Covered Cause of Loss damages a building that is "covered property" and the loss is increased by an ordinance or law that:
  - (a) requires the demolition of a building that is otherwise reparable;
  - (b) is in force at the time of the Covered Cause of Loss; and
  - (c) is not addressed under Hazardous Substances coverage or Mold coverage.
- (2) We will pay for the following additional costs to comply with such ordinance or law:
  - (a) your actual and necessary cost to demolish and clear the site of the undamaged parts of the building; and
  - (b) your actual and necessary cost to reconstruct the undamaged parts of the building.
- (3) As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no such ordinance or law been in force at the time of the Covered Cause of Loss.
- (4) We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of i.(1) above, if such coverage is otherwise applicable under this Policy. This coverage is included within and subject to your Demolition limit.

**j. Ordinance or Law**

- (1) This coverage applies if a Covered Cause of Loss damages a building that is "covered property" and the loss is increased by an ordinance or law that:
  - (a) regulates the construction or repair of buildings, including "building utilities";
  - (b) is in force at the time of the Covered Cause of Loss; and
  - (c) is not addressed under Demolition coverage, Hazardous Substances coverage or Mold coverage.
- (2) We will pay for the following additional costs to comply with such ordinance or law:
  - (a) your actual and necessary cost to repair the damaged portions of the building;
  - (b) your actual and necessary cost to reconstruct the damaged portions of the building; and
  - (c) your actual and necessary cost to bring undamaged portions of the building into compliance with the ordinance or law.
- (3) As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no such ordinance or law been in force at the time of the Covered Cause of Loss.
- (4) We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of j.(1) above, if such coverage is otherwise applicable under this Policy. This coverage is included within and subject to your Ordinance or Law limit.

**k. Expediting Expenses**

With respect to your damaged "covered property," we will pay the reasonable extra cost to:

- (1) make temporary repairs; and
- (2) expedite permanent repairs or permanent replacement.

**l. Hazardous Substances**

- (1) We will pay for the additional cost to repair or replace "covered property" because of contamination by a "hazardous substance." This includes the additional expenses to clean up or dispose of such property. This does not include contamination of "perishable goods" by refrigerant, including but not limited to ammonia, which is addressed in **Perishable Goods, A.2.g.(3)**.
- (2) As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no "hazardous substance" been involved.
- (3) We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of **l.(1)** above, if such coverage is otherwise applicable under this Policy. This coverage is included within and subject to your Hazardous Substances limit.

**m. Newly Acquired Locations**

- (1) You will notify us promptly of any newly acquired location that you have purchased or leased during the Policy period.
- (2) All coverages applicable to any scheduled location under this Equipment Breakdown Coverage are extended to a newly acquired location that you have purchased or leased during the Policy period.

- (3) This coverage begins at the time you acquire the property. As respects newly constructed properties, we will only consider them to be acquired by you when you have fully accepted the completed project.

- (4) This coverage ends when any of the following first occurs:

- (a) this Policy expires;
- (b) the number of days specified in the Declarations for this coverage expires after you acquire the location;
- (c) the location is incorporated into the regular coverage of this Policy; or
- (d) the location is incorporated into the regular coverage of another Equipment Breakdown policy you have.

- (5) If limits or deductibles vary by location, the highest limits and deductibles will apply to newly acquired locations. However, the most we will pay for loss, damage or expense arising from any "one equipment breakdown" is the amount shown as the Newly Acquired Locations limit in the Declarations.

- (6) We will charge you additional premium for newly acquired locations from the date you acquire the property.

**n. Course of Construction**

This coverage is automatically included and does not need to be indicated in the Declarations.

- (1) You will notify us promptly of any expansion or rehabilitation of any location described in the Declarations.

- (2) All coverages applicable to any location described in the Declarations are extended to an expansion or rehabilitation of that location.
- (3) This coverage begins at the time you begin the expansion or rehabilitation project.
- (4) We will charge you additional premium for newly acquired equipment from the date the equipment is installed.

#### **o. Civil Authority**

We will pay for your loss and expense as defined under Business Income and Extra Expense coverages that results from a civil authority prohibiting access to a location described in the Declarations due solely to a Covered Cause of Loss that causes damage to property within one mile of such location, provided that such action is taken in response to dangerous physical conditions resulting from the Covered Cause of Loss, or to enable a civil authority to have unimpeded access to the damaged property.

#### **p. Green**

- (1) With respect to "covered property," we will pay for additional costs you incur:
  - (a) to repair damaged property using equipment, materials and service firms required or recommended by a "recognized environmental standards program," if repair is the least expensive option as described in Section **E. Loss Conditions, 10. Valuation**, paragraph **a.**;
  - (b) to replace damaged property using equipment, materials and service firms required or recommended by a "recognized environmental standards program," if replacement is the least expensive

option as described in Section **E. Loss Conditions, 10. Valuation**, paragraph **a.**;

- (c) to dispose of damaged property or equipment, if practicable, through a recycling process; and
- (d) to flush out reconstructed space with up to 100% outside air using new filtration media.

As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage in the absence of this Green coverage.

- (2) With respect to any building that is "covered property" which, at the time of the Covered Cause of Loss, was certified by a "recognized environmental standards program," we will pay for costs you incur:
  - (a) to prevent a lapse of such certification;
  - (b) to reinstate the certification or replace it with an equivalent certification;
  - (c) for an engineer authorized by a "recognized environmental standards program" to oversee the repair or replacement of the damaged "covered property"; and
  - (d) for a Professional Engineer to commission or re-commission your damaged mechanical, electrical, or electronic building systems.
- (3) We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of **p.(1)** and **p.(2)** above, if such coverage is otherwise ap-

plicable under this Policy. This coverage is included within and subject to your Green limit.

**(4)** This Green coverage is subject to the following provisions:

- (a)** This coverage applies in addition to any coverage that may apply under Section **E. Loss Conditions, 10. Valuation**, paragraph **d. Environmental, Safety and Efficiency Improvements**, or any other applicable coverage.
- (b)** This coverage only applies to "covered property" that must be repaired or replaced as a direct result of a Covered Cause of Loss.
- (c)** This coverage does not apply to any property or equipment that is valued on an Actual Cash Value basis under this Policy.

**q. Mold**

- (1)** We will pay for the additional cost to repair or replace "covered property" because of contamination by mold, fungus, mildew or yeast, including any spores or toxins created or produced by or emanating from such mold, fungus, mildew or yeast, resulting from a Covered Cause of Loss. This includes the additional costs to clean up or dispose of such property. This does not include "spoilage" of personal property that is "perishable goods" to the extent that such "spoilage" is covered under Perishable Goods coverage.
- (2)** As used in this Mold coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no mold, fungus, mildew, yeast, spores or toxins been involved.

- (3)** We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of **g.(1)** above, if such coverage is otherwise applicable under this Policy. This coverage is included within and subject to your Mold limit.
- (4)** We will also pay the cost of testing performed after repair or replacement of the damaged "covered property" is completed only to the extent that there is reason to believe there is the presence of mold, fungus, mildew, yeast, spores or toxins.

**r. Public Relations**

- (1)** This coverage only applies if you have sustained an actual loss of "business income" covered under this policy.
- (2)** We will pay for your reasonable costs for professional services to create and disseminate communications, when the need for such communications arises directly from the interruption of your business. This communication must be directed to one or more of the following:
  - (a)** The media;
  - (b)** The public; or
  - (c)** Your customers, clients or members.
- (3)** Such costs must be incurred during the "period of restoration" or up to 30 days after the "period of restoration" has ended.

**B. Exclusions**

We will not pay for any excluded loss, damage or expense, even though any other cause or event contributes concurrently or in any sequence to the loss, damage or expense.

1. We will not pay for loss, damage or expense caused directly or indirectly by any of the following, whether or not caused by or resulting from a Covered Cause of Loss.

**a. Fire and Explosion**

- (1) Fire, including smoke from a fire.
- (2) Combustion explosion. This includes, but is not limited to, a combustion explosion of any steam boiler or other fired vessel.
- (3) Any other explosion, except as specifically provided in the definition of "accident."

**b. Ordinance or Law**

The enforcement of, or change in, any ordinance, law, regulation, rule or ruling regulating or restricting repair, replacement, alteration, use, operation, construction or installation, except as specifically provided in **A.2. Demolition, Ordinance or Law, Hazardous Substances and Mold coverages.**

**c. Earth Movement**

Earth movement, whether natural or human-made, including but not limited to earthquake, shock, tremor, subsidence, landslide, rock fall, earth sinking, sinkhole collapse or tsunami.

**d. Nuclear Hazard**

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

**e. 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, political violence or action taken by governmental authority in hindering or defending against any of these.

**f. Water**

- (1) flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) mudslide or mudflow; or
- (3) water that backs up or overflows from a sewer, drain or sump.

However, if electrical "covered equipment" requires drying out because of the above, we will pay for the amount you actually expend to dry out such equipment, subject to the applicable Property Damage limit and Direct Coverage deductible. We will not pay more than the Actual Cash Value of the affected electrical "covered equipment."

We will not pay to replace such equipment or for any other loss, damage or expense.

**g. Failure to Protect Property**

Your failure to use all reasonable means to protect "covered property" from damage following a Covered Cause of Loss.

**h. Fines**

Fine, penalty or punitive damage.

**i. Mold**

Mold, fungus, mildew or yeast, including any spores or toxins created or produced by or emanating from such mold, fungus, mildew or yeast. This includes, but is not limited to, costs arising from clean-up, remediation, containment, removal or abatement of such mold, fungus, mildew, yeast, spores or toxins, except as specifically covered under Mold coverage. However, this exclusion does not ap-

ply to "spoilage" of personal property that is "perishable goods" to the extent that such "spoilage" is covered under Perishable Goods Coverage.

**j. Vandalism**

Vandalism, meaning a willful and malicious act that causes damage or destruction.

**2. We will not pay for a Covered Cause of Loss caused by or resulting from any of the following causes of loss:**

- a. Lightning.**
- b. Windstorm or Hail.** However, this exclusion does not apply when:
  - (1)** "covered equipment" located within a building or structure suffers a Covered Cause of Loss that results from windblown rain, snow, sand or dust; and
  - (2)** the building or structure did not first sustain wind or hail damage to its roof or walls through which the rain, snow, sand or dust entered.
- c. Collision or any physical contact caused by a "vehicle."** This includes damage by objects falling from aircraft. However, this exclusion does not apply to any unlicensed "vehicles" which you own or which are operated in the course of your business.
- d. Riot or Civil Commotion.**
- e. Leakage or discharge of any substance from an automatic sprinkler system, including collapse of a tank that is part of the system.**
- f. Volcanic Action.**
- g. An electrical insulation breakdown test.**
- h. A hydrostatic, pneumatic or gas pressure test.**
- i. Water or other means intended to extinguish a fire, even when such an attempt is unsuccessful.**

**j. Elevator collision.**

**3. We will not pay for a Covered Cause of Loss caused by or resulting from any of the following perils, if such peril is a covered cause of loss under another coverage part or policy of insurance you have, whether collectible or not, and without regard to whether or not the other coverage part or policy of insurance provides the same coverage or scope of coverage as this Policy.**

- a. Falling Objects.**
- b. Weight of Snow, Ice or Sleet.**
- c. Water Damage,** meaning discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance containing water or steam.
- d. Collapse.**
- e. Breakage of Glass.**
- f. Freezing caused by cold weather.**
- g. Discharge of molten material from equipment, including the heat from such discharged material.**

**4. Exclusions 2. and 3. do not apply if all of the following are true:**

- a. the excluded peril occurs away from any location described in the Declarations and causes an electrical surge or other electrical disturbance;**
- b. such surge or disturbance is transmitted through utility service transmission lines to a described location;**
- c. at the described location, the surge or disturbance results in a Covered Cause of Loss to "covered equipment" that is owned or operated under the control of you or your landlord; and**
- d. the loss, damage or expense caused by such surge or disturbance is not a covered cause of loss under another coverage part or policy of insurance you have, whether collectible or not, and without regard to whether or not**

the other coverage part or policy of insurance provides the same coverage or scope of coverage as this Policy.

**5. With respect to Business Income, Extra Expense and Service Interruption Coverages, we will also not pay for:**

- a.** loss associated with business that would not or could not have been carried on if the Covered Cause of Loss had not occurred;
- b.** loss caused by your failure to use due diligence and dispatch and all reasonable means to resume business;
- c.** that part of any loss that extends beyond or occurs after the "period of restoration." This includes, but is not limited to:
  - (1)** "business income" that would have been earned after the "period of restoration," even if such loss is the direct result of the suspension, lapse or cancellation of a contract during the "period of restoration"; and
  - (2)** "extra expense" to operate your business after the "period of restoration," even if such loss is contracted for and paid during the "period of restoration."
- d.** any increase in loss resulting from an agreement between you and your customer or supplier. This includes, but is not limited to, contingent bonuses or penalties, late fees, demand charges, demurrage charges and liquidated damages.

**6. With respect to Off Premises Equipment Breakdown, Service Interruption, Civil Authority, Contingent Business Income, paragraph (2) of Data Restoration and paragraph (2) of Perishable Goods, we will also not pay for a Covered Cause of Loss caused by or resulting from any of the perils listed in Exclusion 3. above, whether or not such peril is a covered cause of loss under another coverage part or policy of insurance you have.**

**7. With respect to Data Restoration coverage, we will also not pay to reproduce:**

- a.** software programs or operating systems that are not commercially available; or
- b.** "data" that is obsolete, unnecessary or useless to you.

**8. With respect to Demolition and Ordinance or Law Coverages, we will also not pay for:**

- a.** increased demolition or reconstruction costs until they are actually incurred; or
- b.** loss due to any ordinance or law that:
  - (1)** you were required to comply with before the loss, even if the building was undamaged; and
  - (2)** you failed to comply with;

whether or not you were aware of such non-compliance.

**C. Limits of Insurance**

Any payment made under this Equipment Breakdown Coverage will not be increased if more than one insured is shown in the Declarations or if you are comprised of more than one legal entity.

**1. Equipment Breakdown Limit**

The most we will pay for loss, damage or expense arising from any "one equipment breakdown" is the amount shown as the Equipment Breakdown Limit in the Declarations.

**2. Coverage Limits**

- a.** The limit of your insurance under each of the coverages listed in **A.2.** from loss, damage or expense arising from any "one equipment breakdown" is the amount indicated for that coverage in the Declarations. These limits are a part of, and not in addition to, the Equipment Breakdown Limit. If an amount of time is shown, coverage will continue for no more than that amount of time



immediately following the Covered Cause of Loss. If a coverage is shown as "Included," that coverage is provided up to the remaining amount of the Equipment Breakdown Limit. If no limit is shown in the Declarations for a coverage, or if a coverage is shown as Excluded in the Declarations, that coverage will be considered to have a limit of \$0.

- b. Loss arising from any "one equipment breakdown" may continue to be present or recur in a later policy period. This includes, but is not limited to, loss arising from mold, fungus, mildew or yeast as covered under Mold coverage. In such a case, the most we will pay for all loss, damage or expense arising out of any "one equipment breakdown" is the coverage limit applicable at the time of the Covered Cause of Loss.
- c. If two or more coverage limits apply to the same loss or portion of a loss, we will pay only the smallest of the applicable limits for that loss or portion of the loss. This means that if:

- (1) you have a loss under one of the coverages listed in **A.2.**; and

- (2) all or part of the loss is not covered because the applicable coverage is Excluded or has a limit that is less than the amount of your loss,

we will not pay the remaining amount of such loss under any other coverage.

#### **Example 1**

Property Damage Limit: \$7,000,000

Business Income Limit: \$1,000,000

Newly Acquired Locations Limit: \$500,000

There is a Covered Cause of Loss at a newly acquired location that results in a Property Damage loss of \$200,000 and a Business Income loss of \$800,000.

We will pay \$500,000, because the entire loss is subject to the Newly Acquired Locations Limit of \$500,000.

#### **Example 2**

Property Damage Limit: \$7,000,000

Business Income Limit: \$500,000

Hazardous Substances Limit: \$25,000

There is a Covered Cause of Loss that results in a loss of \$100,000. If no "hazardous substance" had been involved, the property damage loss would have been \$10,000 and the business income loss would have been \$20,000. The presence of the "hazardous substance" increased the loss by \$70,000 (increasing the clean up and repair costs by \$30,000 and increasing the business income loss by \$40,000).

We will pay \$55,000 (\$10,000 property damage plus \$20,000 business income plus \$25,000 hazardous substances).

### **D. Deductibles**

#### **1. Deductibles for Each Coverage**

- a. Unless the Declarations indicate that your deductible is combined for all coverages, multiple deductibles may apply to any "one equipment breakdown."
- b. We will not pay for loss, damage or expense under any coverage until the amount of the covered loss or damage exceeds the deductible amount indicated for that coverage in the Declarations. We will then pay the amount of loss, damage or expense in excess of the applicable deductible amount, subject to the applicable limit indicated in the Declarations.
- c. If deductibles vary by type of "covered equipment" and more than one type of "covered equipment" is involved in any "one equipment breakdown," only the highest deductible for each coverage will apply.

- d. The following applies when a deductible is expressed as a function of the horsepower rating of a refrigerating or air conditioning system. If more than one compressor is used with a single system, the horsepower rating of the largest motor or compressor will determine the horsepower rating of the system.

## 2. Direct and Indirect Coverages

- a. Direct Coverages Deductibles and Indirect Coverages Deductibles may be indicated in the Declarations.
- b. Unless more specifically indicated in the Declarations:
  - (1) Indirect Coverages Deductibles apply to Business Income and Extra Expense loss, regardless of where such coverage is provided in this Equipment Breakdown Coverage; and
  - (2) Direct Coverages Deductibles apply to all remaining loss, damage or expense covered by this Equipment Breakdown Coverage.

### Example

A Covered Cause of Loss results in covered losses as follows:

\$100,000 Total Loss (all applicable coverages)

\$35,000 Business Income Loss (including \$2,000 of business income loss payable under Data Restoration Coverage)

\$5,000 Extra Expense Loss

In this case, the Indirect coverages loss totals \$40,000 before application of the Indirect Coverage Deductible. The Direct coverages loss totals the remaining \$60,000 before application of the Direct Coverage Deductible.

## 3. Application of Deductibles

### a. Dollar Deductibles

We will not pay for loss, damage or expense resulting from any "one equipment breakdown" until the amount of loss, damage or expense exceeds the applicable deductible or deductibles shown in the Declarations. We will then pay the amount of loss, damage or expense in excess of the applicable deductible or deductibles, subject to the applicable limits shown in the Declarations.

### b. Time Deductibles

If a time deductible is shown in the Declarations, we will not be liable for any loss occurring during the specified number of hours or days immediately following the Covered Cause of Loss. If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.

### c. Multiple of Average Daily Value (ADV) Deductibles

If a deductible is expressed as a number times ADV, that amount will be calculated as follows:

The ADV (Average Daily Value) will be the "business income" that would have been earned during the period of interruption had no Covered Cause of Loss occurred, divided by the number of working days in that period. The ADV applies to the "business income" value of the entire location, whether or not the loss affects the entire location. If more than one location is included in the valuation of the loss, the ADV will be the combined value of all affected locations. For purposes of this calculation, the period of interruption may not extend beyond the "period of restoration."

The number indicated in the Declarations will be multiplied by the ADV as determined above. The result will be used as the applicable deductible.

**Example**

Business is interrupted, partially or completely, for 10 working days. If there had been no Covered Cause of Loss the total "business income" at the affected location for those 10 working days would have been \$5,000. The Indirect Coverages Deductible is 3 times ADV.

$$\$5,000/10 = \$500 \text{ ADV}$$

$$3 \times \$500 = \$1,500 \text{ Indirect Coverages Deductible}$$

**d. Percentage of Loss Deductibles**

If a deductible is expressed as a percentage of loss, we will not be liable for the indicated percentage of the gross amount of loss, damage or expense (prior to any applicable deductible or coinsurance) insured under the applicable coverage. If the dollar amount of such percentage is less than the indicated Minimum Deductible, the Minimum Deductible will be the applicable deductible.

**E. Loss Conditions**

The following conditions apply:

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Brands and Labels**

- a. If branded or labeled merchandise that is "covered property" is damaged by a Covered Cause of Loss but retains a salvage value, you may:

- (1) stamp the word **Salvage** on the merchandise or its containers if the stamp will not physically damage the merchandise; or
- (2) remove the brands or labels, if doing so will not physically damage the merchandise. You must re-label the merchandise or its containers to comply with the law.

- b. We will pay for any reduction in value of the salvage merchandise resulting from either of the two actions listed in **2.a.** above, subject to all applicable limits.

- c. We will also pay the reasonable and necessary expenses you incur to perform either of the two actions described in **2.a.** above. We will pay for such expenses to the extent that they do not exceed the amount recoverable from salvage.

- d. If a Brands and Labels Limit is shown on the Declarations, we will not pay more than the indicated amount for coverage under this Condition.

**3. Coinsurance - Business Income Coverage**

- a. If a coinsurance percentage is shown in the Declarations, Business Income coverage is subject to coinsurance. This means that we will not pay the full amount of any "business income" loss if the "business income actual annual value" is greater than the "business income estimated annual value" at the affected location at the time of the Covered Cause of Loss. Instead, we will determine the most we will pay using the following steps:

- (1) divide the "business income estimated annual value" by the "business income actual annual value" at the time of the Covered Cause of Loss;
- (2) multiply the total amount of the covered loss of "business income" by the amount determined in paragraph (1) above;
- (3) subtract the applicable deductible from the amount determined in paragraph (2) above;

The resulting amount, or the Business Income Limit, whichever is less, is the most we will pay. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

- b. Coinsurance applies separately to each insured location.
- c. If you report a single "business income estimated annual value" for more than one location, without providing information on how that amount should be distributed among the locations, we will distribute the amount evenly among all applicable locations.

### Example 1 (Underinsurance)

When:

The "business income actual annual value" at the location of loss at the time of the Covered Cause of Loss is \$200,000.

The "business income estimated annual value" shown in the Declarations for the location of loss is \$100,000.

The actual loss of "business income" resulting from the Covered Cause of Loss is \$40,000.

The Business Income limit is \$100,000.

The Business Income deductible is \$5,000.

Step 1:  $\$100,000 / \$200,000 = .5$

Step 2:  $\$40,000 \times .5 = \$20,000$

Step 3:  $\$20,000 - \$5,000 = \$15,000$

The total "business income" loss recovery, after deductible, would be \$15,000. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

We will also charge you an additional premium in recognition of the "business income actual annual value."

### Example 2 (Adequate Insurance)

When:

The "business income actual annual value" at the location of loss at the time of the Covered Cause of Loss is \$200,000.

The "business income estimated annual value" shown in the Declarations for the location of loss is \$200,000.

The actual loss of "business income" resulting from the Covered Cause of Loss is \$40,000.

The Business Income limit is \$100,000.

The Business Income deductible is \$5,000.

Step 1:  $\$200,000 / \$200,000 = 1$

Step 2:  $\$40,000 \times 1 = \$40,000$

Step 3:  $\$40,000 - \$5,000 = \$35,000$

The total "business income" loss recovery, after deductible, would be \$35,000.

## 4. Coinsurance - Coverages Other than Business Income

Coverages other than Business Income may be subject to coinsurance if so indicated in the Declarations. 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 the property subject to the coverage at the time of the Covered Cause of Loss times the Coinsurance percentage shown for it in the Declarations is greater than the applicable limit.

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

- (1) multiply the value of the property subject to the coverage at the time of the Covered Cause of Loss by the Coinsurance Percentage;
- (2) divide the applicable limit by the amount determined in step (1);
- (3) multiply the total amount of loss, before the application of any deductible, by the amount determined in step (2); and
- (4) subtract the deductible from the amount determined in step (3).

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

- b. Coinsurance applies separately to each insured location.

### Example 1 (Underinsurance)

When:

The actual value of "perishable goods" at the location of loss at the time of the Covered Cause of Loss is \$200,000.

The Perishable Goods limit is \$100,000 @ 80% coinsurance.

The loss under Perishable Goods coverage resulting from the Covered Cause of Loss is \$60,000.

The Perishable Goods deductible is \$5,000.

Step 1:  $\$200,000 \times 80\% = \$160,000$

Step 2:  $\$100,000 / \$160,000 = .625$

Step 3:  $\$60,000 \times .625 = \$37,500$

Step 4:  $\$37,500 - \$5,000 = \$32,500$

The total Perishable Goods loss recovery, after deductible, would be \$32,500. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

### Example 2 (Adequate Insurance)

When:

The actual value of "perishable goods" at the location of loss at the time of the Covered Cause of Loss is \$100,000.

The Perishable Goods limit is \$100,000 @ 80% coinsurance.

The loss under Perishable Goods Coverage resulting from the Covered Cause of Loss is \$60,000.

The Perishable Goods Deductible is \$5,000.

Step 1:  $\$100,000 \times 80\% = \$80,000$

Step 2:  $\$100,000 / \$80,000 = 1.25$

Coinsurance does not apply.

Step 3:  $\$60,000 - \$5,000 = \$55,000$

The total Perishable Goods loss recovery, after deductible, would be \$55,000.

## 5. Defense

We have the right, but are not obligated, to defend you against suits arising from claims of owners of property in your care, custody or control. When we do this, it will be at our expense.

## 6. Duties in the Event of Loss or Damage

You must see that the following are done in the event of loss or damage:

- a. Give us a prompt notice of the loss or damage, including a description of the property involved.
- b. You must reduce your loss, damage or expense, if possible, by:
  - (1) protecting property from further damage. We will not pay for your failure to protect property, as stated in exclusion B.1.g.;
  - (2) resuming business, partially or completely at the location of loss or at another location;
  - (3) making up lost business within a reasonable amount of time. This includes working extra time or overtime at the location of loss or at another location. The reasonable amount of time does not necessarily end when the operations are resumed;
  - (4) using merchandise or other property available to you;
  - (5) using the property or services of others; and
  - (6) salvaging the damaged property.

- c. Allow us a reasonable time and opportunity to examine the property and premises before repair or replacement is undertaken or physical evidence of the Covered Cause of Loss is removed. But you must take whatever measures are necessary for protection from further damage.
- d. Make no statement that will assume any obligation or admit any liability, for any loss, damage or expense for which we may be liable, without our consent.
- e. Promptly send us any legal papers or notices received concerning the loss, damage or expense.
- f. As often as may be reasonably required, permit us to inspect your property, premises 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.
- g. If requested, permit us to examine you and any of your agents, employees and representatives under oath. We may examine any insured under oath while not in the presence of any other insured. Such examination:
  - (1) may be at any time reasonably required;
  - (2) may be about any matter relating to this insurance, your loss, damage or expense, or your claim, including, but not limited to, your books and records; and
  - (3) may be recorded by us by any methods we choose.
- h. Send us a signed, sworn proof of loss containing the information we request. You must do this within 60 days after our request.
- i. Cooperate with us in the investigation and settlement of the claim.

## 7. Errors and Omissions

- a. We will pay your loss covered by this Equipment Breakdown Coverage if such loss is otherwise not payable solely because of any of the following:
  - (1) any error or unintentional omission in the description or location of property as insured under this Policy;
  - (2) any failure through error to include any premises owned or occupied by you at the inception of this Policy; or
  - (3) any error or unintentional omission by you that results in cancellation of any premises insured under this Policy.
- b. No coverage is provided as a result of any error or unintentional omission by you in the reporting of values or the coverage you requested.
- c. It is a condition of this coverage that such errors or unintentional omissions shall be reported and corrected when discovered. The Policy premium will be adjusted accordingly to reflect the date the premises should have been added had no error or omission occurred.
- d. If an Errors and Omissions Limit is shown on the Declarations, we will not pay more than the indicated amount for coverage under this Condition.

## 8. Proving Your Loss

It is your responsibility, at your own expense, to provide documentation to us:

- a. demonstrating that the loss, damage or expense is the result of a Covered Cause of Loss covered under this Equipment Breakdown Coverage; and
- b. calculating the dollar amount of the loss, damage and expense that you claim is covered.

Your responsibility in **8.a.** above is without regard to whether or not the possible Covered Cause of Loss occurred at your premises or involved your equipment.

## 9. Salvage and Recoveries

When, in connection with any loss under this Equipment Breakdown Coverage, any salvage or recovery is received after the payment for such loss, the amount of the loss shall be refigured on the basis on which it would have been settled had the amount of salvage or recovery been known at the time the loss was originally determined. Any amounts thus found to be due either party from the other shall be paid promptly.

## 10. Valuation

We will determine the value of "covered property" as follows:

**a.** Except as specified otherwise, our payment for damaged "covered property" will be the smallest of:

- (1) the cost to repair the damaged property;
- (2) the cost to replace the damaged property on the same site; or
- (3) the amount you actually spend that is necessary to repair or replace the damaged property.

**b.** The amount of our payment will be based on the most cost-effective means to replace the function, capacity and remaining useful life of the damaged property. This may include the use of generic, used or reconditioned parts, equipment or property.

**c.** Except as described in **d.** below, you must pay the extra cost of replacing damaged property with property of a better kind or quality or of a different size or capacity.

## **d. Environmental, Safety and Efficiency Improvements**

If "covered equipment" requires replacement due to a Covered Cause of Loss we will pay your additional cost to replace with equipment that we agree is better for the environment, safer for people or more energy or water efficient than the equipment being replaced, subject to the following conditions:

- (1) we will not pay more than 150% of what the cost would have been to replace with like kind and quality;
- (2) we will not pay to increase the size or capacity of the equipment;
- (3) this provision only applies to Property Damage Coverage;
- (4) this provision does not increase any of the applicable limits;
- (5) this provision does not apply to any property valued on an Actual Cash Value basis; and
- (6) this provision does not apply to the replacement of component parts.

**e.** The following property will be valued on an Actual Cash Value basis:

- (1) any property that does not currently serve a useful or necessary function for you;
- (2) any "covered property" that you do not repair or replace within 24 months after the date of the Covered Cause of Loss; and
- (3) any "covered property" for which Actual Cash Value coverage is specified in the Declarations.

Actual Cash Value includes deductions for depreciation.

**f.** If any one of the following conditions is met, property held for sale by you will be valued at the sales price as if

no loss or damage had occurred, less any discounts and expenses that otherwise would have applied:

- (1) the property was manufactured by you;
- (2) the sales price of the property is less than the replacement cost of the property; or
- (3) you are unable to replace the property before its anticipated sale.

g. Except as specifically provided for under Data Restoration coverage, "data" and "media" will be valued on the following basis:

- (1) For mass-produced and commercially available software, at the replacement cost.
- (2) For all other "data" and "media," at the cost of blank "media" for reproducing the records. We will not pay for "data" representing financial records based on the face value of such records.

h. Air conditioning or refrigeration equipment that utilizes a refrigerant containing CFC (chlorofluorocarbon) substances will be valued at the cost to do the least expensive of the following:

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

In determining the least expensive option, we will include any associated Business Income or Extra Expense loss. If option (2) or (3) is more expensive than (1), but you wish to retro-

fit or replace anyway, we will consider this better for the environment and therefore eligible for valuation under paragraph d., **Environmental, Safety and Efficiency Improvements**. In such case, **10.d.(1)** above is amended to read: "We will not pay more than 150% of what the cost would have been to repair or replace with like kind and quality."

## F. Additional Conditions

The following conditions apply in addition to the Loss Conditions:

### 1. Additional Insured

If a person or organization is designated in this Equipment Breakdown Coverage as an additional insured, we will consider them to be an insured under this Equipment Breakdown Coverage only to the extent of their interest in the "covered property."

### 2. Bankruptcy

The bankruptcy or insolvency of you or your estate will not relieve you or us of any obligation under this Equipment Breakdown Coverage.

### 3. Cancellation

a. The first Named Insured shown in the Declarations may cancel this Policy by mailing or delivering to us advance written notice of cancellation.

b. We may cancel this Policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.



d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

e. If this Policy is canceled, 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.

f. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### 4. 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.

#### 5. Concealment, Misrepresentation or Fraud

We will not pay for any loss and coverage will be void if you or any additional insured at any time:

- a. intentionally cause or allow loss, damage or expense in order to collect on insurance; or
- b. intentionally conceal or misrepresent a material fact concerning:
  - (1) this Equipment Breakdown Coverage;
  - (2) the "covered property";
  - (3) your interest in the "covered property"; or
  - (4) a claim under this Equipment Breakdown Coverage.

#### 6. 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.

#### 7. Inspections and Surveys

a. We have the right to:

- (1) make inspections and surveys at any time;
- (2) give you reports on the conditions we find; and
- (3) recommend changes.

b. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions 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:

- (1) are safe or healthful; or
- (2) comply with laws, regulations, codes or standards.

c. Paragraphs a. and b. 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.

#### 8. Jurisdictional Inspections

It is your responsibility to comply with any state or municipal boiler and pressure vessel regulations. If any "covered equipment" that is "covered property" requires inspection to comply with such regulations, at your option we agree to perform such inspection.

#### 9. Legal Action Against Us

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

- a. there has been full compliance with all the terms of this Equipment Breakdown Coverage; and
- b. the action is brought within two years after the date of the Covered Cause of Loss; or
- c. we agree in writing that you have an obligation to pay for damage to "covered property" of others or until the amount of that obligation has been determined by final judgment or arbitration award. No one has the right under this Policy to bring us into an action to determine your liability.

## 10. Liberalization

If we adopt any standard form revision for general use that would broaden the coverage under this Equipment Breakdown Coverage without additional premium, the broadened coverage will apply to this Equipment Breakdown Coverage commencing on the date that such revision becomes effective in the jurisdiction where the Covered Cause of Loss occurs.

## 11. Loss Payable

- a. We will pay you and the loss payee shown in the Declarations for loss covered by this Equipment Breakdown Coverage, as interests may appear. The insurance covers the interest of the loss payee unless the loss results from conversion, secretion or embezzlement on your part or on the part of the loss payee.
- b. We may cancel the Policy as allowed by the **Cancellation** Condition. Cancellation ends this agreement as to the loss payee's interest. If we cancel, we will mail you and the loss payee the same advance notice.
- c. If we make any payment to the loss payee, we will obtain their rights against any other party.

## 12. Maintaining Your Property and Equipment

It is your responsibility to appropriately maintain your property and equipment. We will not pay your costs to maintain, operate, protect or enhance your property or equipment, even if such costs are to comply with our recommendations or prevent loss, damage or expense that would be covered under this Policy.

## 13. Mortgage Holders and Lender's Loss Payable

- a. The term mortgage holder includes trustee.
- b. We will pay for direct damage to "covered property" due to a Covered Cause of Loss to "covered equipment" to you and each mortgage holder and lender loss payee shown in the Declarations in their order of precedence, as interests in the "covered property" may appear.
- c. The mortgage holder and lender loss payee have the right to receive loss payment even if they have started foreclosure or similar action on the "covered property."
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Equipment Breakdown Coverage, the mortgage holder and lender loss payee will still have the right to receive loss payment, provided the mortgage holder and lender loss payee do all of the following:
  - (1) pay any premium due under this Equipment Breakdown Coverage at our request if you have failed to do so;
  - (2) submit a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so;

- (3) have notified us of any change in ownership or material change in risk known to the mortgage holder; and
- (4) have complied with all other terms and conditions of this Policy.

All of the terms of this Equipment Breakdown Coverage will then apply directly to the mortgage holder and lender loss payee.

- e. If we pay the mortgage holder and lender loss payee for any loss and deny payment to you because of your acts or because you have failed to comply with the terms of this Equipment Breakdown Coverage:

- (1) the rights of the mortgage holder and lender loss payee will be transferred to us to the extent of the amount we pay; and
- (2) the rights of the mortgage holder and lender loss payee to recover the full amount of their claim will not be impaired.

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

- f. If we cancel this Policy, we will give written notice to the mortgage holder and lender loss payee 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 mortgage holder and lender loss payee at least 10 days before the expiration date of this Policy.

- h. If we suspend coverage, it will also be suspended as respects the mortgage holder and lender loss payee. We will give written notice of the suspension to the mortgage holder and lender loss payee.

#### 14. Other Insurance

If there is other insurance that applies to the same loss, damage or expense, this Equipment Breakdown Coverage shall apply only as excess insurance after all other applicable insurance has been exhausted.

#### 15. Policy Period, Coverage Territory

Under this Equipment Breakdown Coverage:

- a. The Covered Cause of Loss must occur during the policy period, but expiration of the Policy does not limit our liability.
- b. The Covered Cause of Loss must occur within the following Coverage Territory:
  - (1) the United States of America (including its territories and possessions);
  - (2) Puerto Rico; and
  - (3) Canada.
- c. With respect to Off Premises Equipment Breakdown coverage only, the Covered Cause of Loss may occur in any country except one in which the United States has imposed sanctions, embargoes or similar restrictions on the provision of insurance.

#### 16. Premiums

The first Named Insured shown in the Declarations:

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

**17. Privilege to Adjust with Owner**

In the event of loss, damage or expense involving property of others in your care, custody or control, we have the right to settle the loss, damage or expense with respect to such property with the owner of the property. Settlement with owners of that property will satisfy any claim of yours.

**18. Suspension**

Whenever "covered equipment" is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss from a Covered Cause of Loss to that "covered equipment." This can be done by delivering or mailing a written notice of suspension to:

- a. your last known address; or
- b. the address where the "covered equipment" is located.

Once suspended in this way, your insurance can be reinstated only by an endorsement for that "covered equipment."

If we suspend your insurance, you will get a pro rata refund of premium for that "covered equipment" for the period of suspension. But the suspension will be effective even if we have not yet made or offered a refund.

**19. 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.

**20. Transfer of Rights of Recovery Against Others to Us**

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

- a. Prior to Covered Cause of Loss.
- b. After Covered Cause of Loss only if, at time of the Covered Cause of Loss, that party is one of the following:
  - (1) someone insured by this Policy; or
  - (2) a business firm:
    - (a) owned or controlled by you; or
    - (b) that owns or controls you.

**G. Definitions****1. "Accident"**

- a. **"Accident"** means a fortuitous event that causes direct physical damage to "covered equipment." The event must be one of the following:
  - (1) mechanical breakdown, including rupture or bursting caused by centrifugal force;
  - (2) artificially generated electrical current, including electrical arcing, that damages electrical devices, appliances or wires;
  - (3) explosion, other than combustion explosion, of steam boilers, steam piping, steam engines or steam turbines;
  - (4) an event inside steam boilers, steam pipes, steam engines or steam turbines that damages such equipment;

- (5) an event inside hot water boilers or other water heating equipment that damages such equipment; or
  - (6) bursting, cracking or splitting.
- b. None of the following is an "accident," however caused and without regard to whether such condition or event is normal and expected or unusual and unexpected. However, if an event as defined under **1.a.** above results from any of the following, it will be considered an "accident."
- (1) depletion, deterioration, rust, corrosion, erosion, settling or wear and tear;
  - (2) any gradually developing condition;
  - (3) any defect, programming error, programming limitation, computer virus, malicious code, loss of "data," loss of access, loss of use, loss of functionality or other condition within or involving "data" or "media" of any kind;
  - (4) contamination by a "hazardous substance"; or
  - (5) misalignment, miscalibration, tripping off-line, or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance.
2. **"Anchor Location"** means a location, operated by others, upon which you depend to attract customers to your scheduled location.
3. **"Boilers and Vessels"** means:
- a. boilers;
  - b. steam piping;
  - c. piping that is part of a closed loop used to conduct heat from a boiler;
  - d. condensate tanks; and
  - e. unfired vessels which, during normal usage, operate under vacuum or pressure, other than the weight of contents.
- This term does not appear elsewhere in this Coverage Form, but may appear in the Declarations.
4. **"Building Utilities"** means "covered equipment" permanently mounted on or in a building and used to provide any of the following services within the building: heating, ventilating, air conditioning, electrical power, hot water, elevator or escalator services, central vacuum, natural gas service or communications. "Building utilities" does not include personal property or equipment used in manufacturing or processing.
5. **"Buried Vessels or Piping"** means any piping or vessel buried or encased in the earth, concrete or other material, whether above or below grade, or in an enclosure which does not allow access for inspection and repair.
6. **"Business Income"** means the sum of:
- a. the Net Income (net profit or loss before income taxes) that would have been earned or incurred; and
  - b. continuing normal and necessary operating expenses incurred, including employee payroll.
7. **"Business Income Actual Annual Value"** means the "business income" for the current fiscal year that would have been earned had no Covered Cause of Loss occurred.
- In calculating the "Business Income Actual Annual Value," we will take into account the actual experience of your business before the Covered Cause of Loss and the probable experience you would have had without the Covered Cause of Loss.
8. **"Business Income Estimated Annual Value"** means the anticipated "business income" reported to us and shown in the Declarations. If no value is shown in the Declarations, the "Business Income Esti-

mated Annual Value" will be the most recent report of anticipated "business income" values on file with us.

**9. "Cloud Computing Services"** means professional, on-demand, self-service data storage or data processing services provided through the Internet or over telecommunications lines. This includes services known as IaaS (infrastructure as a service), PaaS (platform as a service), SaaS (software as a service) and NaaS (network as a service). This includes business models known as public clouds, community clouds and hybrid clouds. "Cloud computing services" include private clouds if such services are owned and operated by a third party.

#### **10. "Covered Equipment"**

**a. "Covered Equipment,"** means the following:

(1) Unless specified otherwise in the Declarations:

(a) equipment that generates, transmits or utilizes energy, including electronic communications and data processing equipment; or

(b) equipment which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.

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

(2) Except as specifically provided for under Off Premises Equipment Breakdown, Service Interruption, Contingent Business Income, paragraph (2) of Data Restoration, paragraph (2) of Perishable Goods and Civil Authority, such equipment must be at a location described in the Declarations and must be owned or leased by you or operated under your control.

**b. None of the following is "covered equipment":**

(1) structure, including but not limited to the structural portions of buildings and towers, and scaffolding;

(2) foundation;

(3) cabinet, compartment, conduit or ductwork;

(4) insulating or refractory material;

(5) "buried vessels or piping";

(6) waste, drainage or sewer piping;

(7) piping, valves or fittings forming a part of a sprinkler or fire suppression system;

(8) water piping that is not part of a closed loop used to conduct heat or cooling from a boiler or a refrigeration or air conditioning system;

(9) "vehicle" or any equipment mounted on a "vehicle";

(10) satellite, spacecraft or any equipment mounted on a satellite or spacecraft;

(11) dragline, excavation or construction equipment;

(12) equipment manufactured by you for sale; or

(13) "data."

#### **11. "Covered Property"**

**a. "Covered Property"** means property that you own or property that is in your care, custody or control and for which you are legally liable. Such property must be at a location described in the Declarations except as provided under Off Premises Equipment Breakdown coverage.

b. None of the following is "covered property":

- (1) accounts, bills, currency, deeds or other evidences of debt, money, notes or securities;
- (2) fine arts, jewelry, furs or precious stones;
- (3) precious metal, unless forming a part of "covered equipment";
- (4) animals;
- (5) contraband, or property in the course of illegal transportation or trade;
- (6) land (including land on which the property is located), water, trees, growing crops or lawns; or
- (7) shrubs or plants, unless held indoors for retail sale.

12. **"Data"** means information or instructions stored in digital code capable of being processed by machinery.

**13. "Electrical Generating Equipment"**

a. "Electrical Generating Equipment" means equipment which converts any other form of energy into electricity. This includes, but is not limited to, the following:

- (1) boilers used primarily to provide steam for one or more turbine-generator units;
- (2) turbine-generators (including steam, gas, water or wind turbines);
- (3) engine-generators;
- (4) fuel cells or other alternative electrical generating equipment;
- (5) electrical transformers, switchgear and power lines used to convey the generated electricity; and

(6) associated equipment necessary for the operation of any of the equipment listed in (1) through (5) above.

b. "Electrical Generating Equipment" does not mean:

- (1) elevator or hoist motors that generate electricity when releasing cable; or
- (2) equipment intended to generate electricity solely on an emergency, back-up basis.

This term does not appear elsewhere in this Coverage Form, but may appear in the Declarations.

14. **"Electronic circuitry"** means microelectronic components, including but not limited to circuit boards, integrated circuits, computer chips and disk drives.

**15. "Electronic Circuitry Impairment"**

a. "Electronic circuitry impairment" means a fortuitous event involving "electronic circuitry" within "covered equipment" that causes the "covered equipment" to suddenly lose its ability to function as it had been functioning immediately before such event. This definition is subject to the conditions specified in b., c., and d. below.

b. We shall determine that the reasonable and appropriate remedy to restore such "covered equipment's" ability to function is the replacement of one or more "electronic circuitry" components of the "covered equipment."

c. The "covered equipment" must be owned or leased by you, or operated under your control.

d. None of the following is an "electronic circuitry impairment":

- (1) Any condition that can be reasonably remedied by:

- (a) Normal maintenance, including but not limited to replacing expendable parts, recharging batteries or cleaning;
    - (b) Rebooting, reloading or updating software or firmware; or
    - (c) Providing necessary power or supply.
  - (2) Any condition caused by or related to:
    - (a) Incompatibility of the "covered equipment" with any software or equipment installed, introduced or networked within the prior 30 days; or
    - (b) Insufficient size, capability or capacity of the "covered equipment."
  - (3) Exposure to adverse environmental conditions, including but not limited to change in temperature or humidity, unless such conditions result in an observable loss of functionality. Loss of warranty shall not be considered an observable loss of functionality.
- 16. "Extra Expense"** means the additional cost you incur to operate your business over and above the cost that you normally would have incurred to operate your business during the same period had no Covered Cause of Loss occurred.
- 17. "Hazardous Substance"** means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.
- 18. "Interruption of Service"**
- a. "Interruption of Service" means a failure or disruption of the normal supply of any of the Covered Services listed in **b.** below, when such failure or disruption is caused by an "accident" to "covered equipment," subject to the conditions listed in **c.** through **f.** below. The failure or disruption must arise from an "accident."
  - b. Covered Services are electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks, "cloud computing services" and data transmission.
  - c. The "covered equipment" must either be:
    - (1) owned by a company with whom you have a contract to supply you with one of the Covered Services; or
    - (2) used to supply you with one of the Covered Services and located within one mile of a location described in the Declarations.
  - d. If a Service Interruption Distance Limitation is indicated in the Declarations, the "covered equipment" suffering the "accident" must be located within the indicated distance of any location described in the Declarations.
  - e. Unless otherwise shown in the Declarations, no failure or disruption of service will be considered to qualify as an "interruption of service" until the failure or disruption exceeds 24 hours immediately following the "accident."
  - f. "Interruption of Service" does not include any failure or disruption, whether or not arising from or involving an "accident," in which a supplier could have continued to provide service to the location but chose for any reason to reduce or discontinue service.
- 19. "Interruption of Supply"**
- a. "Interruption of Supply" means a failure or disruption of the normal supply of any of the Covered Contingencies listed below, when such failure or disruption is caused by an "accident" to "covered equipment" that is located at



a Contingent Business Income supplier or receiver location indicated in the Declarations. If no Contingent Business Income supplier or receiver location is indicated in the Declarations, the "covered equipment" must be owned by a supplier from whom you have received the Covered Contingency for at least six months prior to the "accident" or a receiver to whom you have supplied the Covered Contingency for at least six months prior to the "accident."

b. Covered Contingencies are raw materials, intermediate products, finished products, packaging materials and product processing services.

**20. "Media"** means material on which "data" is recorded, such as magnetic tapes, hard disks, optical disks or floppy disks.

**21. "One Equipment Breakdown"** means all "accidents" or "electronic circuitry impairments" occurring at the same time from the same event. If an "accident" or "electronic circuitry impairment" causes other "accidents" or "electronic circuitry impairments," all will be considered "one equipment breakdown."

**22. "Ordinary Payroll"** means the Payroll Expenses associated with all employees other than executives, department managers and employees under contract.

As used above, Payroll Expenses means all payroll, employee benefits directly related to payroll, FICA payments you pay, union dues you pay and workers compensation premiums.

"Ordinary payroll" does not include pensions or directors fees.

This term does not appear elsewhere in this Coverage Form, but may appear in the Declarations.

**23. "Period of Restoration"**

a. Except as indicated in b. below, "period of restoration" means the period of time that begins at the time of the Covered Cause of Loss and continues until the earlier of:

(1) the date the "covered equipment" is repaired or replaced; or

(2) the date on which such equipment could have been repaired or replaced with the exercise of due diligence and dispatch,

plus the number of days, if any, shown in the Declarations for Extended Period of Restoration.

b. Only as respects Civil Authority coverage, "period of restoration" means the period of time that begins as of the time access is prohibited by action of civil authority and continues until the earlier of:

(1) Twenty-one (21) thereafter; or

(2) the date access is restored.

**24. "Perishable Goods"** means any "covered property" subject to deterioration or impairment as a result of a change of conditions, including but not limited to temperature, humidity or pressure.

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

However, "production machinery" does not mean any boiler, or fired or unfired pressure vessel.

This term does not appear elsewhere in this Coverage Form, but may appear in the Declarations.

**26. "Recognized Environmental Standards Program"** means one of the following:

a. the United States Environmental Protection Agency ENERGY STAR® program;

b. the U.S. Green Building Council LEED® program;

c. the Green Building Initiative GREEN GLOBES® program; or

d. any nationally or internationally recognized environmental standards program that is designed to achieve energy savings and related objectives of the type included in the programs listed above.

**27. "Spoilage"** means any detrimental change in state. This includes but is not limited to thawing of frozen goods, warming of refrigerated goods, freezing of fresh goods, solidification of liquid or molten material and chemical reactions to material in process.

**28. "Vehicle"** means any machine or apparatus that is used for transportation or moves under its own power. "Vehicle" includes, but is not limited to, car, truck, bus, trailer, train, aircraft, watercraft, forklift, bulldozer, tractor or harvester.

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

## **EQUIPMENT BREAKDOWN - SCHEDULE OF LOCATIONS**

1 - 8777 Collins Ave, Surfside, FL 33154

**FORMS AND ENDORSEMENTS SCHEDULE**

It is hereby understood and agreed the following forms and endorsements are attached to and are a part of this policy:

	<b>Form and Edition</b>		<b>Date Added * or Date Deleted</b>	<b>Form Description</b>
1.	BM7210	03-17		Equipment Breakdown Coverage Part Declarations No. 1
2.	BM7211	03-17		Equipment Breakdown Coverage Form
3.	BM7296	06-09		Equipment Breakdown - Schedule of Locations
4.	BM7230	06-17		Florida Changes
5.	BM7285	06-07		Florida Changes

\* If not at inception

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

This endorsement modifies insurance provided under the following:

**EQUIPMENT BREAKDOWN COVERAGE FORM**

**A. Under F. Additional Conditions, paragraph 9. Legal Action Against Us, subparagraph b. is replaced by the following:**

- b.** the action is brought within five years after the date of the Covered Cause of Loss; or

an act of God, unless we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property; or

**B. Under F. Additional Conditions, paragraph 3. Cancellation, subparagraphs b. and e. are replaced by the following:**

**b. Cancellation for Policies in Effect 90 Days or Less**

- (1)** If this Policy has been in effect for 90 days or less, we may cancel this Policy by mailing or delivering to the Named Insured written notice of cancellation, accompanied by the specific reasons for cancellation, at least:

- (a)** 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

- (b)** 20 days before the effective date of cancellation if we cancel for any other reason, except we may cancel immediately if there has been:

- (i)** a material misstatement or misrepresentation; or

- (ii)** a failure to comply with underwriting requirements established by the insurer.

- (2)** We may not cancel:

- (a)** on the basis of property insurance claims that are the result of

- (b)** solely on the basis of a single property insurance claim which is a result of water damage, unless we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the Insured property.

- e.** 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. If the return premium is not refunded with the notice of cancellation or when this Policy is returned to us, we will mail the refund within 15 working days after the date cancellation takes effect, unless this is an audit policy.

If this is an audit policy, then, subject to your full cooperation with us or our agent in securing the necessary data for audit, we will return any premium refund due within 90 days of the date cancellation takes effect. If our audit is not completed within this time limitation, then we shall accept your own audit, and any premium refund due shall be mailed within 10 working days of receipt of your audit.

The cancellation will be effective even if we have not made or offered a refund.

**C. Under F. Additional Conditions, paragraph 3. Cancellation, the following is added:**

**g. Cancellation for Policies in Effect for More than 90 Days**

(1) If this Policy has been in effect for more than 90 days, we may cancel this Policy only for one or more of the following reasons:

- (a) nonpayment of premium;
- (b) the Policy was obtained by a material misstatement;
- (c) in the event of failure to comply, within 90 days after the effective date of coverage, with underwriting requirements established by us before the effective date of coverage;
- (d) there has been a substantial change in the risk covered by the Policy;
- (e) the cancellation is for all insureds under such policies for a given class of insureds;
- (f) on the basis of property insurance claims that are the result of an act of God, if we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property;
- (g) on the basis of a single property insurance claim which is the result of water damage, if we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.
- (h) the cancellation of some or all of our policies is necessary to protect the best interests of the public or policyholders and such

cancellation is approved by the Florida Office of Insurance Regulation.

(2) If we cancel this Policy for any of these reasons, we will mail or deliver to the first Named Insured written notice of cancellation, accompanied by the specific reasons for cancellation, at least:

(a) 10 days before the effective date of cancellation if cancellation is for nonpayment of premium;

(b) 45 days before the effective date of cancellation if:

(i) cancellation is for one or more of the reasons stated in paragraphs **g.(1)(b)** through **g.(1)(g)** above; and this Policy does not cover a residential structure or its contents; or

(ii) cancellation is based on the reason stated in paragraph **g.(1)(h)** above;

(c) 120 days before the effective date of cancellation if:

(i) cancellation is for one or more of the reasons stated in paragraphs **g.(1)(b)** through **g.(1)(g)** above; and

(ii) this policy covers a residential structure or its contents.

(3) If this Policy has been in effect for more than 90 days and covers a residential structure or its contents, we may not cancel this Policy based on credit information available in public records.

**D. Under F. Additional Conditions**, the following is added:

**Nonrenewal**

a. If we decide not to renew this Policy we will mail or deliver to the first Named Insured written notice of nonrenewal, accompanied by the specific reason for nonrenewal, at least:

(1) 45 days prior to the expiration of the Policy if this Policy does not cover a residential structure or its contents; or if nonrenewal is for the reason stated in paragraph **D.e.**; or

(2) 120 days prior to the expiration of the Policy if this Policy covers a residential structure or its contents.

b. Any notice of nonrenewal will be mailed or delivered to the first Named Insured at the last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

c. We may not refuse to renew this Policy:

(1) on the basis of property insurance claims that are the result of an act of God, unless we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property;

(2) on the basis of filing of claims for sinkhole loss. However, we may refuse to renew this Policy if:

(a) the total of such property insurance claim payments for this Policy equals or exceeds the policy limits in effect on the date of loss for property damage to the covered building; or

(b) you have failed to repair the structure in accordance with the engineering recommendations upon which any loss payment or policy proceeds were based; or

(3) solely on the basis of a single property insurance claim which is the result of water damage, unless we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.

d. Notwithstanding the provisions of paragraph **D.c.**, we may refuse to renew this Policy if this Policy included Sinkhole Loss Coverage. If we nonrenew this Policy for purposes of removing Sinkhole Loss Coverage, pursuant to section 627.706, Florida Statutes, we will offer you a policy that includes Catastrophic Ground Cover Collapse Coverage.

e. Notwithstanding the provisions of paragraph **D.c.**, we may refuse to renew this Policy if nonrenewal of some or all of our policies is necessary to protect the best interests of the public or policyholders and such nonrenewal is approved by the Florida Office of Insurance Regulation.

**E. Limitations on Cancellation and Nonrenewal in the Event of Hurricane or Wind Loss - Residential Property:**

a. The following provisions apply to a policy covering a residential structure or its contents, if such property has sustained damage as a result of a hurricane or wind-storm that is the subject of a declaration of emergency by the Governor and filing of an order by the Commissioner of Insurance Regulation:

(1) Except as provided in paragraphs **E.a.(2).**, we may not cancel or non-renew the Policy until at least 90 days after repairs to the residential structure or its content have been substantially completed so that it is restored to the extent that it is insurable by another insurer writing policies in Florida. If we elect to not renew the Policy, we will provide at least 100 days' notice that we intend to non-renew 90 days after the substantial completion of repairs.

(2) We may cancel or nonrenew the Policy prior to restoration of the structure or its contents, for any of the following reasons:

- (a) nonpayment of premium;
- (b) material misstatement or fraud related to the claim;
- (c) we determine that you have unreasonably caused a delay in the repair of the structure; or
- (d) we have paid the policy limits.

If we cancel or nonrenew for nonpayment of premium, we will give you 10 days' notice. If, we cancel or nonrenew for a reason listed in paragraphs (2)(b), (2)(c) or (2)(d), we will give you 45 days' notice.

- b. With respect to a policy covering a residential structure or its contents, any cancellation or nonrenewal that would otherwise take effect during the duration of a hurricane will not take effect until the end of the duration of such hurricane, unless a replacement policy has been obtained and is in effect for a claim occurring during the duration of the hurricane. We may collect premium for the period of time for which the policy period is extended.
- c. With respect to paragraph E.b., a hurricane is a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service (hereafter referred to as NHC). The hurricane occurrence begins at the time a hurricane watch or hurricane warning is issued for any part of Florida by the NHC, and ends 72 hours after the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the NHC.



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

## **FLORIDA CHANGES**

This endorsement modifies insurance provided under the following:

### **EQUIPMENT BREAKDOWN COVERAGE FORM**

- A.** The **Mold** Exclusion is replaced by the following.

Mold, fungus, mildew or yeast, including any spores or toxins created or produced by or emanating from such mold, fungus, mildew or yeast. This includes, but is not limited to, costs arising from clean-up, remediation, containment, removal or abatement of such mold, fungus, mildew, yeast, spores or toxins. However, this exclusion does not apply to "spoilage" of personal property that is "perishable goods" to the extent that such "spoilage" is covered under Perishable Goods Coverage.

This exclusion does not apply to the extent that coverage is provided in **B.** below.

- B.** The following is added to **A.2. Coverages Provided:**

#### **o. Mold**

- (1)** We will pay for the additional cost to repair or replace "covered property" because of contamination by mold, fungus, mildew or yeast, including any spores or toxins created or produced by or emanating from such mold, fungus, mildew or yeast. This includes the additional expenses to clean up or dispose of such property. This does not

include "spoilage" of "perishable goods," which is addressed in Perishable Goods Coverage.

- (2)** As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no mold, fungus, mildew, yeast, spores or toxins been involved.
- (3)** We will also pay for your loss and expense as defined under Business Income Coverage and Extra Expense Coverage that is the result of **o.(1)** above, if such coverage is otherwise applicable under this Policy. This coverage is included within and subject to the aggregate mold limit defined below.
- (4)** This Mold Coverage is subject to an aggregate mold limit of \$15,000. This amount is separate from and in addition to the Equipment Breakdown Limit. The aggregate mold limit is the most we will pay under this coverage for the total of all loss, damage or expense arising out of all "accidents" which take place during any one policy period, even if such mold, fungus, mildew, yeast, spore or toxin continues to be present or active, or recurs, in a later policy period.

**FORMS AND ENDORSEMENTS SCHEDULE**

It is hereby understood and agreed the following forms and endorsements are attached to and are a part of this policy:

	<b>Form and Edition</b>		<b>Date Added * or Date Deleted</b>	<b>Form Description</b>
1.	CM0001	09-04		Commercial Inland Marine Conditions
2.	CM0066	01-13		Accounts Receivable Coverage Form
3.	CM7658	12-98		Business Electronic Systems and Telecommunications Forms
4.	CM0116	02-12		Florida Changes - Loss Payment

\* If not at inception

**COMMERCIAL INLAND MARINE CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions and applicable Additional Conditions in **Commercial Inland Marine Coverage Forms**:

**Loss Conditions****A. Abandonment**

There can be no abandonment of any property to us.

**B. 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:

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

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

**C. Duties in the Event of Loss**

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. You will not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.
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. 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.
8. Send us a signed, sworn proof of loss containing the information we request to settle the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

9. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit.
10. Cooperate with us in the investigation or settlement of the claim.

#### **D. 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.

#### **E. Loss Payment**

1. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
2. We will not pay you more than your financial interest in the Covered Property.
3. 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 claim against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
4. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
5. 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 the terms of this Coverage Part and:
  - a. we have reached agreement with you on the amount of the loss; or
  - b. an appraisal award has been made.
6. We will not be liable for any part of a loss that has been paid or made good by others.

#### **F. 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.

#### **G. Pair, Sets or Parts**

##### **1. Pair or Set**

In case of loss or damage to any part of a pair or set we may:

- a. repair or replace any part to restore the pair or set to its value before the loss or damage; or
- b. pay the difference between the value of the pair or set before and after the loss or damage.

##### **2. Parts**

In case of loss or damage to any part of Covered Property consisting of several parts when complete, we will only pay for the value of the lost or damaged part.

#### **H. 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.

#### **I. Reinstatement of Limit After Loss**

The Limit of Insurance will not be reduced by the payment of any claim, except for total loss or damage of a scheduled item, in which event we will refund the unearned premium on that item.

**J. 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.
2. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
  - a. someone insured by this insurance; or
  - b. a business firm:
    - (1) owned or controlled by you; or
    - (2) that owns or controls you.

This will not restrict your insurance.

**General Conditions****A. Concealment, Misrepresentation or Fraud**

This Coverage Part is void in any case of fraud, intentional concealment or misrepresentation of a material fact, by you or any other insured, at any time, 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. 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 the terms of this Coverage Part; and
2. the action is brought within 2 years after you first have knowledge of the direct loss or damage.

**D. No Benefit to Bailee**

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

**E. Policy Period, Coverage Territory**

We cover loss or damage commencing:

1. during the policy period shown in the Declarations; and
2. within the coverage territory.

**F. Valuation**

The value of property will be the least of the following amounts:

1. the actual cash value of that property;
2. the cost of reasonably restoring that property to its condition immediately before loss or damage; or
3. the cost of replacing that property with substantially identical property.

In the event of loss or damage, the value of property will be determined as of the time of loss or damage.

## ACCOUNTS RECEIVABLE 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 **E - Definitions**.

### A. Coverage

#### 1. We will pay:

- 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 Covered Causes of Loss to your records of accounts receivable.

#### 2. Property Not Covered

Coverage does not apply to:

- a. records of accounts receivable in storage away from the "premises" shown in the Declarations; or
- b. contraband, or property in the course of illegal transportation or trade.

### 3. Covered Causes of Loss

Covered Causes of Loss means Direct Physical Loss or Damage to your records of accounts receivable except those causes of loss listed in the exclusions.

### 4. Additional Coverage - Collapse

The coverage provided under this Additional Coverage - Collapse applies only to an abrupt collapse as described and limited in paragraphs a. through c.

- a. 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.
- b. 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 contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:
  - (1) building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
  - (2) insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
  - (3) 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;
  - (4) 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:

- (a) a cause of loss listed in paragraph (1) or (2);
- (b) one or more of the following causes of loss: fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage; earthquake; all only as insured against in this Coverage Form;
- (c) weight of people or personal property; or
- (d) weight of rain that collects on a roof.

c. This Additional Coverage - Collapse will not increase the Limits of Insurance provided in this Coverage Form.

## 5. Coverage Extension

### Removal

If you give us written notice within 10 days of removal of your records of accounts receivable because of imminent danger of loss or damage, we will pay for loss or damage while they are:

- a. at a safe place away from your "premises"; or
- b. being taken to and returned from that place.

This Coverage Extension is included within the Limit of Insurance applicable to the "premises" from which the records of accounts receivable are removed.

## 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. 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 Form.

### b. 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 direct loss or damage caused by that fire if the fire would be covered under this Coverage Form.

### c. 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.

Exclusions **B.1.a.** through **B.1.c.** 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.** Delay, loss of use, loss of market or any other consequential loss.
- b.** Dishonest or criminal act (including theft) committed by:
  - (1)** you, any of your partners, employees (including temporary employees and leased workers), officers, directors, trustees, or authorized representatives;
  - (2)** a manager or a member if you are a limited liability company; or
  - (3)** anyone else with an interest in the property, or their employees (including temporary employees and leased workers) or authorized representatives;

whether acting alone or in collusion with each other or with any other party.

This exclusion applies whether or not an act occurs during your normal hours of operation.

This exclusion 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.

- c.** 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.

- d.** Bookkeeping, accounting or billing errors or omissions.

- e.** Electrical or magnetic injury, disturbance or erasure of electronic recordings that is caused by or results from:

- (1)** programming errors or faulty machine instructions;
- (2)** faulty installation or maintenance of data processing equipment or component parts;
- (3)** an occurrence that took place more than 100 feet from your "premises"; or
- (4)** interruption of electrical power supply, power surge, blackout or brownout if the cause of such occurrence took place more than 100 feet from your "premises."

But we will pay for direct loss or damage caused by lightning.

- f.** Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- g.** Unauthorized instructions to transfer property to any person or to any place.
- h.** Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.
- i.** 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.

This exclusion applies whether or not an act occurs during your normal hours of operation.

- 3. We will not pay for loss or damage that requires any audit of records or any inventory computation to prove its factual existence.**



4. We will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause of Loss results, 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 wherever located.

d. 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, shrinking or expansion as such condition relates to paragraph (1) or (2).

This Exclusion, d., does not apply to the extent that coverage is provided under the Additional Coverage - Collapse or to collapse caused by one or

more of the following: fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; breakage of building glass; falling objects; weight of snow, ice or sleet; water damage; earthquake; weight of people or personal property; weight of rain that collects on a roof.

### 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.

### D. Additional Conditions

#### 1. Determination of Receivables

General Condition **F. Valuation** in the Commercial Inland Marine Conditions is replaced by the following:

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:

(1) 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

(2) 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 from the average for that month.

b. The following will be deducted from the total amount of accounts receivable, however that amount is established:

(1) the amount of the accounts for which there is no loss or damage;

- (2) the amount of the accounts that you are able to reestablish or collect;
- (3) an amount to allow for probable bad debts that you are normally unable to collect; and
- (4) all unearned interest and service charges.

## 2. Recoveries

The following is added to Loss Condition **H. Recovered Property** in the Commercial Inland Marine Conditions:

You will pay us the amount of all recoveries you receive for loss or damage paid by us. But any recoveries in excess of the amount we have paid belong to you.

- 3. The following conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

### a. Coverage Territory

We cover records of accounts receivable:

- (1) within your "premises"; and
- (2) away from your "premises" while in transit or within premises of others if those premises are located or the transit is within:
  - (a) the United States of America (including its territories and possessions);
  - (b) Puerto Rico; and
  - (c) Canada.

### b. Coinsurance

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

We will not pay the full amount of any loss if the value of all accounts receivable, except those in transit, at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for Coverage Applicable At All Locations.

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

- (1) multiply the value of all accounts receivable, except those in transit, at the time of loss by the Coinsurance percentage;
- (2) divide the Limit of Insurance for Coverage Applicable At All Locations by the figure determined in Step (1); and
- (3) multiply the total amount of loss by the figure determined in Step (2).

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

This condition will not apply to records of accounts receivable in transit, interest charges, excess collection expenses or expenses to reestablish your records of accounts receivable.

### c. Protection of Records

Whenever you are not open for business, and except while you are actually using the records, you must keep all records of accounts receivable in receptacles that are described in the Declarations.

## E. Definitions

**"Premises"** means that interior portion of the building at the address shown in the Declarations that you occupy for your business.

**BUSINESS ELECTRONIC SYSTEMS  
AND TELECOMMUNICATIONS FORMS**

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**

We will pay for "loss" to Covered Property from any of the Covered Causes of Loss.

**1. Covered Property**, as used in this Coverage Form, means:

**a. Electronic Equipment** - meaning your Electronic Data Processing, Information Technology Hardware, and Telecommunications Equipment, including their component parts;

**b. Data, Programs and Media**

(1) Data is information which has been converted to a form usable in Data Processing Equipment. Data includes Computer Programs and Instructions;

(2) Media is the material on which Data is recorded; for example, magnetic disks and tapes.

**c. Property of Others** - similar property of others in your care, custody or control, and for which you are legally responsible.

**2. Property Not Covered**

Covered Property does not include:

**a.** Property you loan, rent or lease to others while it is away from your premises;

**b.** Data or Media which cannot be replaced with other of the same kind or quality, unless it is specifically described and scheduled with a separate Limit of Insurance in the Declarations.

**c.** Satellites, microwave towers and dishes, earth stations, telephone switching stations or similar property.

**d.** Accounts, bills, currency, securities, evidence of debt, valuable papers, abstracts, records, deeds, manuscripts or other documents, unless converted to Data, and then only in that form.

**e.** Your stock in trade.

**f.** Contraband, or property in the course of illegal transportation or trade.

**3. Covered Causes of Loss**

Covered Causes of Loss means Risks Of Direct Physical "Loss" to Covered Property except those causes of "loss" listed in the Exclusions.

**4. Additional Coverages****a. Extra Expense**

(1) We will pay the actual and necessary Extra Expense you sustain from a Covered Cause of Loss, due to direct physical loss of or damage to:

(a) Covered Property at your premises or in transit, within the Coverage Territory;

(b) the building in which the Covered Property is located, provided the building is damaged to an extent which prevents access to the Covered Property;

(c) the air conditioning, voltage regulator, line conditioner or uninterruptable power supply systems that specifically service your data processing operation;

(d) the electrical or telecommunication system that specifically services your data processing operation, provided the damage to the system occurs inside, or within 100 feet of, the building housing your data processing operation.

(e) a building adjacent to a scheduled location, when access to the scheduled location is prohibited by civil authority. Coverage is limited to no more than two (2) weeks.

(2) **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:

(a) To avoid or minimize the suspension of business and to continue "operations":

(i) at the described premises; or

(ii) at replacement premises or at temporary locations, including:

Relocation expenses; and

Costs to equip and operate the replacement or temporary locations.

(b) To minimize the suspension of business if you cannot continue "operations"; or

(c) (i) to repair or replace any property; or

(ii) to research, replace or restore the lost information on damaged valuable papers and records;

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

(3) The most we will pay for "loss" in any one occurrence under this Additional Coverage is the applicable Extra Expense Limit of Insurance shown in the Declarations.

**(b) Newly Acquired Electronic Equipment**

We will pay for "loss" to Newly Acquired Electronic Equipment at each location scheduled in the Declarations, provided the value of the equipment is reported to us within 60 days from the time you acquired it. If it is not reported within that time, or if the policy period ends within that time, coverage will cease. We will compute the additional premium due from the date you acquire the equipment.

The most we will pay for "loss" in any one occurrence under this Additional Coverage is 25% of the highest Limit of Insurance for any location shown in the Declarations, for coverage **A.1.a. Electronic Equipment**, up to a maximum of \$250,000.

**c. Newly Acquired Locations**

We will pay for "loss" to Covered Property at any new location which you acquire, provided the new location is reported to us within 60 days from the time you acquired it. If it is not reported within that time, or if the policy period ends within that time, coverage will cease. We will compute any change in your premium from the date you occupy the new location.

The most we will pay for "loss" in any one occurrence under this Additional Coverage is the In Transit/Any Other Location Limit shown in the Declarations.

**d. Temporary Locations**

We will pay for "loss" to Covered Property while at temporary locations but only for the first 60 days that the property is located there, and not beyond the end of the policy period.

The most we will pay in any one occurrence under this Additional Coverage is the In Transit/Any Other Location Limit shown in the Declarations.

**e. Debris Removal**

We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss.

The most we will pay for "loss" at each location under this Additional Coverage is 25% of the sum of the applicable location limits for Electronic Equipment and Data, Programs, Media Coverages up to a maximum of \$100,000.

This Additional Coverage doesn't apply to the cost to:

- (1) extract "pollutants" from land or water; or
- (2) remove, restore or replace polluted land or water.

**f. Pollutant Clean Up and Removal**

We will pay your necessary expense to extract "pollutants" from land or water at the premises described in the Declarations, if the release, discharge or dispersal of the "pollutants" results from a Covered Cause of Loss to Covered Property that occurs during the policy period. Your expenses will be paid only if they are reported to us within 180 days of the earlier of:

- (1) the date of the direct physical loss or damage; or
- (2) the end of the policy period.

The most we will pay for each location under this Additional Coverage is 10% of the sum of the applicable location limits for Electronic Equipment and Data, Programs, Media Coverages, up to a maximum of \$10,000, for the sum of all such expenses for each separate 12 month policy period.

No deductible applies to this Additional Coverage.

**g. Cost of Preparing a Statement of Loss**

We will pay the cost of preparing a statement of loss or any other exhibits required in connection with any claim under this Coverage Form.

The most we will pay for the cost of preparing a statement of loss or other exhibits under this Additional Coverage is \$1,000.

This Additional Coverage does not include public adjuster's fees.

**h. Duplicate Data**

We will pay for your "loss" of duplicate data stored at locations not scheduled on the Declarations. The most we will pay for "loss" under this Additional Coverage in any one occurrence is 25% of the highest Data, Programs, Media location limit up to a maximum of \$100,000.

**i. Protective Equipment**

We will pay your necessary expenses to:

- (1) Repair or replace (in excess of any amount covered by other insurance);
- (2) Recharge:

Your fire protection equipment that is used exclusively to protect the Covered Property.

We will pay if the damage or discharge is the result of a response to a fire, a false alarm, or another Covered Cause of Loss. But, we won't pay for discharge which occurs during installation, repair or recharge. Nor will we pay for gradual leakage from the system.

The most we will pay under this Additional Coverage in any one occurrence is \$25,000.

These Additional Coverages have separate Limits of Insurance.

**B. EXCLUSIONS**

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

**a. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for 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 Form.

**b. Nuclear Hazard**

- (1) Any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination from any other cause. But we will pay for direct "loss" caused by resulting fire if the fire would be covered under this Coverage Form.

**c. 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.

**d. Earth Movement**

- (1) Any earth movement such as earthquake, landslide, or earth sinking, rising or shifting. But if loss or damage by fire, theft, or explosion results, we will pay for that resulting "loss."
- (2) Volcanic eruption, explosion or effusion. But if "loss" by fire or volcanic action results, we will pay for that resulting "loss."

Volcanic action means direct "loss" resulting from the eruption of a volcano when the "loss" is caused by:

- (a) airborne volcanic blast or airborne shock waves;
- (b) ash, dust or particulate matter; or
- (c) lava flow.

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

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

#### **e. Water**

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

But if "loss" by fire, explosion, theft or sprinkler leakage results, we will pay for that resulting "loss."

- 2. We will not pay for a "loss" caused by or resulting from any of the following:

- a. Dishonest acts by you, your partners, officers or trustees, or your or their agents, or others to whom Covered Property is entrusted;

This exclusion will not apply to acts of destruction by an employee of yours; nor will it apply to bailees for hire (for example, truckers or warehousemen). But we will not pay for theft by your employees.

- b. Delay, loss of market or loss of income;
- c. The enforcement of any law which regulates the construction, repair or demolition of buildings or other structures;
- d. Any change in, or interruption of:

(1) power supply; or

(2) 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."

- e. Programming errors or incorrect machine instructions. This does not include loss or damage by computer virus or other malicious software.

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

- f. Interference by strikers or other persons with repairs to damaged property, or with resumption of normal business "operations";
- g. Mechanical or machinery breakdown of any property not named in the Extra Expense Additional Coverage;

- h. The suspension, lapse or cancellation of any lease, license or contract beyond the "period of restoration";
  - i. Any other consequential "loss."
3. We will not pay for a "loss" caused by or resulting from any of the following. But if "loss" by a Covered Cause of Loss results, we will pay for that resulting "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."
  - b. Faulty, inadequate or defective workmanship, repair, material used in repair, upgrading or remodeling of Covered Property.
  - c. Wear and tear, gradual deterioration or obsolescence.

### C. LIMITS OF INSURANCE

Except for the Additional Coverages **b,e,f,g,h** and **i**, the most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations. The Limits of Insurance for Additional Coverages **b,e,f,g,h** and **i**, are stated in those Additional Coverages.

### D. DEDUCTIBLE

We will pay only the amount of the adjusted "loss" in excess of the applicable Deductible shown in the Declarations, up to the applicable Limit of Insurance.

1. The **Breakdown** Deductible applies to losses resulting from:
  - a. Mechanical breakdown, (for example, head crash) of the Covered Property;
  - b. Short circuit, blow-out or other electric or magnetic disturbance, other than lightning, within electrical equipment, apparatus or devices;

- c. Any repairing, servicing or processing operation;
- d. Damage to Data or Media when Electronic Equipment breaks down or malfunctions while Data or Media is being run through the system.

2. The All Other "Loss" Deductible applies to all other losses under this Coverage Form.

### E. ADDITIONAL CONDITIONS

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

#### 1. Coverage Territory

We cover Covered Property in transit to, or from, and at:

- a. Locations shown in the Declarations;
- b. Newly acquired locations and temporary locations as provided in the Additional Coverages for Newly Acquired Locations and Temporary Locations;

all while in:

- c. The United States of America;
- d. Canada;

but we do not cover property in transit by watercraft to or from Alaska or Hawaii.

#### 2. Valuation

The Valuation General Condition is replaced by the following:

##### a. Electronic Equipment

We will adjust a "loss" to Electronic Equipment on the basis of "replacement cost." The most we will pay is the lesser of:

- (1) the amount necessary to repair the equipment; or
- (2) the amount necessary to replace the equipment with:



- (a) equipment of the same kind and quality; or
- (b) if Equipment cannot be replaced by Equipment of the same kind and quality, new Equipment capable of performing the same functions.

- (3) The applicable Limit of Insurance.

#### b. Data

Data (including Programs) will be valued 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

The value of the Media will be the cost to replace the Media with material of the same kind or quality.

### 3. Our Options

If we notify you in writing within thirty (30) days after we receive your signed, sworn statement of loss, we may take **all** or part of the damaged Covered Property at a value that we will agree upon with you. If we choose, we may also repair the damaged Covered Property, or replace it with similar property.

## F. DEFINITIONS

- 1. **"Loss"** means accidental loss or damage.

- 2. **"Operations"** means your business activities occurring at the described premises.

- 3. **"Period of Restoration"** means the period of time that:

- a. begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

**"Period of Restoration"** does not include any increased period required due to the enforcement of any law that regulates the construction, use or repair, or requires the tearing down, of any property.

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 material to be recycled, reconditioned or reclaimed.

- 5. **"Replacement Cost"** means the cost to repair or replace the covered property damaged or lost without deduction for depreciation. But, if you choose not to repair or replace the item, we will pay only the actual cash value of the item, or its repair, with proper deduction for depreciation.

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

### **FLORIDA CHANGES**

This endorsement modifies insurance provided under the following:

#### **COMMERCIAL INLAND MARINE COVERAGE PART**

**A.** Paragraph **5.** of Loss Condition **E. Loss Payment** in the **Commercial Inland Marine Conditions** is replaced by the following:

**5.** Provided you have complied with all the terms of this Coverage Part, we will pay for covered loss or damage within:

**a.** 20 days after we receive the sworn proof of loss and reach written agreement with you; or

**b.** 30 days after we receive the sworn proof of loss and:

**(1)** there is an entry of final judgment; or

**(2)** there is a filing of an appraisal award with us.

Paragraph **A.** does not apply to the Mail Coverage Form.

**B.** The following provisions are added to Loss Condition **C. Duties in the Event of Loss** in the **Commercial Inland Marine Conditions**:

**1.** A claim, supplemental claim or reopened claim for loss or damage caused by hurricane or other windstorm is barred unless notice of claim is given to us in accordance with the terms of this Coverage Part within three years after the hurricane first made landfall or a windstorm other than hurricane caused the covered damage. (Supplemental claim or reopened claim means an additional claim for recovery from us for losses from the same hurricane or other windstorm which we have previously adjusted pursuant to the initial claim.)

This provision concerning time for submission of claim, supplemental claim or reopened claim does not affect any limitation for legal action against us as provided in this Coverage Part under the Legal Action Against Us Condition, including any amendment to that Condition.

**2.** Any inspection or survey by us, or on our behalf, of property that is the subject of a claim, will be conducted with at least 48 hours' notice to you. The 48-hour notice may be waived by you.

# EXHIBIT B



CHAMTO2

OP ID: MS

# CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)  
 01/04/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> 954-883-2900 Tanenbaum Harber of Florida 2900 SW 149th Avenue Miramar, FL 33027-6605 Peter C. Catallo	<b>CONTACT NAME:</b> Peter C. Catallo <b>PHONE (A/C, No, Ext):</b> 954-883-2900 <b>FAX (A/C, No):</b> 954-517-7400 <b>E-MAIL ADDRESS:</b>  <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: James River Ins. Company</td> <td>12203</td> </tr> <tr> <td>INSURER B: Philadelphia Indemnity Ins.Co.</td> <td>18058</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: James River Ins. Company	12203	INSURER B: Philadelphia Indemnity Ins.Co.	18058	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															
<b>INSURED</b> Champlain Towers South Condominium Association, Inc. 8777 Collins Avenue Surfside, FL 33154															

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			000985321	12/28/2020	12/28/2021	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ Excluded
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
B	Directors/Officers			PCAP0186890218	12/28/2020	12/28/2021	D&O 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

136 Unit Condominium Association

## CERTIFICATE HOLDER

## CANCELLATION

<b>PROOF01</b>  Champlain Towers South Proof of Insurance Only 8777 Collins Avenue Surfside, FL 33154	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# EXHIBIT C



HARP INC.

**HARP, INC - Risk Purchasing Group**

**CERTIFICATE OF COVERAGE  
UMBRELLA AND EXCESS LIABILITY INSURANCE**

9954-7

HARP Inc. Risk Purchasing Group Member (Certificate Holder) and Mailing Address:  
Champlain Towers South Condominium Association, Inc.

8777 Collins Avenue MIAMI BEACH, FL 33154

Designated Location(s) and other Named Insured(s): See Schedule of Locations Form  
8777 Collins Avenue  
MIAMI BEACH, FL 33154

Coverage Period: 12/28/2020 to 12/28/2021  
12:01 a.m. Standard Time at the Mailing Address of Purchasing Group Member as stated herein.

**APPLICABLE LIMITS OF INSURANCE AND PARTICIPATING INSURERS:**

**COMBINED LIMIT OF LIABILITY:** \$15,000,000 EACH OCCURRENCE AND AGGREGATE AS APPLICABLE

**PARTICIPATING INSURANCE COMPANIES AND LIMITS:**

<u>LEAD INSURANCE</u>	<u>Policy#</u>	<u>Limit of Insurance</u>
Fireman's Fund Insurance	USL00656920U	\$10,000,000 Each Occurrence \$10,000,000 General Aggregate (where applicable) \$10,000,000 Products/Completed Operations

**EXCESS/UMBRELLA  
INSURANCE**

QBE Insurance	HRP2020	\$5,000,000 Each Occurrence and Aggregate Excess of \$10,000,000
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Each Occurrence and Aggregate  
Excess of

Harp, Inc. (Harp) a Purchasing Group formed in Delaware pursuant to the Liability Risk Retention of 1986 (as amended)(15 U.S.C. 3910 et. seq.) and Delaware Law. In connection with its risk purchasing group activities, Harp has appointed PG Administrators LLC (PG) to administer certain risk purchasing group operations of Harp and PG is paid an administration fee by for such services. Trivedi - Capacity Associates LLC (Trivedi) is the insurance agent through which PG currently purchases the insurance coverage for Harp's members and is an affiliate of PG.

ISSUE DATE: 12/28/2020

AUTHORIZED SIGNATURE:

12GAU100 (08/12)



HARP INC.

**HARP, INC - Risk Purchasing Group**

**Commercial Umbrella and Excess Liability  
Insurance  
Other Named Insureds Schedule**

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**Attached to and forming part of Certificate of Coverage Number:**

**For HARP, Inc. Purchasing Group Member:**

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**Item 1 of the Certificate of Coverage is amended to include the following as member (s).**

**Named Insured**

Champlain Towers South Condominium Association, Inc.

### **Schedule Of Underlying Insurance**

For the insured shown above, and subject to all the terms and conditions of Coverage/Excess Follow-Form Coverage A, this insurance follows form on to those coverages:

- which are indicated below by an X ; and
- for which policies of underlying insurance for at least the limits shown have been issued to and remain in force for such insured.



Commercial General Liability:  
\$1,000,000 Per Occurrence  
\$2,000,000 General Aggregate (per location if more than one location)  
\$1,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal & Advertising Injury

Carrier: James River Insurance Company  
Policy No: As Assigned by Carrier  
Policy Period: 12/28/2020 to 12/28/2021



Employee Benefits Liability:  
\$1,000,000 Per Claim  
\$1,000,000 Aggregate

Claims Made  
Retroactive Date:

**\*Note retroactive date is the same as the policy inception date**

Carrier:  
Policy No:  
Policy Period: Occurrence



Liquor Liability:  
\$1,000,000 Each Common Cause  
\$1,000,000 Aggregate

Carrier:  
Policy No:



Commercial Automobile Liability:  
\$1,000,000 Combined Single Limit

Carrier: James River Insurance Company  
Policy No: As Assigned by Carrier  
Policy Period: 12/28/2020 To 12/28/2021



Employers Liability:  
\$500,000 Each Accident  
\$500,000 Disease Policy Limit  
\$500,000 Disease Each Employee

Carrier: CNA  
Policy No: As Assigned by Carrier



☐ Garage Keeper Legal Liability:  
\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate

Carrier:  
Policy No:

☒ Directors & Officers: (Condo/Co-Op)  
\$1,000,000 Each Claim  
\$1,000,000 Aggregate Per Association (Defense in addition to the limit)

Carrier: Philadelphia  
Policy No: As Assigned by Carrier

The following Condition is added.

***Conditions***

***Continuation Of Coverage***

In the event that the policy to which this endorsement attaches is cancelled midterm, coverage as provided under this endorsement will remain in effect:

- for the benefit of the named insured shown above; and
- for the term of insured status shown above (and will not be renewed);

as if the first named insured's policy had not been cancelled, unless such named insured requests earlier cancellation of this endorsement.

All other terms and conditions remain unchanged.

\_\_\_\_\_

## Forms Schedule

The following policy forms and endorsements have been attached to and made a part of the policy at Inception:

Form Title	Form Number
<b>Policyholder Messages</b>	
Important Policy Notice Regarding Terrorism Coverage	380139 01 15
Important Notice Regarding the Terrorism Coverage Offered in this Quotation	380140 01 15
Policyholder Message	386636 08 17
<b>Umbrella Liability</b>	
The Fund Umbrella	5400 06 19
Economic or Trade Sanctions Compliance	145985 06 14
Silica Particles Exclusion	178575 05 04 NY
Sublimited Primary Coverage Exclusion	178578 06 04
Disclosure of Premium and Estimated Premium for Certified Acts of Terrorism Coverage; Cap on Insurer Participation in Payment of Terrorism Losses (Pursuant NY to Terrorism Risk Insurance Act)	178587 01 15
Lead Exclusion	178771 03 98
Pollution - Absolute Exclusion - Coverage B	178789 10 01
Products-Completed Operations Hazard Exclusion - Coverage B	178792 03 98
Professional Services Exclusion	178794 04 13
Coverage Amendments	178874 04 13
Discrimination Liability Exclusion - Coverage B	178905 10 01
Personal and Advertising Injury Exclusion - Coverage B	178909 09 98
Abuse, Assault and Molestation Exclusion - Coverage B	178913 10 01
Intellectual Property Exclusion	178944 10 01
Designated Operations Exclusion	178947 10 01
Primary Insurance Restriction Endorsement Amendment Coverage B	178962 10 01
Coverage for Certified Acts of Terrorism	178993 01 15
Additional Policy Provisions	179020 04 13
Directors and Officers Exclusion - Coverage B	179032 04 13
Violation of Statutes Exclusion (E-Mails, Fax, Phone Calls or Other Methods of Recording or Distribution of Material or Information)	179033 05 09
Communicable Diseases and Viruses - Absolute Exclusion	179054 09 07

Harp, Inc.  
Policy No: USL00656920U



Fireman's Fund Insurance Company

Form Title	Form Number
Crisis Management Response Costs and Crisis Management Loss Coverage Extension Endorsement	179061 06 19 NY
Amendment - Limits of Insurance	100001
Policy Term Endorsement	100002
Non-Cumulation of Limits Endorsement	100003
Risk Purchasing Group - Program Manager	100004
Occupational or Environment Disease Exclusion	100005
Employment Practices Exclusion - Coverage A	100006
Claims Made Amendment and Exclusion	100007
Fungi or Bacteria Exclusion - all states except New York	100008
State Amendatory Endorsement	100009

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Company indicated on the Declarations Page of the policy has caused the policy to be signed by its President and Secretary.



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Secretary



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President

## Important Policy Notice Regarding Terrorism Coverage

### 380139 01 15

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You are hereby notified that this policy will apply with respect to a "certified act of terrorism", if coverage for such "certified act of terrorism" is provided by all scheduled **Primary Insurance** or **Underlying Insurance** that are subject to the Terrorism Risk Insurance Act, as amended.

As used in this message, "certified act of terrorism" means an act or acts that are certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, as amended, to be an act of terrorism pursuant to such Act, as amended ("The Act"). The criteria contained in The Act for a "certified act of terrorism" includes 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, as amended; and
2. The act resulted in damage:
  - a. Within the United States (including its territories and possessions and Puerto Rico); or
  - b. Outside the United States in the case of:
    - (1) An air carrier (as defined in Section 40102 of title 49, United States code) or United states flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States) regardless of where the loss occurs; or
    - (2) The premises of any United States mission; and
3. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act, as amended, exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, as amended, then 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.

If you have any questions, please contact your agent or broker.

## Important Notice Regarding the Terrorism Coverage Offered in this Quotation

### 380140 01 15

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You are hereby notified that under the Terrorism Risk Insurance Act, as amended ("The Act"), you have a right to purchase insurance coverage for losses arising out of certified acts of terrorism, as defined in Section 102(1) of The Act: The term "certified act of terrorism" means any act or acts that are certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, as amended, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property; or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

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

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURER'S LIABILITY FOR LOSSES RESULTING FROM **CERTIFIED ACTS OF TERRORISM** WHEN THE AMOUNT OF SUCH LOSSES IN ANYONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEEDS \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

This quotation includes an offer of coverage for losses due to certified acts of terrorism, as defined by The Act, and, if accepted, will be subject to the limit(s), terms and conditions of any policy subsequently issued. In addition, as with any other coverage under an umbrella policy, the scope of your coverage for terrorism is directly related to the coverage of your primary policy(ies). Our offer of certified acts of terrorism coverage is conditioned upon your acceptance and purchase of certified acts of terrorism coverage, as defined in The Act, for all policies of insurance which are scheduled in this policy as primary insurance for this policy that are subject to The Act. The quoted premium for this terrorism coverage is per attached quote.

In order to accept or reject this offer of certified acts of terrorism coverage for the premium stated above please do one of the following:

**To Reject this offer, do ALL of the following:**

- (1) Communicate your decision to your agent or broker; and
- (2) Mark the "Reject" option below, sign and date below, and return the originally signed document to the address specified below.

**To Accept this offer, you must do ALL of the following:**

- (1) Communicate your decision to your agent or broker;

- (2) Accept and purchase certified acts of terrorism coverage in all scheduled primary insurance policies that are subject to The Act; and
- (3) Pay the premium by the due date shown on your premium billing.

**WE STRONGLY RECOMMEND** that you contact your insurance agent prior to accepting this offer.

Please note that any coverage mandated by applicable Workers Compensation laws in your state will not be affected by your rejection below of terrorism coverage.

If you have any questions about this or any other insurance matter, please contact your agent or broker.

**TERRORISM COVERAGE ELECTION:**

I understand that this offer is conditional on my purchase of coverage for certified acts of terrorism, as defined in The Act, for all policies of insurance which are scheduled in this policy as primary insurance for this policy that are subject to The Act. I understand that if at a later time it is determined that any of the primary policies that are subject to The Act do not include coverage for certified acts of terrorism, as defined in The Act, then my election to accept this quote to purchase coverage for certified acts of terrorism, as defined in The Act, will be null and void. In that event, I also understand that the policy that I am purchasing will have no coverage for losses arising from certified acts of terrorism, as defined in The Act.

☐ I REJECT COVERAGE FOR LOSSES DUE TO CERTIFIED ACTS OF TERRORISM, AS DEFINED IN THE ACT.

Applicant:

Signature:

Title:

Date:

Insurance Company:

Please return to your agent or broker.



## New York Labor Law Section 240 and its Impact to Your Business

### 386626 10 13 NY

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New York Labor Law Section 240 places the *responsibility for worksite safety* on building owners, tenants and managers who hire contractors or service providers who erect, demolish, repair, alter, paint or clean a building or structure - generally anyone you hire to work on your premises. The law, commonly known as the 'Scaffold Statute', may impose strict liability to you for injuries sustained by contractors or service providers as a result of a fall from height or from falling objects on your premises.

Understanding the applicability of this law, common claim scenarios and best practices for mitigating the risk to you may impact the effectiveness of your overall risk management program and improve the availability and affordability of General Liability insurance coverage in the future.

Liability may be imposed regardless of whether the property owner, tenant or manager exercised any supervision or control over the injured worker at all. Furthermore, the law may not allow you to assert that the injured party was negligent themselves or assumed the risk of injury while on your property.

Because of the complexity of this law and the often severe nature of injuries when a fall from height or falling objects are involved, these claims or suits can often be costly to defend and ultimately pay. Examples of claims or suits subject to New York Labor Law Section 240:

- An employee of an electrical contractor you hire falls off of a ladder while rewiring light fixtures in your leased office building and suffers a brain injury.
- An artist you hire to paint a mural in your office lobby falls from the scaffolding and is seriously injured.
- An employee of a roofing company is injured when a co-worker tosses debris off of the roof while working on your retail complex.
- A technician dies after falling through a skylight while repairing your rooftop air conditioning system.

The allegation of liability in each of these claims was violation of New York Labor Law Section 240, even though the building owner or manager *did not directly supervise or control the worksite*.

#### Best Practices for Managing Your Risk:

Hiring licensed and experienced contractors and service providers paired with effective risk transfer protocols is the best foundation for managing the additional risk to your business in New York. The following best practices have proven useful in mitigating New York Labor Law exposure:

- Purchase adequate insurance limits. Even with risk transfer opportunities discussed below, claims or suits have historically been very costly. Consult with your agent on liability limits adequate to protect your assets.
- Hire only licensed contractors and service providers that provide you with evidence of both General Liability and Worker's Compensation insurance. Even seemingly low-hazard jobs, such as janitorial services, can result in injuries that may be subject to Section 240 of New York Labor Law.
- Require all contractors you hire to strictly follow all applicable OSHA and Department of Safety and Health regulations.
- **Transfer the Risk:** Use a written contract or purchase order before *any* work is performed on your property, regardless of how incidental. Since purchase orders generally do not have indemnification agreements, be sure to attach an addendum to the purchase order that indemnifies you and holds you harmless. The contract(s) you use should be reviewed by your attorney and may incorporate several or all of the following best practice approaches

#### Contract Language

- Include hold harmless and indemnification language in your favor and to the fullest extent of the law; avoid mutual hold harmless agreements.
- Include a "primary and non-contributory" clause meaning the contractor or service provider's insurance may apply first in the event of a claim or suit.
- Name you as "additional insured" on the contractor or service provider's General Liability insurance.

#### Insurance Limits and Coverage

- At a minimum, require \$1M per occurrence General Liability insurance limits. It's important to note however that damage from New York Labor Law based suits and claims have well exceeded \$1M, so higher limits are encouraged.
- The contractor's or service provider's General Liability insurance policy may include exclusions or limitations to coverage for the very exposure you are requiring additional insured coverage for. Coverage language that excludes or limits injury to "any employee of any insured," "employee action over" or similar language should be avoided. The existence of such exclusions may render your risk transfer ineffective in the event of a claim or suit from a worker injured on your premise. Prohibit this type of language in the General Liability insurance coverage you require from your contractor or service provider and ask for a list of endorsements contained in their policy.

#### Contract Management

- Have a diary system to ensure that your contractor's or service provider's Worker's Compensation and General Liability insurance does not lapse.
- If you own or manage several properties, consider centralizing all contract management and insurance certificate reviews.

As a New York building owner, manager or tenant, you cannot completely avoid the strict liability components of New York Labor Law Section 240, but you can mitigate their impact on your business. For more information about how to manage your business risk, please contact your agent.

This publication provides general information and recommendations that may apply to many different situations or operations. Any recommendations described in this publication are not intended to be specific to your unique situation or operation and are not intended to address all possible hazardous conditions or unsafe acts that may exist. Consult with your staff and specialists to determine how and whether the information in this publication might guide you in developing specific plans or procedures for your situation or operations. This publication does not substitute for legal advice, which should come from your own counsel.

## Policyholder Message

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### Important Information for Policyholders

If you have questions about your policy, please contact your independent agent or broker. If you have additional questions, you can contact the company issuing the policy listed on your Declarations page at the following address:

Allianz Global Risks US Insurance Company  
225 W. Washington Street, Suite 1800  
Chicago, IL 60606-3484

Toll Free Telephone: 1-(888) 466-7883

Toll Free Telephone for Claims: 1-(800) 870-8857

Website: <http://www.agcs.allianz.com/>

Website Address for Support Services: <http://www.agcs.allianz.com/global-offices/united-states/support-services/>

The information above supersedes any other Company contact information you may have received with your policy.

## Umbrella Liability Coverage Section - Declarations

- These Declarations, together with the Common Policy Declarations, Schedule of Primary Insurance, Coverage Form(s) and any Endorsement(s), complete this policy.
- 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.

### The Fund Umbrella® (5400 06 19)

#### Limits of Insurance

Description of Limits	Limit of Insurance
Each Occurrence	\$ 10,000,000
Aggregate	\$ 10,000,000

#### Endorsements Completed in the Declaration

#### Designated Operations Exclusion (178947 10 01)

Description of Operations
Any construction and/or development, with the exception of alteration or renovation operations and/or maintenance or repair operations. This exception does not apply to any structural alteration that involves changing the size of, or any demolishing or moving of any building or other structure.

## Quick Reference

### The Fund Umbrella®

### 5400 06 19

This insurance is provided by one of Allianz Global Risks US Insurance Companies as shown on the Declarations Page. Our mailing address is: 225 W. Washington Street Suite 1800 Chicago, IL 60606.

At inception, The Fund Umbrella policy consists of: the Declarations, The Fund Umbrella policy form, and the endorsements listed on the Declarations.

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Read the entire policy carefully to determine rights, duties and what is and is not covered.

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 are boldfaced have special meaning. Refer to the DEFINITIONS and WHO IS AN INSURED sections.

By accepting this policy, you agree that:

1. The statements in the Declarations and Application are your agreements and representations;
2. Those statements are accurate and complete;
3. This policy is issued and continued in reliance upon the truth of those representations; and
4. This policy contains all agreements existing between you, us, and our agents, relating to this insurance.

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## SECTION I. EXCESS LIABILITY - COVERAGE A

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### A. COVERAGE A - INSURING AGREEMENT

1. We will pay on behalf of any **Insured** those sums in excess of **Primary Insurance** that any **Insured** becomes legally obligated to pay as damages or a **Covered Pollution Cost or Expense** provided that such damages and **Covered Pollution Cost or Expense**:
  - a. Are covered by **Primary Insurance**;
  - b. Arise from injury or damage that occurs, or from an offense committed, during our Policy Period; and
  - c. Take place anywhere in the world.
2. The terms and conditions of **Primary Insurance** apply to Coverage A, unless they are inconsistent with any provision of this policy.
3. The amount we will pay is limited as described in Limits of Insurance.
4. a. Subject to Section I.B. and Section I.E.5., we will only pay defense expenses we incur in addition to the applicable Limits of Insurance.
  - b. If we are prevented by law from investigating or settling any claim or defending any **Insured** against any **Suit**, we will pay any expense incurred by any **Insured** with our consent.

### B. COVERAGE A - WHEN WE WILL HAVE A DUTY TO DEFEND

1. We will have the right and duty to defend any **Insured** against any **Suit** seeking damages or a **Covered Pollution Cost or Expense** to which Coverage A applies but only:
  - a. After the applicable limits of insurance of **Primary Insurance** and **Other Insurance** cease to apply because of exhaustion by the payment of judgments or settlements, or because of exhaustion by the payment of defense expenses by the terms of that policy; and
  - b. If no **Other Insurance** affording a defense or indemnity against such a **Suit** is available to any **Insured**. We will pay only those defense expenses we incur.
2. We have the right but not the duty, to associate with **Primary Insurers** in the defense and control of any **Occurrence**, claim or **Suit** to which we think Coverage A may apply.
3. At our discretion we may:
  - a. Investigate any **Occurrence**, claim or **Suit**; or
  - b. Settle any claim or **Suit**.
4. We have no duty to defend any **Insured** against any **Suit** seeking damages or a **Covered Pollution Cost or Expense**:
  - a. To which Coverage A does not apply;

- b. After our applicable Limits of Insurance have been exhausted by the payment of judgments or settlements, or exhausted by the payment of defense expenses or reimbursements in the same manner as the terms of **Primary Insurance** or **Other Insurance**; or
- c. To which **Primary Insurance** or **Other Insurance**, by its terms, has no duty to defend provided that such **Primary Insurance** or **Other Insurance** does not defend for reasons other than the exhaustion of its limits of insurance.

### C. COVERAGE A - EXCLUSIONS

Coverage A of this policy does not apply:

1. **ASBESTOS** - To any liability arising, in whole or in part, out of or in any way related to **Asbestos**.
2. **E.R.I.S.A.** - To any liability of any **Insured** under, or any claim based upon:
  - a. The Employees' Retirement Income Securities Act (E.R.I.S.A.) of 1974 and any amendment thereto; or
  - b. Similar provisions of any federal, state, or local statutory law or common law.
3. **WORKERS COMPENSATION AND SIMILAR LAWS** - To any obligation of any **Insured** under a Law of:
  - a. Workers compensation;
  - b. Disability benefits;
  - c. Unemployment compensation; or
  - d. Any similar law.
4. **POLLUTION**
  - a. To any liability arising out of the actual, alleged or threatened, discharge, dispersal, seepage, migration, release or escape of **Pollutants**:
    - (1) At or from any premises, site or location which is or was at any time:
      - (a) Owned or occupied by; or
      - (b) Rented or loaned to;
   
any **Insured**;
    - (2) At or from any premises, site or location which is or was at any time used by or for:
      - (a) Any **Insured**; or
      - (b) Others;
   
for the handling, storage, disposal, processing or treatment of waste;
    - (3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
      - (a) Any **Insured**; or
      - (b) Any person or organization for whom you may be legally responsible;
    - (4) At or from any premises, site or location on which any **Insured**, or any contractors or subcontractors working directly or indirectly on any **Insured's** behalf are performing operations:
      - (a) If the **Pollutants** are brought on or to such premises, site or location, in connection with such operations by such **Insured**, contractor or subcontractor; or
      - (b) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **Pollutants**;
    - (5) That are, or that are contained in, any property that is:
      - (a) Being transported or towed by, handled or handled for movement into, onto or from; any auto covered by **Primary Insurance**;
      - (b) Otherwise in the course of transit by or on behalf of any **Insured**; or

- (c) Being stored, disposed of, treated or processed, in or upon any auto covered by **Primary Insurance**; or
- (6) (a) Before the **Pollutants**, or any property in which the **Pollutants** are contained, are moved from the place where they are accepted by any **Insured** for movement into or onto any auto covered by **Primary Insurance**; or
  - (b) After the **Pollutants**, or any property in which the **Pollutants** are contained, are moved from any auto covered by **Primary Insurance** to the place where they are finally delivered, disposed of or abandoned by any **Insured**.
- b. To any loss, cost or expense arising out of any:
  - (1) Request, demand, order or statutory or regulatory requirement that any **Insured** or others:
    - (a) Test for, monitor, clean up, remove, contain, treat, detoxify or neutralize; or
    - (b) In any way respond to, or assess the effects of; **Pollutants**; or
  - (2) Claim or suit by or on behalf of a governmental authority for damages because of:
    - (a) Testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing; or
    - (b) In any way responding to, or assessing the effects of; **Pollutants**.

This subsection 4.b. does not apply to:

- (1) A **Covered Pollution Cost or Expense** to which Coverage A applies; or
- (2) Liability for damages because of property damage that the **Insured** would have in the absence of such request, demand or order or statutory or regulatory requirement, or such claim or **Suit** by or on behalf of a governmental authority.
- c. (1) **HOSTILE FIRE** - Subsections a.(1) and a.(4)(a) above do not apply to bodily injury or property damage arising out of heat, smoke or fumes from a **Hostile Fire**.
- (2) **MOBILE EQUIPMENT FUELS** - Subsection a.(4)(a) above does not apply to bodily injury or property damage arising out of the escape of fuels, lubricants, or other operating fluids, which are needed to perform the normal electrical, hydraulic, or mechanical functions necessary for the operation of **Mobile Equipment** or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them.

This exception does not apply if:

- (a) The fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released; or
- (b) Such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged or released as part of the operations being performed by such **Insured**, contractor or subcontractor.
- (3) **AUTO FUELS** - Subsection a.(5) above does not apply to fuels, lubricants, fluids, exhaust gasses or other similar **Pollutants**, that are needed for or result from the normal electrical, hydraulic or mechanical functioning of any auto or its parts, covered by **Primary Insurance** if:
  - (a) The **Pollutants** escape, seep, migrate, or are discharged, dispersed or released directly from an auto part designed by its manufacturer to hold, store, receive or dispose of such **Pollutants**; and
  - (b) The bodily injury, property damage or **Covered Pollution Cost or Expense** does not arise out of the operation of any equipment listed in subsections 6.(b) and (c) of definition J. of **Mobile Equipment**, under SECTION VI. DEFINITIONS.



- (4) **AUTO UPSET/OVERTURN/DAMAGE** - Subsection a.(6) above does not apply to **Occurrences** that occur away from premises owned by or rented to any **Insured** with respect to **Pollutants** not in or upon any auto covered by **Primary Insurance** if:
  - (a) The **Pollutants** or any property in which the **Pollutants** are contained are upset, overturned or damaged as a result of the maintenance or use of any auto covered by **Primary Insurance**; and
  - (b) The discharge, dispersal, seepage, migration, release or escape of the **Pollutants** is caused directly by such upset, overturn or damage.
- (5) **PRODUCTS/COMPLETED OPERATIONS** - Subsection a. above does not apply to bodily injury or property damage included within the products-completed operations hazard provided that your product or your work has not at any time been:
  - (a) Discarded, dumped, abandoned, thrown away; or
  - (b) Treated or handled as waste; by anyone.
- (6) **BUILDING HEATING EQUIPMENT** - Subsection a.(1) above does not apply to bodily injury if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building.
- (7) **PESTICIDE OR HERBICIDE APPLICATOR** - With respect to pesticide or herbicide application by any **Insured**, subsection a.(4)(a) above does not apply if the operations meet all standards of any statute, ordinance, regulation or license requirement of any federal, state or local government which apply to those operations.
- (8) **CONTRACTORS** - subsection a.(1) above does not apply to bodily injury or property damage for which you may be held liable if:
  - (a) You are a contractor; and
  - (b) The owner or lessee of such premises, site or location has been added to this policy as an additional **Insured** with respect to your ongoing operations performed for that additional **Insured** at that premises, site or location; and
  - (c) Such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any **Insured**, other than the owner or lessee of that premises who has been added to the policy as an additional **Insured**.
- (9) **MATERIALS** - Subsection a.(4)(a) above does not apply to bodily injury or property damage sustained within a building and caused by the release of gasses fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor.
- 5. **EMPLOYMENT PRACTICES** - To any liability arising out of any employment-related or personnel practices, policies, acts or omissions. This includes, but is not limited to:
  - a. Refusal to employ;
  - b. Termination of employment;
  - c. Coercion, criticism, demotion, failure to promote, evaluation, reassignment, discipline, defamation, self-defamation, harassment, humiliation, discrimination, libel, slander, false arrest and imprisonment, or violation of a person's right of privacy; or
  - d. Any consequential injury or damages as a result of a., b. or c. above.
 This exclusion applies:
  - a. To all claims, demands, charges, complaints or **Suits** by any person(s) or organization(s) for damages because of such injury or liability, including damages for care and loss of services;

- b. Whether any Insured may be held liable as an employer or in any other capacity either directly or indirectly related to employment; and
  - c. To any obligation to share damages with or repay someone else who must pay damages because of such injury or liability.
6. **WAR** - To any liability arising, directly or indirectly, out of:
- a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### D. COVERAGE A - WHO IS AN INSURED

Each of the following is an Insured under Coverage A:

- 1. **NAMED INSURED** - Any person or organization shown in the Named Insured section of our Declarations.
- 2. **NEWLY ACQUIRED OR FORMED ORGANIZATIONS** - Any organization you newly acquire or form during our Policy Period. However, Coverage A does not apply to any injury, damage or Occurrence, which took place or was committed before you acquired or formed the organization.
- 3. **PERSONS OR ORGANIZATIONS INSURED IN PRIMARY POLICIES** - Any person or organization that is an insured in **Primary Policies**. However, any person or organization that becomes an insured in **Primary Policies** after the inception date of our policy is an **Insured** under Coverage A of our policy only if, prior to the time of an **Occurrence**, you agreed in a written contract to provide such insurance as is afforded by Coverage A of this policy.

#### E. COVERAGE A - LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the terms below fix the most we will pay regardless of the number of:
  - a. Coverages provided by this policy;
  - b. **Insureds**;
  - c. Claims made or **Suits** brought; or
  - d. Persons or organizations making claims or bringing **Suits**.
- 2. **OCCURRENCE LIMIT**
  - a. The "each occurrence" limit shown in our Declarations is the most we will pay under Coverages A and B combined, for the sum of damages and **Covered Pollution Cost or Expense** arising out of any one **Occurrence**.  
  
Any amount we pay for damages or a **Covered Pollution Cost or Expense** arising out of an **Occurrence** will reduce or exhaust the amount of our applicable aggregate Limit of Insurance available for payment of damages or a Covered Pollution Cost or Expense arising out of any other Occurrence.
  - b. Coverage A applies only in excess of the Limit of Insurance shown in our Schedule of Primary Insurance. But if a **Primary Policy** has a limit of insurance:
    - (1) Greater than the amount shown, our policy applies excess of the greater amount; or
    - (2) Less than the amount shown, our policy applies excess of the amount shown in our Schedule.
  - c. If the limit of insurance of a **Primary Policy** is:
    - (1) Reduced; or
    - (2) Exhausted;
 by payment of judgments or settlements arising out of **Occurrences**, Coverage A will apply in excess of such reduced or exhausted limit of insurance.

3. **SAME BASIS AGGREGATE LIMIT** - The Limit of Insurance shown in our Declarations as "aggregate" is the most we will pay under Coverage A for the sum of damages and **Covered Pollution Cost or Expense**. Our aggregate limit will apply only when a **Primary Policy** applies an aggregate limit, and will apply on the same basis as a **Primary Policy**.
4. **POLICY PERIOD EXTENSIONS** - The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the Policy Period shown in the Declarations. However, if we extend our Policy Period after this policy is issued, we will consider the additional period as part of the last preceding annual period for purposes of determining the Limits of Insurance.
5. **SAME BASIS DEFENSE EXPENSES** - If the limits of insurance of any **Primary Policy** or **Other Insurance** are reduced by defense expenses by the terms of that policy then any defense expense payments we make to defend any **Insured** or reimbursements we make to any **Insured** for defense expenses will reduce our applicable Limits of Insurance in the same manner.

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## SECTION II. UMBRELLA LIABILITY - COVERAGE B

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### A. COVERAGE B - INSURING AGREEMENT

1. We will pay on behalf of any **Insured** those sums that any **Insured**:
  - a. Becomes legally obligated to pay as damages because of **Bodily Injury** or **Property Damage**, but only if:
    - (1) The **Bodily Injury** or **Property Damage** occurs during our Policy Period;
    - (2) The **Bodily Injury** or **Property Damage** is caused by an **Occurrence**; and
    - (3) Prior to the Policy Period, no **Insured**, and no **Employee** authorized by you to give or receive notice of an **Occurrence** or claim, knew that the **Bodily Injury** or **Property Damage** had occurred, in whole or in part. If such an **Insured** or authorized **Employee** knew, prior to the Policy Period, that the **Bodily Injury** or **Property Damage** occurred, then any continuation, change or resumption of such **Bodily Injury** or **Property Damage** during or after the Policy Period will be deemed to have been known prior to the Policy Period.

However, under this subsection A.1.a.:

- (1) **Bodily Injury** or **Property Damage** which occurs during the Policy Period and was not, prior to the Policy Period known to have occurred by any **Insured** or by any **Employee** authorized by you to give or receive notice of an **Occurrence** or claim, includes any continuation, change or resumption of that **Bodily Injury** or **Property Damage** after the end of the Policy Period.
- (2) **Bodily Injury** or **Property Damage** will be deemed to have been known to have occurred at the earliest time when any **Insured**, or any **Employee** authorized by you to give or receive notice of an **Occurrence** or claim:
  - (a) Reports all, or any part, of the **Bodily Injury** or **Property Damage** to us or any other insurer;
  - (b) Receives a written or verbal demand or claim for damages because of the **Bodily Injury** or **Property Damage**; or
  - (c) Becomes aware by any other means that **Bodily Injury** or **Property Damage** has occurred or has begun to occur.
- b. Becomes legally obligated to pay as damages because of **Personal and Advertising Injury** but only if:
  - (1) Caused by an offense arising out of your business; and
  - (2) The offense was committed during our Policy Period.

The Policy Period for this policy may be comprised of more than one consecutive annual period.

However, whether or not this policy of insurance applies to more than one consecutive annual period

the most we will pay for all damages for **Personal and Advertising Injury** arising out of an offense committed during one annual period is the Limits of Insurance available under that one annual period. This provision applies even if the **Personal and Advertising Injury** which arises from an offense committed during one annual period continues or progressively deteriorates into a subsequent annual period(s).

2. Coverage B does not apply to any claim or **Suit**:
  - a. Which is covered by **Primary Insurance** or Coverage A of this policy; or
  - b. Which would have been covered by **Primary Insurance** or Coverage A of this policy except for the exhaustion of the limits of such insurance.
3. Damages because of **Bodily Injury** include damages claimed by any person or organization for care, loss of services or death resulting at any time from the **Bodily Injury**.
4. Coverage B applies anywhere in the world.
5. The amount we will pay is limited as described in Limits of Insurance.
6.
  - a. Subject to Section 11.B . and Section 11. E. 5., we will only pay defense expenses we incur in addition to the applicable Limits of Insurance.
  - b. If we are prevented by law from investigating or settling any claim or defending any **Insured** against any **Suit**, we will pay any expense incurred by any **Insured** with our consent.

#### **B. COVERAGE B - WHEN WE WILL HAVE A DUTY TO DEFEND**

1. We will have the right and duty to defend any **Insured** against any **Suit**, seeking damages to which Coverage B applies, but only:
  - a. If Coverage A or **Primary Insurance** does not apply or owe a duty of defense against such a **Suit**; and
  - b. If no **Other Insurance** affording a defense or indemnity against such a **Suit** is available to any **Insured**.

We will pay only those defense expenses we incur.
2. We have the right but not the duty, to associate with **Other Insurance** insurers in the defense and control of any **Occurrence**, claim or **Suit** to which we think Coverage B may apply.
3. At our discretion we may:
  - a. Investigate any **Occurrence**, claim or **Suit**; and
  - b. Settle any claim or **Suit**.
4. We have no duty to defend any **Insured** against any **Suit** seeking damages:
  - a. To which Coverage B does not apply;
  - b. After our applicable Limits of Insurance have been exhausted by the payment of judgments or settlements, or exhausted by the payment of defense expenses in the same manner as the terms of **Other Insurance**; or
  - c. To which any **Other Insurance**, by its terms, has no duty to defend provided that such **Other Insurance** does not defend for reasons other than the exhaustion of its limits of insurance.

#### **C. COVERAGE B - EXCLUSIONS**

Coverage B of this policy does not apply:

1. **AIRCRAFT** - To any liability arising out of the ownership, maintenance, operation, use, entrustment to others, loading or unloading of any aircraft:
  - a. Owned, leased, hired, rented or borrowed by or on behalf of you; or
  - b. Chartered without crew by or on behalf of you.

This exclusion:

- a. Applies even if the claims against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Insured**; and
  - b. Does not apply to liability assumed under an **Insured Contract**.
2. **PERSONAL AND ADVERTISING INJURY** - To **Personal and Advertising Injury**:
- a. Caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **Personal and Advertising Injury**.
  - b. Arising out of oral or written publication of material, if done by or at the direction of the **Insured** with knowledge of its falsity.
  - c. Arising out of oral or written publication of material whose first publication took place before the beginning of the Policy Period.
  - d. Arising out of a criminal act committed by or at the direction of the **Insured**.
  - e. Arising out of a breach of contract, except an implied contract to use another's advertising idea in your **Advertisement**.
  - f. Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your **Advertisement**.
  - g. Arising out of the wrong description of the price of goods, products or services stated in your **Advertisement**.
  - h. Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. However, this exclusion does not apply to infringement, in your **Advertisement**, of copyright, trade dress or slogan.
  - i. Committed by an **Insured** whose business is:
    - (1) Advertising, broadcasting, publishing or telecasting;
    - (2) Designing or determining content of web-sites for others; or
    - (3) An internet search, access, content or service provider.

However, this exclusion i. does not apply to subsections 1., 2. and 3. of definition N. Personal and Advertising Injury, under SECTION VI. DEFINITIONS.

For the purposes of this exclusion i., the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.
  - j. Arising out of an electronic chatroom or bulletin board the **Insured** hosts, owns, or over which the **Insured** exercises control.
  - k. Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.
3. **ASBESTOS** - To any liability arising, in whole or in part, out of or in any way related to **Asbestos**.
4. **CONTRACTUAL LIABILITY** - To any liability for which any **Insured** is obligated to pay damages by reason of the assumption of liability in any contract or agreement. This exclusion does not apply to liability for damages:
- a. Assumed in a contract or agreement that is an **Insured Contract**, provided the **Bodily Injury, Personal and Advertising Injury or Property Damage** occurs after the execution of the contract or agreement; or
  - b. That the **Insured** would have in the absence of the contract or agreement.
5. **DAMAGE TO INSURED'S PROPERTY** - To **Property Damage** to property of one **Insured** in the care, custody or control of another **Insured**.
6. **DAMAGE TO YOUR PRODUCT OR WORK** - To **Property Damage** to:
- a. **Your Product** arising out of it or any part of it; or

- b. **Your Work** arising out of it or any part of it and included in the **Products-Completed Operations Hazard**. This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- 7. **EMPLOYMENT PRACTICES** - To any liability arising out of any employment-related or personnel practices, policies, acts or omissions. This includes, but is not limited to:
  - a. Refusal to employ;
  - b. Termination of employment;
  - c. Coercion, criticism, demotion, failure to promote, evaluation, reassignment, discipline, defamation, self-defamation, harassment, humiliation, discrimination, libel, slander, false arrest or imprisonment, and violation of a person's right of privacy; or
  - d. Any consequential injury or damages as a result of a., b. or c. above.

This exclusion applies:

  - a. To all claims, demands, charges, complaints or **Suits** by any person(s) or organization(s) for damages because of such injury or liability, including damages for care and loss of services;
  - b. Whether any **Insured** may be held liable as an employer or in any other capacity either directly or indirectly related to employment; and
  - c. To any obligation to share damages with or repay someone else who must pay damages because of such injury or liability.
- 8. **E.R.I.S.A.** - To any liability of any **Insured** under, or any claim based upon:
  - a. The Employees' Retirement Income Securities Act (E.R.I.S.A.) of 1974 and any amendment thereto; or
  - b. Similar provisions of any federal, state, or local statutory law or common law.
- 9. **EXPECTED OR INTENDED** - To **Bodily Injury or Property Damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **Bodily Injury or Property Damage** which results from the use of reasonable force to protect persons or property.
- 10. **IMPAIRED PROPERTY** - To **Property Damage to Impaired Property** or property that has not been physically injured arising out of:
  - a. A defect, deficiency, inadequacy or dangerous condition in **Your Product or Your Work**; or
  - b. A delay or failure by any **Insured** or anyone acting on any **Insured's** behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **Your Product or Your Work** after it has been put to its intended use.
- 11. **WAR** - To any liability arising, directly or indirectly, out of:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- 12. **POLLUTION**
  - a. To any liability arising out of the actual, alleged or threatened, discharge, dispersal seepage, migration, release or escape of **Pollutants**:
    - (1) At or from any premises, site or location which is or was at any time:
      - (a) Owned or occupied by; or
      - (b) Rented or loaned to;



any **Insured**;

- (2) At or from any premises, site or location which is or was at any time used by or for:
  - (a) Any **Insured**; or
  - (b) Others;
 for the handling, storage, disposal, processing or treatment of waste;
- (3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - (a) Any **Insured**; or
  - (b) Any person or organization for whom you may be legally responsible; or
- (4) At or from any premises, site or location on which any **Insured**, or any contractors or subcontractors working directly or indirectly on any **Insured's** behalf are performing operations:
  - (a) If the **Pollutants** are brought on or to such premises, site or location, in connection with such operations by such **Insured**, contractor or subcontractor; or
  - (b) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**;
- (5) That are, or that are contained in, any property that is:
  - (a) Being transported or towed by, handled, or handled for movement into, onto, or from, any **Auto** covered by Coverage B;
  - (b) Otherwise in the course of transit by or on behalf of any **Insured**; or
  - (c) Being stored, disposed of, treated or processed in or upon any **Auto** covered by Coverage B;
- (6) (a) Before the **Pollutants** or any property in which the **Pollutants** are contained are moved from the place where they are accepted by any **Insured** for movement into or onto any **Auto** covered by Coverage B; or
  - (b) After the **Pollutants** or any property in which the **Pollutants** are contained are moved from any **Auto** covered by Coverage B to the place where they are finally delivered, disposed of or abandoned by any **Insured**.

b. To any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any **Insured** or others:
  - (a) Test for, monitor, clean up, remove, contain, treat, detoxify or neutralize; or
  - (b) In any way respond to, or assess the effects of;

**Pollutants**; or

- (2) Claim or suit by or on behalf of a governmental authority for damages because of:
  - (a) Testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing; or
  - (b) In any way responding to, or assessing the effects of;

**Pollutants.**

This subsection 12.b. does not apply to liability for damages because of **Property Damage** that the **Insured** would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or **Suit** by or on behalf of a governmental authority.

- c. **HOSTILE FIRE** - Subsections a.(1) and a.(4)(a) above do not apply to **Bodily Injury or Property Damage** arising out of heat, smoke or fumes from a **Hostile Fire**.

13. **RECALL OF PRODUCTS** - To damages claimed for any loss, cost or expense incurred by any **Insured** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
  - a. **Your Product;**
  - b. **Your Work;** or
  - c. **Impaired Property;**
 if such product, work or property is withdrawn or recalled:
  - a. From the market; or
  - b. From use;
 by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.
14. **WORKERS COMPENSATION AND SIMILAR LAWS** -To any obligation of any **Insured** under a law of:
  - a. Workers compensation;
  - b. Disability benefits;
  - c. Unemployment compensation; or
  - d. Any similar laws.

#### **D. COVERAGE B - WHO IS AN INSURED**

1. Each of the following is an **Insured** under Coverage B:
  - a. **NAMED INSURED**-Any person or organization shown in the Named Insured section of our Declarations and:
    - (1) If you are an individual, you and your spouse are **Insureds**, but only with respect to the conduct of a business of which you are the sole owner.
    - (2) If you are a partnership or joint venture, you, your members, your partners and their spouses are **Insureds**, but only with respect to the conduct of your business.
    - (3) If you are a limited liability company, your members are **Insureds**, but only with respect to the conduct of your business. Your managers are **Insureds**, but only with respect to their duties as your managers.
    - (4) If you are an organization other than a partnership, joint venture or limited liability company, your executive officers and directors are **Insureds**, but only with respect to their duties as your officers or directors. Your stockholders are **Insureds**, but only with respect to their liability as stockholders.
    - (5) If you are a trust, your trustees are **Insureds**, but only with respect to their duties as trustees.
  - b. **NEWLY ACQUIRED OR FORMED ORGANIZATIONS** - Any organization you acquire or form during our Policy Period other than a partnership, joint venture or limited liability company. But Coverage B applies only:
    - (1) If you maintain majority ownership or majority interest in such organization; and
    - (2) To an injury, damage or **Occurrence**, that took place or was committed after you acquired or formed the organization.
  - c. **SUBSIDIARIES** - Any subsidiary you wholly own, either directly or indirectly, at the inception of our policy.
  - d. **REAL ESTATE MANAGERS** - Any person or any organization while acting as your real estate manager.
  - e. **CUSTODIANS** - Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and



- (2) Until your legal representative has been appointed.
- f. **LEGAL REPRESENTATIVES**-Your legal representative if you die, but only with respect to their duties as such.
- g. Your **Volunteer Workers** but only while performing duties related to the conduct of your business, or your **Employees**, other than:
  - (1) Your **Executive Officers** (if you are an organization other than a partnership, joint venture or limited liability company); or
  - (2) Your managers (if you are a limited liability company);
 are **Insureds**, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these **Employees** or **Volunteer Workers** are **Insureds** for injury:

- (a) To you;
  - (b) To your partners or members (if you are a partnership or joint venture);
  - (c) To your members (if you are a limited liability company);
  - (d) To a **co-Employee** while in the course of his or her employment or performing duties related to the conduct of your business;
  - (e) To your other **Volunteer Workers** while performing duties related to the conduct of your business;
  - (f) To the spouse, child, parent, brother or sister of that **co-Employee** or **Volunteer Worker** as a consequence of subsections (a) through (e) above;
  - (g) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in subsections (a) through (f) above; or
  - (h) Arising out of his or her providing or failing to provide professional health care services.
2. The following persons and organizations are not **Insureds** under Coverage B:

No person or organization is an **Insured** with respect to the conduct of any current, past or newly acquired or formed:

- a. Partnership;
- b. Joint venture; or
- c. Limited liability company;

that is not shown as a **Named Insured** in our Declarations.

## E. COVERAGE B - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the terms below fix the most we will pay regardless of the number of:
  - a. Coverages provided by this policy;
  - b. **Insureds**;
  - c. Claims made or **Suits** brought; or
  - d. Persons or organizations making claims or bringing **Suits**.
2. **OCCURRENCE LIMIT** - The "each occurrence" limit shown in our Declarations is the most we will pay under Coverages A and B combined, for the sum of damages and **Covered Pollution Cost or Expense** arising out of any one **Occurrence**.

Any amount we pay for damages or **Covered Pollution Cost of Expense** arising out of an **Occurrence** will reduce or exhaust the amount of our applicable aggregate Limit of Insurance available for payment of damages or **Covered Pollution Cost or Expense** arising out of any other **Occurrence**.

3. **AGGREGATE LIMIT** - The Limit of Insurance shown in our Declarations as "aggregate" is the most we will pay under Coverage B, and applies separately for each of the following:
  - a. **GENERAL AGGREGATE** - Our aggregate limit is the most we will pay for the sum of damages except for damages under subsections b. and c. below.
  - b. **PRODUCTS AND COMPLETED OPERATIONS AGGREGATE** - Our aggregate limit is the most we will pay for damages included in the **Products-Completed Operations Hazard**.
  - c. **OCCUPATIONAL DISEASE AGGREGATE** - Our aggregate limit is the most we will pay for damages arising out of injury by disease to your officers or **Employees**.
4. **POLICY PERIOD EXTENSIONS** - The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the Policy Period shown in the Declarations. However, if we extend our Policy Period after this policy is issued, we will consider the additional period as part of the last preceding period for purposes of determining the Limits of Insurance.
5. **SAME BASIS DEFENSE EXPENSES** - If the limits of Insurance of any **Primary Insurance or Other Insurance** are reduced by defense expenses by the terms of that policy then any defense expense payments we make to defend any **Insured** will reduce our applicable Limits of Insurance in the same manner.

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### SECTION III. SUPPLEMENTARY PAYMENTS

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When we have the duty under this policy to defend any **Insured** against any **Suit**, we will pay the following expenses in addition to our Limit of Insurance to the extent that they are not covered by **Primary Insurance or Other Insurance** by the terms of that insurance:

1. Costs taxed against any **Insured** in the **Suit**.
2. Up to \$2000 for cost of bail bonds required. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within our applicable Limit of Insurance. We do not have to furnish these bonds.
4. Reasonable expenses incurred by any **Insured** when we request the **Insured** to assist us in the investigation of the claim or defense of the **Suit**. This includes actual loss of earnings up to \$500 a day, because of time off from work.
5. Prejudgment interest awarded against any **Insured** on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance we will not pay any prejudgment interest based on that period of time after the offer.
6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our applicable Limit of Insurance.

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### SECTION IV. CONDITIONS

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- A. **APPEALS** - If any **Primary Insurer** elects not to appeal a judgment in excess of the amount of the **Primary Insurance or Other Insurance**, we may elect to appeal. If we appeal, we will pay the expenses of such appeal. Such payments will not reduce our Limits of Insurance.
- B. **BANKRUPTCY**
  1. Bankruptcy or insolvency of any **Insured or Insured's** estate does not relieve us of our obligations under this policy.
  2. If any **Primary Insurer** becomes bankrupt or insolvent, this policy:
    - a. Does not replace such **Primary Insurance**; and

- b. Applies as though such **Primary Insurance** were available and collectible.

### C. CANCELLATION

1. The **First Named Insured** may cancel this policy by mailing or delivering advance written notice to us, or the agent or broker of record. The Policy Period will end on the effective date requested.
2. We may cancel this policy by mailing by first class or certified mail to the **First Named Insured** and to the agent or broker of record, at their last addresses known to us, written notice of cancellation stating the reason for cancellation, at least:
  - a. Ten (10) days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. Ninety (90) days before the effective date of cancellation if we cancel for any other reason.
3. Notice of cancellation will state the effective date of cancellation. The Policy Period will end on the date of cancellation.
4. If this policy is cancelled, we will send the **First Named Insured** any premium refund due.
  - a. If we cancel, the refund will be pro rata unearned premium.
  - b. 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.
5. A post office certificate of mailing or a certified mail receipt will be sufficient proof of mailing of notice.

**D. CHANGES** - The **First Named Insured** 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 a written endorsement issued by us and made a part of this policy.

**E. CONFORMITY WITH LAWS** - Any terms of this policy which are in conflict with the laws of the state or Canadian province where this policy is issued are amended to conform to such laws.

### F. DUTIES OF INSUREDS IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT

You must see to it that:

1. We are notified as soon as practicable:
  - a. Of any **Occurrence** which may result in a claim under this policy, when the **Occurrence** is known to:
    - (1) You, if you are an individual;
    - (2) Your partner, if you are a partnership;
    - (3) Your member, if you are a joint venture;
    - (4) Your member or manager, if you are a limited liability company; or
    - (5) Your officer or insurance manager, if you are an organization other than a partnership or joint venture; and
  - b. If a claim is made or **Suit** is brought against any **Insured**.
2. **Insureds:**
  - a. Cooperate with us in the investigation or settlement of any claim, or defense of any **Insured** against any **Suit**;
  - b. Enforce any right, upon our request, against any person or organization which may be liable to any **Insured** because of injury or damage to which this policy applies; and
  - c. Make no admission of liability, incur no expense other than first aid, and assume no obligation, without our consent.
3. In jurisdictions in which we are prevented from investigating, defending or settling a claim, or defending any **Insured** against any **Suit**, you must make or cause to be made such investigation, defense or settlement as may be reasonably necessary. However, settlement requires our prior written authorization. Also, you must see to it that **Insureds** continue to comply with their duty to cooperate in the defense.

## G. MAINTENANCE OF PRIMARY INSURANCE

While this policy is in effect you agree:

1. To maintain **Primary Insurance** in full force, except for the reduction of limits of insurance due to the payment of judgments or settlements;
2. The terms and conditions of **Primary Insurance** will not materially change; and
3. Renewals or replacements of **Primary Insurance** will not materially change from the expiring **Primary Insurance**.

If you fail to comply with the above this policy shall apply as if **Primary Insurance** had been so maintained.

**H. PAYMENT OF LOSS UNDER THIS POLICY** - This policy will not apply until the **Insured** or the **Primary Insurer** is obligated to pay the full amount of the **Primary Insurance** limits of insurance. When the amount of judgment or settlement has finally been determined, we will promptly pay on behalf of the **Insured** the amount of damages which falls within the terms of this policy.

## I. PREMIUM

1. The **First Named Insured**:
  - a. Is responsible for the payment of all premiums; and
  - b. Will be the payee for any return premiums.
2. The Advance Premium for this policy is shown in the Declarations. It is not subject to adjustment unless the Basis of Premium shown in the Declarations is other than: "flat charge".
3. If the Advance Premium is subject to adjustment, the earned premium will be determined at the end of our Policy Period. If the earned premium is:
  - a. More than the Advance Premium, the **First Named Insured** will pay the excess to us; or
  - b. Less than the Advance Premium, we will return to the **First Named Insured** the unearned portion. However, the earned premium is subject to the Annual Minimum Premium shown in our Declarations for each twelve (12) months of our Policy Period.

**J. TITLES OR CAPTIONS** - The titles or captions used in this policy are solely for convenience or reference. They do not affect the provisions to which they relate.

**K. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY** - Your rights and duties under this policy may not be transferred without our written consent. If you die, your rights and duties are transferred to your legal representative but only while they are acting within the scope of their duties as such. Until one is appointed, anyone having proper temporary custody of your property will have your rights and duties with respect to that property.

## L. SUBROGATION

1. If any **Insured** has rights to recover all or part of any payment we make under this policy, those rights are transferred to us. The **Insured** must do nothing after loss to impair them. At our request, the **Insured** will bring **Suit** or transfer those rights to us and help us enforce them.
2. Any recoveries shall be distributed as follows:
  - a. First, we shall be entitled to recover to the extent of our payment; and
  - b. Next, any remaining amounts shall be paid to the **Primary Insurers** or any other party to the extent of their payment.
  - c. The expenses of the recovery will be distributed in proportion to the share of each party's recovery. But, if we conduct the recovery proceedings by ourselves:
    - (1) We will pay all expenses; and
    - (2) If we make a recovery, we will be reimbursed in full from the recovery for our expenses before the recovery is distributed.

**M. OTHER INSURANCE** - If there is any **Other Insurance** available to any **Insured**, this policy applies excess of and does not contribute with such **Other Insurance**. However:

1. At your option, our policy will apply before **Other Insurance** applies when you agree in a written **Insured Contract** prior to the time of an **Occurrence** that such insurance as is afforded by this policy will apply in that manner.
2. This does not apply if the **Other Insurance** is specifically written to be excess over this policy.

**N. SEPARATION OF INSUREDS** - Except with respect to the Limits of Insurance and any rights or duties specifically assigned to the **First Named Insured**, this insurance applies:

1. As if each **Named Insured** were the only **Named Insured**; and
2. Separately to each **Insured** against whom claim is made or **Suit** is brought.

**O. INSPECTION AND AUDIT**

1. We have the right but not the duty to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not:
  - a. Make safety inspections;
  - b. Undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public; or
  - c. Warrant that conditions are:
    - (1) Safe or healthful; or
    - (2) Comply with laws, regulations, codes or standards.
3. This condition applies:
  - a. To us; and
  - b. To any rating, advisory, rate service or similar organization, which makes insurance inspections, surveys, reports or recommendations.
4. We may examine and audit your books and records as they relate to this policy:
  - a. At any time during our Policy Period; and
  - b. Up to one hundred eighty (180) days afterward.

**P. UNINTENTIONAL FAILURE TO DISCLOSE** - If you unintentionally fail to disclose to us all of:

1. **Your Products**;
2. **Your Work**; or
3. Property owned or used by you;

which exist at the inception date of this policy, we will not deny coverage under this policy because of such failure.

**Q. WAIVER OF SUBROGATION SAME AS PRIMARY** - If you and the **Primary Insurer**, prior to the time of an Occurrence, waive any right of recovery against a specific person or organization for injury or damage, we will also waive any rights we may have against such person or organization.

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## SECTION V. NUCLEAR ENERGY LIABILITY EXCLUSION

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**A.** The policy does not apply:

1. Under any coverage, to injury, sickness, disease, death or destruction:
  - a. With respect to which any **Insured** under this policy is also an insured under a nuclear energy liability policy issued by:
    - (1) Nuclear Energy Liability Insurance Association;
    - (2) Mutual Atomic Energy Liability Underwriters; or
    - (3) Nuclear Insurance Association of Canada;
 or would be insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - b. Resulting from the "Hazardous Properties" of "Nuclear Material" and with respect to which:
    - (1) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
    - (2) Any **Insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. Under any liability coverage, to injury, sickness, disease, death or destruction resulting from the "Hazardous Properties" of "Nuclear Material", if:
  - a. The "Nuclear Material":
    - (1) Is at any "Nuclear Facility" owned by, or operated by or on behalf of, any **Insured**, or
    - (2) Has been discharged or dispersed therefrom;
  - b. The "Nuclear Material" is contained in "Spent Fuel" or "Waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of any **Insured**; or
  - c. The injury, sickness, disease, death or destruction arises out of the furnishing by any **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "Nuclear Facility". But if such facility is located within the United States of America, its territories or possessions or Canada, subsection c. applies only to injury to or destruction of property at such "Nuclear Facility".

**B.** As used in this exclusion:

1. "Hazardous Properties" includes radioactive, toxic or explosive properties.
2. "Nuclear Material" means "Source Material", "Special Nuclear Material" or "By-Product Material".
3. "Source Material", "Special Nuclear Material", and "By-Product Material" have the meaning given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
4. "Spent Fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "Nuclear Reactor".
5. "Waste" means any material which:
  - a. Contains "By-Product Material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium, from any ore processed primarily for its Source Material content; and
  - b. Results from the operation by any person or organization of any "Nuclear Facility" included under a. and b. of the definition of "Nuclear Facility".
6. "Nuclear Facility" means:



- a. Any "Nuclear Reactor";
  - b. Any equipment or device designed or used for:
    - (1) Separating the isotopes of uranium or plutonium;
    - (2) Processing or utilizing "Spent Fuel"; or
    - (3) Handling, processing or packaging "Waste";
  - c. Any equipment or device used for processing, fabricating or alloying of "Special Nuclear Material" if, at any time, the total amount of such material in the custody of any **Insured** at the premises where such equipment or device is located consists of or contains more than 25grams of:
    - (1) Plutonium; or
    - (2) Uranium 233; or
 any combination thereof, or more than 250 grams of uranium 235;
  - d. Any structure, basin, excavation, premises or place, prepared or used for the storage or disposal of "Waste";
- and includes:
- a. The site on which any of the foregoing is located;
  - b. All operations conducted on such site; and
  - c. All premises used for such operations.
7. "Nuclear Reactor" means any apparatus designed or used to:
- a. Sustain nuclear fission in a self-supporting chain reaction; or
  - b. Contain a critical mass of fissionable material.
8. With respect to injury to or destruction of property, the words "injury" or "destruction" include all forms of radioactive contamination of property.

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## SECTION VI. DEFINITIONS

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- A. ADVERTISEMENT** under Coverage B, means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers and supporters. For the purposes of this definition:
  - 1. Notices that are broadcast or published include material placed on the Internet or on similar electronic means of communication; and
  - 2. Regarding web-sites, only that part of a web-site that relates to your goods, products or services for the purposes of attracting customers or supporters is considered an **Advertisement**.
- B. ASBESTOS** under Coverages A and B, includes but is not limited to: asbestos, asbestos products, asbestos fibers, asbestos dust, and asbestos contained in products or materials.
- C. AUTO** under Coverage B, means a land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery or equipment. But **Auto** does not include **Mobile Equipment**.
- D. BODILY INJURY** under Coverage B, means bodily injury, sickness or disease sustained by a person including death or mental anguish resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.
- E. COVERED POLLUTION COST OR EXPENSE** under Coverage A, means any cost or expense arising out of any:
  - 1. Request, demand, order or statutory or regulatory requirement; or
  - 2. Claim or **Suit** by or on behalf of a governmental authority;

demanding that the **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**.

**Covered Pollution Cost or Expense** does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants**:

1. That are, or that are contained in any property that is:
  - a. Being transported or towed by, handled , or handled for movement into, onto or from, any **Auto** covered by this policy;
  - b. Otherwise in the course of transit by or on behalf of any **Insured**;
  - c. Being stored, disposed of, treated or processed in or upon any **Auto** covered by this policy;
2. Before the **Pollutants**, or any property in which the **Pollutants** are contained, are moved from the place where they are accepted by any **Insured** for movement into or onto any **Auto** covered by this policy; or
3. After the **Pollutants**, or any property in which the **Pollutants** are contained, are moved from any **Auto** covered by this policy to the place where they are finally delivered, disposed of or abandoned by any **Insured**.

Subsection 1. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar **Pollutants**, that are needed for or result from the normal electrical, hydraulic or mechanical functioning of any **Auto** covered by this policy, or its parts, if:

- a. The **Pollutants** escape, seep, migrate, or are discharged, dispersed or released directly from an **Auto** part designed by its manufacturer to hold, store, receive or dispose of such **Pollutants**; and
- b. The **Bodily Injury, Property Damage or Covered Pollution Cost or Expense** does not arise out of the operation of any equipment listed in subsections 6.b. or c. of the definition of **Mobile Equipment**.

Subsections 2. and 3. above do not apply to **Occurrences** that occur away from premises owned by or rented to any **Insured** with respect to **Pollutants** not in or upon any **Auto** covered by this policy if:

- a. The **Pollutants** or any property in which the **Pollutants** are contained are upset, overturned or damaged as a result of the maintenance or use of any **Auto** covered by this policy; and
- b. The discharge, dispersal, seepage, migration, release or escape of the **Pollutants** is caused directly by such upset, overturn or damage.

**F. FIRST NAMED INSURED** under Coverages A and B, means the person or organization shown first in the Named Insured section of our Declarations.

**G. HOSTILE FIRE** under Coverages A and B, means one which becomes uncontrollable or breaks out from where it was intended to be.

**H. IMPAIRED PROPERTY** under Coverage B, means tangible property, other than **Your Product or Your Work**, that cannot be used or is less useful because:

1. It incorporates **Your Product or Your Work** that is known or thought to be defective, deficient, inadequate or dangerous; or
2. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

1. The repair, replacement, adjustment or removal of **Your Product or Your Work**; or
2. Your fulfilling the terms of the contract or agreement.

**I. INSURED CONTRACT** under Coverage B, means:

1. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an **Insured Contract**;
2. A sidetrack agreement;



3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. An elevator maintenance agreement;
6. That part of any contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for **Bodily Injury, Personal and Advertising Injury or Property Damage** to a third person or organization. "Tort liability" means a liability that would be imposed by law in the absence of any contract or agreement.

This subsection 6. does not include that part of any contract or agreement:

- a. That indemnifies a railroad for liability arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (1) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports surveys, field orders, change orders or drawings and specifications; or
  - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- c. Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the **Insured's** rendering or failure to render professional services, including those listed in b. above and supervisory, inspection, architectural or engineering activities.

**J. MOBILE EQUIPMENT** under Coverages A and B, means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on or next to premises you own or rent;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted;
  - a. Power cranes, shovels, loaders, diggers or drills; or
  - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
5. Vehicles not described in subsections 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - b. Cherry pickers and similar devices used to raise or lower workers.
6. Vehicles not described in subsections 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not **Mobile Equipment** but will be considered **Autos**:
  - a. Equipment designed primarily for:
    - (1) Snow removal;
    - (2) Road maintenance, but not construction or resurfacing; or
    - (3) Street cleaning;
  - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.

**K. NAMED INSURED** under Coverages A and B, means any person or organization shown in the Named Insured section of our Declarations.

**L. OCCURRENCE:**

- 1. Under Coverage A, has the same meaning as has the term "occurrence" contained in **Primary Insurance**. But with respect to personal and advertising injury as defined in **Primary Policies**, the term means a personal and advertising injury offense.
- 2. Under Coverage B, means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. With respect to **Personal and Advertising Injury**, the term means an offense which causes such injury.

**M. OTHER INSURANCE** under Coverages A and B, means insurance that is available to any **Insured** and covers damage to which this policy applies, other than:

- 1. **Primary Insurance**; or
- 2. Insurance that is specifically purchased by you to be excess of the insurance afforded by this policy.

**N. PERSONAL AND ADVERTISING INJURY** under Coverage B, means injury, including consequential **Bodily Injury**, arising out of one or more of the following offenses:

- 1. False arrest, detention or imprisonment;
- 2. Malicious prosecution or abuse of process;
- 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies by or on behalf of its owner, landlord or lessor;
- 4. Oral or written publication, in any manner, of material that:
  - a. Slanders or libels a person or organization;
  - b. Disparages a person's or organization's goods, products or services; or
  - c. Violates a person's right of privacy;
- 5. The use of another's advertising idea in your **Advertisement**;
- 6. Infringing upon another's copyright, trade dress or slogan in your **Advertisement**; or
- 7. "Discrimination" when based solely on either disparate impact or vicarious liability (unless insurance thereof is prohibited by law). As used in this definition N, the term "discrimination" means the unlawful treatment of individuals based on race, color, religion, gender, age, or national origin.

**O. POLLUTANTS** under Coverages A and B, 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.

**P. PRIMARY INSURER** under Coverages A and B, means the insurer of the **Primary Insurance or Other Insurance** policies.

**Q. PRIMARY POLICY, PRIMARY POLICIES or PRIMARY INSURANCE** under Coverage A and B, means the policy or policies of insurance shown in our Schedule of Primary Insurance.

**R. PRODUCTS-COMPLETED OPERATIONS HAZARD** under Coverage B, includes all **Bodily Injury** and **Property Damage** occurring away from premises you own or rent and arising out of **Your Product or Your Work** except:

- 1. Products that are still in your physical possession; or
- 2. Work that has not yet been completed or abandoned.

**Your Work** will be deemed completed at the earliest of the following times:

- 1. When all of the work called for in your contract has been completed;

2. When all of the work to be done at the site has been completed if your contract calls for work at more than one site; or
- c. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

**S. PROPERTY DAMAGE** under Coverage B, means:

1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **Occurrence** that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

As used in this definition, "electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**T. SUIT** under Coverages A and B, means a civil proceeding in which damages insured by this policy are alleged. The term includes:

1. An arbitration proceeding in which such damages are claimed and to which any **Insured** must submit or does submit with our consent; or
2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which any **Insured** submits with our consent.

**U. YOUR PRODUCT** under Coverage B, means:

1. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - a. You;
  - b. Others trading under your name; or
  - c. A person or organization whose business or assets you have acquired; and
2. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**Your Product** includes:

1. Warranties or representations made at any time as respects the fitness, quality, durability, performance or use of **Your Product**; and
2. The providing of or failure to provide warnings or instructions.

**Your Product** does not include vending machines or any other property rented to or located for the use of others but not sold.

**V. YOUR WORK** under Coverage B means:

1. Work or operations performed by you or on your behalf; and
2. Materials, parts or equipment furnished in connection with such work or operations.

**Your Work** includes:

1. Warranties or representations made at any time as respects the fitness, quality, durability, performance or use of **Your Work**; and
2. The providing of or failure to provide warnings or instructions.

**W. EMPLOYEE** under Coverage B, includes a **Leased Worker**. **Employee** does not include a **Temporary Worker**.

- X. **EXECUTIVE OFFICER** under Coverage B, means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- Y. **LEASED WORKER** under Coverage B, means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased Worker** does not include a **Temporary Worker**.
- Z. **TEMPORARY WORKER** under Coverage B, means a person who is furnished to you to substitute for a permanent **Employee** on leave or to meet seasonal or short-term workload conditions.
- AA. **VOLUNTEER WORKER** under Coverage B, means a person who is not your **Employee** , and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

## **Economic or Trade Sanctions Compliance - 145985 06 14**

### **Policy Amendment**

The following is added to the Policy and replaces any other provision in the Policy addressing economic or trade sanctions:

This insurance does not apply to the extent that economic or trade sanctions or other laws or regulations prohibit us (the Company) from providing insurance.

All other terms and conditions of the policy remain unchanged.

## **Silica Particles Exclusion**

**178575 05 04 NY**

Policy Amendment - Umbrella Policy - Excess Liability Policy

- A. The policy does not apply to any liability, loss, cost or expense arising, in whole or in part, directly or indirectly out of, or which is in any way related to, the "Silica hazard".
- B. As used in this exclusion:
  - 1. "Silica hazard" means exposure to, inhalation of or contact with, or threat of exposure to, inhalation of or contact with "silica" or "silica-related dust" which results in, or are alleged to cause, harmful health effects;
  - 2. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds; and
  - 3. "Silica-related dust" means a mixture or combination of "silica" and other dust or particles.

All other terms and conditions of the policy remain unchanged.

## Sublimited Primary Coverage Exclusion

**178578 06 04**

Policy Amendment - Umbrella Policy - Excess Liability Policy

- A. This policy does not apply to any claims or **Suits** covered by **Primary Insurance** when the applicable **Primary Policy's** limits of insurance that apply to such claims or **Suits** is a "sublimit".

However, this exclusion does not apply when the available "sublimit" is less than the Limit of Insurance, as shown in our Schedule of Primary Insurance, for the applicable **Primary Policy** if solely due to a reduction in limits by payments of judgments, settlements or defense expenses.

- B. As used in this endorsement, "sublimit" means the limits of insurance which apply to any coverage provided by **Primary Insurance** that are less than the Limit of Insurance, as shown in our Schedule of Primary Insurance, for the applicable **Primary Policy**. This includes any "sublimit" whether it is subject to, or in addition to, the **Primary Policy** limits shown in our Schedule of Primary Insurance.

All other terms and conditions of the policy remain unchanged.

## **Disclosure of Premium for Certified Acts of Terrorism Coverage; Cap on Insurer Participation in Payment of Terrorism Losses (Pursuant to Terrorism Risk Insurance Act)**

**178587 01 15 NY**

Policy Amendment - Umbrella Policy - Excess Liability Policy

**This Endorsement is attached to and made part of your policy in response to the disclosure requirements of the Terrorism Risk Insurance Act.**

### **A. Disclosure of Premium**

In accordance with the federal Terrorism Risk Insurance Act, as amended, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act, as amended ("certified acts of terrorism"). The portion of your premium attributable to such coverage is shown in the policy Declarations. This premium is based on the rates in effect at the time of policy issuance or policy anniversary and was calculated for the full term of the current policy period.

### **B. Disclosure of Federal Participation in Payment of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020 of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act, as amended, exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceed \$100 billion.

### **C. Cap on Insurer Participation in Payment of Terrorism Losses**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act, as amended, exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, as amended, then we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

All other terms and conditions of the policy remain unchanged.



## **Lead Exclusion**

**178771 03 98**

Policy Amendment - Umbrella Policy - Excess Liability Policy

The policy does not apply to any liability arising in whole or in part, out of or in any way related to "Lead".

As used in this exclusion, the term "Lead" includes but is not limited to, lead, lead products, lead contained in paint, and lead contained in any products or materials.

All other terms and conditions of the policy remain unchanged.

## Pollution - Absolute Exclusion - Coverage B 178789 10 01

Policy Amendment - Umbrella Policy

A. SECTION II. UMBRELLA LIABILITY- COVERAGE 8 , C. COVERAGE 8 - EXCLUSIONS, subsection 12. POLLUTION is replaced by the following:

### 12. POLLUTION

- a. To any liability arising:
  - (1) Directly;
  - (2) Indirectly; or
  - (3) In concurrence, or in any sequence, with a cause for which coverage may be afforded by this policy; out of the actual, alleged or threatened existence, discharge, dispersal, seepage, migration, release or escape of **Pollutants**.
- b. To any loss, cost, or expense arising out of any:
  - (1) Request, demand, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effects of **Pollutants**; or
  - (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, **Pollutants**.
- c. It is the intent and effect of this exclusion to exclude any or all coverage afforded by Coverage 8 of this policy for any claim, action, judgment, liability, settlement, defense, or expense in any way arising out of the existence, discharge, dispersal, seepage, migration, release or escape of **Pollutants**. It applies whether such results from any **Insured's** activities or the activities of others. It applies whether such is sudden, gradual, accidental, intended, foreseeable, expected, fortuitous, or inevitable. And it applies wherever or however such occurs.

All other terms and conditions of the policy remain unchanged.

## **Products-Completed Operations Hazard Exclusion - Coverage B**

**178792 03 98**

Policy Amendment - Umbrella Policy

COVERAGE B of the policy does not apply to any liability arising out of the **Products-Completed Operations Hazard**; nor to any liability assumed under that part of an **Insured Contract** that indemnifies a person or organization for any liability arising out of the **Products-Completed Operations Hazard**.

All other terms and conditions of the policy remain unchanged.

## Professional Services Exclusion

**178794 04 13**

Policy Amendment - Umbrella Policy - Excess Liability Policy

The policy does not apply to any liability arising out of the rendering of or failure to render any "professional" services.

This exclusion applies even if the claims against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Insured**, if the offense which caused the damages involved the rendering of or failure to render any professional service.

As used in this endorsement, a "professional" service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill. It also means relating to or characteristic of a learned profession that often requires special licensing by an agency or society with such authority.

All other terms and conditions of the policy remain unchanged.

## New York Amendatory 178859 10 03 NY

Policy Amendment - Umbrella Policy

- A. SECTION I. EXCESS LIABILITY - COVERAGE A, C. COVERAGE A EXCLUSIONS, the following exclusion is added:
- EXPECTED OR INTENDED - Bodily injury or property damage expected or intended from the standpoint of any **Insured**. But this does not apply to bodily injury or property damage which results from the use of reasonable force to protect persons or property.
- B. SECTION II. UMBRELLA LIABILITY - COVERAGE B, A. COVERAGE B - INSURING AGREEMENT, subsection 1.c. is added as follows:
1. c. This insurance shall apply in excess of the greater of either:
    - (1) The applicable limit or limits of insurance of any valid and collectible **Other Insurance** available to any **Insured**; or
    - (2) \$10,000, hereinafter referred to as the "Insured's Retained Limit."

It shall be the obligation of any **Insured** to pay the amount of the "Insured's Retained Limit" with respect to all damages to which this policy applies and for which there is no **Primary Insurance** or **Other Insurance**.
- C. Whenever the "Insured's Retained Limit" applies, the policy is subject to these additional conditions:
1. The "Insured's Retained Limit" shall be deducted from the total amount of all sums for damages which we are obligated to pay for each **Occurrence**;
  2. The terms of the policy, including those pertaining to our rights and duties with respect to the defense of **Suits** and to any **Insured's** duties in the event of an **Occurrence**, apply irrespective of the application of the "Insured's Retained Limit";
  3. We will settle any claim or **Suit** only with the written consent of any **Insured**. If any **Insured** refuses to consent to our making any settlement recommended by us, based upon a judgment or a bona fide offer of settlement, the excess of the amount for which such settlement could have been made, as so recommended by us, will not be recoverable under the policy; and
  4. With the written consent of any **Insured**, we may pay any part or all of the "Insured's Retained Limit" amount to effect settlement of any claim or **Suit**. Upon notification of the action taken, any **Insured** shall promptly reimburse us for such part of the "Insured's Retained Limit" as has been paid by us.
- D. SECTION I. EXCESS LIABILITY - COVERAGE A, B. COVERAGE A - WHEN WE WILL HAVE A DUTY TO DEFEND, subsection 1., the first sentence is replaced by the following:
1. We will have the right and duty to defend any **Insured** against any **Suit** seeking damages or a **Covered Pollution Cost or Expense** to which Coverage A applies even if the allegations are groundless, false or fraudulent, but only:
- Subsections a., b. and the last sentence of subsection 1. remain unchanged.
- E. SECTION II. UMBRELLA LIABILITY - COVERAGE B, B. COVERAGE B - WHEN WE WILL HAVE A DUTY TO DEFEND, subsection 1., the first sentence is replaced by the following:
1. We will have the right and duty to defend any **Insured** against any **Suit**, seeking damages to which Coverage B applies even if the allegations are groundless, false or fraudulent, but only:
- Subsections a., b. and the last sentence of subsection 1. remain unchanged.
- F. The policy does not apply to any punitive or exemplary damages or any fines or penalties, in whatever form assessed.
- G. With respect to any **Insured's** employees subject to the New York State Workers' Compensation Law:

1. This policy does not apply to any liability arising out of any injury to:
  - a. Any employee of any **Insured** arising out of and in the course of:
    - (1) Employment by any **Insured**; or
    - (2) Performing duties related to the conduct of any **Insured's** business; or
  - b. The spouse, child, parent, brother, or sister of that employee as a consequence of subsection a. above.

This exclusion applies:

- a. Whether any **Insured** may be liable as an employer or in any other capacity; and
- b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by an **Insured** under an **Insured Contract**.

2. SECTION II. UMBRELLA LIABILITY - COVERAGE B, E. COVERAGE B - LIMITS OF INSURANCE, subsection 3.c. OCCUPATIONAL DISEASE AGGREGATE does not apply.

H. With respect to SECTION I. EXCESS LIABILITY - COVERAGE A, B. COVERAGE A - WHEN WE WILL HAVE A DUTY TO DEFEND, and SECTION II. UMBRELLA LIABILITY - COVERAGE B, B. COVERAGE B - WHEN WE WILL HAVE A DUTY TO DEFEND, the following is added:

If we have assumed control of the settlement of any claim or defense of any **Suit**:

1. If we think that our Limit of Insurance stated in our Declarations as "each occurrence" or "aggregate" limit is likely to be exhausted by payment of judgments or settlements, we will notify the **First Named Insured** in writing to that effect;
2. After the applicable Limit of Insurance of this policy has been exhausted by payment of judgments or settlements:
  - a. We will notify the **First Named Insured** in writing as soon as practicable, that:
    - (1) Such a limit has actually been exhausted; and
    - (2) We have no duty to defend any **Insured** against any **Suit** after the applicable Limit of Insurance of this policy has been exhausted by payment of judgments or settlements;
  - b. We will initiate and cooperate in the transfer of control, to any appropriate **Insured** of the settlement of all claims or defense of all **Suits** seeking damages which are subject to that limit and which are reported to us before that limit is exhausted. That **Insured** must cooperate in the transfer of control of said claims and **Suits**.

We agree to take such steps as we deem appropriate, to avoid a default in, or continue the defense of, such **Suits** until such transfer is completed, providing the appropriate **Insured** is cooperating in completing such transfer.

We have no duty to take any action whatsoever with respect to any claim or **Suit** seeking damages that would have been subject to that limit, had it not been exhausted, if the claim or **Suit** is reported to us after that Limit of Insurance has been exhausted; and

- c. The **First Named Insured**, and any other **Insured** involved in a **Suit** seeking damages subject to that limit, must arrange for the defense of such **Suit** within such time period as agreed to between the appropriate **Insured** and us. Absent any such agreement, arrangements for the defense of such **Suit** must be made by the appropriate **Insured** as soon as practicable;
3. The **First Named Insured** will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with paragraph 2.b. above.

The duty of the **First Named Insured** to reimburse us will begin on:

- a. The date on which the applicable Limit of Insurance is exhausted, if we sent notice in accordance with paragraph 1. above; or

b. The date on which we sent notice in accordance with paragraph 2.a. above, if we did not send notice in accordance with paragraph 1. above; and

4. The exhaustion of any Limit of Insurance of this policy by the payment of judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions contained above.

I. SECTION IV. CONDITIONS, F. DUTIES OF INSURED IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT, the following is added:

Notice given by or on behalf of any **Insured**, or written notice by or on behalf of the injured person or any other claimant, to any agent of ours in New York State with particulars sufficient to identify any **Insured**, shall be considered notice to us.

Failure of any **Insured** to notify us within the time prescribed in this condition will not invalidate a claim made by any **Insured** or by any other claimant, if it is shown that notice was given as soon as was practicable.

J. SECTION IV. CONDITIONS, the following is added:

NEW YORK CONFORMITY WITH REGULATIONS - COVERAGE A - With respect to operations in the State of New York, Coverage A of the policy shall conform to the applicable insurance laws of the State of New York or the applicable regulations of the New York Insurance Department in effect at the time the policy is issued; provided however, that our Limits of Insurance shall be excess of an amount of damages equal to the amount of the Limits of Insurance stated in our Schedule of Primary Insurance.

K. SECTION VI. DEFINITIONS, P. PRIMARY INSURER is replaced by the following:

P. **Primary Insurer** under Coverages A and B, means the insurer of the **Primary Insurance**.

L. SECTION VI. DEFINITIONS, the following is added:

**Other Insurer** under Coverages A and B, means the insurer of the **Other Insurance**.

M. In the following subsections of the policy, wherever used, the words "Primary Insurer" are replaced by the words "Primary Insurer or Other Insurer":

1. SECTION I. EXCESS LIABILITY - COVERAGE A, B. COVERAGE A - WHEN WE WILL HAVE A DUTY TO DEFEND, subsection 2.;
2. SECTION IV. CONDITIONS, A. APPEALS; and
3. SECTION IV. CONDITIONS, L. SUBROGATION, subsection 2.b.

All other terms and conditions of the policy remain unchanged.

## Cancellation, Nonrenewal or Conditional Renewal 178860 10 02 NY

Policy Amendment - Umbrella Policy - Excess Liability Policy

- A. The policy CONDITIONS, CANCELLATION, subsection 2.a. is replaced by the following:
  - a. Fifteen (15) days before the effective date of cancellation if we cancel for nonpayment of premium; or
- B. The following is added to the policy CONDITIONS, CANCELLATION, subsection 2.:
 

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

  - a. Nonpayment of premium;
  - b. Conviction of a crime arising out of acts increasing the hazard insured against;
  - c. Discovery of fraud or material misrepresentation in obtaining this policy or in the presentation of a claim thereunder;
  - d. After issuance of this policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current Policy Period;
  - e. Material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of this policy which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time this policy was issued or last renewed;
  - f. Required pursuant to determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency, or be hazardous to the interest of our policyholders, our creditors or the public; or
  - g. A determination by the Superintendent that the continuation of this policy would violate, or would place us in violation of, any provision of the Insurance Code.
- C. The following is added to the policy CONDITIONS, CANCELLATION, subsection 4.:
  - c. If premium is advanced under a premium finance agreement, the cancellation refund will be pro rata, and we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater.
- D. The following is added to the policy CONDITIONS:
 

**NONRENEWAL BY US**

  - 1. If we elect not to renew this policy, we will mail by first class or certified mail to the **First Named Insured** and to the agent or broker of record, at their last addresses known to us, written notice stating the reason for nonrenewal, at least thirty (30) days but not more than one hundred and twenty (120) days before the effective date of nonrenewal.
  - 2. Notice of nonrenewal will state the effective date of nonrenewal. The Policy Period will end on the date of nonrenewal.
  - 3. A post office certificate of mailing or a certified mail receipt will be sufficient proof of mailing of notice.
  - 4. If we violate any of the provisions of items 1. through 3. above, by sending the **First Named Insured** a notice:
    - a. That is incomplete, or later than 30 days prior to this policy's expiration date but prior to the policy's expiration date, coverage will remain in effect at the same terms and conditions of this policy and at the lower of the current rates or the prior period's rates, until 60 days after proper nonrenewal notice is mailed unless the **First Named Insured**, during this 60 day period, has replaced the coverage or elects to cancel; or



- b. At the same terms and conditions of this policy for another annual policy period, at the lower of the current rates or the prior period's rates unless the **First Named Insured**, during this additional policy period, has replaced the coverage or elects to cancel.

The Aggregate Limit of Insurance shown in the Declarations will be increased in proportion to any Policy extension as provided in 4.a. or 4.b. above.

- 5. We will not send you notice of nonrenewal if your authorized agent or broker or another insurer of yours mails or delivers notice to us that this policy has been replaced or is no longer desired.

E. The following is added to the policy CONDITIONS:

CONDITIONAL RENEWAL

- 1. If we condition renewal of this policy upon:

- a. Change of limits;
- b. Change in type of coverage;
- c. Reduction of coverage;
- d. Increased deductible or Retained Amount;
- e. Addition of exclusion;
- f. Requirements relating to **Primary Insurance**; or
- g. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units or as a result of experience rating, loss rating, retrospective rating or audit;

We will mail, to the **First Named Insured** and the agent or broker of record, at their last addresses known to us, written notice stating the specific reasons for conditional renewal, the amount of any premium increase, and a description of any other changes, at least thirty (30) days but not more than one hundred and twenty (120) days before this policy's:

- (1) Expiration date; or
- (2) Annual anniversary date.

- 2. Proof of mailing will be sufficient proof of notice.

- 3. If we violate any of the above provisions of this condition by sending the **First Named Insured** a conditional renewal notice:

- a. That is incomplete or later than 30 days prior to this policy's expiration date but prior to the policy's expiration date, coverage will remain in effect at the same terms and conditions of this policy, at the lower of the current rates or the prior period's rates, until 60 days after proper conditional renewal notice is mailed or delivered unless the First Named Insured, during this 60 day period, has replaced the coverage or elects to cancel; or
- b. That is later than the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another annual policy period, at the lower of the current rates or the prior period's rates unless the First Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.

- 4. The Aggregate Limit of Insurance shown in the Declarations will be increased in proportion to any policy extension as provided in 3.a. or 3.b. above.

- 5. We will not send you notice of conditional renewal if your authorized agent or broker or another insurer of yours mails or delivers notice to us that this policy has been replaced or is no longer desired.

All other terms and conditions of the policy remain unchanged.

## Coverage Amendments

**178874 04 13**

Policy Amendment - Umbrella Policy

- A. The following replaces SECTION II. UMBRELLA LIABILITY - COVERAGE B, C. COVERAGE B - EXCLUSIONS, 5. DAMAGE TO INSURED'S PROPERTY:

5. DAMAGE TO PROPERTY-To **Property Damage** to real or personal property in the care, custody or control of any **Insured**, including any costs or expenses incurred by you, or any other person, or organization, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another 's property.

- B. The following are added to SECTION II. UMBRELLA LIABILITY - COVERAGE B, C. COVERAGE B - EXCLUSIONS:

### AUTO

To any liability arising out of the ownership, maintenance, operation, use, entrustment to others, loading or unloading of any **Auto**. This exclusion applies even if the claims against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that **Insured**.

### EMPLOYEE INJURY

To any liability arising out of any injury to:

1. Any **Employee** of any **Insured** arising out of and in the course of:
  - a. Employment by any **Insured**; or
  - b. Performing duties related to the conduct of any **Insured's** business; or
2. The spouse, child, parent, brother or sister of that **Employee** as a consequence of section 1. above.

This exclusion applies:

1. Whether any **Insured** may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

### LIQUOR LIABILITY

To any liability arising out of:

1. Causing or contributing to the intoxication of any person;
2. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
3. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages; or
4. Owning or leasing premises used for selling or serving alcoholic beverages.

This exclusion applies even if the claims against any **Insured** allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that **Insured**; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol.

### WATERCRAFT

To any liability arising out of any watercraft except one you do not own:

1. That is less than 50 feet long; and
2. That is not being used for public transportation or as a common carrier.

This exclusion applies even if the claims against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Insured**.

#### EMPLOYEE BENEFIT PROGRAM EXCLUSION

To any liability arising out of the "Administration" of any "Employee Benefit Program."

As used in this endorsement, the following terms have the following meanings:

1. "Employee Benefit Program" includes but is not limited to group life insurance, group accident or health insurance, profit sharing plans, pension plans and stock subscription plans, unemployment insurance, social security benefits, workers' compensation and disability benefits insurance.
2. "Administration" includes but is not limited to performing or failure to perform any of the following functions with respect to an "Employee Benefit Program":
  - a. Application of rules determining eligibility for or participation in benefits;
  - b. Calculation of service and compensation credit for benefits;
  - c. Preparation of **Employee** communications material;
  - d. Maintenance of participants' service and employment records;
  - e. Preparation of reports required by government agencies;
  - f. Calculation of benefits;
  - g. Orientation of new participants and advising participants of their rights and options under the plan;
  - h. Collection of contributions and application of contributions as provided in the plan;
  - i. Preparation of reports concerning participants' benefits;
  - j. Processing of claims; or
  - k. Rendering or providing advice, other than legal advice.

All other terms and conditions of the policy remain unchanged.

## **Discrimination Liability Limitation - Coverage B**

**178905 10 01**

Policy Amendment - Umbrella Policy

- A. SECTION VI. DEFINITIONS, N. PERSONAL AND ADVERTISING INJURY, subsection 7. is deleted.
- B. Coverage B of the policy does not apply to any liability arising out of or alleging "discrimination" against any person or organization.

"Discrimination" includes, but is not limited to, discrimination because of race, color, ethnic or national origin, religion, age, gender, marital status, physical disability or impairment, or any employment practices related to the foregoing.

All other terms and conditions of the policy remain unchanged.

## **Personal and Advertising Injury Exclusion - Coverage B**

### **178909 09 98**

Policy Amendment - Umbrella Policy

COVERAGE B of the policy does not apply to any liability arising out of **Personal and Advertising Injury**.

All other terms and conditions of the policy remain unchanged.

## **Abuse, Assault and Molestation Exclusion - Coverage B**

### **178913 10 01**

Policy Amendment - Umbrella Policy

Coverage B of the policy does not apply to any:

- A. Liability arising directly or indirectly out of any actual, alleged or threatened:
  - 1. Sexual abuse, sexual assault, sexual molestation, sexual harassment or sexual misconduct;
  - 2. Physical abuse, physical assault, physical battery;
  - 3. Mental abuse; or
  - 4. Child molestation;
- B. Injury to any person who is so abused, assaulted, battered, molested or harassed; or
- C. Liability for:
  - 1. Failing to prevent or deter any of the above; or
  - 2. Negligently hiring or supervising any persons who cause or contribute to any of the above.

All other terms and conditions of the policy remain unchanged.

## Intellectual Property Exclusion

**178944 10 01**

Policy Amendment - Umbrella Policy - Excess Liability Policy

The policy does not apply to any liability arising out of any actual or alleged infringement, disparagement, defamation, violation, misappropriation, or unfair usage of any form of intellectual property, including but not limited to:

- A. Copyright, slogan or title;
- B. Patent;
- C. Trademark, service mark, collective mark, or certification mark, including without limitation any word, name, symbol, device or any combination thereof used to identify or distinguish the origin of a good, product or service;
- D. Trade secret;
- E. Trade dress including without limitation, any shape, color, design or appearance used to distinguish the origin of a good, product or service;
- F. False designation of the origin of a good, product or service;
- G. Advertising ideas, concepts, campaigns, or style of doing business; or
- H. Any other intellectual property rights recognized or implied by law.

All other terms and conditions of the policy remain unchanged.

## Designated Operations Exclusion

**178947 10 01**

Policy Amendment - Umbrella Policy - Excess Liability Policy

The policy does not apply to any liability arising out of any operations performed by or on behalf of any **Insured**, nor to any liability assumed under that part of any contract or agreement that indemnifies a person or organization for liability arising out of operations listed below:

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

All other terms and conditions of the policy remain unchanged.



## **Primary Insurance Restriction Endorsement Amendment Coverage B 178962 10 01**

Policy Amendment - Umbrella Policy

SECTION II. UMBRELLA LIABILITY - COVERAGE B, A. COVERAGE B - INSURING AGREEMENT, subsection 2, the following is added:

- c. Which would have been covered by **Primary Insurance** except for the attachment of an endorsement to **Primary Insurance**, either at policy inception or during the policy term, which restricts or excludes coverage.

All other terms and conditions of the policy remain unchanged.

## Coverage for Certified Acts of Terrorism

**178993 01 15**

Policy Amendment - Umbrella Policy

- A. Coverage A of this policy will apply with respect to a "certified act of terrorism".
- B. Coverage B of this policy does not apply to any liability arising, directly or indirectly, out of any "certified act of terrorism".
- C. As used in 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, as amended, to be an act of terrorism pursuant to such Act, as amended. The criteria contained in the Terrorism Risk Insurance Act, as amended, 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, as amended; and
  - 2. The act resulted in damage:
    - a. Within the United States (including its territories and possessions and Puerto Rico); or
    - b. Outside the United States in the case of:
      - (1) An air carrier (as defined in Section 40102 of title 49, United States code) or United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States) regardless of where the loss occurs; or
      - (2) The premises of any United States mission; and
  - 3. 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.
- D. If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act, as amended, exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, as amended, then we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

All other terms and conditions of the policy remain unchanged.

## Additional Policy Provisions

### 179020 04 13

#### Policy Amendment - Umbrella Policy

Unless otherwise amended by any other endorsement to this policy issued on or after the date this endorsement is added, this policy is amended as follows:

- A. SECTION II. UMBRELLA LIABILITY - COVERAGE B, C. COVERAGE B - EXCLUSIONS, 2. PERSONAL AND ADVERTISING INJURY, subsection b., c. and h. are replaced by the following:
  - b. Arising out of oral or written publication, in any manner, of material, if done by or at the direction of the **Insured** with knowledge of its falsity.
  - c. Arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the Policy Period.
  - h. Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your **Advertisement**. However, this exclusion does not apply to infringement, in your **Advertisement**, of copyright, trade dress or slogan.
- B. SECTION I. EXCESS LIABILITY - COVERAGE A, C. COVERAGE A - EXCLUSIONS, 4. POLLUTION, subsection (6) is replaced by the following:
  - (6) BUILDING HEATING EQUIPMENT- Subsection a.(1) above does not apply to bodily injury if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.
- C. SECTION I. EXCESS LIABILITY - COVERAGE A, C. COVERAGE A - EXCLUSIONS 5. EMPLOYMENT PRACTICES and SECTION II. UMBRELLA LIABILITY - COVERAGE B, C. COVERAGE B - EXCLUSIONS , 7. EMPLOYMENT PRACTICES, are replaced by the following:
 

EMPLOYMENT PRACTICES

  - a. To any liability arising out of any employment-related or personnel practices, policies, acts or omissions. This includes, but is not limited to:
    - (1) Refusal to employ;
    - (2) Termination of employment;
    - (3) Coercion, criticism, demotion, failure to promote, evaluation, reassignment, discipline, defamation, self-defamation, harassment, humiliation, discrimination, libel, slander, false arrest or imprisonment, violation of a person's right of privacy, or malicious prosecution; or
    - (4) Any consequential injury or damages as a result of (1), (2) or (3) above.
  - b. This exclusion applies:
    - (1) To all claims, demands, charges, complaints or **Suits** by any person(s) or organization(s) for damages because of such injury or liability, including damages for care and loss of services, whether such injury-causing event occurs before employment, during employment or after employment;
    - (2) Whether any **Insured** may be held liable as an employer or in any other capacity either directly or indirectly related to employment; and
    - (3) To any obligation to share damages with or repay someone else who must pay damages because of such injury or liability.
- D. The following is added to SECTION II. UMBRELLA LIABILITY - COVERAGE B, C. COVERAGE B - EXCLUSIONS:

ELECTRONIC DATA - To damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

E. SECTION III. SUPPLEMENTARY PAYMENTS, subsection 1. is replaced by the following:

1. Costs taxed against any **Insured** in the **Suit**. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the **Insured**.

F. SECTION VI. DEFINITIONS, C. AUTO is replaced by the following:

C. AUTO under Coverage B, means:

1. A land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, **Auto** does not include **Mobile Equipment**.

G. SECTION VI. DEFINITIONS, I. INSURED CONTRACT, subsection 6. is replaced by the following:

6. That part of any contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) -under which you assume the tort liability of another to pay for **Bodily Injury, Personal and Advertising Injury or Property Damage** to a third person or organization, provided injury or damage is caused, in whole or in part, by you or by those acting on your behalf. "Tort liability" means a liability that would be imposed by law in the absence of any contract or agreement.

This subsection 6. does not include that part of any contract or agreement:

- a. That indemnifies a railroad for liability arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (1) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports surveys, field orders, change orders or drawings and specifications; or
  - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- c. Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the **Insured's** rendering or failure to render professional services, including those listed in b. above and supervisory, inspection, architectural or engineering activities.

H. The following is added to SECTION VI. DEFINITIONS, J. MOBILE EQUIPMENT:

However, **Mobile Equipment** does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **Autos**.

All other terms and conditions of the policy remain unchanged.

## Directors and Officers Exclusion - Coverage B 179032 04 13

Policy Amendment - Umbrella Policy

Coverage B of the policy does not apply to any liability arising out of any "wrongful act."

As used in this endorsement, "wrongful act" means any actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty by any director, officer, trustee, governor, regent, commissioner, committee member, managing member or member of any board of managers or any board of directors, or any similar governing body, of any organization of any **Insured** in the discharge of their duties, individually or collectively, or any matter claimed against them solely by reason of being directors or officers.

This exclusion applies even if the claims against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Insured**.

All other terms and conditions of the policy remain unchanged.

## **Violation of Statutes Exclusion (E-Mails, Fax, Phone Calls or Other Methods of Recording or Distribution of Material or Information)**

**179033 05 09**

Policy Amendment - Umbrella Policy - Excess Liability Policy

The policy does not apply to any liability arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- A. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- B. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- C. The Fair Credit Reporting Act (FCRA), and any amendment of our addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- D. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

All other terms and conditions of the policy remain unchanged.

## **Communicable Diseases and Viruses -Absolute Exclusion**

### **179054 09 07**

Policy Amendment - Umbrella Policy - Excess Liability Policy

This policy does not apply to any claim or liability arising, in whole or in part, directly or indirectly out of, or which is in any way related to any communicable disease, virus or any variant, strain, adaptation or mutation thereof.

Without limiting the foregoing, this exclusion applies to every injury, damage, loss, cost or expense otherwise covered by this policy, if any.

All other terms and conditions of the policy remain unchanged.

## New York Changes - 2008 N.Y. Laws (Former SB 8610) Provisions 179059 01 09 NY

### Policy Amendment(s) Liability

- A. The following provision is hereby added to the policy and shall replace any other provision addressing the ability to bring a legal action against the insurer providing coverage under this policy:

#### Legal Action Against Us

1. Except as provided in Paragraph 2., no person or organization has a right under this Coverage Form or Part:
  - a. To join us as a party or otherwise bring us into a **Suit** asking for damages from an **Insured**; or
  - b. To sue us on this Coverage Form or Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an **Insured**; but we will not be liable for damages that are not payable under the terms of this Coverage Form or Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and a release of liability signed by us, the **Insured** and the claimant or the claimant's legal representative.

2. With respect to **Bodily Injury** claims, if we deny coverage or do not admit liability because an **Insured** or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or non admission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an **Insured**:

- a. Brings an action to declare the rights of the parties under the policy; and
- b. Names the injured person, someone acting for the injured person or other claimant as a party to the action.

The addition of these provisions is not intended to broaden coverage otherwise provided by the policy in the absence of such language.

- B. The following provision is added and supersedes any provision to the contrary:

Failure to give notice to us as soon as practicable, as required under this Coverage Form or Part shall not invalidate any claim made by the **Insured**, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the **Insured**, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

All other terms and conditions of this policy remain unchanged.



**Crisis Management Response Costs and Crisis Management Loss Coverage  
Extension Endorsement  
179061 06 19 NY**

Schedule A - Crisis Management Limits of Insurance

Crisis Management Response Costs Sublimit of Insurance: \$250,000

Crisis Management Loss Limit of Insurance: \$50,000

Schedule B - Approved Crisis Management Firms

Hill & Knowlton Strategies

24-hour North America crisis help line: +1(212) 885-0306

or

Allianz Global Corporate & Specialty

1 Progress Point Parkway

O'Fallon, MO 63368

Phone number: 888-347-3428

or email the loss to [Newloss@agcs.allianz.com](mailto:Newloss@agcs.allianz.com)

Schedule C - Additional Key Executives

None, unless Schedule C - Additional Key Executives is shown in the Declarations.

## I. Insuring Agreement - Crisis Management Response Costs and Crisis Management Loss

### A. Crisis Management Response Costs

We will pay **Crisis Management Response Costs** on behalf of the **Named Insured**, regardless of fault, arising from a **Crisis Management Event** which first commences during our Policy Period, up to the amount of the **Crisis Management Response Costs Sublimit of Insurance**.

### B. Crisis Management Loss

We will pay **Crisis Management Loss** on behalf of the **Named Insured** arising from a **Crisis Management Event** which first commences during our Policy Period, up to the amount of the **Crisis Management Loss Limit of Insurance**.

C. A **Crisis Management Event** will be deemed to commence at the time when a **Key Executive** first becomes aware of a **Crisis Management Event** and will end when we determine that a crisis no longer exists or when the **Crisis Management Response Costs Sublimit of Insurance** has been exhausted, whichever occurs first.

D. There will be no **Retained Limit** applicable to **Crisis Management Response Costs** or **Crisis Management Loss**.

E. Any payment of **Crisis Management Response Costs** or **Crisis Management Loss** that we make under the coverage provided by this endorsement will not be an acknowledgement of coverage under the policy, nor does it create any duty to defend any **Suit** under any other part of this policy.

## II. Limits of Insurance

A. The **Crisis Management Response Costs Sublimit of Insurance** is the most we will pay for all **Crisis Management Response Costs** under this policy, regardless of the number of **Crisis Management Events** first commencing during our Policy Period. This **Crisis Management Response Costs Sublimit of Insurance** will be in addition to the applicable Limits of Insurance shown in the Declarations of this policy.

B. The **Crisis Management Loss Limit of Insurance** is the most we will pay for all **Crisis Management Loss** under this policy, regardless of the number of **Crisis Management Events** first commencing during our Policy Period. This **Crisis Management Loss Limit of Insurance** will be in addition to the applicable Limits of Insurance shown in the Declarations of this policy.

C. We will have no obligation to pay **Crisis Management Response Costs** when we determine that a **Crisis Management Event** has ended or when the **Crisis Management Response Costs Sublimit of Insurance** has been exhausted, whichever occurs first.

D. The Crisis Management Limits of Insurance in Schedule A of this endorsement apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, beginning with the inception date of our Policy Period shown in the Declarations, unless our Policy Period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Crisis Management Limits of Insurance of this endorsement.

111. As used in this endorsement, the following terms have the following meanings:

A. **Crisis Management Event** means an **Occurrence** that triggers significant adverse regional or national media coverage that in the good faith opinion of a **Key Executive** of the **Named Insured** has or may result in damages covered by this policy that are in excess of the total applicable limits of **Primary Insurance**, **Other Insurance**, or **Self-Insured Retention**.

**Crisis Management Event** includes man-made disasters such as explosions, major crashes, multiple deaths, burns, dismemberment, traumatic brain injury, permanent paralysis, or contamination of food, drink, or pharmaceuticals, provided that they result from an **Occurrence**.

B. **Crisis Management Firm** means any firm approved by us and shown in Schedule B, Approved Crisis Management Firms, of this endorsement, which is hired by you to perform **Crisis Management Services** in connection with a **Crisis Management Event**. An approved **Crisis Management Firm** will be in business

three or more years, be available to respond to an insured twenty four hours a day seven days a week, have a specialty in **Crisis Management Services** practices, and have no conflict of interest with the **Named Insured**.

- C. **Crisis Management Loss** means the following amounts incurred during a **Crisis Management Event**:
  - 1. Amounts for the reasonable and necessary fees and expenses incurred by a **Crisis Management Firm** in the performance of **Crisis Management Services** for the **Named Insured** solely arising from a covered **Crisis Management Event**; and
  - 2. Amounts for reasonable and necessary printing, advertising, mailing of materials, or travel by directors, officers, employees or agents of the **Named Insured** or a **Crisis Management Firm** incurred at the direction of a **Crisis Management Firm**, solely arising from a covered **Crisis Management Event**.
- D. **Crisis Management Services** means those services performed by a **Crisis Management Firm** in assisting the **Named Insured** in minimizing potential harm to the **Named Insured** from a covered **Crisis Management Event** by maintaining and restoring public confidence in the **Named Insured**.
- E. **Crisis Management Response Costs** means the following reasonable and necessary expenses incurred during a **Crisis Management Event** directly caused by a **Crisis Management Event**, provided that such expenses have been pre-approved by us and are associated with damages that would be covered by this policy:
  - 1. Medical expenses;
  - 2. Funeral expenses;
  - 3. Psychological counseling;
  - 4. Travel expenses;
  - 5. Temporary living expenses;
  - 6. Expenses to secure the scene of a **Crisis Management Event**.

**Crisis Management Response Costs** does not include defense costs or **Crisis Management Loss**.
- F. **Crisis Management Response Costs Sublimit of Insurance** means the Crisis Management Response Costs Sublimit of Insurance shown in Schedule A of this endorsement.
- G. **Crisis Management Loss Limit of Insurance** means the Crisis Management Loss Limit of Insurance shown in Schedule A of this endorsement.
- H. **Key Executive** means the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, President, General Counsel or general partner ( if the **Named Insured** is a partnership) of the **Named Insured** or sole proprietor (if the **Named Insured** is a sole proprietorship). A **Key Executive** also means any other person holding a title designated by you and approved by us, which title is shown in Schedule C - Additional Key Executives of this endorsement.
- I. **Retained Limit** means:
  - 1. The total applicable limits of **Primary Insurance** and any applicable **Other Insurance** providing coverage to the **Insured**; or
  - 2. The **Self-Insured Retention** applicable to each **Occurrence** that results in damages not covered by **Primary Insurance** nor any applicable **Other Insurance** providing coverage to the **Insured**.
- J. **Self-Insured Retention** means the amount of Self-Insured Retention, if any, that may be scheduled on the policy.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

## Access or Disclosure of Confidential or Personal Information and Data-Related Exclusion

**179087 05 14**

Policy Amendment - Umbrella Policy - Excess Liability Policy

This policy does not apply to any liability arising out of:

- A. Access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- B. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described above.

As used in this exclusion, **electronic data** means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

All other terms and conditions of the policy remain unchanged.

## **NEW YORK AMENDATORY AGRL IL NY010819**

Wherever used in this endorsement: (1) "we", "us", "our" and "insurer" mean the insurance company which issued this policy; and (2) "you", "your", "named insured" and "insured" mean the named corporation, named organization, named sponsor, named insured or insured stated in the declarations page; and (3) "other insured(s)" means all other persons or entities afforded coverage under this policy.

This policy is amended to include the following provisions and shall replace any provision within this policy which would otherwise apply:

### **A. DUTY TO DEFEND**

When we have a duty to defend, we will defend the insured against any suit seeking those damages even if the allegations of the suit are groundless, false or fraudulent.

### **B. CANCELLATION**

1. The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.
2. If this policy has been in effect for sixty (60) days or less, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. Thirty (30) days before the effective date of cancellation if we cancel for any reason not included in Paragraph 3. below; or
  - b. Fifteen (15) days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph 3. below.
3. If this Policy has been in effect for sixty (60) days or more, or if this is a renewal or continuation of a Policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least fifteen (15) days before the effective date of cancellation:
  - a. Nonpayment of premium provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
  - b. Conviction of a crime arising out of acts increasing the hazard insured against;
  - c. Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;
  - d. After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy;
  - e. Material physical change in the property insured, occurring after change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
  - f. Cancellation is required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;
  - g. A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code;

- h. Suspension or revocation during the required policy period of the driver's license of any person who continues to operate a covered auto, other than a suspension issued pursuant to Subdivision (1) of Section 510(b) of the Vehicle and Traffic Law or one or more administrative suspensions arising from the same incident which has or have been terminated prior to the effective date or cancellation;
  - i. Cancellation of one or more of the underlying policies providing primary or intermediate coverage where:
    - (1) Such cancellation is based upon Paragraphs a. through h. above; and
    - (2) Such policies are not replaced without lapse; or
  - j. Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.
4. The notice of cancellation will be mailed or delivered to the first named insured at the address shown in the policy and to the authorized agent or broker.
  5. Notice of cancellation will state the effective date of cancellation, and if cancellation is for nonpayment of premium, the amount due. The Policy Period will end on the date of cancellation.
  6. If this policy is cancelled, we will send the first named insured any premium refund due.
    - a. If we cancel this policy, the refund will be pro-rata.
    - b. If the first named insured cancels, the refund may be less than pro rata.
    - c. However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.
  7. Regardless of the number of days this policy has been in effect, if:
    - a. This policy covers auto subject to the provision of Section 370(a) and (b) of the New York Vehicle and Traffic Law; and
    - b. The Commissioner of the Department of Motor Vehicles deems this policy to be insufficient for any reason;

we may cancel this policy by giving you notice of such insufficiency forty-five (45) days before the effective date of cancellation to permit you to replace this policy. Notice will include the reason for our cancellation. We will mail or deliver our notice to the first Named Insured at the address shown in the policy and to the authorized agent or broker. However, we may deliver any notice instead of mailing it. Proof of mailing will be sufficient proof of notice.

## C. NON-RENEWAL

### 1. Nonrenewal

If we decide, not to renew this policy we will send notice as provided in Paragraph 3. below.

### 2. Conditional Renewal

If we conditionally renew this policy subject to:

- a. A change of limits;
- b. A change in type of coverage;
- c. A reduction of coverage;
- d. An increased deductible;
- e. An addition of exclusion; or



- f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph 3. below.

We may conditionally renew this policy subject to any requirements to maintain underlying insurance. In the event of failure to comply with such conditions as of the expiration date of the policy, or sixty (60) days after mailing or delivering the notice of conditional renewal, the conditional renewal shall be deemed to be an effective notice of nonrenewal.

### 3. Notices Of Nonrenewal And Conditional Renewal

- a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs 1. and 2. above, we will mail or deliver written notice to the first Named Insured shown in the Declarations and the agent or broker or record, at least 60 but not more than 120 days before:
  - (1) The expiration date; or
  - (2) The anniversary date if this is a continuous policy.
- b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.
- c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.
- d. If we violate any of the provisions of Paragraph 3.a., b. or c. above by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:
  - (1) And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel;
  - (2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.
- e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:
  - (1) Upon expiration of the 60-day period, unless Subparagraph (2) below applies; or
  - (2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.
- f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.

### D LEGAL ACTION AGAINST US

- 1. Except as provided in Paragraph 2., no person or organization has a right under this policy to:
  - a. Join us as a party or otherwise bring us into a suit asking for damages from an insured; or
  - b. sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreement settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and a release of liability signed by us, the insured and the claimant or the claimant's legal representative.

2. With respect to bodily injury claims, if we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or non-admission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within sixty (60) days after we deny coverage or do not admit liability, we or an insured:

- a. Brings an action to declare the rights of the parties under the policy; and
- b. Names the injured person, someone acting for the injured person or other claimant as a party to the action.

The addition of these provisions is not intended to broaden coverage otherwise provided by this policy in the absence of such language.

#### E. SAME BASIS DEFENSE EXPENSES

We will not recognize the reduction or exhaustion of the underlying limits by defense costs. Any defense expense payments we make will be in addition to the applicable Limits of Insurance.

#### F. FAILURE TO GIVE NOTICE

Failure to give notice to us as soon as practicable, as required under this policy, shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

#### G. FRAUD STATEMENT

Any person who knowingly and with intent to defraud any insurance company or other person files an application for commercial insurance or a statement of claim for any commercial or personal insurance benefits containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, and any person who, in connection with such application or claim, knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation.

#### H. NEW YORK CONFORMITY WITH REGULATIONS

With respect to operations in the State of New York, this policy shall conform to the applicable insurance laws of the State of New York or the applicable regulations of the New York Insurance Department in effect at the time the policy is issued; provided however, that if applicable, our Limit of Insurance shall be excess of an amount of damages equal to the amount of the Limits of Insurance stated in the any schedule of primary or underlying insurance.

THE PROVISIONS OF THIS ENDORSEMENT APPLY NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS POLICY AND SUPERSEDE ANY OTHER TERMS, CONDITIONS AND PROVISIONS CONTAINED IN THIS POLICY OR ITS ENDORSEMENTS.

All other terms, conditions, and exclusions will remain the same.



**Amendment - Limits of Insurance - 100001**

DECLARATIONS PAGE and CLAIMS-MADE COVERAGE AMENDMENT AND EXCLUSION - FORM#100007

- Limits of insurance for those entities or group of related entities designated as member of the risk purchasing group will either be:

\$10,000,000 EACH OCCURRENCE

\$10,000,000 AGGREGATE

or

\$5,000,000 EACH OCCURRENCE

\$5,000,000 AGGREGATE

or

\$3,000,000 EACH OCCURRENCE

\$3,000,000 AGGREGATE

or

\$2,000,000 EACH OCCURRENCE

\$2,000,000 AGGREGATE

or

\$1,000,000 EACH OCCURRENCE

\$1,000,000 AGGREGATE

as shown on the Individual Certificate of Coverage.

## **Policy Term Endorsement - 100002**

The master policy term will be 08/01/2020 to 08/01/2022 (24 months).

Those Participants who are a Lead Named Insured will be provided twelve months coverage from their respective effective date, unless otherwise approved, not to exceed beyond the 08/01/2022 expiration date of the master policy.

All additions and deletions made by an existing Participant will be subject to the expiration date designated for the Lead Named Insured.

For the purpose of this endorsement, Lead Named Insured shall be defined as the First Named Insured for each Participant covered under HARP Inc.

**Non-Cumulation of Limits Endorsement - 100003**

If an occurrence, claim, or suit covered under this policy is also covered under another Commercial Excess and Umbrella Insurance policy or Commercial Excess Insurance policy or other similar policy issued by us or any other member insurer of the Fireman's Fund Insurance Companies, the combined maximum amount paid for such occurrence, claim or suit under all applicable policies will not exceed the amount stated in the Declarations of the policy with the highest Each Occurrence Limit Of Insurance.

Payments made for such occurrence, claim or suit will be treated as paid under each of the applicable policies for purposes to determine the Limits Of Insurance available under the aggregate limits as respects any subsequent occurrence, claim or suit.

## **Risk Purchasing Group - Program Manager - 100004**

It is hereby agreed that those entities or group of related entities designated as members of the risk purchasing group that is the first named insured in this policy on the individual member's Certificate of Coverage are included as named insured's under this policy.

Coverage only applies to liability arising out of the operation(s) at the specified locations scheduled on the individual member's Certificate of Coverage, but only as respects:

- the specific named insured's listed in that Certificate of Coverage and designated as the owner(s), manager(s), or lessee(s) of those specified locations and
- the coverages shown on that Certificate of Coverage, subject to the terms and conditions of this insurance.

It is agreed that those named insureds listed in an individual Certificate of Coverage issued by the risk purchasing group during this policy period are provided coverage for the time period specified in such Certificate of Coverage, not to exceed twelve months.

All additions and deletions made for a named insured will be subject to the expiration date designated in the Individual Certificate of Coverage for that named insured.

**Occupational or Environment Disease Exclusion -100005**

Regardless of whether or not such coverage is afforded by any underlying insurance", this insurance does not apply:  
To any liability or injury resulting from any occupational or environmental disease arising out of the operations or products of any "insured" and affecting:

- a. Any employees of any "insured", or
- b. Any other person.

## Employment Practices Exclusion - Coverage A - 100006

Section I. Excess Liability - Coverage A, C. Coverage A - Exclusions, 5. Employment Practices is deleted in its entirety and replaced by the following:

5. EMPLOYMENT PRACTICES - To any liability arising out of any employment-related or personnel practices, policies, acts or omissions. This includes, but is not limited to:
- a. Refusal to employ;
  - b. Termination of employment;
  - c. Coercion, criticism, demotion, failure to promote, evaluation, reassignment, discipline, defamation, self-defamation, harassment, humiliation, discrimination, libel, slander, false arrest and imprisonment, or violation of a person's right of privacy; or
  - d. Any consequential injury or damages as a result of a., b. or c. above.

This exclusion applies:

- a. To all claims, demands, charges, complaints or Suits by any person(s) or organization(s) for damages because of such injury or liability, including damages for care and loss of services;
- b. Whether any Insured may be held liable as an employer or in any other capacity either directly or indirectly related to employment; and
- c. To any obligation to share damages with or repay someone else who must pay damages because of such injury or liability.

This exclusion applies:

- whether the insured may be liable as an employer or in any other capacity;
- and
- to any obligation to share damages with or repay someone else who must pay damages because of any of the foregoing.

This exclusion does not apply to Excess Liability - Coverage A to the extent that insurance is provided under a Directors & Officers Liability policy shown in the Schedule of Underlying Insurance.

## Claims Made Amendment and Exclusion - 100007

### CLAIMS-MADE COVERAGE AMENDMENT AND EXCLUSION

COVERAGE PROVIDED BY THIS ENDORSEMENT APPLIES ON A CLAIMS-MADE BASIS.

PLEASE READ THE ENTIRE ENDORSEMENT CAREFULLY.

#### A. 1. Claims-Made Coverage - Coverage A

Solely with respect to Coverage A of this policy in excess of Primary Insurance which applies on the basis of Claims-Made, we adopt the terms of Primary Insurance with respect to what must occur after the Primary Insurance Retroactive Date, if any, in order for coverage to apply.

However, we do not adopt terms of any:

- a. Primary Insurance Retroactive Date, if any; and
- b. Primary Insurance inception and termination dates.

#### 2. All of the following apply with respect to the above:

- a. SECTION I. EXCESS LIABILITY - COVERAGE A, A. COVERAGE A - INSURING AGREEMENT, subsection 1.b. does not apply with respect to coverage in excess of Claims-Made basis Primary Insurance; and
- b. Our Coverage A Retroactive Date for Claims-Made coverage provided by this endorsement is: Various; and Per the Scheduled Underlying Insurance retroactive date (if any).
- c. For Coverage A to apply, the claim must be first made during our Policy Period as well as during the Primary Insurance policy period. As used in 2.b. above, the term "Retroactive Date" means the date that is the earliest date on which the wrongful act, error or omission may first take place for coverage to apply.

#### B. Limits of Insurance Amendment - Coverage A

Subject to our Limits of Insurance, the most we will pay under Coverage A of this policy for coverage under A. above is:

\$10,000,000 Each Claim or Wrongful Act of the term that is used to determine the exhaustion of the limit of insurance in Primary Insurance

\$10,000,000 Aggregate

These Limits of Insurance are included within, and are not in addition to, the Each Occurrence Limit of Insurance and the Aggregate Limit of Insurance shown in our Declarations.

#### C. Notice of Claim - Coverage A

Notwithstanding anything to the contrary contained in this policy, notice of an Occurrence is not notice of a claim under that part of Coverage A which provides coverage on the basis of Claims-Made pursuant to this endorsement. All conditions of such Primary Insurance that require you to provide

Primary Insurers with notice of claims or Suits also apply separately and distinctly to us with respect to any claim or Suit which may reasonably be expected to result in a claim against this policy. You must give such notice to us on the same basis that you are to give notice to such Primary Insurer.

#### D. Extended Reporting Period - Coverage A

If a Primary Policy provides coverage for claims made under an Extended Reporting Period then Coverage A of this policy will provide an Extended Reporting Period in the same manner, subject to all of the following:

- 1. Our Extended Reporting Period under Coverage A of this policy will not reinstate or increase the Limits of Insurance of this policy or extend our Policy Period.
- 2. Our Extended Reporting Period will not be longer than twelve (12) months unless we expressly agree in writing at the time the Extended Reporting Period becomes effective.
- 3. If the Primary Policy requires you to make a written request in order for its Extended Reporting Period to apply to their policy, then:
  - a. We must also receive a written request from you for an Extended Reporting Period for our policy no later than sixty (60) days after the termination date of this policy.
  - b. If our Extended Reporting Period is for a period of more than sixty (60) days, you must promptly pay us any additional premium we require. The premium for our Extended Reporting Period will not exceed 200% of the annual premium of this policy if the Extended Reporting Period is for no

more than a twelve (12) month period, and will be deemed fully earned at the inception of the Extended Reporting Period.

#### E. Wrongful Acts Policy Exclusion

This policy does not apply to any liability arising out of any criminal, malicious, fraudulent, intentional, knowingly wrongful, or dishonest, act or omission by any person or organization whether or not an Insured. This exclusion applies even if the claim or Suit alleges negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by any Insured.

This exclusion does not apply to Excess Liability - Coverage A - to the extent that Primary Insurance is provided under a Directors and Officers liability policy shown in the Primary Schedule of Underlying Insurance.

#### F. Contractual Liability Limitation

This policy does not apply to any liability arising out of:

1. Any Insured's obligation to pay damages by reason of any Insureds assumption of the liability of another person or organization in any contract or agreement for the rendering of or failure to render any professional service; or
2. Any breach of any contract, agreement, warranty, guarantee or representation.



## **Fungi or Bacteria Exclusion - all states except New York - 100008**

The policy does not apply to:

- A. Any claims or liability arising, in whole or in part, out of, resulting from, caused by, or in any way related to "fungi" or bacteria; or
- B. The cost to test for, monitor, abate, mitigate, remove, dispose of or remediate "fungi" or bacteria.

This exclusion applies regardless of any other cause, event, material, product or building component that contributed concurrently or in any sequence to such liability. However, this exclusion does not apply to bacteria that is, is on, or contained in, a good or product intended for human ingestion.

"Fungi" is defined to include but is not limited to fungus, mildew, mold or resulting spores and byproducts, including mycotoxins or allergens. However, "fungi" does not include "fungi" for human ingestion.

## **State Amendatory Endorsement -100009**

The following State Amendatory Endorsement are included as applicable:

178830 10-03 AK - Alaska Amendatory  
178831 10-01 AR - Arkansas Amendatory  
178858 01-12 CA- California Amendatory  
178832 03-98R CO - Colorado Amendatory  
178833 03-98R CT - Connecticut Amendatory  
178834 03-98R DC - District of Columbia Amendatory  
178835 03-98R FL - Florida Amendatory  
178836 03-98R GA - Georgia Amendatory  
178383 10-02 IL - Illinois Amendatory  
178864 03-98R KS - Kansas Amendatory  
178868 10-03 KY - Kentucky Amendatory  
178533 10-02 LA - Louisiana Amendatory  
178838 03-98R ME - Maine Amendatory  
178839 10-01 MD - Maryland Amendatory  
178840 03-98R MI - Michigan Amendatory  
178841 10-03 MN - Minnesota Amendatory  
178842 03-98R MO - Missouri Amendatory  
178843 10-01 MT - Montana Amendatory  
178844 03-98R NE - Nebraska Amendatory  
178959 10-01 NV - Nevada Amendatory  
178845 10-03 NH - New Hampshire Amendatory  
178846 10-02 NJ - New Jersey Amendatory  
178859 10-03 NY - New York Amendatory  
178847 03-98R NC - North Carolina Amendatory  
178849 08-98R OH - Ohio Amendatory  
178850 03-98R OK - Oklahoma Amendatory  
178851 03-98R PA- Pennsylvania Amendatory  
178852 03-98R RI - Rhode Island Amendatory  
178861 03-98R SD - South Dakota Amendatory  
178543 10-02 TN - Tennessee Amendatory  
178386 10-02 TX - Texas Amendatory  
178973 10-01-UT - Utah Amendatory  
178854 07-12 VA - Virginia Amendatory  
178855 10-03R WA - Washington Amendatory  
178378 10-02 WI - Wisconsin Amendatory  
178857 03-98R WY - Wyoming Amendatory





## QBE - HARP Real Estate RPG Program Form Library

<b>Seq</b>	<b>Form Number</b>	<b>Description</b>
1	CL Jacket (03-20)	Policy Jacket
2	QBCX-7000	Notice - Offer of Terrorism Insurance Coverage
3	AMSXR-3002 (06-20)	Commercial Excess Liability Declarations
4	XS 70 00 09 11	Commercial Excess Liability Coverage Part
5	AMSXR-2002 (06-20)	Following The Form of Underlying General Aggregate Per Project or Per Location
6	AMSXR-2009 (06-20)	Certificate of Coverage Endorsement
7	AMSXR-2014 (06-20)	Underlying Claims Made Coverage
8	AMSXR-2005 (06-20)	Total Pollution Exclusion
9	AMSXR-2006 (06-20)	Exclusion - Employment Related Practice
10	AMSXR-2008 (06-20)	Nuclear Energy Liability Exclusion
11	AMSXR-2012 (06-20)	Exclusion - Violation of Statutes That Governs Recording and Distribution of Material
12	AMSXR-2013 (06-20)	Exclusion - War Exclusion
13	XS 70 65 09 11	Non-Stacking of Limits
14	XS 70 88 09 11	Exclusion - Asbestos (Total)
15	XS 70 95 09 11	Exclusion - Coverage in Violation of U.S. Economic or Trade Sanctions
16	XS 71 03 09 11	Exclusion - Known Loss
17	XS 71 20 09 11	Exclusion - Occupational Disease
18	XS 71 25 09 11	Exclusion - Professional Services Exclusion
19	XS 71 50 09 11	Exclusion Related to Contractors
20	IL 09 85 01 15	Disclose Pursuant to Terrorism Risk Insurance Act
21	AMSXR-2007 (06-20)	Cap on Losses from Certified Acts of Terrorism
22	AMSXR-5001 (06-20)	Delaware Changes - Cancellation and Nonrenewal
23	AMSXR-7002 (06-20)	Excess Liability Certificate of Coverage
24	AMSXR-7003 (06-20)	New Jersey Property and Liability Insurance Guaranty Association Surcharge (PLIGA)
	XS 71 15 09 11	Exclusion - Mold and Fungus
	XS 71 05 09 11	Exclusion - Lead
	XS 71 35 09 11	Exclusion - Silica
	XS 70 80 09 11	Exclusion - Aircraft Products and Grounding

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

### **EXCLUSION - KNOWN LOSS**

This insurance does not apply to, nor shall we have any duty to defend, "loss" in connection with any claim or suit made against an insured based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, claim or suit that has been the subject of any notice given prior to inception date of this policy to any insurer under any policy of insurance.

All other terms and conditions of this policy remain unchanged.

# EXHIBIT D



HARP INC.

**HARP, INC - Risk Purchasing Group**

**CERTIFICATE OF COVERAGE  
UMBRELLA AND EXCESS LIABILITY INSURANCE**

9954-7

HARP Inc. Risk Purchasing Group Member (Certificate Holder) and Mailing Address:  
Champlain Towers South Condominium Association, Inc.

8777 Collins Avenue MIAMI BEACH, FL 33154

Designated Location(s) and other Named Insured(s): See Schedule of Locations Form  
8777 Collins Avenue  
MIAMI BEACH, FL 33154

Coverage Period: 12/28/2020 to 12/28/2021  
12:01 a.m. Standard Time at the Mailing Address of Purchasing Group Member as stated herein.

**APPLICABLE LIMITS OF INSURANCE AND PARTICIPATING INSURERS:**

**COMBINED LIMIT OF LIABILITY:** \$15,000,000 EACH OCCURRENCE AND AGGREGATE AS APPLICABLE

**PARTICIPATING INSURANCE COMPANIES AND LIMITS:**

<b><u>LEAD INSURANCE</u></b>	<b><u>Policy#</u></b>	<b><u>Limit of Insurance</u></b>
Fireman's Fund Insurance	USL00656920U	\$10,000,000 Each Occurrence \$10,000,000 General Aggregate (where applicable) \$10,000,000 Products/Completed Operations

**EXCESS/UMBRELLA  
INSURANCE**

QBE Insurance	HRP2020	\$5,000,000 Each Occurrence and Aggregate Excess of \$10,000,000
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Each Occurrence and Aggregate  
Excess of

Harp, Inc. (Harp) a Purchasing Group formed in Delaware pursuant to the Liability Risk Retention of 1986 (as amended)(15 U.S.C. 3910 et. seq.) and Delaware Law. In connection with its risk purchasing group activities, Harp has appointed PG Administrators LLC (PG) to administer certain risk purchasing group operations of Harp and PG is paid an administration fee by for such services. Trivedi - Capacity Associates LLC (Trivedi) is the insurance agent through which PG currently purchases the insurance coverage for Harp's members and is an affiliate of PG.

ISSUE DATE: 12/28/2020

AUTHORIZED SIGNATURE:

12GAU100 (08/12)



HARP INC.

**HARP, INC - Risk Purchasing Group**

**Commercial Umbrella and Excess Liability  
Insurance  
Other Named Insureds Schedule**

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**Attached to and forming part of Certificate of Coverage Number:**

**For HARP, Inc. Purchasing Group Member:**

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**Item 1 of the Certificate of Coverage is amended to include the following as member (s).**

**Named Insured**

Champlain Towers South Condominium Association, Inc.



### **Schedule Of Underlying Insurance**

For the insured shown above, and subject to all the terms and conditions of Coverage/Excess Follow-Form Coverage A, this insurance follows form on to those coverages:

- which are indicated below by an X ; and
- for which policies of underlying insurance for at least the limits shown have been issued to and remain in force for such insured.



Commercial General Liability:  
\$1,000,000 Per Occurrence  
\$2,000,000 General Aggregate (per location if more than one location)  
\$1,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal & Advertising Injury

Carrier: James River Insurance Company  
Policy No: As Assigned by Carrier  
Policy Period: 12/28/2020 to 12/28/2021



Employee Benefits Liability:  
\$1,000,000 Per Claim  
\$1,000,000 Aggregate

Claims Made  
Retroactive Date:

**\*Note retroactive date is the same as the policy inception date**

Carrier:  
Policy No:  
Policy Period: Occurrence



Liquor Liability:  
\$1,000,000 Each Common Cause  
\$1,000,000 Aggregate

Carrier:  
Policy No:



Commercial Automobile Liability:  
\$1,000,000 Combined Single Limit

Carrier: James River Insurance Company  
Policy No: As Assigned by Carrier  
Policy Period: 12/28/2020 To 12/28/2021



Employers Liability:  
\$500,000 Each Accident  
\$500,000 Disease Policy Limit  
\$500,000 Disease Each Employee

Carrier: CNA  
Policy No: As Assigned by Carrier

☐ Garage Keeper Legal Liability:  
\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate

Carrier:  
Policy No:

☒ Directors & Officers: (Condo/Co-Op)  
\$1,000,000 Each Claim  
\$1,000,000 Aggregate Per Association (Defense in addition to the limit)

Carrier: Philadelphia  
Policy No: As Assigned by Carrier

The following Condition is added.

***Conditions***

***Continuation Of Coverage***

In the event that the policy to which this endorsement attaches is cancelled midterm, coverage as provided under this endorsement will remain in effect:

- for the benefit of the named insured shown above; and
- for the term of insured status shown above (and will not be renewed);

as if the first named insured's policy had not been cancelled, unless such named insured requests earlier cancellation of this endorsement.

All other terms and conditions remain unchanged.

\_\_\_\_\_

## Forms Schedule

The following policy forms and endorsements have been attached to and made a part of the policy at Inception:

Form Title	Form Number
<b>Policyholder Messages</b>	
Important Policy Notice Regarding Terrorism Coverage	380139 01 15
Important Notice Regarding the Terrorism Coverage Offered in this Quotation	380140 01 15
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<b>Umbrella Liability</b>	
The Fund Umbrella	5400 06 19
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Silica Particles Exclusion	178575 05 04 NY
Sublimited Primary Coverage Exclusion	178578 06 04
Disclosure of Premium and Estimated Premium for Certified Acts of Terrorism Coverage; Cap on Insurer Participation in Payment of Terrorism Losses (Pursuant NY to Terrorism Risk Insurance Act)	178587 01 15
Lead Exclusion	178771 03 98
Pollution - Absolute Exclusion - Coverage B	178789 10 01
Products-Completed Operations Hazard Exclusion - Coverage B	178792 03 98
Professional Services Exclusion	178794 04 13
Coverage Amendments	178874 04 13
Discrimination Liability Exclusion - Coverage B	178905 10 01
Personal and Advertising Injury Exclusion - Coverage B	178909 09 98
Abuse, Assault and Molestation Exclusion - Coverage B	178913 10 01
Intellectual Property Exclusion	178944 10 01
Designated Operations Exclusion	178947 10 01
Primary Insurance Restriction Endorsement Amendment Coverage B	178962 10 01
Coverage for Certified Acts of Terrorism	178993 01 15
Additional Policy Provisions	179020 04 13
Directors and Officers Exclusion - Coverage B	179032 04 13
Violation of Statutes Exclusion (E-Mails, Fax, Phone Calls or Other Methods of Recording or Distribution of Material or Information)	179033 05 09
Communicable Diseases and Viruses - Absolute Exclusion	179054 09 07

Harp, Inc.  
Policy No: USL00656920U



Fireman's Fund Insurance Company

Form Title	Form Number
Crisis Management Response Costs and Crisis Management Loss Coverage Extension Endorsement	179061 06 19 NY
Amendment - Limits of Insurance	100001
Policy Term Endorsement	100002
Non-Cumulation of Limits Endorsement	100003
Risk Purchasing Group - Program Manager	100004
Occupational or Environment Disease Exclusion	100005
Employment Practices Exclusion - Coverage A	100006
Claims Made Amendment and Exclusion	100007
Fungi or Bacteria Exclusion - all states except New York	100008
State Amendatory Endorsement	100009

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Company indicated on the Declarations Page of the policy has caused the policy to be signed by its President and Secretary.



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Secretary



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President

## Important Policy Notice Regarding Terrorism Coverage

### 380139 01 15

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You are hereby notified that this policy will apply with respect to a "certified act of terrorism", if coverage for such "certified act of terrorism" is provided by all scheduled **Primary Insurance** or **Underlying Insurance** that are subject to the Terrorism Risk Insurance Act, as amended.

As used in this message, "certified act of terrorism" means an act or acts that are certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, as amended, to be an act of terrorism pursuant to such Act, as amended ("The Act"). The criteria contained in The Act for a "certified act of terrorism" includes 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, as amended; and
2. The act resulted in damage:
  - a. Within the United States (including its territories and possessions and Puerto Rico); or
  - b. Outside the United States in the case of:
    - (1) An air carrier (as defined in Section 40102 of title 49, United States code) or United states flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States) regardless of where the loss occurs; or
    - (2) The premises of any United States mission; and
3. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act, as amended, exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, as amended, then 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.

If you have any questions, please contact your agent or broker.

## Important Notice Regarding the Terrorism Coverage Offered in this Quotation

### 380140 01 15

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You are hereby notified that under the Terrorism Risk Insurance Act, as amended ("The Act"), you have a right to purchase insurance coverage for losses arising out of certified acts of terrorism, as defined in Section 102(1) of The Act: The term "certified act of terrorism" means any act or acts that are certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, as amended, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property; or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

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

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURER'S LIABILITY FOR LOSSES RESULTING FROM **CERTIFIED ACTS OF TERRORISM** WHEN THE AMOUNT OF SUCH LOSSES IN ANYONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEEDS \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

This quotation includes an offer of coverage for losses due to certified acts of terrorism, as defined by The Act, and, if accepted, will be subject to the limit(s), terms and conditions of any policy subsequently issued. In addition, as with any other coverage under an umbrella policy, the scope of your coverage for terrorism is directly related to the coverage of your primary policy(ies). Our offer of certified acts of terrorism coverage is conditioned upon your acceptance and purchase of certified acts of terrorism coverage, as defined in The Act, for all policies of insurance which are scheduled in this policy as primary insurance for this policy that are subject to The Act. The quoted premium for this terrorism coverage is per attached quote.

In order to accept or reject this offer of certified acts of terrorism coverage for the premium stated above please do one of the following:

**To Reject this offer, do ALL of the following:**

- (1) Communicate your decision to your agent or broker; and
- (2) Mark the "Reject" option below, sign and date below, and return the originally signed document to the address specified below.

**To Accept this offer, you must do ALL of the following:**

- (1) Communicate your decision to your agent or broker;



- (2) Accept and purchase certified acts of terrorism coverage in all scheduled primary insurance policies that are subject to The Act; and
- (3) Pay the premium by the due date shown on your premium billing.

**WE STRONGLY RECOMMEND** that you contact your insurance agent prior to accepting this offer.

Please note that any coverage mandated by applicable Workers Compensation laws in your state will not be affected by your rejection below of terrorism coverage.

If you have any questions about this or any other insurance matter, please contact your agent or broker.

**TERRORISM COVERAGE ELECTION:**

I understand that this offer is conditional on my purchase of coverage for certified acts of terrorism, as defined in The Act, for all policies of insurance which are scheduled in this policy as primary insurance for this policy that are subject to The Act. I understand that if at a later time it is determined that any of the primary policies that are subject to The Act do not include coverage for certified acts of terrorism, as defined in The Act, then my election to accept this quote to purchase coverage for certified acts of terrorism, as defined in The Act, will be null and void. In that event, I also understand that the policy that I am purchasing will have no coverage for losses arising from certified acts of terrorism, as defined in The Act.

☐ I REJECT COVERAGE FOR LOSSES DUE TO CERTIFIED ACTS OF TERRORISM, AS DEFINED IN THE ACT.

Applicant:

Signature:

Title:

Date:

Insurance Company:

Please return to your agent or broker.

## New York Labor Law Section 240 and its Impact to Your Business

### 386626 10 13 NY

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New York Labor Law Section 240 places the *responsibility for worksite safety* on building owners, tenants and managers who hire contractors or service providers who erect, demolish, repair, alter, paint or clean a building or structure - generally anyone you hire to work on your premises. The law, commonly known as the 'Scaffold Statute', may impose strict liability to you for injuries sustained by contractors or service providers as a result of a fall from height or from falling objects on your premises.

Understanding the applicability of this law, common claim scenarios and best practices for mitigating the risk to you may impact the effectiveness of your overall risk management program and improve the availability and affordability of General Liability insurance coverage in the future.

Liability may be imposed regardless of whether the property owner, tenant or manager exercised any supervision or control over the injured worker at all. Furthermore, the law may not allow you to assert that the injured party was negligent themselves or assumed the risk of injury while on your property.

Because of the complexity of this law and the often severe nature of injuries when a fall from height or falling objects are involved, these claims or suits can often be costly to defend and ultimately pay. Examples of claims or suits subject to New York Labor Law Section 240:

- An employee of an electrical contractor you hire falls off of a ladder while rewiring light fixtures in your leased office building and suffers a brain injury.
- An artist you hire to paint a mural in your office lobby falls from the scaffolding and is seriously injured.
- An employee of a roofing company is injured when a co-worker tosses debris off of the roof while working on your retail complex.
- A technician dies after falling through a skylight while repairing your rooftop air conditioning system.

The allegation of liability in each of these claims was violation of New York Labor Law Section 240, even though the building owner or manager *did not directly supervise or control the worksite*.

#### **Best Practices for Managing Your Risk:**

Hiring licensed and experienced contractors and service providers paired with effective risk transfer protocols is the best foundation for managing the additional risk to your business in New York. The following best practices have proven useful in mitigating New York Labor Law exposure:

- Purchase adequate insurance limits. Even with risk transfer opportunities discussed below, claims or suits have historically been very costly. Consult with your agent on liability limits adequate to protect your assets.
- Hire only licensed contractors and service providers that provide you with evidence of both General Liability and Worker's Compensation insurance. Even seemingly low-hazard jobs, such as janitorial services, can result in injuries that may be subject to Section 240 of New York Labor Law.
- Require all contractors you hire to strictly follow all applicable OSHA and Department of Safety and Health regulations.
- **Transfer the Risk:** Use a written contract or purchase order before *any* work is performed on your property, regardless of how incidental. Since purchase orders generally do not have indemnification agreements, be sure to attach an addendum to the purchase order that indemnifies you and holds you harmless. The contract(s) you use should be reviewed by your attorney and may incorporate several or all of the following best practice approaches

#### Contract Language

- Include hold harmless and indemnification language in your favor and to the fullest extent of the law; avoid mutual hold harmless agreements.
- Include a "primary and non-contributory" clause meaning the contractor or service provider's insurance may apply first in the event of a claim or suit.
- Name you as "additional insured" on the contractor or service provider's General Liability insurance.

#### Insurance Limits and Coverage

- At a minimum, require \$1M per occurrence General Liability insurance limits. It's important to note however that damage from New York Labor Law based suits and claims have well exceeded \$1M, so higher limits are encouraged.
- The contractor's or service provider's General Liability insurance policy may include exclusions or limitations to coverage for the very exposure you are requiring additional insured coverage for. Coverage language that excludes or limits injury to "any employee of any insured," "employee action over" or similar language should be avoided. The existence of such exclusions may render your risk transfer ineffective in the event of a claim or suit from a worker injured on your premise. Prohibit this type of language in the General Liability insurance coverage you require from your contractor or service provider and ask for a list of endorsements contained in their policy.

#### Contract Management

- Have a diary system to ensure that your contractor's or service provider's Worker's Compensation and General Liability insurance does not lapse.
- If you own or manage several properties, consider centralizing all contract management and insurance certificate reviews.

As a New York building owner, manager or tenant, you cannot completely avoid the strict liability components of New York Labor Law Section 240, but you can mitigate their impact on your business. For more information about how to manage your business risk, please contact your agent.

This publication provides general information and recommendations that may apply to many different situations or operations. Any recommendations described in this publication are not intended to be specific to your unique situation or operation and are not intended to address all possible hazardous conditions or unsafe acts that may exist. Consult with your staff and specialists to determine how and whether the information in this publication might guide you in developing specific plans or procedures for your situation or operations. This publication does not substitute for legal advice, which should come from your own counsel.

## Policyholder Message

386636 08 17

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### Important Information for Policyholders

If you have questions about your policy, please contact your independent agent or broker. If you have additional questions, you can contact the company issuing the policy listed on your Declarations page at the following address:

Allianz Global Risks US Insurance Company  
225 W. Washington Street, Suite 1800  
Chicago, IL 60606-3484

Toll Free Telephone: 1-(888) 466-7883

Toll Free Telephone for Claims: 1-(800) 870-8857

Website: <http://www.agcs.allianz.com/>

Website Address for Support Services: <http://www.agcs.allianz.com/global-offices/united-states/support-services/>

The information above supersedes any other Company contact information you may have received with your policy.

## Umbrella Liability Coverage Section - Declarations

- These Declarations, together with the Common Policy Declarations, Schedule of Primary Insurance, Coverage Form(s) and any Endorsement(s), complete this policy.
- 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.

### The Fund Umbrella® (5400 06 19)

#### Limits of Insurance

Description of Limits	Limit of Insurance
Each Occurrence	\$ 10,000,000
Aggregate	\$ 10,000,000

#### Endorsements Completed in the Declaration

#### Designated Operations Exclusion (178947 10 01)

Description of Operations
Any construction and/or development, with the exception of alteration or renovation operations and/or maintenance or repair operations. This exception does not apply to any structural alteration that involves changing the size of, or any demolishing or moving of any building or other structure.

## Quick Reference

### The Fund Umbrella®

### 5400 06 19

This insurance is provided by one of Allianz Global Risks US Insurance Companies as shown on the Declarations Page. Our mailing address is: 225 W. Washington Street Suite 1800 Chicago, IL 60606.

At inception, The Fund Umbrella policy consists of: the Declarations, The Fund Umbrella policy form, and the endorsements listed on the Declarations.

BEGINNING ON PAGE

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Read the entire policy carefully to determine rights, duties and what is and is not covered.

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 are boldfaced have special meaning. Refer to the DEFINITIONS and WHO IS AN INSURED sections.

By accepting this policy, you agree that:

1. The statements in the Declarations and Application are your agreements and representations;
2. Those statements are accurate and complete;
3. This policy is issued and continued in reliance upon the truth of those representations; and
4. This policy contains all agreements existing between you, us, and our agents, relating to this insurance.

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## SECTION I. EXCESS LIABILITY - COVERAGE A

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### A. COVERAGE A - INSURING AGREEMENT

1. We will pay on behalf of any **Insured** those sums in excess of **Primary Insurance** that any **Insured** becomes legally obligated to pay as damages or a **Covered Pollution Cost or Expense** provided that such damages and **Covered Pollution Cost or Expense**:
  - a. Are covered by **Primary Insurance**;
  - b. Arise from injury or damage that occurs, or from an offense committed, during our Policy Period; and
  - c. Take place anywhere in the world.
2. The terms and conditions of **Primary Insurance** apply to Coverage A, unless they are inconsistent with any provision of this policy.
3. The amount we will pay is limited as described in Limits of Insurance.
4. a. Subject to Section I.B. and Section I.E.5., we will only pay defense expenses we incur in addition to the applicable Limits of Insurance.
- b. If we are prevented by law from investigating or settling any claim or defending any **Insured** against any **Suit**, we will pay any expense incurred by any **Insured** with our consent.

### B. COVERAGE A - WHEN WE WILL HAVE A DUTY TO DEFEND

1. We will have the right and duty to defend any **Insured** against any **Suit** seeking damages or a **Covered Pollution Cost or Expense** to which Coverage A applies but only:
  - a. After the applicable limits of insurance of **Primary Insurance** and **Other Insurance** cease to apply because of exhaustion by the payment of judgments or settlements, or because of exhaustion by the payment of defense expenses by the terms of that policy; and
  - b. If no **Other Insurance** affording a defense or indemnity against such a **Suit** is available to any **Insured**. We will pay only those defense expenses we incur.
2. We have the right but not the duty, to associate with **Primary Insurers** in the defense and control of any **Occurrence**, claim or **Suit** to which we think Coverage A may apply.
3. At our discretion we may:
  - a. Investigate any **Occurrence**, claim or **Suit**; or
  - b. Settle any claim or **Suit**.
4. We have no duty to defend any **Insured** against any **Suit** seeking damages or a **Covered Pollution Cost or Expense**:
  - a. To which Coverage A does not apply;

- b. After our applicable Limits of Insurance have been exhausted by the payment of judgments or settlements, or exhausted by the payment of defense expenses or reimbursements in the same manner as the terms of **Primary Insurance** or **Other Insurance**; or
- c. To which **Primary Insurance** or **Other Insurance**, by its terms, has no duty to defend provided that such **Primary Insurance** or **Other Insurance** does not defend for reasons other than the exhaustion of its limits of insurance.

## C. COVERAGE A - EXCLUSIONS

Coverage A of this policy does not apply:

1. **ASBESTOS** - To any liability arising, in whole or in part, out of or in any way related to **Asbestos**.
2. **E.R.I.S.A.** - To any liability of any **Insured** under, or any claim based upon:
  - a. The Employees' Retirement Income Securities Act (E.R.I.S.A.) of 1974 and any amendment thereto; or
  - b. Similar provisions of any federal, state, or local statutory law or common law.
3. **WORKERS COMPENSATION AND SIMILAR LAWS** - To any obligation of any **Insured** under a Law of:
  - a. Workers compensation;
  - b. Disability benefits;
  - c. Unemployment compensation; or
  - d. Any similar law.
4. **POLLUTION**
  - a. To any liability arising out of the actual, alleged or threatened, discharge, dispersal, seepage, migration, release or escape of **Pollutants**:
    - (1) At or from any premises, site or location which is or was at any time:
      - (a) Owned or occupied by; or
      - (b) Rented or loaned to;
 any **Insured**;
    - (2) At or from any premises, site or location which is or was at any time used by or for:
      - (a) Any **Insured**; or
      - (b) Others;
 for the handling, storage, disposal, processing or treatment of waste;
    - (3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
      - (a) Any **Insured**; or
      - (b) Any person or organization for whom you may be legally responsible;
    - (4) At or from any premises, site or location on which any **Insured**, or any contractors or subcontractors working directly or indirectly on any **Insured's** behalf are performing operations:
      - (a) If the **Pollutants** are brought on or to such premises, site or location, in connection with such operations by such **Insured**, contractor or subcontractor; or
      - (b) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **Pollutants**;
    - (5) That are, or that are contained in, any property that is:
      - (a) Being transported or towed by, handled or handled for movement into, onto or from; any auto covered by **Primary Insurance**;
      - (b) Otherwise in the course of transit by or on behalf of any **Insured**; or



- (c) Being stored, disposed of, treated or processed, in or upon any auto covered by **Primary Insurance**; or
- (6) (a) Before the **Pollutants**, or any property in which the **Pollutants** are contained, are moved from the place where they are accepted by any **Insured** for movement into or onto any auto covered by **Primary Insurance**; or
  - (b) After the **Pollutants**, or any property in which the **Pollutants** are contained, are moved from any auto covered by **Primary Insurance** to the place where they are finally delivered, disposed of or abandoned by any **Insured**.
- b. To any loss, cost or expense arising out of any:
  - (1) Request, demand, order or statutory or regulatory requirement that any **Insured** or others:
    - (a) Test for, monitor, clean up, remove, contain, treat, detoxify or neutralize; or
    - (b) In any way respond to, or assess the effects of; **Pollutants**; or
  - (2) Claim or suit by or on behalf of a governmental authority for damages because of:
    - (a) Testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing; or
    - (b) In any way responding to, or assessing the effects of; **Pollutants**.

This subsection 4.b. does not apply to:

- (1) A **Covered Pollution Cost or Expense** to which Coverage A applies; or
- (2) Liability for damages because of property damage that the **Insured** would have in the absence of such request, demand or order or statutory or regulatory requirement, or such claim or **Suit** by or on behalf of a governmental authority.
- c. (1) **HOSTILE FIRE** - Subsections a.(1) and a.(4)(a) above do not apply to bodily injury or property damage arising out of heat, smoke or fumes from a **Hostile Fire**.
- (2) **MOBILE EQUIPMENT FUELS** - Subsection a.(4)(a) above does not apply to bodily injury or property damage arising out of the escape of fuels, lubricants, or other operating fluids, which are needed to perform the normal electrical, hydraulic, or mechanical functions necessary for the operation of **Mobile Equipment** or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them.

This exception does not apply if:

- (a) The fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released; or
- (b) Such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged or released as part of the operations being performed by such **Insured**, contractor or subcontractor.
- (3) **AUTO FUELS** - Subsection a.(5) above does not apply to fuels, lubricants, fluids, exhaust gasses or other similar **Pollutants**, that are needed for or result from the normal electrical, hydraulic or mechanical functioning of any auto or its parts, covered by **Primary Insurance** if:
  - (a) The **Pollutants** escape, seep, migrate, or are discharged, dispersed or released directly from an auto part designed by its manufacturer to hold, store, receive or dispose of such **Pollutants**; and
  - (b) The bodily injury, property damage or **Covered Pollution Cost or Expense** does not arise out of the operation of any equipment listed in subsections 6.(b) and (c) of definition J. of **Mobile Equipment**, under SECTION VI. DEFINITIONS.

- (4) **AUTO UPSET/OVERTURN/DAMAGE** - Subsection a.(6) above does not apply to **Occurrences** that occur away from premises owned by or rented to any **Insured** with respect to **Pollutants** not in or upon any auto covered by **Primary Insurance** if:
  - (a) The **Pollutants** or any property in which the **Pollutants** are contained are upset, overturned or damaged as a result of the maintenance or use of any auto covered by **Primary Insurance**; and
  - (b) The discharge, dispersal, seepage, migration, release or escape of the **Pollutants** is caused directly by such upset, overturn or damage.
- (5) **PRODUCTS/COMPLETED OPERATIONS** - Subsection a. above does not apply to bodily injury or property damage included within the products-completed operations hazard provided that your product or your work has not at any time been:
  - (a) Discarded, dumped, abandoned, thrown away; or
  - (b) Treated or handled as waste; by anyone.
- (6) **BUILDING HEATING EQUIPMENT** - Subsection a.(1) above does not apply to bodily injury if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building.
- (7) **PESTICIDE OR HERBICIDE APPLICATOR** - With respect to pesticide or herbicide application by any **Insured**, subsection a.(4)(a) above does not apply if the operations meet all standards of any statute, ordinance, regulation or license requirement of any federal, state or local government which apply to those operations.
- (8) **CONTRACTORS** - subsection a.(1) above does not apply to bodily injury or property damage for which you may be held liable if:
  - (a) You are a contractor; and
  - (b) The owner or lessee of such premises, site or location has been added to this policy as an additional **Insured** with respect to your ongoing operations performed for that additional **Insured** at that premises, site or location; and
  - (c) Such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any **Insured**, other than the owner or lessee of that premises who has been added to the policy as an additional **Insured**.
- (9) **MATERIALS** - Subsection a.(4)(a) above does not apply to bodily injury or property damage sustained within a building and caused by the release of gasses fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor.
- 5. **EMPLOYMENT PRACTICES** - To any liability arising out of any employment-related or personnel practices, policies, acts or omissions. This includes, but is not limited to:
  - a. Refusal to employ;
  - b. Termination of employment;
  - c. Coercion, criticism, demotion, failure to promote, evaluation, reassignment, discipline, defamation, self-defamation, harassment, humiliation, discrimination, libel, slander, false arrest and imprisonment, or violation of a person's right of privacy; or
  - d. Any consequential injury or damages as a result of a., b. or c. above.

This exclusion applies:

  - a. To all claims, demands, charges, complaints or **Suits** by any person(s) or organization(s) for damages because of such injury or liability, including damages for care and loss of services;

- b. Whether any Insured may be held liable as an employer or in any other capacity either directly or indirectly related to employment; and
  - c. To any obligation to share damages with or repay someone else who must pay damages because of such injury or liability.
6. **WAR** - To any liability arising, directly or indirectly, out of:
- a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### D. COVERAGE A - WHO IS AN INSURED

Each of the following is an Insured under Coverage A:

- 1. **NAMED INSURED** - Any person or organization shown in the Named Insured section of our Declarations.
- 2. **NEWLY ACQUIRED OR FORMED ORGANIZATIONS** - Any organization you newly acquire or form during our Policy Period. However, Coverage A does not apply to any injury, damage or Occurrence, which took place or was committed before you acquired or formed the organization.
- 3. **PERSONS OR ORGANIZATIONS INSURED IN PRIMARY POLICIES** - Any person or organization that is an insured in **Primary Policies**. However, any person or organization that becomes an insured in **Primary Policies** after the inception date of our policy is an **Insured** under Coverage A of our policy only if, prior to the time of an **Occurrence**, you agreed in a written contract to provide such insurance as is afforded by Coverage A of this policy.

#### E. COVERAGE A - LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the terms below fix the most we will pay regardless of the number of:
  - a. Coverages provided by this policy;
  - b. **Insureds**;
  - c. Claims made or **Suits** brought; or
  - d. Persons or organizations making claims or bringing **Suits**.
- 2. **OCCURRENCE LIMIT**
  - a. The "each occurrence" limit shown in our Declarations is the most we will pay under Coverages A and B combined, for the sum of damages and **Covered Pollution Cost or Expense** arising out of any one **Occurrence**.  
  
Any amount we pay for damages or a **Covered Pollution Cost or Expense** arising out of an **Occurrence** will reduce or exhaust the amount of our applicable aggregate Limit of Insurance available for payment of damages or a Covered Pollution Cost or Expense arising out of any other Occurrence.
  - b. Coverage A applies only in excess of the Limit of Insurance shown in our Schedule of Primary Insurance. But if a **Primary Policy** has a limit of insurance:
    - (1) Greater than the amount shown, our policy applies excess of the greater amount; or
    - (2) Less than the amount shown, our policy applies excess of the amount shown in our Schedule.
  - c. If the limit of insurance of a **Primary Policy** is:
    - (1) Reduced; or
    - (2) Exhausted;
 by payment of judgments or settlements arising out of **Occurrences**, Coverage A will apply in excess of such reduced or exhausted limit of insurance.

3. **SAME BASIS AGGREGATE LIMIT** - The Limit of Insurance shown in our Declarations as "aggregate" is the most we will pay under Coverage A for the sum of damages and **Covered Pollution Cost or Expense**. Our aggregate limit will apply only when a **Primary Policy** applies an aggregate limit, and will apply on the same basis as a **Primary Policy**.
4. **POLICY PERIOD EXTENSIONS** - The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the Policy Period shown in the Declarations. However, if we extend our Policy Period after this policy is issued, we will consider the additional period as part of the last preceding annual period for purposes of determining the Limits of Insurance.
5. **SAME BASIS DEFENSE EXPENSES** - If the limits of insurance of any **Primary Policy** or **Other Insurance** are reduced by defense expenses by the terms of that policy then any defense expense payments we make to defend any **Insured** or reimbursements we make to any **Insured** for defense expenses will reduce our applicable Limits of Insurance in the same manner.

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## SECTION II. UMBRELLA LIABILITY - COVERAGE B

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### A. COVERAGE B - INSURING AGREEMENT

1. We will pay on behalf of any **Insured** those sums that any **Insured**:
  - a. Becomes legally obligated to pay as damages because of **Bodily Injury** or **Property Damage**, but only if:
    - (1) The **Bodily Injury** or **Property Damage** occurs during our Policy Period;
    - (2) The **Bodily Injury** or **Property Damage** is caused by an **Occurrence**; and
    - (3) Prior to the Policy Period, no **Insured**, and no **Employee** authorized by you to give or receive notice of an **Occurrence** or claim, knew that the **Bodily Injury** or **Property Damage** had occurred, in whole or in part. If such an **Insured** or authorized **Employee** knew, prior to the Policy Period, that the **Bodily Injury** or **Property Damage** occurred, then any continuation, change or resumption of such **Bodily Injury** or **Property Damage** during or after the Policy Period will be deemed to have been known prior to the Policy Period.

However, under this subsection A.1.a.:

- (1) **Bodily Injury** or **Property Damage** which occurs during the Policy Period and was not, prior to the Policy Period known to have occurred by any **Insured** or by any **Employee** authorized by you to give or receive notice of an **Occurrence** or claim, includes any continuation, change or resumption of that **Bodily Injury** or **Property Damage** after the end of the Policy Period.
- (2) **Bodily Injury** or **Property Damage** will be deemed to have been known to have occurred at the earliest time when any **Insured**, or any **Employee** authorized by you to give or receive notice of an **Occurrence** or claim:
  - (a) Reports all, or any part, of the **Bodily Injury** or **Property Damage** to us or any other insurer;
  - (b) Receives a written or verbal demand or claim for damages because of the **Bodily Injury** or **Property Damage**; or
  - (c) Becomes aware by any other means that **Bodily Injury** or **Property Damage** has occurred or has begun to occur.
- b. Becomes legally obligated to pay as damages because of **Personal and Advertising Injury** but only if:
  - (1) Caused by an offense arising out of your business; and
  - (2) The offense was committed during our Policy Period.

The Policy Period for this policy may be comprised of more than one consecutive annual period.

However, whether or not this policy of insurance applies to more than one consecutive annual period

the most we will pay for all damages for **Personal and Advertising Injury** arising out of an offense committed during one annual period is the Limits of Insurance available under that one annual period. This provision applies even if the **Personal and Advertising Injury** which arises from an offense committed during one annual period continues or progressively deteriorates into a subsequent annual period(s).

2. Coverage B does not apply to any claim or **Suit**:
  - a. Which is covered by **Primary Insurance** or Coverage A of this policy; or
  - b. Which would have been covered by **Primary Insurance** or Coverage A of this policy except for the exhaustion of the limits of such insurance.
3. Damages because of **Bodily Injury** include damages claimed by any person or organization for care, loss of services or death resulting at any time from the **Bodily Injury**.
4. Coverage B applies anywhere in the world.
5. The amount we will pay is limited as described in Limits of Insurance.
6.
  - a. Subject to Section 11.B . and Section 11. E. 5., we will only pay defense expenses we incur in addition to the applicable Limits of Insurance.
  - b. If we are prevented by law from investigating or settling any claim or defending any **Insured** against any **Suit**, we will pay any expense incurred by any **Insured** with our consent.

#### **B. COVERAGE B - WHEN WE WILL HAVE A DUTY TO DEFEND**

1. We will have the right and duty to defend any **Insured** against any **Suit**, seeking damages to which Coverage B applies, but only:
  - a. If Coverage A or **Primary Insurance** does not apply or owe a duty of defense against such a **Suit**; and
  - b. If no **Other Insurance** affording a defense or indemnity against such a **Suit** is available to any **Insured**.

We will pay only those defense expenses we incur.
2. We have the right but not the duty, to associate with **Other Insurance** insurers in the defense and control of any **Occurrence**, claim or **Suit** to which we think Coverage B may apply.
3. At our discretion we may:
  - a. Investigate any **Occurrence**, claim or **Suit**; and
  - b. Settle any claim or **Suit**.
4. We have no duty to defend any **Insured** against any **Suit** seeking damages:
  - a. To which Coverage B does not apply;
  - b. After our applicable Limits of Insurance have been exhausted by the payment of judgments or settlements, or exhausted by the payment of defense expenses in the same manner as the terms of **Other Insurance**; or
  - c. To which any **Other Insurance**, by its terms, has no duty to defend provided that such **Other Insurance** does not defend for reasons other than the exhaustion of its limits of insurance.

#### **C. COVERAGE B - EXCLUSIONS**

Coverage B of this policy does not apply:

1. **AIRCRAFT** - To any liability arising out of the ownership, maintenance, operation, use, entrustment to others, loading or unloading of any aircraft:
  - a. Owned, leased, hired, rented or borrowed by or on behalf of you; or
  - b. Chartered without crew by or on behalf of you.

This exclusion:

- a. Applies even if the claims against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Insured**; and
- b. Does not apply to liability assumed under an **Insured Contract**.

2. **PERSONAL AND ADVERTISING INJURY - To Personal and Advertising Injury:**

- a. Caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **Personal and Advertising Injury**.
- b. Arising out of oral or written publication of material, if done by or at the direction of the **Insured** with knowledge of its falsity.
- c. Arising out of oral or written publication of material whose first publication took place before the beginning of the Policy Period.
- d. Arising out of a criminal act committed by or at the direction of the **Insured**.
- e. Arising out of a breach of contract, except an implied contract to use another's advertising idea in your **Advertisement**.
- f. Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your **Advertisement**.
- g. Arising out of the wrong description of the price of goods, products or services stated in your **Advertisement**.
- h. Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. However, this exclusion does not apply to infringement, in your **Advertisement**, of copyright, trade dress or slogan.
- i. Committed by an **Insured** whose business is:
  - (1) Advertising, broadcasting, publishing or telecasting;
  - (2) Designing or determining content of web-sites for others; or
  - (3) An internet search, access, content or service provider.

However, this exclusion i. does not apply to subsections 1., 2. and 3. of definition N. Personal and Advertising Injury, under SECTION VI. DEFINITIONS.

For the purposes of this exclusion i., the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

- j. Arising out of an electronic chatroom or bulletin board the **Insured** hosts, owns, or over which the **Insured** exercises control.
  - k. Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.
3. **ASBESTOS - To any liability arising, in whole or in part, out of or in any way related to Asbestos.**
4. **CONTRACTUAL LIABILITY - To any liability for which any Insured is obligated to pay damages by reason of the assumption of liability in any contract or agreement. This exclusion does not apply to liability for damages:**
- a. Assumed in a contract or agreement that is an **Insured Contract**, provided the **Bodily Injury, Personal and Advertising Injury or Property Damage** occurs after the execution of the contract or agreement; or
  - b. That the **Insured** would have in the absence of the contract or agreement.
5. **DAMAGE TO INSURED'S PROPERTY - To Property Damage to property of one Insured in the care, custody or control of another Insured.**
6. **DAMAGE TO YOUR PRODUCT OR WORK - To Property Damage to:**
- a. **Your Product** arising out of it or any part of it; or



- b. **Your Work** arising out of it or any part of it and included in the **Products-Completed Operations Hazard**. This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- 7. **EMPLOYMENT PRACTICES** - To any liability arising out of any employment-related or personnel practices, policies, acts or omissions. This includes, but is not limited to:
  - a. Refusal to employ;
  - b. Termination of employment;
  - c. Coercion, criticism, demotion, failure to promote, evaluation, reassignment, discipline, defamation, self-defamation, harassment, humiliation, discrimination, libel, slander, false arrest or imprisonment, and violation of a person's right of privacy; or
  - d. Any consequential injury or damages as a result of a., b. or c. above.

This exclusion applies:

  - a. To all claims, demands, charges, complaints or **Suits** by any person(s) or organization(s) for damages because of such injury or liability, including damages for care and loss of services;
  - b. Whether any **Insured** may be held liable as an employer or in any other capacity either directly or indirectly related to employment; and
  - c. To any obligation to share damages with or repay someone else who must pay damages because of such injury or liability.
- 8. **E.R.I.S.A.** - To any liability of any **Insured** under, or any claim based upon:
  - a. The Employees' Retirement Income Securities Act (E.R.I.S.A.) of 1974 and any amendment thereto; or
  - b. Similar provisions of any federal, state, or local statutory law or common law.
- 9. **EXPECTED OR INTENDED** - To **Bodily Injury or Property Damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **Bodily Injury or Property Damage** which results from the use of reasonable force to protect persons or property.
- 10. **IMPAIRED PROPERTY** - To **Property Damage to Impaired Property** or property that has not been physically injured arising out of:
  - a. A defect, deficiency, inadequacy or dangerous condition in **Your Product or Your Work**; or
  - b. A delay or failure by any **Insured** or anyone acting on any **Insured's** behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **Your Product or Your Work** after it has been put to its intended use.
- 11. **WAR** - To any liability arising, directly or indirectly, out of:
  - a. War, including undeclared or civil war;
  - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- 12. **POLLUTION**
  - a. To any liability arising out of the actual, alleged or threatened, discharge, dispersal seepage, migration, release or escape of **Pollutants**:
    - (1) At or from any premises, site or location which is or was at any time:
      - (a) Owned or occupied by; or
      - (b) Rented or loaned to;

any **Insured**;

- (2) At or from any premises, site or location which is or was at any time used by or for:
  - (a) Any **Insured**; or
  - (b) Others;
 for the handling, storage, disposal, processing or treatment of waste;
- (3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - (a) Any **Insured**; or
  - (b) Any person or organization for whom you may be legally responsible; or
- (4) At or from any premises, site or location on which any **Insured**, or any contractors or subcontractors working directly or indirectly on any **Insured's** behalf are performing operations:
  - (a) If the **Pollutants** are brought on or to such premises, site or location, in connection with such operations by such **Insured**, contractor or subcontractor; or
  - (b) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**;
- (5) That are, or that are contained in, any property that is:
  - (a) Being transported or towed by, handled, or handled for movement into, onto, or from, any **Auto** covered by Coverage B;
  - (b) Otherwise in the course of transit by or on behalf of any **Insured**; or
  - (c) Being stored, disposed of, treated or processed in or upon any **Auto** covered by Coverage B;
- (6) (a) Before the **Pollutants** or any property in which the **Pollutants** are contained are moved from the place where they are accepted by any **Insured** for movement into or onto any **Auto** covered by Coverage B; or
  - (b) After the **Pollutants** or any property in which the **Pollutants** are contained are moved from any **Auto** covered by Coverage B to the place where they are finally delivered, disposed of or abandoned by any **Insured**.

b. To any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any **Insured** or others:
  - (a) Test for, monitor, clean up, remove, contain, treat, detoxify or neutralize; or
  - (b) In any way respond to, or assess the effects of;

**Pollutants**; or

- (2) Claim or suit by or on behalf of a governmental authority for damages because of:
  - (a) Testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing; or
  - (b) In any way responding to, or assessing the effects of;

**Pollutants.**

This subsection 12.b. does not apply to liability for damages because of **Property Damage** that the **Insured** would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or **Suit** by or on behalf of a governmental authority.

- c. **HOSTILE FIRE** - Subsections a.(1) and a.(4)(a) above do not apply to **Bodily Injury or Property Damage** arising out of heat, smoke or fumes from a **Hostile Fire**.



13. **RECALL OF PRODUCTS** - To damages claimed for any loss, cost or expense incurred by any **Insured** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
  - a. **Your Product;**
  - b. **Your Work;** or
  - c. **Impaired Property;**
 if such product, work or property is withdrawn or recalled:
  - a. From the market; or
  - b. From use;
 by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.
14. **WORKERS COMPENSATION AND SIMILAR LAWS** -To any obligation of any **Insured** under a law of:
  - a. Workers compensation;
  - b. Disability benefits;
  - c. Unemployment compensation; or
  - d. Any similar laws.

#### **D. COVERAGE B - WHO IS AN INSURED**

1. Each of the following is an **Insured** under Coverage B:
  - a. **NAMED INSURED**-Any person or organization shown in the Named Insured section of our Declarations and:
    - (1) If you are an individual, you and your spouse are **Insureds**, but only with respect to the conduct of a business of which you are the sole owner.
    - (2) If you are a partnership or joint venture, you, your members, your partners and their spouses are **Insureds**, but only with respect to the conduct of your business.
    - (3) If you are a limited liability company, your members are **Insureds**, but only with respect to the conduct of your business. Your managers are **Insureds**, but only with respect to their duties as your managers.
    - (4) If you are an organization other than a partnership, joint venture or limited liability company, your executive officers and directors are **Insureds**, but only with respect to their duties as your officers or directors. Your stockholders are **Insureds**, but only with respect to their liability as stockholders.
    - (5) If you are a trust, your trustees are **Insureds**, but only with respect to their duties as trustees.
  - b. **NEWLY ACQUIRED OR FORMED ORGANIZATIONS** - Any organization you acquire or form during our Policy Period other than a partnership, joint venture or limited liability company. But Coverage B applies only:
    - (1) If you maintain majority ownership or majority interest in such organization; and
    - (2) To an injury, damage or **Occurrence**, that took place or was committed after you acquired or formed the organization.
  - c. **SUBSIDIARIES** - Any subsidiary you wholly own, either directly or indirectly, at the inception of our policy.
  - d. **REAL ESTATE MANAGERS** - Any person or any organization while acting as your real estate manager.
  - e. **CUSTODIANS** - Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and

- (2) Until your legal representative has been appointed.
- f. **LEGAL REPRESENTATIVES**-Your legal representative if you die, but only with respect to their duties as such.
- g. Your **Volunteer Workers** but only while performing duties related to the conduct of your business, or your **Employees**, other than:
  - (1) Your **Executive Officers** (if you are an organization other than a partnership, joint venture or limited liability company); or
  - (2) Your managers (if you are a limited liability company);
 are **Insureds**, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these **Employees** or **Volunteer Workers** are **Insureds** for injury:

- (a) To you;
  - (b) To your partners or members (if you are a partnership or joint venture);
  - (c) To your members (if you are a limited liability company);
  - (d) To a **co-Employee** while in the course of his or her employment or performing duties related to the conduct of your business;
  - (e) To your other **Volunteer Workers** while performing duties related to the conduct of your business;
  - (f) To the spouse, child, parent, brother or sister of that **co-Employee** or **Volunteer Worker** as a consequence of subsections (a) through (e) above;
  - (g) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in subsections (a) through (f) above; or
  - (h) Arising out of his or her providing or failing to provide professional health care services.
2. The following persons and organizations are not **Insureds** under Coverage B:
- No person or organization is an **Insured** with respect to the conduct of any current, past or newly acquired or formed:
- a. Partnership;
  - b. Joint venture; or
  - c. Limited liability company;
- that is not shown as a **Named Insured** in our Declarations.

## E. COVERAGE B - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the terms below fix the most we will pay regardless of the number of:
  - a. Coverages provided by this policy;
  - b. **Insureds**;
  - c. Claims made or **Suits** brought; or
  - d. Persons or organizations making claims or bringing **Suits**.
2. **OCCURRENCE LIMIT** - The "each occurrence" limit shown in our Declarations is the most we will pay under Coverages A and B combined, for the sum of damages and **Covered Pollution Cost or Expense** arising out of any one **Occurrence**.
 

Any amount we pay for damages or **Covered Pollution Cost of Expense** arising out of an **Occurrence** will reduce or exhaust the amount of our applicable aggregate Limit of Insurance available for payment of damages or **Covered Pollution Cost or Expense** arising out of any other **Occurrence**.

3. **AGGREGATE LIMIT** - The Limit of Insurance shown in our Declarations as "aggregate" is the most we will pay under Coverage B, and applies separately for each of the following:
  - a. **GENERAL AGGREGATE** - Our aggregate limit is the most we will pay for the sum of damages except for damages under subsections b. and c. below.
  - b. **PRODUCTS AND COMPLETED OPERATIONS AGGREGATE** - Our aggregate limit is the most we will pay for damages included in the **Products-Completed Operations Hazard**.
  - c. **OCCUPATIONAL DISEASE AGGREGATE** - Our aggregate limit is the most we will pay for damages arising out of injury by disease to your officers or **Employees**.
4. **POLICY PERIOD EXTENSIONS** - The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the Policy Period shown in the Declarations. However, if we extend our Policy Period after this policy is issued, we will consider the additional period as part of the last preceding period for purposes of determining the Limits of Insurance.
5. **SAME BASIS DEFENSE EXPENSES** - If the limits of Insurance of any **Primary Insurance or Other Insurance** are reduced by defense expenses by the terms of that policy then any defense expense payments we make to defend any **Insured** will reduce our applicable Limits of Insurance in the same manner.

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### SECTION III. SUPPLEMENTARY PAYMENTS

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When we have the duty under this policy to defend any **Insured** against any **Suit**, we will pay the following expenses in addition to our Limit of Insurance to the extent that they are not covered by **Primary Insurance or Other Insurance** by the terms of that insurance:

1. Costs taxed against any **Insured** in the **Suit**.
2. Up to \$2000 for cost of bail bonds required. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within our applicable Limit of Insurance. We do not have to furnish these bonds.
4. Reasonable expenses incurred by any **Insured** when we request the **Insured** to assist us in the investigation of the claim or defense of the **Suit**. This includes actual loss of earnings up to \$500 a day, because of time off from work.
5. Prejudgment interest awarded against any **Insured** on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance we will not pay any prejudgment interest based on that period of time after the offer.
6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our applicable Limit of Insurance.

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### SECTION IV. CONDITIONS

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- A. **APPEALS** - If any **Primary Insurer** elects not to appeal a judgment in excess of the amount of the **Primary Insurance or Other Insurance**, we may elect to appeal. If we appeal, we will pay the expenses of such appeal. Such payments will not reduce our Limits of Insurance.
- B. **BANKRUPTCY**
  1. Bankruptcy or insolvency of any **Insured or Insured's** estate does not relieve us of our obligations under this policy.
  2. If any **Primary Insurer** becomes bankrupt or insolvent, this policy:
    - a. Does not replace such **Primary Insurance**; and

- b. Applies as though such **Primary Insurance** were available and collectible.

### C. CANCELLATION

1. The **First Named Insured** may cancel this policy by mailing or delivering advance written notice to us, or the agent or broker of record. The Policy Period will end on the effective date requested.
2. We may cancel this policy by mailing by first class or certified mail to the **First Named Insured** and to the agent or broker of record, at their last addresses known to us, written notice of cancellation stating the reason for cancellation, at least:
  - a. Ten (10) days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. Ninety (90) days before the effective date of cancellation if we cancel for any other reason.
3. Notice of cancellation will state the effective date of cancellation. The Policy Period will end on the date of cancellation.
4. If this policy is cancelled, we will send the **First Named Insured** any premium refund due.
  - a. If we cancel, the refund will be pro rata unearned premium.
  - b. 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.
5. A post office certificate of mailing or a certified mail receipt will be sufficient proof of mailing of notice.

**D. CHANGES** - The **First Named Insured** 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 a written endorsement issued by us and made a part of this policy.

**E. CONFORMITY WITH LAWS** - Any terms of this policy which are in conflict with the laws of the state or Canadian province where this policy is issued are amended to conform to such laws.

### F. DUTIES OF INSUREDS IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT

You must see to it that:

1. We are notified as soon as practicable:
  - a. Of any **Occurrence** which may result in a claim under this policy, when the **Occurrence** is known to:
    - (1) You, if you are an individual;
    - (2) Your partner, if you are a partnership;
    - (3) Your member, if you are a joint venture;
    - (4) Your member or manager, if you are a limited liability company; or
    - (5) Your officer or insurance manager, if you are an organization other than a partnership or joint venture; and
  - b. If a claim is made or **Suit** is brought against any **Insured**.
2. **Insureds:**
  - a. Cooperate with us in the investigation or settlement of any claim, or defense of any **Insured** against any **Suit**;
  - b. Enforce any right, upon our request, against any person or organization which may be liable to any **Insured** because of injury or damage to which this policy applies; and
  - c. Make no admission of liability, incur no expense other than first aid, and assume no obligation, without our consent.
3. In jurisdictions in which we are prevented from investigating, defending or settling a claim, or defending any **Insured** against any **Suit**, you must make or cause to be made such investigation, defense or settlement as may be reasonably necessary. However, settlement requires our prior written authorization. Also, you must see to it that **Insureds** continue to comply with their duty to cooperate in the defense.

## G. MAINTENANCE OF PRIMARY INSURANCE

While this policy is in effect you agree:

1. To maintain **Primary Insurance** in full force, except for the reduction of limits of insurance due to the payment of judgments or settlements;
2. The terms and conditions of **Primary Insurance** will not materially change; and
3. Renewals or replacements of **Primary Insurance** will not materially change from the expiring **Primary Insurance**.

If you fail to comply with the above this policy shall apply as if **Primary Insurance** had been so maintained.

**H. PAYMENT OF LOSS UNDER THIS POLICY** - This policy will not apply until the **Insured** or the **Primary Insurer** is obligated to pay the full amount of the **Primary Insurance** limits of insurance. When the amount of judgment or settlement has finally been determined, we will promptly pay on behalf of the **Insured** the amount of damages which falls within the terms of this policy.

## I. PREMIUM

1. The **First Named Insured**:
  - a. Is responsible for the payment of all premiums; and
  - b. Will be the payee for any return premiums.
2. The Advance Premium for this policy is shown in the Declarations. It is not subject to adjustment unless the Basis of Premium shown in the Declarations is other than: "flat charge".
3. If the Advance Premium is subject to adjustment, the earned premium will be determined at the end of our Policy Period. If the earned premium is:
  - a. More than the Advance Premium, the **First Named Insured** will pay the excess to us; or
  - b. Less than the Advance Premium, we will return to the **First Named Insured** the unearned portion. However, the earned premium is subject to the Annual Minimum Premium shown in our Declarations for each twelve (12) months of our Policy Period.

**J. TITLES OR CAPTIONS** - The titles or captions used in this policy are solely for convenience or reference. They do not affect the provisions to which they relate.

**K. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY** - Your rights and duties under this policy may not be transferred without our written consent. If you die, your rights and duties are transferred to your legal representative but only while they are acting within the scope of their duties as such. Until one is appointed, anyone having proper temporary custody of your property will have your rights and duties with respect to that property.

## L. SUBROGATION

1. If any **Insured** has rights to recover all or part of any payment we make under this policy, those rights are transferred to us. The **Insured** must do nothing after loss to impair them. At our request, the **Insured** will bring **Suit** or transfer those rights to us and help us enforce them.
2. Any recoveries shall be distributed as follows:
  - a. First, we shall be entitled to recover to the extent of our payment; and
  - b. Next, any remaining amounts shall be paid to the **Primary Insurers** or any other party to the extent of their payment.
  - c. The expenses of the recovery will be distributed in proportion to the share of each party's recovery. But, if we conduct the recovery proceedings by ourselves:
    - (1) We will pay all expenses; and
    - (2) If we make a recovery, we will be reimbursed in full from the recovery for our expenses before the recovery is distributed.

**M. OTHER INSURANCE** - If there is any **Other Insurance** available to any **Insured**, this policy applies excess of and does not contribute with such **Other Insurance**. However:

1. At your option, our policy will apply before **Other Insurance** applies when you agree in a written **Insured Contract** prior to the time of an **Occurrence** that such insurance as is afforded by this policy will apply in that manner.
2. This does not apply if the **Other Insurance** is specifically written to be excess over this policy.

**N. SEPARATION OF INSUREDS** - Except with respect to the Limits of Insurance and any rights or duties specifically assigned to the **First Named Insured**, this insurance applies:

1. As if each **Named Insured** were the only **Named Insured**; and
2. Separately to each **Insured** against whom claim is made or **Suit** is brought.

**O. INSPECTION AND AUDIT**

1. We have the right but not the duty to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not:
  - a. Make safety inspections;
  - b. Undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public; or
  - c. Warrant that conditions are:
    - (1) Safe or healthful; or
    - (2) Comply with laws, regulations, codes or standards.
3. This condition applies:
  - a. To us; and
  - b. To any rating, advisory, rate service or similar organization, which makes insurance inspections, surveys, reports or recommendations.
4. We may examine and audit your books and records as they relate to this policy:
  - a. At any time during our Policy Period; and
  - b. Up to one hundred eighty (180) days afterward.

**P. UNINTENTIONAL FAILURE TO DISCLOSE** - If you unintentionally fail to disclose to us all of:

1. **Your Products**;
2. **Your Work**; or
3. Property owned or used by you;

which exist at the inception date of this policy, we will not deny coverage under this policy because of such failure.

**Q. WAIVER OF SUBROGATION SAME AS PRIMARY** - If you and the **Primary Insurer**, prior to the time of an Occurrence, waive any right of recovery against a specific person or organization for injury or damage, we will also waive any rights we may have against such person or organization.



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## SECTION V. NUCLEAR ENERGY LIABILITY EXCLUSION

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**A.** The policy does not apply:

1. Under any coverage, to injury, sickness, disease, death or destruction:
  - a. With respect to which any **Insured** under this policy is also an insured under a nuclear energy liability policy issued by:
    - (1) Nuclear Energy Liability Insurance Association;
    - (2) Mutual Atomic Energy Liability Underwriters; or
    - (3) Nuclear Insurance Association of Canada;
 or would be insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - b. Resulting from the "Hazardous Properties" of "Nuclear Material" and with respect to which:
    - (1) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
    - (2) Any **Insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. Under any liability coverage, to injury, sickness, disease, death or destruction resulting from the "Hazardous Properties" of "Nuclear Material", if:
  - a. The "Nuclear Material":
    - (1) Is at any "Nuclear Facility" owned by, or operated by or on behalf of, any **Insured**, or
    - (2) Has been discharged or dispersed therefrom;
  - b. The "Nuclear Material" is contained in "Spent Fuel" or "Waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of any **Insured**; or
  - c. The injury, sickness, disease, death or destruction arises out of the furnishing by any **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "Nuclear Facility". But if such facility is located within the United States of America, its territories or possessions or Canada, subsection c. applies only to injury to or destruction of property at such "Nuclear Facility".

**B.** As used in this exclusion:

1. "Hazardous Properties" includes radioactive, toxic or explosive properties.
2. "Nuclear Material" means "Source Material", "Special Nuclear Material" or "By-Product Material".
3. "Source Material", "Special Nuclear Material", and "By-Product Material" have the meaning given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
4. "Spent Fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "Nuclear Reactor".
5. "Waste" means any material which:
  - a. Contains "By-Product Material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium, from any ore processed primarily for its Source Material content; and
  - b. Results from the operation by any person or organization of any "Nuclear Facility" included under a. and b. of the definition of "Nuclear Facility".
6. "Nuclear Facility" means:

- a. Any "Nuclear Reactor";
  - b. Any equipment or device designed or used for:
    - (1) Separating the isotopes of uranium or plutonium;
    - (2) Processing or utilizing "Spent Fuel"; or
    - (3) Handling, processing or packaging "Waste";
  - c. Any equipment or device used for processing, fabricating or alloying of "Special Nuclear Material" if, at any time, the total amount of such material in the custody of any **Insured** at the premises where such equipment or device is located consists of or contains more than 25grams of:
    - (1) Plutonium; or
    - (2) Uranium 233; or
 any combination thereof, or more than 250 grams of uranium 235;
  - d. Any structure, basin, excavation, premises or place, prepared or used for the storage or disposal of "Waste";
- and includes:
- a. The site on which any of the foregoing is located;
  - b. All operations conducted on such site; and
  - c. All premises used for such operations.
7. "Nuclear Reactor" means any apparatus designed or used to:
- a. Sustain nuclear fission in a self-supporting chain reaction; or
  - b. Contain a critical mass of fissionable material.
8. With respect to injury to or destruction of property, the words "injury" or "destruction" include all forms of radioactive contamination of property.

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## SECTION VI. DEFINITIONS

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- A. ADVERTISEMENT** under Coverage B, means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers and supporters. For the purposes of this definition:
  - 1. Notices that are broadcast or published include material placed on the Internet or on similar electronic means of communication; and
  - 2. Regarding web-sites, only that part of a web-site that relates to your goods, products or services for the purposes of attracting customers or supporters is considered an **Advertisement**.
- B. ASBESTOS** under Coverages A and B, includes but is not limited to: asbestos, asbestos products, asbestos fibers, asbestos dust, and asbestos contained in products or materials.
- C. AUTO** under Coverage B, means a land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery or equipment. But **Auto** does not include **Mobile Equipment**.
- D. BODILY INJURY** under Coverage B, means bodily injury, sickness or disease sustained by a person including death or mental anguish resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.
- E. COVERED POLLUTION COST OR EXPENSE** under Coverage A, means any cost or expense arising out of any:
  - 1. Request, demand, order or statutory or regulatory requirement; or
  - 2. Claim or **Suit** by or on behalf of a governmental authority;



demanding that the **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**.

**Covered Pollution Cost or Expense** does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants**:

1. That are, or that are contained in any property that is:
  - a. Being transported or towed by, handled , or handled for movement into, onto or from, any **Auto** covered by this policy;
  - b. Otherwise in the course of transit by or on behalf of any **Insured**;
  - c. Being stored, disposed of, treated or processed in or upon any **Auto** covered by this policy;
2. Before the **Pollutants**, or any property in which the **Pollutants** are contained, are moved from the place where they are accepted by any **Insured** for movement into or onto any **Auto** covered by this policy; or
3. After the **Pollutants**, or any property in which the **Pollutants** are contained, are moved from any **Auto** covered by this policy to the place where they are finally delivered, disposed of or abandoned by any **Insured**.

Subsection 1. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar **Pollutants**, that are needed for or result from the normal electrical, hydraulic or mechanical functioning of any **Auto** covered by this policy, or its parts, if:

- a. The **Pollutants** escape, seep, migrate, or are discharged, dispersed or released directly from an **Auto** part designed by its manufacturer to hold, store, receive or dispose of such **Pollutants**; and
- b. The **Bodily Injury, Property Damage or Covered Pollution Cost or Expense** does not arise out of the operation of any equipment listed in subsections 6.b. or c. of the definition of **Mobile Equipment**.

Subsections 2. and 3. above do not apply to **Occurrences** that occur away from premises owned by or rented to any **Insured** with respect to **Pollutants** not in or upon any **Auto** covered by this policy if:

- a. The **Pollutants** or any property in which the **Pollutants** are contained are upset, overturned or damaged as a result of the maintenance or use of any **Auto** covered by this policy; and
- b. The discharge, dispersal, seepage, migration, release or escape of the **Pollutants** is caused directly by such upset, overturn or damage.

- F. **FIRST NAMED INSURED** under Coverages A and B, means the person or organization shown first in the Named Insured section of our Declarations.
- G. **HOSTILE FIRE** under Coverages A and B, means one which becomes uncontrollable or breaks out from where it was intended to be.
- H. **IMPAIRED PROPERTY** under Coverage B, means tangible property, other than **Your Product or Your Work**, that cannot be used or is less useful because:
  1. It incorporates **Your Product or Your Work** that is known or thought to be defective, deficient, inadequate or dangerous; or
  2. You have failed to fulfill the terms of a contract or agreement;
 if such property can be restored to use by:
  1. The repair, replacement, adjustment or removal of **Your Product or Your Work**; or
  2. Your fulfilling the terms of the contract or agreement.
- I. **INSURED CONTRACT** under Coverage B, means:
  1. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an **Insured Contract**;
  2. A sidetrack agreement;

3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. An elevator maintenance agreement;
6. That part of any contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for **Bodily Injury, Personal and Advertising Injury or Property Damage** to a third person or organization. "Tort liability" means a liability that would be imposed by law in the absence of any contract or agreement.

This subsection 6. does not include that part of any contract or agreement:

- a. That indemnifies a railroad for liability arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (1) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports surveys, field orders, change orders or drawings and specifications; or
  - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- c. Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the **Insured's** rendering or failure to render professional services, including those listed in b. above and supervisory, inspection, architectural or engineering activities.

**J. MOBILE EQUIPMENT** under Coverages A and B, means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on or next to premises you own or rent;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted;
  - a. Power cranes, shovels, loaders, diggers or drills; or
  - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
5. Vehicles not described in subsections 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - b. Cherry pickers and similar devices used to raise or lower workers.
6. Vehicles not described in subsections 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not **Mobile Equipment** but will be considered **Autos**:
  - a. Equipment designed primarily for:
    - (1) Snow removal;
    - (2) Road maintenance, but not construction or resurfacing; or
    - (3) Street cleaning;
  - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.

**K. NAMED INSURED** under Coverages A and B, means any person or organization shown in the Named Insured section of our Declarations.

**L. OCCURRENCE:**

- 1. Under Coverage A, has the same meaning as has the term "occurrence" contained in **Primary Insurance**. But with respect to personal and advertising injury as defined in **Primary Policies**, the term means a personal and advertising injury offense.
- 2. Under Coverage B, means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. With respect to **Personal and Advertising Injury**, the term means an offense which causes such injury.

**M. OTHER INSURANCE** under Coverages A and B, means insurance that is available to any **Insured** and covers damage to which this policy applies, other than:

- 1. **Primary Insurance**; or
- 2. Insurance that is specifically purchased by you to be excess of the insurance afforded by this policy.

**N. PERSONAL AND ADVERTISING INJURY** under Coverage B, means injury, including consequential **Bodily Injury**, arising out of one or more of the following offenses:

- 1. False arrest, detention or imprisonment;
- 2. Malicious prosecution or abuse of process;
- 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies by or on behalf of its owner, landlord or lessor;
- 4. Oral or written publication, in any manner, of material that:
  - a. Slanders or libels a person or organization;
  - b. Disparages a person's or organization's goods, products or services; or
  - c. Violates a person's right of privacy;
- 5. The use of another's advertising idea in your **Advertisement**;
- 6. Infringing upon another's copyright, trade dress or slogan in your **Advertisement**; or
- 7. "Discrimination" when based solely on either disparate impact or vicarious liability (unless insurance thereof is prohibited by law). As used in this definition N, the term "discrimination" means the unlawful treatment of individuals based on race, color, religion, gender, age, or national origin.

**O. POLLUTANTS** under Coverages A and B, 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.

**P. PRIMARY INSURER** under Coverages A and B, means the insurer of the **Primary Insurance or Other Insurance** policies.

**Q. PRIMARY POLICY, PRIMARY POLICIES or PRIMARY INSURANCE** under Coverage A and B, means the policy or policies of insurance shown in our Schedule of Primary Insurance.

**R. PRODUCTS-COMPLETED OPERATIONS HAZARD** under Coverage B, includes all **Bodily Injury** and **Property Damage** occurring away from premises you own or rent and arising out of **Your Product or Your Work** except:

- 1. Products that are still in your physical possession; or
- 2. Work that has not yet been completed or abandoned.

**Your Work** will be deemed completed at the earliest of the following times:

- 1. When all of the work called for in your contract has been completed;

2. When all of the work to be done at the site has been completed if your contract calls for work at more than one site; or
- c. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

**S. PROPERTY DAMAGE** under Coverage B, means:

1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **Occurrence** that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

As used in this definition, "electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**T. SUIT** under Coverages A and B, means a civil proceeding in which damages insured by this policy are alleged. The term includes:

1. An arbitration proceeding in which such damages are claimed and to which any **Insured** must submit or does submit with our consent; or
2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which any **Insured** submits with our consent.

**U. YOUR PRODUCT** under Coverage B, means:

1. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - a. You;
  - b. Others trading under your name; or
  - c. A person or organization whose business or assets you have acquired; and
2. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**Your Product** includes:

1. Warranties or representations made at any time as respects the fitness, quality, durability, performance or use of **Your Product**; and
2. The providing of or failure to provide warnings or instructions.

**Your Product** does not include vending machines or any other property rented to or located for the use of others but not sold.

**V. YOUR WORK** under Coverage B means:

1. Work or operations performed by you or on your behalf; and
2. Materials, parts or equipment furnished in connection with such work or operations.

**Your Work** includes:

1. Warranties or representations made at any time as respects the fitness, quality, durability, performance or use of **Your Work**; and
2. The providing of or failure to provide warnings or instructions.

**W. EMPLOYEE** under Coverage B, includes a **Leased Worker**. **Employee** does not include a **Temporary Worker**.

- X. **EXECUTIVE OFFICER** under Coverage B, means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- Y. **LEASED WORKER** under Coverage B, means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased Worker** does not include a **Temporary Worker**.
- Z. **TEMPORARY WORKER** under Coverage B, means a person who is furnished to you to substitute for a permanent **Employee** on leave or to meet seasonal or short-term workload conditions.
- AA. **VOLUNTEER WORKER** under Coverage B, means a person who is not your **Employee** , and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

## **Economic or Trade Sanctions Compliance - 145985 06 14**

### **Policy Amendment**

The following is added to the Policy and replaces any other provision in the Policy addressing economic or trade sanctions:

This insurance does not apply to the extent that economic or trade sanctions or other laws or regulations prohibit us (the Company) from providing insurance.

All other terms and conditions of the policy remain unchanged.

## **Silica Particles Exclusion**

**178575 05 04 NY**

Policy Amendment - Umbrella Policy - Excess Liability Policy

- A. The policy does not apply to any liability, loss, cost or expense arising, in whole or in part, directly or indirectly out of, or which is in any way related to, the "Silica hazard".
- B. As used in this exclusion:
  - 1. "Silica hazard" means exposure to, inhalation of or contact with, or threat of exposure to, inhalation of or contact with "silica" or "silica-related dust" which results in, or are alleged to cause, harmful health effects;
  - 2. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds; and
  - 3. "Silica-related dust" means a mixture or combination of "silica" and other dust or particles.

All other terms and conditions of the policy remain unchanged.

## Sublimited Primary Coverage Exclusion

**178578 06 04**

Policy Amendment - Umbrella Policy - Excess Liability Policy

- A. This policy does not apply to any claims or **Suits** covered by **Primary Insurance** when the applicable **Primary Policy's** limits of insurance that apply to such claims or **Suits** is a "sublimit".

However, this exclusion does not apply when the available "sublimit" is less than the Limit of Insurance, as shown in our Schedule of Primary Insurance, for the applicable **Primary Policy** if solely due to a reduction in limits by payments of judgments, settlements or defense expenses.

- B. As used in this endorsement, "sublimit" means the limits of insurance which apply to any coverage provided by **Primary Insurance** that are less than the Limit of Insurance, as shown in our Schedule of Primary Insurance, for the applicable **Primary Policy**. This includes any "sublimit" whether it is subject to, or in addition to, the **Primary Policy** limits shown in our Schedule of Primary Insurance.

All other terms and conditions of the policy remain unchanged.



## **Disclosure of Premium for Certified Acts of Terrorism Coverage; Cap on Insurer Participation in Payment of Terrorism Losses (Pursuant to Terrorism Risk Insurance Act)**

**178587 01 15 NY**

Policy Amendment - Umbrella Policy - Excess Liability Policy

**This Endorsement is attached to and made part of your policy in response to the disclosure requirements of the Terrorism Risk Insurance Act.**

### **A. Disclosure of Premium**

In accordance with the federal Terrorism Risk Insurance Act, as amended, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act, as amended ("certified acts of terrorism"). The portion of your premium attributable to such coverage is shown in the policy Declarations. This premium is based on the rates in effect at the time of policy issuance or policy anniversary and was calculated for the full term of the current policy period.

### **B. Disclosure of Federal Participation in Payment of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020 of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act, as amended, exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceed \$100 billion.

### **C. Cap on Insurer Participation in Payment of Terrorism Losses**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act, as amended, exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, as amended, then we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

All other terms and conditions of the policy remain unchanged.

## **Lead Exclusion**

**178771 03 98**

Policy Amendment - Umbrella Policy - Excess Liability Policy

The policy does not apply to any liability arising in whole or in part, out of or in any way related to "Lead".

As used in this exclusion, the term "Lead" includes but is not limited to, lead, lead products, lead contained in paint, and lead contained in any products or materials.

All other terms and conditions of the policy remain unchanged.

## Pollution - Absolute Exclusion - Coverage B 178789 10 01

Policy Amendment - Umbrella Policy

A. SECTION II. UMBRELLA LIABILITY- COVERAGE 8 , C. COVERAGE 8 - EXCLUSIONS, subsection 12. POLLUTION is replaced by the following:

### 12. POLLUTION

- a. To any liability arising:
  - (1) Directly;
  - (2) Indirectly; or
  - (3) In concurrence, or in any sequence, with a cause for which coverage may be afforded by this policy; out of the actual, alleged or threatened existence, discharge, dispersal, seepage, migration, release or escape of **Pollutants**.
- b. To any loss, cost, or expense arising out of any:
  - (1) Request, demand, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effects of **Pollutants**; or
  - (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, **Pollutants**.
- c. It is the intent and effect of this exclusion to exclude any or all coverage afforded by Coverage 8 of this policy for any claim, action, judgment, liability, settlement, defense, or expense in any way arising out of the existence, discharge, dispersal, seepage, migration, release or escape of **Pollutants**. It applies whether such results from any **Insured's** activities or the activities of others. It applies whether such is sudden, gradual, accidental, intended, foreseeable, expected, fortuitous, or inevitable. And it applies wherever or however such occurs.

All other terms and conditions of the policy remain unchanged.

## **Products-Completed Operations Hazard Exclusion - Coverage B**

**178792 03 98**

Policy Amendment - Umbrella Policy

COVERAGE B of the policy does not apply to any liability arising out of the **Products-Completed Operations Hazard**; nor to any liability assumed under that part of an **Insured Contract** that indemnifies a person or organization for any liability arising out of the **Products-Completed Operations Hazard**.

All other terms and conditions of the policy remain unchanged.

## Professional Services Exclusion

**178794 04 13**

Policy Amendment - Umbrella Policy - Excess Liability Policy

The policy does not apply to any liability arising out of the rendering of or failure to render any "professional" services.

This exclusion applies even if the claims against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Insured**, if the offense which caused the damages involved the rendering of or failure to render any professional service.

As used in this endorsement, a "professional" service is one arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill. It also means relating to or characteristic of a learned profession that often requires special licensing by an agency or society with such authority.

All other terms and conditions of the policy remain unchanged.

## New York Amendatory 178859 10 03 NY

Policy Amendment - Umbrella Policy

- A. SECTION I. EXCESS LIABILITY - COVERAGE A, C. COVERAGE A EXCLUSIONS, the following exclusion is added:
- EXPECTED OR INTENDED - Bodily injury or property damage expected or intended from the standpoint of any **Insured**. But this does not apply to bodily injury or property damage which results from the use of reasonable force to protect persons or property.
- B. SECTION II. UMBRELLA LIABILITY - COVERAGE B, A. COVERAGE B - INSURING AGREEMENT, subsection 1.c. is added as follows:
1. c. This insurance shall apply in excess of the greater of either:
    - (1) The applicable limit or limits of insurance of any valid and collectible **Other Insurance** available to any **Insured**; or
    - (2) \$10,000, hereinafter referred to as the "Insured's Retained Limit."

It shall be the obligation of any **Insured** to pay the amount of the "Insured's Retained Limit" with respect to all damages to which this policy applies and for which there is no **Primary Insurance** or **Other Insurance**.
- C. Whenever the "Insured's Retained Limit" applies, the policy is subject to these additional conditions:
1. The "Insured's Retained Limit" shall be deducted from the total amount of all sums for damages which we are obligated to pay for each **Occurrence**;
  2. The terms of the policy, including those pertaining to our rights and duties with respect to the defense of **Suits** and to any **Insured's** duties in the event of an **Occurrence**, apply irrespective of the application of the "Insured's Retained Limit";
  3. We will settle any claim or **Suit** only with the written consent of any **Insured**. If any **Insured** refuses to consent to our making any settlement recommended by us, based upon a judgment or a bona fide offer of settlement, the excess of the amount for which such settlement could have been made, as so recommended by us, will not be recoverable under the policy; and
  4. With the written consent of any **Insured**, we may pay any part or all of the "Insured's Retained Limit" amount to effect settlement of any claim or **Suit**. Upon notification of the action taken, any **Insured** shall promptly reimburse us for such part of the "Insured's Retained Limit" as has been paid by us.
- D. SECTION I. EXCESS LIABILITY - COVERAGE A, B. COVERAGE A - WHEN WE WILL HAVE A DUTY TO DEFEND, subsection 1., the first sentence is replaced by the following:
1. We will have the right and duty to defend any **Insured** against any **Suit** seeking damages or a **Covered Pollution Cost or Expense** to which Coverage A applies even if the allegations are groundless, false or fraudulent, but only:
- Subsections a., b. and the last sentence of subsection 1. remain unchanged.
- E. SECTION II. UMBRELLA LIABILITY - COVERAGE B, B. COVERAGE B - WHEN WE WILL HAVE A DUTY TO DEFEND, subsection 1., the first sentence is replaced by the following:
1. We will have the right and duty to defend any **Insured** against any **Suit**, seeking damages to which Coverage B applies even if the allegations are groundless, false or fraudulent, but only:
- Subsections a., b. and the last sentence of subsection 1. remain unchanged.
- F. The policy does not apply to any punitive or exemplary damages or any fines or penalties, in whatever form assessed.
- G. With respect to any **Insured's** employees subject to the New York State Workers' Compensation Law:

1. This policy does not apply to any liability arising out of any injury to:
  - a. Any employee of any **Insured** arising out of and in the course of:
    - (1) Employment by any **Insured**; or
    - (2) Performing duties related to the conduct of any **Insured's** business; or
  - b. The spouse, child, parent, brother, or sister of that employee as a consequence of subsection a. above.

This exclusion applies:

- a. Whether any **Insured** may be liable as an employer or in any other capacity; and
- b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by an **Insured** under an **Insured Contract**.

2. SECTION II. UMBRELLA LIABILITY - COVERAGE B, E. COVERAGE B - LIMITS OF INSURANCE, subsection 3.c. OCCUPATIONAL DISEASE AGGREGATE does not apply.

H. With respect to SECTION I. EXCESS LIABILITY - COVERAGE A, B. COVERAGE A - WHEN WE WILL HAVE A DUTY TO DEFEND, and SECTION II. UMBRELLA LIABILITY - COVERAGE B, B. COVERAGE B - WHEN WE WILL HAVE A DUTY TO DEFEND, the following is added:

If we have assumed control of the settlement of any claim or defense of any **Suit**:

1. If we think that our Limit of Insurance stated in our Declarations as "each occurrence" or "aggregate" limit is likely to be exhausted by payment of judgments or settlements, we will notify the **First Named Insured** in writing to that effect;
2. After the applicable Limit of Insurance of this policy has been exhausted by payment of judgments or settlements:
  - a. We will notify the **First Named Insured** in writing as soon as practicable, that:
    - (1) Such a limit has actually been exhausted; and
    - (2) We have no duty to defend any **Insured** against any **Suit** after the applicable Limit of Insurance of this policy has been exhausted by payment of judgments or settlements;
  - b. We will initiate and cooperate in the transfer of control, to any appropriate **Insured** of the settlement of all claims or defense of all **Suits** seeking damages which are subject to that limit and which are reported to us before that limit is exhausted. That **Insured** must cooperate in the transfer of control of said claims and **Suits**.

We agree to take such steps as we deem appropriate, to avoid a default in, or continue the defense of, such **Suits** until such transfer is completed, providing the appropriate **Insured** is cooperating in completing such transfer.

We have no duty to take any action whatsoever with respect to any claim or **Suit** seeking damages that would have been subject to that limit, had it not been exhausted, if the claim or **Suit** is reported to us after that Limit of Insurance has been exhausted; and

- c. The **First Named Insured**, and any other **Insured** involved in a **Suit** seeking damages subject to that limit, must arrange for the defense of such **Suit** within such time period as agreed to between the appropriate **Insured** and us. Absent any such agreement, arrangements for the defense of such **Suit** must be made by the appropriate **Insured** as soon as practicable;
3. The **First Named Insured** will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with paragraph 2.b. above.

The duty of the **First Named Insured** to reimburse us will begin on:

- a. The date on which the applicable Limit of Insurance is exhausted, if we sent notice in accordance with paragraph 1. above; or

b. The date on which we sent notice in accordance with paragraph 2.a. above, if we did not send notice in accordance with paragraph 1. above; and

4. The exhaustion of any Limit of Insurance of this policy by the payment of judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions contained above.

I. SECTION IV. CONDITIONS, F. DUTIES OF INSURED IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT, the following is added:

Notice given by or on behalf of any **Insured**, or written notice by or on behalf of the injured person or any other claimant, to any agent of ours in New York State with particulars sufficient to identify any **Insured**, shall be considered notice to us.

Failure of any **Insured** to notify us within the time prescribed in this condition will not invalidate a claim made by any **Insured** or by any other claimant, if it is shown that notice was given as soon as was practicable.

J. SECTION IV. CONDITIONS, the following is added:

NEW YORK CONFORMITY WITH REGULATIONS - COVERAGE A - With respect to operations in the State of New York, Coverage A of the policy shall conform to the applicable insurance laws of the State of New York or the applicable regulations of the New York Insurance Department in effect at the time the policy is issued; provided however, that our Limits of Insurance shall be excess of an amount of damages equal to the amount of the Limits of Insurance stated in our Schedule of Primary Insurance.

K. SECTION VI. DEFINITIONS, P. PRIMARY INSURER is replaced by the following:

P. **Primary Insurer** under Coverages A and B, means the insurer of the **Primary Insurance**.

L. SECTION VI. DEFINITIONS, the following is added:

**Other Insurer** under Coverages A and B, means the insurer of the **Other Insurance**.

M. In the following subsections of the policy, wherever used, the words "Primary Insurer" are replaced by the words "Primary Insurer or Other Insurer":

1. SECTION I. EXCESS LIABILITY - COVERAGE A, B. COVERAGE A - WHEN WE WILL HAVE A DUTY TO DEFEND, subsection 2.;
2. SECTION IV. CONDITIONS, A. APPEALS; and
3. SECTION IV. CONDITIONS, L. SUBROGATION, subsection 2.b.

All other terms and conditions of the policy remain unchanged.



## Cancellation, Nonrenewal or Conditional Renewal 178860 10 02 NY

Policy Amendment - Umbrella Policy - Excess Liability Policy

- A. The policy CONDITIONS, CANCELLATION, subsection 2.a. is replaced by the following:
  - a. Fifteen (15) days before the effective date of cancellation if we cancel for nonpayment of premium; or
- B. The following is added to the policy CONDITIONS, CANCELLATION, subsection 2.:
 

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

  - a. Nonpayment of premium;
  - b. Conviction of a crime arising out of acts increasing the hazard insured against;
  - c. Discovery of fraud or material misrepresentation in obtaining this policy or in the presentation of a claim thereunder;
  - d. After issuance of this policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current Policy Period;
  - e. Material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of this policy which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time this policy was issued or last renewed;
  - f. Required pursuant to determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency, or be hazardous to the interest of our policyholders, our creditors or the public; or
  - g. A determination by the Superintendent that the continuation of this policy would violate, or would place us in violation of, any provision of the Insurance Code.
- C. The following is added to the policy CONDITIONS, CANCELLATION, subsection 4.:
  - c. If premium is advanced under a premium finance agreement, the cancellation refund will be pro rata, and we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater.
- D. The following is added to the policy CONDITIONS:
 

**NONRENEWAL BY US**

  - 1. If we elect not to renew this policy, we will mail by first class or certified mail to the **First Named Insured** and to the agent or broker of record, at their last addresses known to us, written notice stating the reason for nonrenewal, at least thirty (30) days but not more than one hundred and twenty (120) days before the effective date of nonrenewal.
  - 2. Notice of nonrenewal will state the effective date of nonrenewal. The Policy Period will end on the date of nonrenewal.
  - 3. A post office certificate of mailing or a certified mail receipt will be sufficient proof of mailing of notice.
  - 4. If we violate any of the provisions of items 1. through 3. above, by sending the **First Named Insured** a notice:
    - a. That is incomplete, or later than 30 days prior to this policy's expiration date but prior to the policy's expiration date, coverage will remain in effect at the same terms and conditions of this policy and at the lower of the current rates or the prior period's rates, until 60 days after proper nonrenewal notice is mailed unless the **First Named Insured**, during this 60 day period, has replaced the coverage or elects to cancel; or

- b. At the same terms and conditions of this policy for another annual policy period, at the lower of the current rates or the prior period's rates unless the **First Named Insured**, during this additional policy period, has replaced the coverage or elects to cancel.

The Aggregate Limit of Insurance shown in the Declarations will be increased in proportion to any Policy extension as provided in 4.a. or 4.b. above.

- 5. We will not send you notice of nonrenewal if your authorized agent or broker or another insurer of yours mails or delivers notice to us that this policy has been replaced or is no longer desired.

E. The following is added to the policy CONDITIONS:

CONDITIONAL RENEWAL

- 1. If we condition renewal of this policy upon:

- a. Change of limits;
- b. Change in type of coverage;
- c. Reduction of coverage;
- d. Increased deductible or Retained Amount;
- e. Addition of exclusion;
- f. Requirements relating to **Primary Insurance**; or
- g. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units or as a result of experience rating, loss rating, retrospective rating or audit;

We will mail, to the **First Named Insured** and the agent or broker of record, at their last addresses known to us, written notice stating the specific reasons for conditional renewal, the amount of any premium increase, and a description of any other changes, at least thirty (30) days but not more than one hundred and twenty (120) days before this policy's:

- (1) Expiration date; or
- (2) Annual anniversary date.

- 2. Proof of mailing will be sufficient proof of notice.

- 3. If we violate any of the above provisions of this condition by sending the **First Named Insured** a conditional renewal notice:

- a. That is incomplete or later than 30 days prior to this policy's expiration date but prior to the policy's expiration date, coverage will remain in effect at the same terms and conditions of this policy, at the lower of the current rates or the prior period's rates, until 60 days after proper conditional renewal notice is mailed or delivered unless the First Named Insured, during this 60 day period, has replaced the coverage or elects to cancel; or
- b. That is later than the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another annual policy period, at the lower of the current rates or the prior period's rates unless the First Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.

- 4. The Aggregate Limit of Insurance shown in the Declarations will be increased in proportion to any policy extension as provided in 3.a. or 3.b. above.

- 5. We will not send you notice of conditional renewal if your authorized agent or broker or another insurer of yours mails or delivers notice to us that this policy has been replaced or is no longer desired.

All other terms and conditions of the policy remain unchanged.

## Coverage Amendments

**178874 04 13**

Policy Amendment - Umbrella Policy

- A. The following replaces SECTION II. UMBRELLA LIABILITY - COVERAGE B, C. COVERAGE B - EXCLUSIONS, 5. DAMAGE TO INSURED'S PROPERTY:

5. DAMAGE TO PROPERTY-To **Property Damage** to real or personal property in the care, custody or control of any **Insured**, including any costs or expenses incurred by you, or any other person, or organization, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another 's property.

- B. The following are added to SECTION II. UMBRELLA LIABILITY - COVERAGE B, C. COVERAGE B - EXCLUSIONS:

### AUTO

To any liability arising out of the ownership, maintenance, operation, use, entrustment to others, loading or unloading of any **Auto**. This exclusion applies even if the claims against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that **Insured**.

### EMPLOYEE INJURY

To any liability arising out of any injury to:

1. Any **Employee** of any **Insured** arising out of and in the course of:
  - a. Employment by any **Insured**; or
  - b. Performing duties related to the conduct of any **Insured's** business; or
2. The spouse, child, parent, brother or sister of that **Employee** as a consequence of section 1. above.

This exclusion applies:

1. Whether any **Insured** may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

### LIQUOR LIABILITY

To any liability arising out of:

1. Causing or contributing to the intoxication of any person;
2. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
3. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages; or
4. Owning or leasing premises used for selling or serving alcoholic beverages.

This exclusion applies even if the claims against any **Insured** allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that **Insured**; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol.

### WATERCRAFT

To any liability arising out of any watercraft except one you do not own:

1. That is less than 50 feet long; and
2. That is not being used for public transportation or as a common carrier.

This exclusion applies even if the claims against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Insured**.

#### EMPLOYEE BENEFIT PROGRAM EXCLUSION

To any liability arising out of the "Administration" of any "Employee Benefit Program."

As used in this endorsement, the following terms have the following meanings:

1. "Employee Benefit Program" includes but is not limited to group life insurance, group accident or health insurance, profit sharing plans, pension plans and stock subscription plans, unemployment insurance, social security benefits, workers' compensation and disability benefits insurance.
2. "Administration" includes but is not limited to performing or failure to perform any of the following functions with respect to an "Employee Benefit Program":
  - a. Application of rules determining eligibility for or participation in benefits;
  - b. Calculation of service and compensation credit for benefits;
  - c. Preparation of **Employee** communications material;
  - d. Maintenance of participants' service and employment records;
  - e. Preparation of reports required by government agencies;
  - f. Calculation of benefits;
  - g. Orientation of new participants and advising participants of their rights and options under the plan;
  - h. Collection of contributions and application of contributions as provided in the plan;
  - i. Preparation of reports concerning participants' benefits;
  - j. Processing of claims; or
  - k. Rendering or providing advice, other than legal advice.

All other terms and conditions of the policy remain unchanged.

## **Discrimination Liability Limitation - Coverage B**

### **178905 10 01**

Policy Amendment - Umbrella Policy

- A. SECTION VI. DEFINITIONS, N. PERSONAL AND ADVERTISING INJURY, subsection 7. is deleted.
- B. Coverage B of the policy does not apply to any liability arising out of or alleging "discrimination" against any person or organization.

"Discrimination" includes, but is not limited to, discrimination because of race, color, ethnic or national origin, religion, age, gender, marital status, physical disability or impairment, or any employment practices related to the foregoing.

All other terms and conditions of the policy remain unchanged.

## **Personal and Advertising Injury Exclusion - Coverage B**

### **178909 09 98**

Policy Amendment - Umbrella Policy

COVERAGE B of the policy does not apply to any liability arising out of **Personal and Advertising Injury**.

All other terms and conditions of the policy remain unchanged.

## **Abuse, Assault and Molestation Exclusion - Coverage B 178913 10 01**

Policy Amendment - Umbrella Policy

Coverage B of the policy does not apply to any:

- A. Liability arising directly or indirectly out of any actual, alleged or threatened:
  - 1. Sexual abuse, sexual assault, sexual molestation, sexual harassment or sexual misconduct;
  - 2. Physical abuse, physical assault, physical battery;
  - 3. Mental abuse; or
  - 4. Child molestation;
- B. Injury to any person who is so abused, assaulted, battered, molested or harassed; or
- C. Liability for:
  - 1. Failing to prevent or deter any of the above; or
  - 2. Negligently hiring or supervising any persons who cause or contribute to any of the above.

All other terms and conditions of the policy remain unchanged.

## Intellectual Property Exclusion

**178944 10 01**

Policy Amendment - Umbrella Policy - Excess Liability Policy

The policy does not apply to any liability arising out of any actual or alleged infringement, disparagement, defamation, violation, misappropriation, or unfair usage of any form of intellectual property, including but not limited to:

- A. Copyright, slogan or title;
- B. Patent;
- C. Trademark, service mark, collective mark, or certification mark, including without limitation any word, name, symbol, device or any combination thereof used to identify or distinguish the origin of a good, product or service;
- D. Trade secret;
- E. Trade dress including without limitation, any shape, color, design or appearance used to distinguish the origin of a good, product or service;
- F. False designation of the origin of a good, product or service;
- G. Advertising ideas, concepts, campaigns, or style of doing business; or
- H. Any other intellectual property rights recognized or implied by law.

All other terms and conditions of the policy remain unchanged.



## Designated Operations Exclusion

**178947 10 01**

Policy Amendment - Umbrella Policy - Excess Liability Policy

The policy does not apply to any liability arising out of any operations performed by or on behalf of any **Insured**, nor to any liability assumed under that part of any contract or agreement that indemnifies a person or organization for liability arising out of operations listed below:

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

All other terms and conditions of the policy remain unchanged.

## **Primary Insurance Restriction Endorsement Amendment Coverage B 178962 10 01**

Policy Amendment - Umbrella Policy

SECTION II. UMBRELLA LIABILITY - COVERAGE B, A. COVERAGE B - INSURING AGREEMENT, subsection 2, the following is added:

- c. Which would have been covered by **Primary Insurance** except for the attachment of an endorsement to **Primary Insurance**, either at policy inception or during the policy term, which restricts or excludes coverage.

All other terms and conditions of the policy remain unchanged.

## Coverage for Certified Acts of Terrorism

**178993 01 15**

Policy Amendment - Umbrella Policy

- A. Coverage A of this policy will apply with respect to a "certified act of terrorism".
- B. Coverage B of this policy does not apply to any liability arising, directly or indirectly, out of any "certified act of terrorism".
- C. As used in 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, as amended, to be an act of terrorism pursuant to such Act, as amended. The criteria contained in the Terrorism Risk Insurance Act, as amended, 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, as amended; and
  - 2. The act resulted in damage:
    - a. Within the United States (including its territories and possessions and Puerto Rico); or
    - b. Outside the United States in the case of:
      - (1) An air carrier (as defined in Section 40102 of title 49, United States code) or United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States) regardless of where the loss occurs; or
      - (2) The premises of any United States mission; and
  - 3. 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.
- D. If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act, as amended, exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, as amended, then we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

All other terms and conditions of the policy remain unchanged.

## Additional Policy Provisions

### 179020 04 13

#### Policy Amendment - Umbrella Policy

Unless otherwise amended by any other endorsement to this policy issued on or after the date this endorsement is added, this policy is amended as follows:

- A. SECTION II. UMBRELLA LIABILITY - COVERAGE B, C. COVERAGE B - EXCLUSIONS, 2. PERSONAL AND ADVERTISING INJURY, subsection b., c. and h. are replaced by the following:
  - b. Arising out of oral or written publication, in any manner, of material, if done by or at the direction of the **Insured** with knowledge of its falsity.
  - c. Arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the Policy Period.
  - h. Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your **Advertisement**. However, this exclusion does not apply to infringement, in your **Advertisement**, of copyright, trade dress or slogan.
- B. SECTION I. EXCESS LIABILITY - COVERAGE A, C. COVERAGE A - EXCLUSIONS, 4. POLLUTION, subsection (6) is replaced by the following:
  - (6) BUILDING HEATING EQUIPMENT- Subsection a.(1) above does not apply to bodily injury if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.
- C. SECTION I. EXCESS LIABILITY - COVERAGE A, C. COVERAGE A - EXCLUSIONS 5. EMPLOYMENT PRACTICES and SECTION II. UMBRELLA LIABILITY - COVERAGE B, C. COVERAGE B - EXCLUSIONS , 7. EMPLOYMENT PRACTICES, are replaced by the following:
 

EMPLOYMENT PRACTICES

  - a. To any liability arising out of any employment-related or personnel practices, policies, acts or omissions. This includes, but is not limited to:
    - (1) Refusal to employ;
    - (2) Termination of employment;
    - (3) Coercion, criticism, demotion, failure to promote, evaluation, reassignment, discipline, defamation, self-defamation, harassment, humiliation, discrimination, libel, slander, false arrest or imprisonment, violation of a person's right of privacy, or malicious prosecution; or
    - (4) Any consequential injury or damages as a result of (1), (2) or (3) above.
  - b. This exclusion applies:
    - (1) To all claims, demands, charges, complaints or **Suits** by any person(s) or organization(s) for damages because of such injury or liability, including damages for care and loss of services, whether such injury-causing event occurs before employment, during employment or after employment;
    - (2) Whether any **Insured** may be held liable as an employer or in any other capacity either directly or indirectly related to employment; and
    - (3) To any obligation to share damages with or repay someone else who must pay damages because of such injury or liability.
- D. The following is added to SECTION II. UMBRELLA LIABILITY - COVERAGE B, C. COVERAGE B - EXCLUSIONS:

ELECTRONIC DATA - To damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

E. SECTION III. SUPPLEMENTARY PAYMENTS, subsection 1. is replaced by the following:

1. Costs taxed against any **Insured** in the **Suit**. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the **Insured**.

F. SECTION VI. DEFINITIONS, C. AUTO is replaced by the following:

C. AUTO under Coverage B, means:

1. A land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, **Auto** does not include **Mobile Equipment**.

G. SECTION VI. DEFINITIONS, I. INSURED CONTRACT, subsection 6. is replaced by the following:

6. That part of any contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) -under which you assume the tort liability of another to pay for **Bodily Injury, Personal and Advertising Injury or Property Damage** to a third person or organization, provided injury or damage is caused, in whole or in part, by you or by those acting on your behalf. "Tort liability" means a liability that would be imposed by law in the absence of any contract or agreement.

This subsection 6. does not include that part of any contract or agreement:

- a. That indemnifies a railroad for liability arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (1) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports surveys, field orders, change orders or drawings and specifications; or
  - (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- c. Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the **Insured's** rendering or failure to render professional services, including those listed in b. above and supervisory, inspection, architectural or engineering activities.

H. The following is added to SECTION VI. DEFINITIONS, J. MOBILE EQUIPMENT:

However, **Mobile Equipment** does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **Autos**.

All other terms and conditions of the policy remain unchanged.

## Directors and Officers Exclusion - Coverage B 179032 04 13

Policy Amendment - Umbrella Policy

Coverage B of the policy does not apply to any liability arising out of any "wrongful act."

As used in this endorsement, "wrongful act" means any actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty by any director, officer, trustee, governor, regent, commissioner, committee member, managing member or member of any board of managers or any board of directors, or any similar governing body, of any organization of any **Insured** in the discharge of their duties, individually or collectively, or any matter claimed against them solely by reason of being directors or officers.

This exclusion applies even if the claims against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Insured**.

All other terms and conditions of the policy remain unchanged.

## **Violation of Statutes Exclusion (E-Mails, Fax, Phone Calls or Other Methods of Recording or Distribution of Material or Information)**

**179033 05 09**

Policy Amendment - Umbrella Policy - Excess Liability Policy

The policy does not apply to any liability arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- A. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- B. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- C. The Fair Credit Reporting Act (FCRA), and any amendment of our addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- D. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

All other terms and conditions of the policy remain unchanged.

## **Communicable Diseases and Viruses -Absolute Exclusion**

### **179054 09 07**

Policy Amendment - Umbrella Policy - Excess Liability Policy

This policy does not apply to any claim or liability arising, in whole or in part, directly or indirectly out of, or which is in any way related to any communicable disease, virus or any variant, strain, adaptation or mutation thereof.

Without limiting the foregoing, this exclusion applies to every injury, damage, loss, cost or expense otherwise covered by this policy, if any.

All other terms and conditions of the policy remain unchanged.



## New York Changes - 2008 N.Y. Laws (Former SB 8610) Provisions 179059 01 09 NY

### Policy Amendment(s) Liability

- A. The following provision is hereby added to the policy and shall replace any other provision addressing the ability to bring a legal action against the insurer providing coverage under this policy:

#### Legal Action Against Us

1. Except as provided in Paragraph 2., no person or organization has a right under this Coverage Form or Part:
  - a. To join us as a party or otherwise bring us into a **Suit** asking for damages from an **Insured**; or
  - b. To sue us on this Coverage Form or Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an **Insured**; but we will not be liable for damages that are not payable under the terms of this Coverage Form or Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and a release of liability signed by us, the **Insured** and the claimant or the claimant's legal representative.

2. With respect to **Bodily Injury** claims, if we deny coverage or do not admit liability because an **Insured** or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or non admission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an **Insured**:

- a. Brings an action to declare the rights of the parties under the policy; and
- b. Names the injured person, someone acting for the injured person or other claimant as a party to the action.

The addition of these provisions is not intended to broaden coverage otherwise provided by the policy in the absence of such language.

- B. The following provision is added and supersedes any provision to the contrary:

Failure to give notice to us as soon as practicable, as required under this Coverage Form or Part shall not invalidate any claim made by the **Insured**, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the **Insured**, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

All other terms and conditions of this policy remain unchanged.

**Crisis Management Response Costs and Crisis Management Loss Coverage  
Extension Endorsement  
179061 06 19 NY**

Schedule A - Crisis Management Limits of Insurance

Crisis Management Response Costs Sublimit of Insurance: \$250,000

Crisis Management Loss Limit of Insurance: \$50,000

Schedule B - Approved Crisis Management Firms

Hill & Knowlton Strategies

24-hour North America crisis help line: +1(212) 885-0306

or

Allianz Global Corporate & Specialty

1 Progress Point Parkway

O'Fallon, MO 63368

Phone number: 888-347-3428

or email the loss to [Newloss@agcs.allianz.com](mailto:Newloss@agcs.allianz.com)

Schedule C - Additional Key Executives

None, unless Schedule C - Additional Key Executives is shown in the Declarations.

## I. Insuring Agreement - Crisis Management Response Costs and Crisis Management Loss

### A. Crisis Management Response Costs

We will pay **Crisis Management Response Costs** on behalf of the **Named Insured**, regardless of fault, arising from a **Crisis Management Event** which first commences during our Policy Period, up to the amount of the **Crisis Management Response Costs Sublimit of Insurance**.

### B. Crisis Management Loss

We will pay **Crisis Management Loss** on behalf of the **Named Insured** arising from a **Crisis Management Event** which first commences during our Policy Period, up to the amount of the **Crisis Management Loss Limit of Insurance**.

C. A **Crisis Management Event** will be deemed to commence at the time when a **Key Executive** first becomes aware of a **Crisis Management Event** and will end when we determine that a crisis no longer exists or when the **Crisis Management Response Costs Sublimit of Insurance** has been exhausted, whichever occurs first.

D. There will be no **Retained Limit** applicable to **Crisis Management Response Costs** or **Crisis Management Loss**.

E. Any payment of **Crisis Management Response Costs** or **Crisis Management Loss** that we make under the coverage provided by this endorsement will not be an acknowledgement of coverage under the policy, nor does it create any duty to defend any **Suit** under any other part of this policy.

## II. Limits of Insurance

A. The **Crisis Management Response Costs Sublimit of Insurance** is the most we will pay for all **Crisis Management Response Costs** under this policy, regardless of the number of **Crisis Management Events** first commencing during our Policy Period. This **Crisis Management Response Costs Sublimit of Insurance** will be in addition to the applicable Limits of Insurance shown in the Declarations of this policy.

B. The **Crisis Management Loss Limit of Insurance** is the most we will pay for all **Crisis Management Loss** under this policy, regardless of the number of **Crisis Management Events** first commencing during our Policy Period. This **Crisis Management Loss Limit of Insurance** will be in addition to the applicable Limits of Insurance shown in the Declarations of this policy.

C. We will have no obligation to pay **Crisis Management Response Costs** when we determine that a **Crisis Management Event** has ended or when the **Crisis Management Response Costs Sublimit of Insurance** has been exhausted, whichever occurs first.

D. The Crisis Management Limits of Insurance in Schedule A of this endorsement apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, beginning with the inception date of our Policy Period shown in the Declarations, unless our Policy Period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Crisis Management Limits of Insurance of this endorsement.

111. As used in this endorsement, the following terms have the following meanings:

A. **Crisis Management Event** means an **Occurrence** that triggers significant adverse regional or national media coverage that in the good faith opinion of a **Key Executive** of the **Named Insured** has or may result in damages covered by this policy that are in excess of the total applicable limits of **Primary Insurance**, **Other Insurance**, or **Self-Insured Retention**.

**Crisis Management Event** includes man-made disasters such as explosions, major crashes, multiple deaths, burns, dismemberment, traumatic brain injury, permanent paralysis, or contamination of food, drink, or pharmaceuticals, provided that they result from an **Occurrence**.

B. **Crisis Management Firm** means any firm approved by us and shown in Schedule B, Approved Crisis Management Firms, of this endorsement, which is hired by you to perform **Crisis Management Services** in connection with a **Crisis Management Event**. An approved **Crisis Management Firm** will be in business

three or more years, be available to respond to an insured twenty four hours a day seven days a week, have a specialty in **Crisis Management Services** practices, and have no conflict of interest with the **Named Insured**.

- C. **Crisis Management Loss** means the following amounts incurred during a **Crisis Management Event**:
  - 1. Amounts for the reasonable and necessary fees and expenses incurred by a **Crisis Management Firm** in the performance of **Crisis Management Services** for the **Named Insured** solely arising from a covered **Crisis Management Event**; and
  - 2. Amounts for reasonable and necessary printing, advertising, mailing of materials, or travel by directors, officers, employees or agents of the **Named Insured** or a **Crisis Management Firm** incurred at the direction of a **Crisis Management Firm**, solely arising from a covered **Crisis Management Event**.
- D. **Crisis Management Services** means those services performed by a **Crisis Management Firm** in assisting the **Named Insured** in minimizing potential harm to the **Named Insured** from a covered **Crisis Management Event** by maintaining and restoring public confidence in the **Named Insured**.
- E. **Crisis Management Response Costs** means the following reasonable and necessary expenses incurred during a **Crisis Management Event** directly caused by a **Crisis Management Event**, provided that such expenses have been pre-approved by us and are associated with damages that would be covered by this policy:
  - 1. Medical expenses;
  - 2. Funeral expenses;
  - 3. Psychological counseling;
  - 4. Travel expenses;
  - 5. Temporary living expenses;
  - 6. Expenses to secure the scene of a **Crisis Management Event**.

**Crisis Management Response Costs** does not include defense costs or **Crisis Management Loss**.
- F. **Crisis Management Response Costs Sublimit of Insurance** means the Crisis Management Response Costs Sublimit of Insurance shown in Schedule A of this endorsement.
- G. **Crisis Management Loss Limit of Insurance** means the Crisis Management Loss Limit of Insurance shown in Schedule A of this endorsement.
- H. **Key Executive** means the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, President, General Counsel or general partner ( if the **Named Insured** is a partnership) of the **Named Insured** or sole proprietor (if the **Named Insured** is a sole proprietorship). A **Key Executive** also means any other person holding a title designated by you and approved by us, which title is shown in Schedule C - Additional Key Executives of this endorsement.
- I. **Retained Limit** means:
  - 1. The total applicable limits of **Primary Insurance** and any applicable **Other Insurance** providing coverage to the **Insured**; or
  - 2. The **Self-Insured Retention** applicable to each **Occurrence** that results in damages not covered by **Primary Insurance** nor any applicable **Other Insurance** providing coverage to the **Insured**.
- J. **Self-Insured Retention** means the amount of Self-Insured Retention, if any, that may be scheduled on the policy.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

## Access or Disclosure of Confidential or Personal Information and Data-Related Exclusion

**179087 05 14**

Policy Amendment - Umbrella Policy - Excess Liability Policy

This policy does not apply to any liability arising out of:

- A. Access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- B. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described above.

As used in this exclusion, **electronic data** means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

All other terms and conditions of the policy remain unchanged.

## **NEW YORK AMENDATORY AGRL IL NY010819**

Wherever used in this endorsement: (1) "we", "us", "our" and "insurer" mean the insurance company which issued this policy; and (2) "you", "your", "named insured" and "insured" mean the named corporation, named organization, named sponsor, named insured or insured stated in the declarations page; and (3) "other insured(s)" means all other persons or entities afforded coverage under this policy.

This policy is amended to include the following provisions and shall replace any provision within this policy which would otherwise apply:

### **A. DUTY TO DEFEND**

When we have a duty to defend, we will defend the insured against any suit seeking those damages even if the allegations of the suit are groundless, false or fraudulent.

### **B. CANCELLATION**

1. The first Named Insured shown in the Declarations may cancel this entire policy by mailing or delivering to us advance written notice of cancellation.
2. If this policy has been in effect for sixty (60) days or less, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. Thirty (30) days before the effective date of cancellation if we cancel for any reason not included in Paragraph 3. below; or
  - b. Fifteen (15) days before the effective date of cancellation if we cancel for any of the reasons included in Paragraph 3. below.
3. If this Policy has been in effect for sixty (60) days or more, or if this is a renewal or continuation of a Policy we issued, we may cancel only for any of the reasons listed below, provided we mail the first Named Insured written notice at least fifteen (15) days before the effective date of cancellation:
  - a. Nonpayment of premium provided however, that a notice of cancellation on this ground shall inform the first Named Insured of the amount due;
  - b. Conviction of a crime arising out of acts increasing the hazard insured against;
  - c. Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim;
  - d. After issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy;
  - e. Material physical change in the property insured, occurring after change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in accordance with our objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
  - f. Cancellation is required pursuant to a determination by the Superintendent that continuation of our present premium volume would jeopardize our solvency or be hazardous to the interest of our policyholders, our creditors or the public;
  - g. A determination by the Superintendent that the continuation of the policy would violate, or would place us in violation of, any provision of the Insurance Code;

- h. Suspension or revocation during the required policy period of the driver's license of any person who continues to operate a covered auto, other than a suspension issued pursuant to Subdivision (1) of Section 510(b) of the Vehicle and Traffic Law or one or more administrative suspensions arising from the same incident which has or have been terminated prior to the effective date or cancellation;
  - i. Cancellation of one or more of the underlying policies providing primary or intermediate coverage where:
    - (1) Such cancellation is based upon Paragraphs a. through h. above; and
    - (2) Such policies are not replaced without lapse; or
  - j. Where we have reason to believe, in good faith and with sufficient cause, that there is a probable risk of danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds. If we cancel for this reason, you may make a written request to the Department of Financial Services, within 10 days of receipt of this notice, to review our cancellation decision. Also, we will simultaneously send a copy of this cancellation notice to the Department of Financial Services.
4. The notice of cancellation will be mailed or delivered to the first named insured at the address shown in the policy and to the authorized agent or broker.
  5. Notice of cancellation will state the effective date of cancellation, and if cancellation is for nonpayment of premium, the amount due. The Policy Period will end on the date of cancellation.
  6. If this policy is cancelled, we will send the first named insured any premium refund due.
    - a. If we cancel this policy, the refund will be pro-rata.
    - b. If the first named insured cancels, the refund may be less than pro rata.
    - c. However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, we will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. The cancellation will be effective even if we have not made or offered a refund.
  7. Regardless of the number of days this policy has been in effect, if:
    - a. This policy covers auto subject to the provision of Section 370(a) and (b) of the New York Vehicle and Traffic Law; and
    - b. The Commissioner of the Department of Motor Vehicles deems this policy to be insufficient for any reason;

we may cancel this policy by giving you notice of such insufficiency forty-five (45) days before the effective date of cancellation to permit you to replace this policy. Notice will include the reason for our cancellation. We will mail or deliver our notice to the first Named Insured at the address shown in the policy and to the authorized agent or broker. However, we may deliver any notice instead of mailing it. Proof of mailing will be sufficient proof of notice.

## C. NON-RENEWAL

### 1. Nonrenewal

If we decide, not to renew this policy we will send notice as provided in Paragraph 3. below.

### 2. Conditional Renewal

If we conditionally renew this policy subject to:

- a. A change of limits;
- b. A change in type of coverage;
- c. A reduction of coverage;
- d. An increased deductible;
- e. An addition of exclusion; or



- f. Increased premiums in excess of 10%, exclusive of any premium increase due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;

we will send notice as provided in Paragraph 3. below.

We may conditionally renew this policy subject to any requirements to maintain underlying insurance. In the event of failure to comply with such conditions as of the expiration date of the policy, or sixty (60) days after mailing or delivering the notice of conditional renewal, the conditional renewal shall be deemed to be an effective notice of nonrenewal.

### 3. Notices Of Nonrenewal And Conditional Renewal

- a. If we decide not to renew this policy or to conditionally renew this policy as provided in Paragraphs 1. and 2. above, we will mail or deliver written notice to the first Named Insured shown in the Declarations and the agent or broker or record, at least 60 but not more than 120 days before:
  - (1) The expiration date; or
  - (2) The anniversary date if this is a continuous policy.
- b. Notice will be mailed or delivered to the first Named Insured at the address shown in the policy and to the authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.
- c. Notice will include the specific reason(s) for nonrenewal or conditional renewal, including the amount of any premium increase for conditional renewal and description of any other changes.
- d. If we violate any of the provisions of Paragraph 3.a., b. or c. above by sending the first Named Insured an incomplete or late conditional renewal notice or a late nonrenewal notice:
  - (1) And if notice is provided prior to the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy at the lower of the current rates or the prior period's rates until 60 days after such notice is mailed or delivered, unless the first Named Insured, during this 60-day period, has replaced the coverage or elects to cancel;
  - (2) And if the notice is provided on or after the expiration date of this policy, coverage will remain in effect at the same terms and conditions of this policy for another policy period, at the lower of the current rates or the prior period's rates, unless the first Named Insured, during this additional policy period, has replaced the coverage or elects to cancel.
- e. If you elect to renew on the basis of a late conditional renewal notice, the terms, conditions and rates set forth in such notice shall apply:
  - (1) Upon expiration of the 60-day period, unless Subparagraph (2) below applies; or
  - (2) Notwithstanding the provisions in Paragraphs d.(1) and d.(2), as of the renewal date of the policy if the conditional renewal notice was sent at least 30 days prior to the expiration or anniversary date of the policy.
- f. We will not send you notice of nonrenewal or conditional renewal if you, your authorized agent or broker or another insurer of yours mails or delivers notice that the policy has been replaced or is no longer desired.

### D LEGAL ACTION AGAINST US

- 1. Except as provided in Paragraph 2., no person or organization has a right under this policy to:
  - a. Join us as a party or otherwise bring us into a suit asking for damages from an insured; or
  - b. sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreement settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and a release of liability signed by us, the insured and the claimant or the claimant's legal representative.



2. With respect to bodily injury claims, if we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or non-admission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within sixty (60) days after we deny coverage or do not admit liability, we or an insured:

- a. Brings an action to declare the rights of the parties under the policy; and
- b. Names the injured person, someone acting for the injured person or other claimant as a party to the action.

The addition of these provisions is not intended to broaden coverage otherwise provided by this policy in the absence of such language.

#### E. SAME BASIS DEFENSE EXPENSES

We will not recognize the reduction or exhaustion of the underlying limits by defense costs. Any defense expense payments we make will be in addition to the applicable Limits of Insurance.

#### F. FAILURE TO GIVE NOTICE

Failure to give notice to us as soon as practicable, as required under this policy, shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

#### G. FRAUD STATEMENT

Any person who knowingly and with intent to defraud any insurance company or other person files an application for commercial insurance or a statement of claim for any commercial or personal insurance benefits containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, and any person who, in connection with such application or claim, knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation.

#### H. NEW YORK CONFORMITY WITH REGULATIONS

With respect to operations in the State of New York, this policy shall conform to the applicable insurance laws of the State of New York or the applicable regulations of the New York Insurance Department in effect at the time the policy is issued; provided however, that if applicable, our Limit of Insurance shall be excess of an amount of damages equal to the amount of the Limits of Insurance stated in the any schedule of primary or underlying insurance.

THE PROVISIONS OF THIS ENDORSEMENT APPLY NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS POLICY AND SUPERSEDE ANY OTHER TERMS, CONDITIONS AND PROVISIONS CONTAINED IN THIS POLICY OR ITS ENDORSEMENTS.

All other terms, conditions, and exclusions will remain the same.

**Amendment - Limits of Insurance - 100001**

DECLARATIONS PAGE and CLAIMS-MADE COVERAGE AMENDMENT AND EXCLUSION - FORM#100007

- Limits of insurance for those entities or group of related entities designated as member of the risk purchasing group will either be:

\$10,000,000 EACH OCCURRENCE

\$10,000,000 AGGREGATE

or

\$5,000,000 EACH OCCURRENCE

\$5,000,000 AGGREGATE

or

\$3,000,000 EACH OCCURRENCE

\$3,000,000 AGGREGATE

or

\$2,000,000 EACH OCCURRENCE

\$2,000,000 AGGREGATE

or

\$1,000,000 EACH OCCURRENCE

\$1,000,000 AGGREGATE

as shown on the Individual Certificate of Coverage.

## **Policy Term Endorsement - 100002**

The master policy term will be 08/01/2020 to 08/01/2022 (24 months).

Those Participants who are a Lead Named Insured will be provided twelve months coverage from their respective effective date, unless otherwise approved, not to exceed beyond the 08/01/2022 expiration date of the master policy.

All additions and deletions made by an existing Participant will be subject to the expiration date designated for the Lead Named Insured.

For the purpose of this endorsement, Lead Named Insured shall be defined as the First Named Insured for each Participant covered under HARP Inc.

**Non-Cumulation of Limits Endorsement - 100003**

If an occurrence, claim, or suit covered under this policy is also covered under another Commercial Excess and Umbrella Insurance policy or Commercial Excess Insurance policy or other similar policy issued by us or any other member insurer of the Fireman's Fund Insurance Companies, the combined maximum amount paid for such occurrence, claim or suit under all applicable policies will not exceed the amount stated in the Declarations of the policy with the highest Each Occurrence Limit Of Insurance.

Payments made for such occurrence, claim or suit will be treated as paid under each of the applicable policies for purposes to determine the Limits Of Insurance available under the aggregate limits as respects any subsequent occurrence, claim or suit.

## **Risk Purchasing Group - Program Manager - 100004**

It is hereby agreed that those entities or group of related entities designated as members of the risk purchasing group that is the first named insured in this policy on the individual member's Certificate of Coverage are included as named insured's under this policy.

Coverage only applies to liability arising out of the operation(s) at the specified locations scheduled on the individual member's Certificate of Coverage, but only as respects:

- the specific named insured's listed in that Certificate of Coverage and designated as the owner(s), manager(s), or lessee(s) of those specified locations and
- the coverages shown on that Certificate of Coverage, subject to the terms and conditions of this insurance.

It is agreed that those named insureds listed in an individual Certificate of Coverage issued by the risk purchasing group during this policy period are provided coverage for the time period specified in such Certificate of Coverage, not to exceed twelve months.

All additions and deletions made for a named insured will be subject to the expiration date designated in the Individual Certificate of Coverage for that named insured.

**Occupational or Environment Disease Exclusion -100005**

Regardless of whether or not such coverage is afforded by any underlying insurance", this insurance does not apply:  
To any liability or injury resulting from any occupational or environmental disease arising out of the operations or products of any "insured" and affecting:

- a. Any employees of any "insured", or
- b. Any other person.

## Employment Practices Exclusion - Coverage A - 100006

Section I. Excess Liability - Coverage A, C. Coverage A - Exclusions, 5. Employment Practices is deleted in its entirety and replaced by the following:

5. EMPLOYMENT PRACTICES - To any liability arising out of any employment-related or personnel practices, policies, acts or omissions. This includes, but is not limited to:
- a. Refusal to employ;
  - b. Termination of employment;
  - c. Coercion, criticism, demotion, failure to promote, evaluation, reassignment, discipline, defamation, self-defamation, harassment, humiliation, discrimination, libel, slander, false arrest and imprisonment, or violation of a person's right of privacy; or
  - d. Any consequential injury or damages as a result of a., b. or c. above.

This exclusion applies:

- a. To all claims, demands, charges, complaints or Suits by any person(s) or organization(s) for damages because of such injury or liability, including damages for care and loss of services;
- b. Whether any Insured may be held liable as an employer or in any other capacity either directly or indirectly related to employment; and
- c. To any obligation to share damages with or repay someone else who must pay damages because of such injury or liability.

This exclusion applies:

- whether the insured may be liable as an employer or in any other capacity;
- and
- to any obligation to share damages with or repay someone else who must pay damages because of any of the foregoing.

This exclusion does not apply to Excess Liability - Coverage A to the extent that insurance is provided under a Directors & Officers Liability policy shown in the Schedule of Underlying Insurance.

## Claims Made Amendment and Exclusion - 100007

### CLAIMS-MADE COVERAGE AMENDMENT AND EXCLUSION

COVERAGE PROVIDED BY THIS ENDORSEMENT APPLIES ON A CLAIMS-MADE BASIS.

PLEASE READ THE ENTIRE ENDORSEMENT CAREFULLY.

#### A. 1. Claims-Made Coverage - Coverage A

Solely with respect to Coverage A of this policy in excess of Primary Insurance which applies on the basis of Claims-Made, we adopt the terms of Primary Insurance with respect to what must occur after the Primary Insurance Retroactive Date, if any, in order for coverage to apply.

However, we do not adopt terms of any:

- a. Primary Insurance Retroactive Date, if any; and
- b. Primary Insurance inception and termination dates.

#### 2. All of the following apply with respect to the above:

- a. SECTION I. EXCESS LIABILITY - COVERAGE A, A. COVERAGE A - INSURING AGREEMENT, subsection 1.b. does not apply with respect to coverage in excess of Claims-Made basis Primary Insurance; and
- b. Our Coverage A Retroactive Date for Claims-Made coverage provided by this endorsement is: Various; and Per the Scheduled Underlying Insurance retroactive date (if any).
- c. For Coverage A to apply, the claim must be first made during our Policy Period as well as during the Primary Insurance policy period. As used in 2.b. above, the term "Retroactive Date" means the date that is the earliest date on which the wrongful act, error or omission may first take place for coverage to apply.

#### B. Limits of Insurance Amendment - Coverage A

Subject to our Limits of Insurance, the most we will pay under Coverage A of this policy for coverage under A. above is:

\$10,000,000 Each Claim or Wrongful Act of the term that is used to determine the exhaustion of the limit of insurance in Primary Insurance

\$10,000,000 Aggregate

These Limits of Insurance are included within, and are not in addition to, the Each Occurrence Limit of Insurance and the Aggregate Limit of Insurance shown in our Declarations.

#### C. Notice of Claim - Coverage A

Notwithstanding anything to the contrary contained in this policy, notice of an Occurrence is not notice of a claim under that part of Coverage A which provides coverage on the basis of Claims-Made pursuant to this endorsement. All conditions of such Primary Insurance that require you to provide

Primary Insurers with notice of claims or Suits also apply separately and distinctly to us with respect to any claim or Suit which may reasonably be expected to result in a claim against this policy. You must give such notice to us on the same basis that you are to give notice to such Primary Insurer.

#### D. Extended Reporting Period - Coverage A

If a Primary Policy provides coverage for claims made under an Extended Reporting Period then Coverage A of this policy will provide an Extended Reporting Period in the same manner, subject to all of the following:

- 1. Our Extended Reporting Period under Coverage A of this policy will not reinstate or increase the Limits of Insurance of this policy or extend our Policy Period.
- 2. Our Extended Reporting Period will not be longer than twelve (12) months unless we expressly agree in writing at the time the Extended Reporting Period becomes effective.
- 3. If the Primary Policy requires you to make a written request in order for its Extended Reporting Period to apply to their policy, then:
  - a. We must also receive a written request from you for an Extended Reporting Period for our policy no later than sixty (60) days after the termination date of this policy.
  - b. If our Extended Reporting Period is for a period of more than sixty (60) days, you must promptly pay us any additional premium we require. The premium for our Extended Reporting Period will not exceed 200% of the annual premium of this policy if the Extended Reporting Period is for no



more than a twelve (12) month period, and will be deemed fully earned at the inception of the Extended Reporting Period.

#### E. Wrongful Acts Policy Exclusion

This policy does not apply to any liability arising out of any criminal, malicious, fraudulent, intentional, knowingly wrongful, or dishonest, act or omission by any person or organization whether or not an Insured. This exclusion applies even if the claim or Suit alleges negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by any Insured.

This exclusion does not apply to Excess Liability - Coverage A - to the extent that Primary Insurance is provided under a Directors and Officers liability policy shown in the Primary Schedule of Underlying Insurance.

#### F. Contractual Liability Limitation

This policy does not apply to any liability arising out of:

1. Any Insured's obligation to pay damages by reason of any Insureds assumption of the liability of another person or organization in any contract or agreement for the rendering of or failure to render any professional service; or
2. Any breach of any contract, agreement, warranty, guarantee or representation.

## **Fungi or Bacteria Exclusion - all states except New York - 100008**

The policy does not apply to:

- A. Any claims or liability arising, in whole or in part, out of, resulting from, caused by, or in any way related to "fungi" or bacteria; or
- B. The cost to test for, monitor, abate, mitigate, remove, dispose of or remediate "fungi" or bacteria.

This exclusion applies regardless of any other cause, event, material, product or building component that contributed concurrently or in any sequence to such liability. However, this exclusion does not apply to bacteria that is, is on, or contained in, a good or product intended for human ingestion.

"Fungi" is defined to include but is not limited to fungus, mildew, mold or resulting spores and byproducts, including mycotoxins or allergens. However, "fungi" does not include "fungi" for human ingestion.

## **State Amendatory Endorsement -100009**

The following State Amendatory Endorsement are included as applicable:

178830 10-03 AK - Alaska Amendatory  
178831 10-01 AR - Arkansas Amendatory  
178858 01-12 CA- California Amendatory  
178832 03-98R CO - Colorado Amendatory  
178833 03-98R CT - Connecticut Amendatory  
178834 03-98R DC - District of Columbia Amendatory  
178835 03-98R FL - Florida Amendatory  
178836 03-98R GA - Georgia Amendatory  
178383 10-02 IL - Illinois Amendatory  
178864 03-98R KS - Kansas Amendatory  
178868 10-03 KY - Kentucky Amendatory  
178533 10-02 LA - Louisiana Amendatory  
178838 03-98R ME - Maine Amendatory  
178839 10-01 MD - Maryland Amendatory  
178840 03-98R MI - Michigan Amendatory  
178841 10-03 MN - Minnesota Amendatory  
178842 03-98R MO - Missouri Amendatory  
178843 10-01 MT - Montana Amendatory  
178844 03-98R NE - Nebraska Amendatory  
178959 10-01 NV - Nevada Amendatory  
178845 10-03 NH - New Hampshire Amendatory  
178846 10-02 NJ - New Jersey Amendatory  
178859 10-03 NY - New York Amendatory  
178847 03-98R NC - North Carolina Amendatory  
178849 08-98R OH - Ohio Amendatory  
178850 03-98R OK - Oklahoma Amendatory  
178851 03-98R PA- Pennsylvania Amendatory  
178852 03-98R RI - Rhode Island Amendatory  
178861 03-98R SD - South Dakota Amendatory  
178543 10-02 TN - Tennessee Amendatory  
178386 10-02 TX - Texas Amendatory  
178973 10-01-UT - Utah Amendatory  
178854 07-12 VA - Virginia Amendatory  
178855 10-03R WA - Washington Amendatory  
178378 10-02 WI - Wisconsin Amendatory  
178857 03-98R WY - Wyoming Amendatory





## QBE - HARP Real Estate RPG Program Form Library

<b>Seq</b>	<b>Form Number</b>	<b>Description</b>
1	CL Jacket (03-20)	Policy Jacket
2	QBCX-7000	Notice - Offer of Terrorism Insurance Coverage
3	AMSXR-3002 (06-20)	Commercial Excess Liability Declarations
4	XS 70 00 09 11	Commercial Excess Liability Coverage Part
5	AMSXR-2002 (06-20)	Following The Form of Underlying General Aggregate Per Project or Per Location
6	AMSXR-2009 (06-20)	Certificate of Coverage Endorsement
7	AMSXR-2014 (06-20)	Underlying Claims Made Coverage
8	AMSXR-2005 (06-20)	Total Pollution Exclusion
9	AMSXR-2006 (06-20)	Exclusion - Employment Related Practice
10	AMSXR-2008 (06-20)	Nuclear Energy Liability Exclusion
11	AMSXR-2012 (06-20)	Exclusion - Violation of Statutes That Governs Recording and Distribution of Material
12	AMSXR-2013 (06-20)	Exclusion - War Exclusion
13	XS 70 65 09 11	Non-Stacking of Limits
14	XS 70 88 09 11	Exclusion - Asbestos (Total)
15	XS 70 95 09 11	Exclusion - Coverage in Violation of U.S. Economic or Trade Sanctions
16	XS 71 03 09 11	Exclusion - Known Loss
17	XS 71 20 09 11	Exclusion - Occupational Disease
18	XS 71 25 09 11	Exclusion - Professional Services Exclusion
19	XS 71 50 09 11	Exclusion Related to Contractors
20	IL 09 85 01 15	Disclose Pursuant to Terrorism Risk Insurance Act
21	AMSXR-2007 (06-20)	Cap on Losses from Certified Acts of Terrorism
22	AMSXR-5001 (06-20)	Delaware Changes - Cancellation and Nonrenewal
23	AMSXR-7002 (06-20)	Excess Liability Certificate of Coverage
24	AMSXR-7003 (06-20)	New Jersey Property and Liability Insurance Guaranty Association Surcharge (PLIGA)
	XS 71 15 09 11	Exclusion - Mold and Fungus
	XS 71 05 09 11	Exclusion - Lead
	XS 71 35 09 11	Exclusion - Silica
	XS 70 80 09 11	Exclusion - Aircraft Products and Grounding

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

### **EXCLUSION - KNOWN LOSS**

This insurance does not apply to, nor shall we have any duty to defend, "loss" in connection with any claim or suit made against an insured based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, claim or suit that has been the subject of any notice given prior to inception date of this policy to any insurer under any policy of insurance.

All other terms and conditions of this policy remain unchanged.

# EXHIBIT E

This instrument was prepared by:  
**KENNETH S. DIREKTOR, ESQ.**  
Becker & Poliakoff, P.A.  
1 East Broward Blvd., Suite 1800  
Ft. Lauderdale, FL 33301

**CERTIFICATE OF AMENDMENT TO THE DECLARATION OF CONDOMINIUM  
OF CHAMPLAIN TOWERS SOUTH CONDOMINIUM  
AND THE BY-LAWS AND ARTICLES OF INCORPORATION OF  
CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC.**

WHEREAS, the Declaration of Condominium of Champlain Towers South Condominium has been duly recorded in the Public Records of Miami-Dade County, Florida, in Official Record Book 11191 at Page 35; and

WHEREAS, the By-Laws and Articles of Incorporation are attached as Exhibits thereto; and

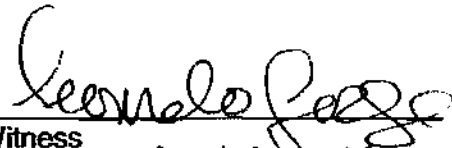
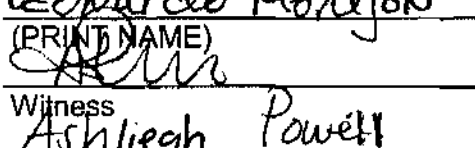
WHEREAS, at a duly called and noticed meeting of the membership of Champlain Towers South Condominium Association, Inc., a Florida not-for-profit corporation, held March 20, 2019, and recessed to and reconvened on April 11, 2019, the aforementioned Declaration, By-Laws and Articles of Incorporation were amended and restated pursuant to the provisions of said Declaration, By-Laws and Articles of Incorporation.

NOW, THEREFORE, the undersigned hereby certify that the following Amended and Restated Declaration, Amended and Restated By-Laws and Amended and Restated Articles of Incorporation are a true and correct copy of the amended and restated documents as approved by the membership.

**SEE ATTACHED**

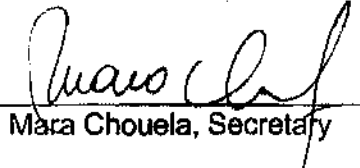
\* \* \* \* \*

WITNESS my signature hereto this 12 day of April, 2019, at Surfside, Miami-Dade County, Florida.

  
Witness  
Leonardo Morejon  
(PRINT NAME)  
  
Witness  
Ashleigh Powell  
(PRINT NAME)

**CHAMPLAIN TOWERS SOUTH CONDOMINIUM  
ASSOCIATION, INC.**

By:   
Anette Goldstein, President

Attest:   
Mara Chouela, Secretary



STATE OF FLORIDA :  
COUNTY OF MIAMI-DADE :

The foregoing instrument was acknowledged before me this 12 day of April 2019, by Anette Goldstein and Mara Chouela, as President and Secretary, respectively, of **Champlain Towers South Condominium Association, Inc.**, a Florida not-for-profit corporation, on behalf of the corporation. They are personally known to me, or have produced J/A as identification and did take an oath.



*Yadira Santos* (Signature)  
Yadira Santos (Print Name)  
Notary Public, State of Florida at Large

This instrument was prepared by:  
Kenneth S. Direktor, Esquire  
Becker & Poliakoff, P.A.  
1 East Broward Blvd., Suite 1800  
Ft. Lauderdale, FL 33301

**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**OF**  
**CHAMPLAIN TOWERS SOUTH CONDOMINIUM**

**NOTE: This document is a substantial rewording of the Declaration of Condominium executed by Developer on July 30, 1981, recorded on August 19, 1981, at Official Records Book 11191, Page 35, of the Public Records of Miami-Dade County, as amended to this date (hereinafter the "Original Declaration");**

**As amended by amendment dated September 10, 1981 and recorded on September 10, 1981, in Official Records Book 11209, Page 1030;**

**As amended by amendment dated July 31, 1985 and recorded on July 31, 1985, in Official Records Book 12590, Page 107;**

**As amended by amendment dated February 5, 1996 and recorded on February 12, 1996, in Official Records Book 17092, Page 3975;**

**As amended by corrective amendment dated February 28, 1996 and recorded on March 13, 1996, in Official Records Book 17127, Page 2720;**

**As amended by amendment dated October 14, 1996 and recorded on October 31, 1996, in Official Records Book 17411, Page 1175;**

**As amended by amendment dated April 21, 2005 and recorded on April 26, 2005, in Official Records Book 23310, Page 1158;**

**As amended by corrective amendment dated June 15, 2005 and recorded on June 27, 2005, in Official Records Book 23516, Page 4714;**

**As amended by amendment dated June 11, 2010 and recorded on June 22, 2010, in Official Records Book 27328, Page 0767.**

All references to Official Records hereinabove are references to the Official Records of Miami-Dade County. All references to the Exhibits or any Exhibit to the Original Declaration shall be deemed to be a reference to such Exhibit or Exhibits as amended to date and such Exhibits are deemed to be incorporated by reference herein and made a part hereof.

**1. INTRODUCTION AND SUBMISSION.**

- 1.1 The Land. The real property comprising this condominium located in Miami-Dade County, Florida, is more particularly described in Exhibit "A" attached hereto

The foregoing shall hereinafter be referred to as the "Land".

- 1.2 Submission Statement. The Developer submitted the Land and all improvements thereon to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act, as defined in Section 2.1 of this Declaration.

- 1.3 Name. The name by which this condominium is to be identified is CHAMPLAIN TOWERS SOUTH CONDOMINIUM.

**2. DEFINITIONS.** The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- 2.1 "Act" means the Florida Condominium Act (Chapter 718, Florida Statutes) as it has been amended to date and as it may be amended from time to time, and all references herein to the Act shall mean and refer to the Act as amended to date and as it may be amended from time to time, whether or not so stated.
- 2.2 "Articles" or "Articles of Incorporation" mean the Amended and Restated Articles of Incorporation of the Association, as the same may be amended from time to time.
- 2.3 "Assessment" means a share of the funds which are required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.
- 2.4 "Association" or "Condominium Association" means CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit

corporation, the entity responsible for the operation and maintenance of the Condominium.

- 2.5 "Association Property" means the property, real and personal, in which title or ownership is vested in, or which is dedicated on a recorded plat or leased to, the Association for the use and benefit of its members.
- 2.6 "Board" or "Board of Directors" means the representative body which is responsible for administration of the Association.
- 2.7 "Building" means the structure situated on the Condominium Property in which the Units are located.
- 2.8 "By-Laws" mean the Amended and Restated By-Laws of the Association, as the same may be amended from time to time.
- 2.9 "Committee" means a group of Board members, Unit Owners or Board members, Unit Owners or other persons appointed by the Board or the President to make recommendations to the Board regarding a proposed annual budget or otherwise to take action on behalf of or make recommendations to the Board.
- 2.10 "Common Elements" means and includes:
  - (a) The portions of the Condominium Property not included within the Units.
  - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of Utility and other services to Units and the Common Elements.
  - (c) An easement of support in every portion of a Unit which contributes to the support of the Building, including but not limited to all load bearing interior walls within the Units.
  - (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.
  - (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration.
- 2.11 "Common Expenses" means: (1) expenses of administration and management of the Condominium Property and Association Property; (2)

expenses of maintenance, operation, protection, repair or replacement of Common Elements and Association Property, as well as those portions of the Units for which the Association is responsible; (3) expenses declared Common Expenses by the provisions of this Declaration or by the By-Laws; (4) any valid charge against the Association or against the Condominium Property or the Association Property; (5) the costs of carrying out the powers and duties of the Association; and (6) all expenses properly incurred by the Association in the performance of its duties, including expenses specified in Florida Statute, Section 718.115. Common Expenses also include all reserves required by the Act or otherwise established by the Board, insurance for directors and officers, social activities, road maintenance and operation expenses, and may include in-house communications, security services, and pest control services to the Units and Common Elements, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or property of the Condominium. The cost of communications services as defined in Chapter 202, Florida Statutes, information services, or internet service obtained pursuant to a bulk contract shall also be a Common Expense, but shall be allocated on a per Unit basis, and shall not include any other separate obligations of individual Unit Owners.

- 2.12 "Common Surplus" means the amount of all receipts or revenues, including Assessments, rents or profits collected by the Association which exceeds Common Expenses.
- 2.13 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.14 "Condominium Property" means the lands, leaseholds, improvements and other personal property submitted to Condominium Ownership by the Original Declaration, subject to the limitations thereof and exclusions therefrom, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.
- 2.15 "County" means the County of Miami-Dade, State of Florida.
- 2.16 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.
- 2.17 "Developer" means the entity identified in the Original Declaration as Developer.

- 2.18 "Improvements" means all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property, including, but not limited to, the Building.
- 2.19 "Legal Fees" mean (a) reasonable fees for attorney and paralegal services incurred in negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and post-judgment proceedings; and (b) court costs through and including all trial and appellate levels and post-judgment proceedings.
- 2.20 "Limited Common Elements" means those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided. Any portion of the Condominium Property for which the Unit Owners are responsible for maintenance, repair or replacement under Section 7 of this Declaration which is not located within the Unit boundaries, as defined in Section 3.6 of this Declaration, shall be Limited Common Elements.
- 2.21 "Member" means an Owner who, or which, is a member of the Association.
- 2.22 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
- 2.23 "Unit Owner" or "Owner of a Unit" or "Owner" or "Unit Owner" means the record Owner of a Unit.
- 2.24 "Utility Services" as used in the Condominium Act and construed with reference to this Condominium and as used in this Declaration, the Articles of Incorporation and By-Laws shall include, but not be limited to, electric power, gas, water, heating, air-conditioning, cable television, sprinkler, irrigation, drainage, sewage and garbage disposal.

### **3. DESCRIPTION OF CONDOMINIUM.**

- 3.1 Survey. A survey of the land showing the improvements on it is attached as Exhibit "B" to this Declaration.
- 3.2 The Building. A thirteen (13) story residential Condominium building that has been constructed on the Land, consisting of one hundred thirty-six (136) Units, together with the Common Elements appurtenant thereto.

- 3.3 Development Plan. The Building and all other improvements constructed on the Condominium Property are set forth in detail in Exhibit "B" attached hereto and made a part hereof. Each Unit is described in Exhibit "B" in such a manner that there can be determined therefrom the identification, location, dimensions, and size of each Unit as well as of the Common Elements appurtenant thereto. Each Unit is identified by either a number, letters, or a combination of letters and numbers, as shown upon Exhibit "B", and that no Unit bears the same designation as any other Unit.
- 3.4 Unit Boundaries. Each Unit shall include that part of the building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:
- (a) The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:
    - (i) Upper Boundaries – The horizontal plane of the undecorated finished ceiling.
    - (ii) Lower Boundaries – The horizontal plane of the undecorated finished floor.
  - (b) The perimetrical boundaries of the Unit shall be the vertical planes of the undecorated, finished interior of the walls bounding the Unit extending to the intersections with each other and with the upper and lower boundaries. The balconies and patios as shows upon Exhibit "B" attached hereto shall be deemed Limited Common Elements and re intended for the exclusive use of the Owner of the Unit to which each is contiguous.
- 3.5 Limited Common Elements.
- (a) Automobile Parking. The Common Elements include a parking area for automobiles of the Unit Owners, one parking space will be assigned to each Unit which will be entitled to the exclusive use of such parking space without charge.
  - (b) Storage Lockers. One storage locker will be assigned to each Unit which will be entitled to the exclusive use of such storage locker without charge.

3.6 Easements. Subject to the Association's authority to suspend use rights hereunder and under the Act, the following easements are hereby created (in addition to any easements created under the Act):

- (a) Perpetual Nonexclusive Easement. Subject to Section 18.4 of this Declaration, and any restrictions set forth in this Declaration or the Rules and Regulations, the Common Elements shall be, and the same are hereby declared to be subject to a perpetual easement in favor of all of the Owners of Units in the Condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Unit Owners.
- (b) Settlement or Movement of Improvements. In the event that any Unit shall encroach upon any Common Elements for any reason not caused by the purposeful or negligent act of the Unit Owner or Owners or agents of such Owner or Owners, then an easement appurtenant to such Unit shall exist for the continuance of such encroachment upon the Common Elements for so long as such encroachment shall naturally exist; and, in the event that any portions of the Common Elements shall encroach upon any Unit, then an easement shall exist for the continuance of such encroachment of the Common Elements into any Unit for so long as such encroachment shall naturally exist.
- (c) Air Space. The Owner of each Unit shall have an exclusive easement for the use of the air space occupied by said Unit as it exists at any particular time and said Unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.
- (d) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property as may be required from time to time for utility, cable television and other services and drainage in order to serve the Condominium. A Unit Owner shall do nothing within or outside his Unit that interferes with or impairs, or may interfere with or impair, the provisions of such utility or other services or drainage facilities or the use of these easements. Except as otherwise provided in Sections 7 and 9 of this Declaration, drainage systems on the Condominium Property, if any, shall be maintained continuously in good condition by the Condominium Association and easements are granted hereby over all Units in favor of all Owners and the Association with respect thereto.



- (e) Ingress and Egress. A non-exclusive easement shall exist in favor of each Unit Owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portion of the Common Elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.
- (f) Maintenance Easement. The Association shall have an easement to enter a Unit for the maintenance, repair and replacement of the Common Elements and any other portion of the Condominium Property for which the Association is responsible under this Declaration, and to otherwise discharge the Association's rights and obligations under this Declaration. Such access to a Unit shall be with notice to the Unit Owner or other occupant, if practicable, and only during reasonable hours, except that access may be had at any time in case of emergency.

#### **4. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS.**

The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and, except as elsewhere provided herein to the contrary, the exclusive right to use all appropriate appurtenant Limited Common Elements shall not be separated from the Unit and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

#### **5. OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS AND SHARE OF COMMON EXPENSES; VOTING RIGHTS.**

- 5.1 Percentage Share of Common Expense, Common Elements and Common Surplus. The Common Expenses of the Condominium shall be shared by the Unit owners in accordance with their respective percentages as specified and set forth in Exhibit "C". The foregoing ratio of sharing Common

Expenses and Assessments shall remain true, regardless of the purchase price of the several parcels, their locations, or subsequent resale. The Common Expense shall include any valid charge against the Condominium as a whole. The Common Surplus of the Association shall similarly be owned by each of the Unit Owners in accordance with their respective percentages as specified and set forth in Exhibit "C".

- 5.2 Membership in Association. Each Unit shall have, as an appurtenance thereto, a membership in the Association and in the funds and assets of the Association.
- 5.3 Voting. An Owner or Owners of a Unit shall be entitled to one (1) vote for each such Unit.

6. **AMENDMENTS.** Except as elsewhere provided herein, amendments to this Declaration may be effected as follows:

- 6.1 Notice. Notice of the subject matter of a proposed amendment will be included in the notice of any meeting at which a proposed amendment is considered.
- 6.2 Resolution. A resolution for the adoption of a proposed amendment may be proposed by the board of directors of the Association or by a written petition signed by at least one-fourth (1/4) of the Members of the Association. Except as elsewhere provided, such proposed amendment must be approved by at least seventy-five percent (75%) of the participating Members, present and voting, but in no event less than a majority of the entire membership, at a meeting at which a quorum is established, or by written agreement provided a quorum participates, or by any other means authorized by Chapters 617 or 718, Florida Statutes, as the same may be amended from time to time.
- 6.3 Proviso. Except as otherwise provided in this document, no amendment shall alter a Unit Owner's percentage in the Common Elements, alter the proportionate share in the Common Expense or Common Surplus, change a Unit Owner's voting rights, or alter the basis for apportionment of Assessment which may be levied by the Association against a Unit Owner without the written consent of the Unit Owner.

7. **MAINTENANCE, REPAIR AND REPLACEMENT OF UNITS, LIMITED COMMON ELEMENTS, COMMON ELEMENTS AND ASSOCIATION PROPERTY.**

- 7.1 Common Elements and Association Property. Except to the extent (i) expressly provided to the contrary in this Declaration, or (ii) proceeds of insurance are made available therefor, the Association shall be responsible, at Common Expense, for maintenance, repair and replacement of:
- (a) All Common Elements, Limited Common Elements and Association Property, except as otherwise provided in this Declaration;
  - (b) All portions of the Condominium (except interior wall surfaces of Units) contributing to the support of the Building, which portions shall include, but not be limited to, the outside walls of the building, chasing and load bearing railings, walls or columns, or boundary walls of Units;
  - (c) All fixtures on the exterior of the Buildings, except those installed by the Unit Owners, including, but not limited to, the lamps on the balconies as originally installed or replacements of like kind;
  - (d) All floor and ceiling slabs, including, but not limited to, the slabs of all terraces and balconies, except for decorative surfaces installed by Unit Owners to the extent any such surfaces may be permitted, including, but not limited to, waterproofing the balcony floors;
  - (e) All conduits, chases, chase areas, ducts, plumbing, and air-conditioning components which serve the Common Elements, Association Property or more than one Unit;
  - (f) All wiring and other facilities for the furnishing of Utility Services which serve the Common Elements, Association Property or more than one Unit;
  - (g) All electrical lines, conduits or fixtures from the shared or Common distribution facility or conduit up to, but not including, the circuit breaker box within or serving the Unit,
  - (h) All plumbing lines, conduits or fixtures from the shared or Common distribution facility or conduit up to, but not including, the main shut off valve within or serving the Unit, and all drain lines, excluding those drain lines for which the Unit Owner is responsible under Section 7.3(e) below;
  - (i) All Unit entry doors;

- (j) Exterior painting, structural maintenance of the Buildings, roofing, maintenance of roads, sidewalks, parking areas, drives, streets, and driveways (except as otherwise provided herein to the contrary), and general exterior maintenance, but shall not include maintenance, repair and replacement of sliding glass doors, hurricane shutters, nor any alteration or addition to the Condominium Property made by a Unit Owner or his or her predecessors in title, nor any portions of the Condominium Property exposed to the elements or any structural element for which this Declaration delegates responsibility to the Unit Owner;
- (j) All property owned by the Association and other property contemplated by and to the extent the same is consistent with the terms hereof;
- (k) All incidental damage caused to a Unit by the Association's discharge of its responsibilities under this Section 7.1 up to a maximum of \$1,000.00 per Unit (unless caused by negligent or intentional misconduct for which the Association is responsible, in which case no limitation shall apply).

The Association's aforementioned responsibilities shall not apply to the extent such maintenance, repair or replacement arises from or is necessitated by the negligence, misuse or neglect of one or more Unit Owners, their families, guests or invitees, in which case such cost and expense shall be paid solely by such Unit Owners, and shall be enforceable in the same manner as any Assessment under Section 12 hereof, including, but not limited to, by recordation and foreclosure of a claim of lien against the Unit.

- 7.2 Units. All maintenance, repairs and replacements of, in or to any Unit, as defined in Section 3.4 hereof, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. The foregoing responsibility of the Unit Owner includes, but is not limited to, appliances, carpets and all other floor, wall and ceiling coverings, all interior surfaces, and everything else within the boundaries of the Unit, except to the extent the Association is specifically responsible therefore under Section 7.1 above. The Unit Owner shall also maintain, repair and replace, at his, her or its sole cost and expense, all portions of any hurricane protection that the Unit Owner may install, including such portion of the Common Elements, if any, to which the hurricane protection is attached, which cost and expense shall also include the cost and expense of removal and/or reinstallation by the Association of

the hurricane protection if necessary or required in order for the Association to discharge its obligations hereunder.

### 7.3 Specific Unit Owner Responsibilities.

- (a) The Unit Owner shall be responsible at his or her own expense for the maintenance, repair and replacement of any portions of the air-conditioning and heating systems serving only his or her particular Unit, including, but not limited to, filters, the compressor, condenser, motor, fan, air handler, discharge lines, the air conditioner water shut off valve, and all related parts, without regard to whether such items are located within the boundaries of the Units. Notwithstanding the foregoing, the Association may enter into a service contract for all air conditioning and heating systems serving any portion of the Condominium Property, and may replace filters with the cost of the service contract or the replacement of filters being paid for at Common Expense, provided, however, that each individual Owner shall be responsible for any maintenance, repair or replacement not covered by the service contract.
- (b) The Unit Owner shall be responsible at his or her own expense for the maintenance, repair and replacement of all exterior screens, sliding glass doors, and windows within the walls bounding the Unit, including, without limitation, all frames, locks and operating mechanisms appurtenant to such exterior screens, doors, sliding glass doors and windows, as well as trim and caulking. Without limiting the generality of the foregoing, no Unit Owner may decorate, alter or modify exterior screens, doors, sliding glass doors, or windows or the framework, locks or operating mechanisms thereof in any manner whatsoever, except with the prior written approval of the board of directors, as provided in Section 9 hereof.
- (c) The Unit Owner shall be responsible at his or her own expense for the maintenance, repair, and replacement of all fans, stoves, hot water heaters, refrigerators, sinks, toilets, tubs, showers, shower pans, or other appliances or equipment, including any fixtures and/or their connections required to provide Utility Service to his Unit.
- (d) The Unit Owner shall be responsible at his or her own expense for the maintenance, repair and replacement of the circuit breaker box within or serving the Unit and all electrical lines, conduits or fixtures running from the circuit breaker box into the Unit up to and including the fixtures or outlets within the Unit.

- (e) The Unit Owner shall be responsible at his or her own expense for the maintenance, repair and replacement of the main shut-off valves within or serving the Unit and all plumbing lines, conduits or fixtures running from the main shut-off valve into the Unit up to and including the fixtures or outlets within the Unit and all drain lines within or serving the Unit up to the point the drain line connects to the Common line. Plumbing lines which serve only one Unit and are located, in whole or in part, within a portion of the Building identified in Section 7.1(b) of this Declaration shall be maintained, repaired or replaced, as necessary, by the Association at the expense of the Owner of the Unit served by such drain lines.
- (f) Maintenance and upkeep of the interior surfaces and interior areas of any balcony/Florida room shall be the responsibility of the Owner of the Unit to which the balcony/Florida room is attached, but shall not include maintenance of any slab or exterior wall structure or the painting of the Building exterior. The installation of tile or any other decorative surface on the floors, walls or ceilings of the balconies/Florida rooms is prohibited without prior written approval from the Board of Directors and subject to such guidelines, specifications and conditions as the Board of Directors may adopt and amend from time to time.
- (g) Unit Owners shall promptly report to the Association any defects or need for repairs, the responsibility for the remedy of which is that of the Association.
- (h) All maintenance, repair or replacement for which the Unit Owners are responsible shall be performed by contractors with appropriate licensure and insurance. The board of directors may set standards for appropriate levels of insurance and may require proof of licensure, insurance and the procurement of any required permits before permitting a contractor on the Condominium Property, and may also adopt such other rules as the Board deems necessary and proper to regulate contractors or any other person performing work anywhere within the Condominium Property. The Board may deny access to the property to any contractor performing work that requires approval from the board of directors hereunder until such approval has been granted in the manner required herein.
- (i) All floors in all Units shall be covered, in accordance with Rules and Regulations promulgated by the board of directors, so as to abate the noise which may be created and transmitted to other Units or Common Elements. All hard surfaces must have approved noise

abatement, except the balcony, terrace or patio. In the event the board of directors determines that any noise is being transmitted to another Unit or to Common Elements and that such noise is unreasonable, then the Owner of such Unit shall, at his expense, take such steps as shall be necessary to abate such noise to the satisfaction of the Board.

- 7.4 Pest Control. The Association shall supply pest control services for the exterior perimeter of the Building and all the Common Elements, with the cost thereof being part of the Common Expenses. If the Building must be "tented" or otherwise treated in a manner that requires the Owners to vacate their Units, the Association shall only be responsible for the cost of the actual tenting or other treatment, and not for incidental expenses of any displaced Unit Owners. The Association may, but is not obligated to, provide pest control services for the Units at Common Expense.
- 7.5 Restrictions on Major Renovations. Unit Owners may not engage in "extensive" remodeling work or "heavy" construction activity, except with prior approval of the Board of Directors. Furthermore, the Board may designate certain holidays or holiday periods during which such work is prohibited. "Extensive" remodeling and "heavy" construction shall be as defined by the Board of Directors from time to time, but, whether so defined or not, shall include, but not be limited to, activities involving the following:
- Activities involving the use of power equipment such as jackhammers, drills, saws, and the like, which create substantial noise, as determined by the Board.
  - Activities resulting in the creation of substantial noise that can be heard outside of the Unit, regardless of whether power equipment is used or not, as determined by the Board.
  - Activities rendering the Unit uninhabitable during the performance of the work.
  - Activities requiring the storage of materials or equipment on the premises outside of the Unit.
  - Activities involving the presence of work crews or significant numbers of workers, as determined by the Board.
  - Activities requiring the use of scaffolding, booms, or other forms of exterior access.

The Board may waive the prohibition against such work being done during the holidays designated by the Board in the case of an emergency, in *de minimus* cases, or in hardship situations, as determined by the Board, and may permit the temporary staging of scaffolding and other work required for installation or maintenance and repair of hurricane shutters or other hurricane protection.

The Association may, but shall not be obligated to, act as the Owner's agent in obtaining the services of contractors or others to perform Unit Owner maintenance responsibilities in the event of an emergency, or in non-emergency situations, provided that in non-emergency situations, the Association and the Owner so agree, or absent such agreement when such work is deemed necessary, as determined by the Board, to facilitate projects involving the Association's maintenance of the Condominium Property. In all such cases the Unit Owner shall be deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting Common Expenses under these Condominium Documents through a Lien for Charges. Unit Owners shall at all times be responsible to ensure, whether or not Association approval is required for work being done within the Unit or elsewhere upon the Condominium Property, that all contractors and other persons performing services for the Unit Owner are properly licensed and insured, including required Worker's Compensation insurance, and that the Condominium Property is kept free from liens and cause no damage to the Condominium Property. The Board has the power (but not the duty) to require proof of: licensure; building permits; and insurance, and may set standards for insurance as to required coverage, deductibles, or other terms and conditions, and may require the Association to be named as an additional insured under such policies. The Unit Owner shall hold the Association harmless from any claim of any nature arising out of failure to comply with these requirements.

**7.6 Hurricane Protection.** Each Unit Owner is required to install hurricane protection at his or her expense in the form of impact resistant glass or hurricane shutters on all exterior windows, sliding glass doors, stationary glass walls, swing doors and other apertures in the walls bounding his or her Unit. Each Unit Owner shall maintain, repair and replace, as necessary, such required hurricane protection at his or her expense. Any Unit Owner installing hurricane shutters in addition to impact resistant glass shall also be responsible for any incidental damage caused to any hurricane protection as a result of the Association maintaining any portion of the Buildings as well as any damage to the Condominium Property as a result of the installation of the hurricane protection. All hurricane protection installations shall be installed, maintained, repaired and replaced to meet, at a minimum, the requirements of the applicable building code. The Board shall adopt specifications for permitted impact resistant glass installations and for permitted hurricane shutter installations which may be more stringent than the standards set forth in the applicable building code. All



hurricane shutter installations shall be subject to such guidelines as may be adopted by the Board of Directors regarding the type, color, location and manner of installation of such hurricane shutters. Prior to the installation of any hurricane protection, whether impact resistant glass or hurricane shutters, the Unit Owner shall make application to the Board of Directors for approval of the same, including plans and specifications evidencing that the proposed installation conforms to the Association's specifications. No hurricane protection, whether impact resistant glass or hurricane shutters, shall be installed without the prior written approval of the Board of Directors. The Board of Directors shall determine in their sole discretion whether the hurricane protection conforms to the requirements of the Association. In the event any Unit Owner fails to properly maintain, repair and replace hurricane protection installed on the apertures serving his or her Unit in the manner required herein, the Board of Directors may, but is not obligated to maintain, repair, replace or, where the hurricane protection is beyond repair, remove same, as determined at the discretion of the Board of Directors and shall do so at the expense of the Owner thereof, which charges shall be a lien upon the Unit, enforceable in the same manner as any other assessment levied by the Association pursuant to this Declaration, including, but not limited to, by recordation and foreclosure of a claim of lien against the Unit, which lien shall also secure interest, costs and attorney's fees, and which shall have the same priority and be foreclosed in the same manner as the lien provided hereunder for assessments. The Association shall have the authority, but not the obligation, to schedule and conduct inspections of the hurricane shutters or impact resistant glass at Common Expense on all Units on an annual basis or at such times as the Board of Directors determines such inspections to be necessary and proper in order to protect the interests of the Association and insure that all hurricane shutters and impact glass are functioning properly and are otherwise in compliance with the requirements hereof and the requirements and specifications made and amended from time to time by the Board of Directors. The Association is further authorized, but not required, to enter a service contract for all impact resistant glass or hurricane shutters on the Condominium Property, with the cost of the service contract being a Common Expense, but each individual Owner being responsible for any installation, maintenance, repair or replacement not covered by such service contract.

8. **ADDITIONS, ALTERATIONS OR IMPROVEMENTS TO COMMON ELEMENTS OR ASSOCIATION PROPERTY BY THE ASSOCIATION.** No portion of the Common Elements and Association Property may be subject to any additions, alterations or improvements (as distinguished from maintenance, repairs and replacements) which involve a Common Expense in excess of five percent (5%) of the annual budget then in effect for Common Expenses, including operating expenses and reserves, for any individual addition, alteration or improvement, or in excess of ten percent (10%) percent of the annual budget then in effect, including operating expenses and funded reserves, for all additions, alterations or

improvements undertaken within a fiscal year, unless such additions, alteration or improvements have been approved by not less than seventy five percent (75%) of the participating Members, present and voting, at a membership meeting at which a quorum is established, but in no event less than a majority of the entire membership, or by written agreement provided a quorum participates, or by any other means authorized by Chapters 617 or 718, Florida Statutes, as the same may be amended from time to time. Any additions, alterations or improvements to the Common Elements or Association Property, or any part thereof, involving a Common Expense not in excess of the five percent (5%) and ten percent (10%) thresholds described above, may be approved by the board of directors without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements or Association Property undertaken by the Association shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners accordingly.

**9. ADDITIONS, ALTERATIONS OR IMPROVEMENTS TO UNITS, LIMITED COMMON ELEMENTS, COMMON ELEMENTS AND ASSOCIATION PROPERTY BY UNIT OWNER.**

9.1 Prohibited Alterations. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements or Association Property. Notwithstanding the foregoing, an Owner of adjacent Units may undertake alterations which combine the Units into a single living space, subject to the requirements of Sections 9.2 and 9.3 below.

9.2 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Unit or to the Limited Common Elements appurtenant to his or her Unit which is structural in nature, or which impacts or is visible from the Common Elements (including, but not limited to, the fixtures and operating mechanisms on the exterior of the exterior doors), any work which involves piercing the Unit boundary, which changes the appearance of any portion of the exterior of the Building, which relocates, modifies or installs new electrical, plumbing, telephone or any such utility line, or which requires the issuance of a permit from a governmental or regulatory authority or agency, without the prior written consent of the board of directors. Any and all requests for electrical, mechanical or structural additions, alterations or improvements must be in writing and must be submitted to the Association with plans prepared and sealed by the appropriate professional (i.e., architect, engineer, etc.). The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement within thirty (30) days after receipt of such request and all sealed plans or thirty (30) days after receipt of any additional information requested by the Board within thirty (30) days of receipt of the initial request. Failure to respond

within the stipulated time shall constitute the Board's consent. The Board may condition the approval on the payment of such fees and charges and the posting of such deposit as the Board deems reasonably necessary. Furthermore, the Board may, as a condition of reviewing an Owner's plans, require the Owner to pay the Association's expenses for such review including, but not limited to, legal, engineering or other consultant fees. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, which may not be waived by the Association under any circumstances, and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. Once approved by the board of directors, such approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and all future Owners of the Unit, and their heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, its Board members, officers and employees, and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair, replacement and insurance for such additions, alterations or improvements from and after the date of installation or construction thereof as may be required by the Association, and shall also be responsible for all costs associated with removal and reinstallation of same when necessary, in the discretion of the board of directors, in connection with the Association's performance of its maintenance obligations under this Declaration. The Board may impose the requirements set forth in Paragraph 7.3(h) above and may require the execution of a covenant to run with the Unit to memorialize the application, approval, conditions of approval and future obligations of the Unit Owner and may condition its approval of any addition, alteration or improvement hereunder upon the preparation, execution and recording of such a covenant at the Unit Owner's expense.

- 9.3 Combination of Units. Two contiguous Units may, subject to the prior written approval of the Board of Directors, be combined in to a single living space. The Board may disapprove such request, in its discretion, upon a finding that the proposed combination of Units is not in the best interests of the Association. The Board, as a condition of approving the combination of Units, may require sealed plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association that the proposed work affiliated with the Unit combination complies with all applicable laws, codes, and ordinances. The Board may further require such Professional Engineer's or Architect's certification at the end of the

work, certifying that said work has been performed in accordance with the plans and specifications, and in accordance with all applicable laws, codes, and ordinances. The Owner (and his successors in title) shall be required to indemnify and hold the Association and Unit Owners harmless for any claim of any nature arising from the combination of the Units. Should the Board, in its discretion, determine that the Association must retain independent professionals to review the request, including but not limited to engineers, architects, or attorneys, the Association may also condition approval of the requesting Unit Owner's agreement to reimburse the Association for said fees and expenses. Units which have been combined shall, after combination, be used only as a "single family" residence (including rental rights), and may not be used as two living quarters. Units which have been combined shall constitute two Units for purposes of sharing Common Expense, ownership of Common Elements, and voting rights. If Units which have been combined are sold, they shall be sold as a single living quarters, unless specifically approved by the Board to the contrary. If combined Units are to be reconfigured into two living spaces, the Board shall have the authority, using the same criteria listed above for combination of Units, to approve the reconfiguration. Without limitation, the Board shall have the authority to require plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association, that the reconfiguration of the Units into two living spaces is done in accordance with all applicable laws, codes, and ordinances and in accordance with the original configuration of the Units.

- 9.4 Additional Unit Owner Responsibility for Alterations and Additions. Any modifications, installations, or additions made by a Unit Owner shall be the financial responsibility of the Unit Owner and his or her grantees, heirs, successors and assigns and any future Owners of the Unit, including, but not limited to, insurance, maintenance, repair, and replacement of the modifications, installations or additions, regardless of whether the modification, installation or addition was installed by the current or a former Unit Owner. Any modifications, installations or additions made by a Unit Owner may be removed by the Association at the expense of the Owner in connection with the Association's discharge of its obligations under this Section. In such cases, if the Association advances the cost of removal and/or re-installation of such improvements, the Unit Owner who installed the alteration, addition, or improvement (and/or his or her successors in title) shall be obligated to reimburse the Association for any costs incurred by the Association in connection with the removal and/or re-installation of the alteration, addition or improvement, with said obligation being secured by a lien enforceable in the same manner as a lien for Common Expenses as provided in Section 12 herein below. Further, the Association, its contractors and agents, shall not be liable for any damage

to the item arising out of its removal and/or re-installation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent.

**10. OPERATION OF THE CONDOMINIUM BY THE ASSOCIATION; POWERS AND DUTIES.**

10.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium. The powers and duties of the Association shall include those set forth in the Amended and Restated By-Laws and Amended and Restated Articles of Incorporation of the Association (respectively, Exhibits "B" and "C" annexed hereto), as amended from time to time. In addition, the Association shall have (i) all the Common law and statutory powers of a corporation not for profit and for profit under the laws of Florida that are not in conflict with the provisions of the Articles, the Declaration, the By-Laws or the Act; (ii) the powers and duties set forth in the Act; as well as (iii) all powers and duties granted to or imposed upon it by this Declaration, including without limitation:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours when necessary for the inspection, maintenance, repair or replacement of any Common Elements, Association Property, or of any portion of a Unit to be maintained by the Association pursuant to this Declaration or at any time as necessary to prevent damage to the Common Elements, Association Property, or to a Unit or Units. Unit Owners shall be required to provide the Association with any and all keys necessary to access the Unit and all portions thereof for the foregoing purposes. If the Owner fails to provide a key or fails to provide a replacement key when any lock is added or changed, the Association shall not be liable for any damage caused to the Unit or to the Unit Owner's property as a result of the Association gaining access to the Unit or any delay in gaining such access, and the Unit Owner shall be liable for any costs incurred by the Association in obtaining access. The Unit Owner shall be given advanced notice of any non-emergency access.
- (b) The power to make and collect regular and special Assessments and other charges against Unit Owners and to regulate, administer, convey, lease, maintain, repair and replace the Common Elements and Association Property.
- (c) The power to acquire or convey title to real property (excluding Units in the Condominium) and to mortgage real property upon the

approval of a majority of all the voting interests of the Association either at a meeting or by written agreement.

- (d) The association shall not have the power to purchase a Unit of the Condominium except at sales in foreclosure of liens for Assessments for Common Expenses, at which sale the Association shall bid no more than the amount secured by its lien. This provision shall not be changed without the unanimous approval of the Members and the joinder of all record Owners of mortgages upon the Condominium. The Association shall have the power to sell, mortgage, lease, maintain and repair any Unit so acquired.
- (e) The power to acquire, sell or mortgage personal property and to hold, regulate, administer, lease, maintain, repair, and replace same.
- (f) The right to grant, modify or move easements which are part of or cross the Common Elements or Association Property.
- (g) The duty to maintain official records according to good accounting practices, and the requirements of the Condominium Act, as same may be amended from time to time.
- (h) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules, maintenance, repair and replacement of those portions of the Condominium Property for which the Association is obligated or authorized to provide same and such other management functions as the board of directors may delegate with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (i) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, subject to the limitation on mortgaging Association real property set forth in Paragraph (c) of this Section 10.1.

- (j) The power to adopt and amend Rules and Regulations concerning the details of the operation and use of the Units, the Common Elements, Association Property and the Condominium Property.
- (k) The power to lease and/or charge a fee for the exclusive use of Common Elements (other than Limited Common Elements) or Association Property to any Unit Owner or other third party being granted a right to such exclusive use.
- (l) All of the powers which a corporation not for profit in the State of Florida may exercise.

In the event of conflict among the powers and duties of the Association and the terms and provisions of this Declaration, or the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable Rules and Regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable Rules and Regulations; and the By-Laws shall take precedence over applicable Rules and Regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

10.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant hereto. Further, the Association shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where (i) such insurance is not required hereby or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.

10.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit.

10.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting or vote by written agreement, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.

10.5 Acts of the Association. Unless the approval or action of Unit Owners and/or a certain specific percentage of the board of directors of the Association is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable Rules and Regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association under the Declaration, Articles of Incorporation or By-Laws shall be given or taken by the board of directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution.

11. **DETERMINATION OF COMMON EXPENSES AND FIXING OF ASSESSMENTS THEREFOR.** The board of directors shall from time to time, and at least annually, prepare a budget for the Association, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses and allocate and assess such Assessments among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. Additionally, the board of directors may levy special assessments when determined by the board of directors to be necessary. The board of directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the board of directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws.

## 12. **COLLECTION OF ASSESSMENTS.**

12.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments and other charges coming due while that person is the Unit Owner. Except as provided in Section 12.4 below, the Unit Owner shall also be jointly and severally liable with the previous Owner for all unpaid Assessments and other charges that came due up to the time of the transfer of title. This liability is without prejudice to any right the Owner



may have to recover from the previous Owner the amounts paid by the Owner. The person acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Condominium Parcel and proceed in the same manner as provided herein and in the Act, for the collection of unpaid Assessments. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or Association Property or by the abandonment of the Unit for which the Assessments are made or otherwise.

- 12.2 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at the highest lawful rate from the date due until paid. In addition to the above stated interest, the Association shall charge an administrative late fee in an amount not to exceed the highest amount provided for in the Act, on Assessments and installments thereof not paid when due. All partial payments upon account shall be applied in the manner prescribed in the Act. The Association has a lien on each Condominium Parcel to secure the payment of Assessments. The lien shall have such priority as may be provided in the Act. All claims of lien must state the description of the Condominium Parcel, the name of the record Owner, the name and address of the Association, the amount due and the due dates and must be executed and acknowledged by an officer or authorized agent of the Association. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, which are due at the time a claim of lien is recorded, as well as all regular and Special Assessments which may be levied or which may accrue subsequent to the recording of the claim of lien and prior to satisfaction of the lien or the issuance of a certificate of title, together with interest, late charges and all reasonable costs and attorney's fees incurred by the Association incident to the collection and foreclosure process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose its lien in the same manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid, the Association may declare the Assessment installments for the remainder of the fiscal year in which a claim of lien has been filed to be accelerated, as provided in Section 12.7 below.

- 12.3 Assignment of Rents. The Association is hereby granted a lien against any rents derived from the Unit which shall have the same priority as the Association's lien for unpaid assessments against the Unit. Except to the extent limited by the Act, the lien on any rentals derived from the Unit shall be enforceable by the delivery of written notice to the Owner and the tenant demanding the payment of the rents, provided, however, that no such demand may be made unless and until the Owner is delinquent in the payment of any Assessment or other charge due and payable to the Association by the Unit Owner under this Declaration.
- 12.4 First Mortgagee. A First Mortgagee acquiring title to a Condominium Parcel as a result of foreclosure of its first mortgage, or by deed in lieu of foreclosure, may not, during the period of its Ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such Ownership. In addition, the First Mortgagee is liable for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed; provided, however, the First Mortgagee's liability is limited to the maximum amount set forth in the Act. If any unpaid share of Common Expenses or Assessments or other charges is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of Common Expenses or Assessments are Common Expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.
- 12.5 Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating whether all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit have been paid. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may charge a reasonable fee for the preparation of the Certificate.
- 12.6 Installments. Regular Assessments may be collected monthly or quarterly, in advance, at the option of the board of directors. Special assessments shall be payable on such terms as may be established by the Board.
- 12.7 Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon an Assessment, the Board may accelerate the remaining installments of the Assessment upon notice to the Unit Owner, and the then unpaid balance of the Assessment shall be due upon the date stated in the notice.

- 12.8 Set Off. Any funds due and payable by the Association to a Unit Owner under this Declaration of Condominium, the Articles of Incorporation or the By-Laws, or under the Act, shall be subject to a right of set-off for any amounts due and owing to the Association by the Unit Owner under this Declaration, the Articles of Incorporation, the By-Laws, or the Act.
13. **INSURANCE.** The insurance which shall be carried upon the Condominium Property, including the Units, Common Elements, and Association Property, shall be as follows:
- 13.1 Authority to Purchase Insurance. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear.
- 13.2 Coverage.
- (a) Property Insurance. Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general property and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements (including Limited Common Elements), the Units, and the personal property of the Association, for the replacement value thereof, including coverage for changes in building codes, unless the Board determines that such coverage for changes in building codes is not reasonably available or commercially practicable, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude landscaping and exterior improvements not customarily insured by condominium associations in the locality, and foundation and excavation costs, in its discretion. The Association shall determine the replacement value of the Insurable Improvements through independent appraisal, at least every thirty-six (36) months, so long as required by the Act. The Board shall establish deductibles, at a duly noticed meeting of the Board, and shall give notice of such meeting, and determine the deductibles, as required by the Act, so long as required by the Act. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be reasonably available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by the Act. The original policy of insurance shall

be held by the Association, and mortgagees shall be furnished, upon request, mortgage endorsements covering their respective interests. The word "Building" or "Insurable Improvement" in every property insurance policy issued to protect a Condominium building does not include those items excluded from the Association policy in the Act. The Unit Owners shall also be responsible to insure all alterations, modifications or additions made to the Unit, Limited Common Elements, or Common Elements by said Unit Owner, or his predecessor in interest or title.

- (b) Flood. The Association shall use its best efforts to obtain and maintain adequate flood insurance, for replacement value, less a commercially reasonable deductible as determined by the Board, and less foundation and excavation costs if determined by the Board. The Association will have discharged its responsibility to use its "best efforts" to obtain "adequate" flood insurance if it is able to purchase flood insurance up to the limits available through the National Flood Insurance Program (NFIP), or through any similar federally-sponsored or related program, or through private carriers with similar coverage, for premium rates that are generally commensurate with flood insurance premium rates for condominiums in the local area.
- (c) Liability Insurance. The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage.
- (d) Fidelity Bond. The Association shall obtain and maintain insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign

checks on behalf of the Association, and the President, Secretary, and Treasurer of the Association.

- (e) Worker's Compensation. Such worker's compensation coverage as may be required by law, or deemed advisable by the Board.
- (f) Other Insurance. Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Errors and Omissions Officers and Directors Liability insurance coverage and insurance for the benefit of its employees.

13.3 Deductible and Other Insurance Features. The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features (including but not limited to exclusions), as it deems desirable and financially expedient, in the exercise of its business judgment, and in the method provided by the Act. The deductible and other features shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the Condominium Property is situated.

13.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

13.5 Insurance Shares or Proceeds. Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

- (a) Common Elements; Proceeds On Account Of Damage to Common Elements. An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.
- (b) Unit; Proceeds On Account Of Damage to Units Shall Be Held In the Following Undivided Shares:
  - i) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established,

such balance shall be distributed in the manner elsewhere stated.

- ii) **Common Elements and Units.** When both Common Elements and those portions of the Unit insured by the Association are damaged by a Common occurrence, the proceeds of insurance shall be allocated between damage to Common Elements, Limited Common Elements, and Units as the Board of Directors shall determine. It shall be presumed that when there are insurance proceeds received on account of a casualty or covered cause of loss under the Association's applicable insurance policy, but insufficient proceeds for casualty or covered cause of loss repair (including but not limited to shortfalls occasioned by the existence of a deductible), that such shortfalls shall first be applied to damage to the Common Elements, and then to damage to Units and Limited Common Elements, it being the intent of this provision that when there is a casualty loss or covered cause of loss under the Association's applicable insurance policy causing significant damage to the premises, the shortfalls occasioned by deductibles shall be first apportioned to all Unit Owners in proportion to their share of the Common Elements and not applied first to Unit damage.
- iii) **Mortgages.** In the event that a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds.

**13.6 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed in the following manner:

- (a) **Reconstruction or Repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the Unit Owners, or, at the option of the Board, may be deposited in the Association's reserve fund.

- (b) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with the Plan of Termination approved pursuant to Article 19.

13.7 Association as Agent. The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Condominium Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim.

14. RECONSTRUCTION OR REPAIR AFTER CASUALTY. If any part of the Condominium Property shall be damaged by casualty or covered cause of loss under the Association's applicable insurance policy, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

14.1 Common Elements. If the damaged improvement is any of the Common Elements, the damaged Common Elements shall be reconstructed or repaired, unless the Condominium is to be terminated as provided elsewhere herein.

14.2 The Building.

- (a) Lesser Damage. If the damage renders less than fifty percent (50%) of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property shall be reconstructed or repaired.

- (b) Major Damage. If the damage renders more than fifty percent (50%) of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless seventy-five percent (75%) of the entire Voting Interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the casualty or covered cause of loss under the Association's applicable insurance policy, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed three (3) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining

information regarding reconstruction costs or insurance proceeds available for reconstruction.

- (c) Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building or any approved alterations thereto.
- (d) Definition of "Uninhabitable". For purposes of this Declaration, "uninhabitable" shall mean that the Board of Directors has concluded that the Condominium Property which the Association is required to insure cannot be restored to the condition (or a better condition) in which it existed prior to the casualty or covered cause of loss under the Association's applicable insurance policy through available insurance proceeds, plus a special assessment against each Unit Owner not to exceed ten percent (10%) of the average fair market value of the Units prior to the casualty or covered cause of loss, as determined by the Board. This calculation shall not include costs affiliated with those items the Unit Owner is obligated to repair or replace, at the Unit Owner's expense. A governmental agency's declaration or order that the Condominium Property may not be occupied for a defined period of time due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are "habitable," a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law.

- 14.3 Responsibility. All reconstruction work after a casualty or covered cause of loss under the Association's applicable insurance policy for damaged items that the Association insures shall be undertaken by the Association, except that a Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board. However, such work, and the disbursement of insurance proceeds, may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, the contract that is used for that purpose, and reasonable verification of appropriate steps to ensure that the work is done and that the contractor is paid for the performance of said work. Unit Owners shall be responsible for reconstructing those items that the Unit Owners are required to insure. All required governmental permits and approvals must be obtained prior to commencing reconstruction. Assessments for the cost of the work shall be set forth in Article 14.5 below. If an Owner fails to repair and reconstruct those items that the Unit Owner is responsible for under this Declaration, the Association shall have, without waiver of other



remedies, the right to proceed in accordance with Article 9.9, in which event the Unit Owner shall be charged for the costs of such activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by such rights as exist for collecting Common Expenses under these Condominium Documents i.e., a Lien for Charges.

- 14.4 Estimates of Costs. After a determination is made to rebuild or repair damage to property for which the Association or Unit Owner has the responsibility of reconstruction and repair, the Association or Unit Owner shall obtain promptly reliable and detailed estimates of the cost to rebuild or repair.
- 14.5 Assessments. The cost of reconstruction after casualty for those portions of the Condominium Property required to be insured by the Association shall be considered a Common Expense, pursuant to Section 718.111(11)(j) of the Act. However, any cost of repair, reconstruction or replacement of portions of the Condominium Property that is not caused by a casualty or covered cause of loss under the Association's applicable insurance policy, as determined by the Board of Directors, shall be repaired, and said costs allocated pursuant to the general maintenance, repair, and replacement provisions of this Declaration.
- 14.6 Damage Caused By Wear and Tear of the Condominium Property. Damage to the Condominium Property that is not caused by a casualty, as defined in Article 1.9 or covered cause of loss under the Association's applicable insurance policy, shall be repaired or replaced in accordance with the provisions of Article 9 and shall not be subject to this Article 14.
- 14.7 Termination of Condominium if Not Reconstructed. If the Owners vote not to reconstruct the Condominium by vote described in Article 14.2(b) hereof, the Condominium shall be terminated in accordance with the procedures set forth in Article 19 hereof.
- 14.8 Additional Board Authority. In addition to Board authority granted by law and the Condominium Documents, the Board shall have the following power and authority in connection with emergency conditions:
  - (a) To determine after a casualty whether the Units can be safely occupied, which decision shall not be conclusive as to the determination of habitability in Article 14.2. Such decision shall be based upon the advice of emergency management officials or a licensed professional.
  - (b) To declare any portion of the Condominium Property or Association Property unavailable for occupancy by Owners, Family members,

Tenants, or Guests after a casualty, including during the rebuilding process. Such decision by the Board shall be based upon the advice of emergency management officials or a licensed professional (such as an engineer) and can be made only if necessary to protect the health, safety, or welfare of the Association, Owners, Family members, Tenants, or Guests.

- (c) To mitigate damage and take action to prevent the spread of fungus (including but not limited to mold and mildew) by tearing out wet drywall and carpet (even if the Unit Owner is obligated to insure and/or replace those items) and to remove personal property from the Unit and dispose of damaged property or store such property onsite or at an offsite location, with Owners responsible for reimbursing the Association for items for which the Owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.
- (d) To contract on behalf of Unit Owners, with said Owners responsible to reimburse the Association, for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes debris removal, dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in the Units. The Unit Owner shall be responsible to reimburse the Association within ten (10) days of the Association's invoice. The Association's right to payment shall be secured by a Common Expense Lien as provided in the Act and actions to collect such sums shall entitle the Association to recover interest, late fees, attorneys' fees, and other costs and expenses of collection.
- (e) To implement a disaster plan prior to, during or after an impending disaster including, but not limited to, shutting down electricity, security systems, and air conditioners.
- (f) To adopt, by Board action, emergency assessments with such notice deemed practicable by the Board.
- (g) To adopt emergency Rules and Regulations governing the use and occupancy of the Units, Common Elements, Limited Common Elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.
- (h) To enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

- (i) To exercise all emergency powers set forth in the Act.

## 15. CONDEMNATION.

- 15.1 Deposit of Awards with Association. The taking of portions of the Condominium Property by the exercise of the power of eminent domain may, in the discretion of the board of directors, be deemed to be a casualty, and the awards for that taking may be deemed to be proceeds from insurance on account of the casualty and may be deposited in the manner provided for insurance proceeds. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association; and in the event of failure to do so, in the discretion of the board of directors of the Association, a special charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.
- 15.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.
- 15.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the Ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds after a casualty, or as elsewhere specifically provided herein.
- 15.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion and discretion of the Board), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:
  - (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged against the Owner of the Unit. The

Association shall have the right to collect and enforce any Assessment for such costs and charges in the manner provided in accordance in Section 12 of this Declaration for the enforcement of Assessments.

- (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, if a mortgagee endorsement has been submitted to the Association, the remittance being made payable jointly to the Owner and such mortgagees in the manner provided in such mortgagee endorsement.
- (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the allocated percentage in the Common Elements, the Common Expenses and the Common Surplus appurtenant to the Unit shall be reduced by multiplying such allocated percentage by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall be restated as follows:
  - (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
  - (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

- 15.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion and discretion of the Board), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Payment of Award. The awards shall be paid first to any Institutional First Mortgagees who have submitted a mortgagee endorsement to the Association in amounts sufficient to pay off their mortgages in connection with each Unit which is made uninhabitable; second, to the Association for any unpaid Assessments and other charges; and third, jointly to the affected Unit Owners and other mortgagees of their

Units who have submitted a mortgagee endorsement to the Association.

- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the board of directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required in Section 8 hereof.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Units. This shall be effected by restating the shares of continuing Unit Owners as follows:
  - (i) Add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Section 15.4(c) hereof (the "Percentage Balance"); and
  - (ii) Divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Section 15.4(c) hereof, by the Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

- (d) Assessments. If the balance of the award (after payments to the Unit Owners and such Owner's mortgagees as provided above) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.

15.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements

usable in the manner approved by the board of directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner required by Section 8 hereof. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares are effected pursuant hereto by reason of the taking or applied by the Association to other Assessments, in the discretion of the Board. If the Board determines to distribute the surplus and there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit who have submitted a mortgagee endorsement to the Association.

- 15.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the Ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium to be approved by, and executed upon the direction of, a majority of the Board.

**16. OCCUPANCY AND USE RESTRICTIONS.** In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

- 16.1 Occupancy. Each Unit shall be used as a single family residence only, except as otherwise herein expressly provided. As used herein, "single family" or words of similar import shall be deemed to include up to two (2) natural persons, who may be, but are not required to be, related by blood, marriage or adoption, living together as a single housekeeping Unit, and their parents, grandparents, children, step-children, sons- and daughters-in-law, siblings, aunts, uncles, nieces, nephews, cousins, and grandchildren, and their spouses or domestic partners.

Under no circumstances may any Unit be used for any business purpose which would cause a level of noise, odor, traffic, debris or other activity inconsistent with residential use.

A guest shall be considered any occupant who is not a Unit Owner or approved tenant. There shall be no time limitation on guest occupancy provided the guest occupies the Unit with the Owner or approved tenant or the guest is a member of the Owner's or approved tenant's family, as defined above. However, any guest who occupies a Unit in excess of thirty (30) days cumulatively in any calendar year, shall be subject to the restrictions applicable to leasing and screened as a tenant under Sections 16.6 and 17 of this Declaration. Guest occupancy in the absence of the Unit

Owner or approved tenant by persons other than members of the Unit Owner's or approved tenant's family, as defined above, is limited to thirty (30) days, per calendar year, cumulatively, for all such guest occupancy and may be subject to such fees and charges as the Board may set from time to time. Prior to any occupancy of the Unit by any guest, the Owner or approved tenant must provide written notice to the Association of the name or names of the intended guests, any familial relationship to the Owner or approved tenant, the anticipated date of arrival, and the anticipated date of departure. All persons claiming to be guests must produce a valid form of identification prior to taking occupancy. The Board may adopt and amend from time to time rules and regulations regarding occupancy by guests consistent with the terms of this provision, including, but not limited to, a requirement that all Owners provide a list of the names of those persons meeting the definition of "single family", as set forth above.

The Board of Directors may adopt and amend Rules and Regulations restricting the number of occupants who may occupy a Unit which shall be reasonably based upon the square footage of the Unit, the shared amenities in the Unit and on the Common Elements, and such other factors as the Board deems relevant and reasonable.

- 16.2 Pets. Except for fish in a fish tank not to exceed thirty (30) gallon capacity or caged birds (provided they do not emit noise that can be heard from the Common Elements or from other Units), no Unit Owner shall keep or harbor any animals or pets on the Condominium Property.
- 16.3 Use of Common Elements. The Common Elements shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units. No Unit Owner may store any personal property of any kind on the Common Elements, except as permitted in the Rules and Regulations, except for the Limited Common Element storage bin assigned to his or her Unit or such other areas on the Common Elements as the Board may designate for such purposes. The Board may also make and amend rules regarding personal property that may be placed on balconies.
- 16.4 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property by its residents or occupants. The board of directors is hereby authorized to adopt additional Rules and Regulations regarding noise, including, but not limited to, regulations regarding the types of activities that

are permitted, the level of noise that is permitted, and the hours during the day during which certain types of activities are permitted.

- 16.5 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth and subject to Section 18 of this Declaration. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this subsection.
- 16.6 Leases. A Unit shall not be leased without the prior written approval of the Association, which approval shall not be unreasonably withheld. The Association may disapprove any lease of a Unit on any reasonable grounds, including, but not limited to, the bases for good cause set forth in Section 17.3 of this Declaration. No Unit may be leased more than once in a twelve (12) month period, said twelve (12) month period to be measured from the commencement of the most recent prior lease of the Unit. No Unit Owner may lease his or her Unit during the first twenty-four (24) months of Ownership, measured from the date of recordation of the most recent instrument conveying any interest in title to the Unit, except transfers by devise or inheritance to members of the family, as defined herein above, of a deceased Unit Owner, or Units acquired by the Association, or transfers to add a member of the Owner's family, as defined hereinabove, to the title for estate planning purposes. In the event of a conveyance of title with an approved tenant in possession under lease, said moratorium against leasing during the first twelve (12) months of Ownership shall commence upon expiration of lease, unless the tenant vacates prior to the conveyance of title. No lease may be for a term of less than six (6) months plus one (1) day or more than twelve (12) months. No rooms may be separately leased and no transient tenants accommodated. Only an entire Unit may be leased and it is strictly prohibited for an Owner to lease out rooms or portions of a Unit. The advertising or listing of Units for occupancy through exchanges or swaps or other online or print forums, including, but not limited to, AirBnB, is strictly prohibited. A Unit shall be considered leased any time it is occupied by a tenant. The Association shall have the right to require that a substantially uniform form of lease be used. The lease shall include a provision granting the Association authority and standing to evict any



lessee of a Unit Owner who is in breach or violation of this Declaration or the Rules and Regulations of the Association. In the event the Association approves a lease, such approval of a lease shall not release the Unit Owner from any obligation under this Declaration. Regardless of whether or not expressed in the applicable lease, if any, a Unit Owner shall be jointly and severally liable with his, hers or their tenants to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant or for the acts and omissions of the tenant(s) or occupant(s) (whether or not subject to a lease) which constitute a violation of, or non-compliance with, the provisions of this Declaration and of any and all Rules and Regulations of the Association. All tenants shall comply with and be subject to the provisions of this Declaration, the By-Laws, and the Act and the provisions of same shall be deemed expressly incorporated into any lease of a Unit. Subleases are prohibited.

When a Unit is leased, a tenant shall have all use rights in the Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the leased Unit shall not have such rights. The exclusive use rights of the Lessee shall extend for the full term of any approved lease, unless the lease is terminated due to the death of the tenant or adequate proof of a work transfer involving the tenant. Nothing herein shall interfere with the access rights of the Unit Owner as a landlord pursuant to Chapter 83, Florida Statutes. Dual usage by a Unit Owner and a tenant of Association Property and Common Elements is prohibited.

- 16.7 Signs. No "For Sale" or "For Rent" signs or other displays of advertising shall be maintained or displayed on any part of the Common Elements, Limited Common Elements, or Units.
- 16.8 Antennas. No television or radio antennas or towers of any nature shall be erected on any part of the Condominium Property or the exterior of any Building, except to the extent such installations must be permitted by federal law or except to the extent such installations are approved as an alteration to the Common Elements as provided in Sections 8 or 9 hereof. The Board is empowered to adopt Rules and Regulations regarding the installation of television or radio satellites or antennas consistent with any applicable federal law in order to preserve and protect the Condominium Property from damage and to address legitimate safety objectives.
- 16.9 Litter. In order to preserve the beauty of the Condominium Property, no garbage, trash, refuse or rubbish shall be deposited, dumped or kept upon any part of the Condominium Property except in proper sized, closed

plastic bags for curbside pickup as required or in closed containers, dumpsters or other garbage collection facilities deemed suitable by the Board. All containers, dumpsters and other garbage collection facilities shall be kept in a clean condition with no noxious or offensive odors emanating therefrom.

#### 16.10 Limitations on Ownership.

- (a) Ownership by Individuals. A Unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.
- (b) Co-Ownership. Co-ownership of Units may be permitted, provided, however, that title to a Unit may not be held in the name of more than four (4) natural persons and such persons must be members of the same family, as that term is defined hereinabove. If the co-owners are other than spouses or domestic partners, the Board shall condition its approval upon the designation of one approved natural person as "Primary Occupant." Two persons may, in the discretion of the Board and upon request, each be designated as "Primary Occupants" so long as such persons are spouses or Domestic Partners. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the Unit may be used as a short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Unit, fractional ownership, or used as guest accommodations for employees, customers, or guests of Units owned by business entities, religious, or charitable organizations, and the like. The use of the Unit by other persons shall be as if the Primary Occupant was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Declaration. No more than one change in Primary Occupant will be approved in any twelve (12) month period. No time share estates may be created. "Unit Sharing" by multiple families and "Fractional Ownership" are prohibited.
- (c) Ownership by Corporations, Partnerships, Limited Liability Companies, Trusts, or Other Artificial Entities. A Unit may be owned in trust, or by a corporation, partnership, limited liability company, or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the Unit may be used as a

short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Unit, fractional ownership, or used as guest accommodations for employees, customers, or guests of Units owned by business entities, religious, or charitable organizations, and the like. The approval of a partnership, trustee, corporation, limited liability company, or other entity as a Unit Owner shall be conditioned upon designation by the Owner of one natural person to be the "Primary Occupant." As a condition of approval of a transfer to such entity, the Board may require a personal guarantee from the Primary Occupant or other person acceptable to the Board for payment of all Assessments, Charges, and other monetary obligations (including but not limited to use fees and fines) and for the liabilities affiliated with compliance with the Condominium Documents, including but not limited to damages and awards of prevailing party attorneys' fees. The use of the Unit by other persons shall be governed by the same restrictions as would be applicable if the Primary Occupant were the only actual Unit Owner. The Primary Occupant shall be the person entitled to vote on behalf of the Unit (unless a voting certificate is submitted signed by an authorized representative of the Unit Owner designating someone other than the Primary Occupant as the person entitled to cast the vote for the Unit), exercise rights of membership, and discharge the responsibilities incident thereto. Any change in this Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in designation of Primary Occupant will be approved in any twelve (12) month period. This provision is not applicable to the acquisition of Units by the Association.

- (d) Life Estate. A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only Member from such Unit, and occupancy of the Unit shall be as if the life tenant were the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all Assessments and Charges against the Unit. Any vote, consent or approval required by the Condominium Documents or law may be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

- (e) Limit on Number of Units. No person or permitted entity may own an interest, directly or indirectly, jointly or individually, in more than four (4) Units in the Condominium, no more than two (2) of which may be leased at any time.

16.11 Parking. The following guidelines shall apply with regard to permitted and prohibited vehicles on the condominium property (including, without limitation, any assigned or unassigned parking spaces):

- (a) ONLY passenger automobiles, station wagons, sport utility vehicles, pick-up trucks up to one-half ton capacity, motorcycles and passenger vans may park on the Condominium Property.
- (b) Without limiting the general provisions set forth above, the following types of vehicles WILL NOT be permitted to park on the Condominium Property, except as provided by sub-paragraph (c) below:
  - (i) Commercial vehicles of any type, including, without limitation, any vehicle, including permitted vehicles, showing or displaying any commercial, charitable or institutional (e.g., church or school) markings, signs, displays or otherwise indicating a commercial or other non-personal use or a vehicle used for commercial purposes;
  - (ii) Vans, other than passenger vans (passenger vans must have windows on all body panels and be designed and used primarily to transport passengers, not cargo);
  - (iii) Limousines or "stretch" limousines;
  - (iv) Trucks of any type, including, but not limited to, pick-up trucks and any other vehicle with a passenger cab and cargo bed, whether covered or uncovered, whether with a bed top or without, the term cargo bed being specifically intended to refer to those vehicles with a bed exposed to the elements or covered by a top (as an after-market device) which are designed, manufactured marketed or sold primarily for the purpose of carrying cargo rather than passengers;
  - (v) Agricultural vehicles;
  - (vi) Dune buggies;

- (vii) Any trailer or other device transportable by vehicular towing;
- (viii) Semis, tractors or tractor trailers;
- (ix) Buses;
- (x) Travel trailers;
- (xi) Boats and boat trailers with or without boats;
- (xii) Vehicles which are not fully mechanically operable or not currently licensed or registered for use;
- (xiii) Recreational vehicles;
- (xiv) Mobile homes or mobile houses;
- (xv) Truck mounted campers attached or detached from the truck chassis;
- (xvi) Motor homes or motor houses;
- (xvii) Motor vehicles not having any bodies whatever, or incomplete buggies;
- (xviii) Swamp buggies; and
- (xix) Passenger automobiles that have been converted for racing.

No vehicles may be parked on the Condominium Property if the vehicle exceeds the size of the assigned parking space.

The Board may allow otherwise prohibited vehicles to park on the Condominium Property provided such vehicles are parked during working hours and are only on the Property because they are providing a service to either the Association or to a resident.

No Owner or other approved resident may self-park other than in the Unit's assigned parking space. Any Owner or approved resident with a second car must use the valet and the second car may be parked on the Condominium Property only if there is space available.

The Board may make and amend additional rules and regulations regarding the parking of vehicles on the Condominium Property consistent with this provision, including, but not limited to, limiting the number of vehicles a resident may park on the Condominium Property, requiring decals to be posted on permitted vehicles and imposing fees for such decals.

**17. CONVEYANCES, SALES, LEASES AND TRANSFERS.** In order to insure the community of congenial residents and thus protect the value of the Units, the sale, leasing, and transfer of Units by any Owner shall be subject to the following provisions:

**17.1 Transfers Subject To Approval.** The following transfers shall be subject to prior written approval of the board of directors and any transfer undertaken without prior written approval of the board of directors shall be void:

- (a) All sales of Units except judicial sales conducted pursuant to a judgment of foreclosure held by an Institutional First Mortgagee encumbering a Unit or public sales conducted by the Miami-Dade County Tax Collector resulting from the failure to pay real property taxes, subject to the limitations of applicable law.
- (b) All transfers by lease.
- (c) All transfers by gift.
- (d) All transfers by devise or inheritance.
- (e) Any other transfer of title to or possession of a Unit.
- (f) All transfers subject to approval shall require, as a condition of approval, the payment to the Association of a transfer fee not to exceed the maximum amount permitted by the Act.
- (g) All transfers by lease may be conditioned upon the posting of a security deposit with the Association not to exceed the maximum amount permitted by the Act.

**17.2 Notice to Association.** Prior to approving any transfer subject to approval hereunder, the Association shall be entitled to written notice of the transferor's intent to make the transfer with a copy of the documentation evidencing the intended transfer, including, but not limited to, a copy of the contract for sale in the case of a sale, a copy of the Letters of

Administration for the Personal Representative of a deceased Owner's estate and such other documentation from the Probate Court file as the Board may reasonably require in the event of a transfer by devise, a copy of the lease in the case of a lease, and a copy of any other documentation pertaining to a proposed transfer subject to approval hereunder which the Association may reasonably require, completed applications on forms prescribed by the Association, a personal interview with the proposed transferee(s) and any other intended occupants of the Unit, and such other and further information about the intended transferees or occupants as the Association may reasonably require.

17.3 Association's Election. Within thirty (30) days of receipt of the last of the information required pursuant to Section 17.2 above, the Association must either approve or disapprove the transfer. Failure on the part of the Association to respond within said thirty (30) day period shall constitute automatic approval for the proposed transfer.

(a) Approval. In the event the Association approves a lease, the Association shall notify the transferor and transferee of its approval in writing. In the event the Association approves any other transfers subject to approval hereunder, the Association shall deliver to the transferor or the transferor's designee an executed certificate of approval, approving the transfer, executed by an authorized representative of the Association.

(b) Disapproval of Transfer of Title. In the event the board of directors disapproves a proposed sale or other transfer of title, unless good cause exists, as defined below, the Association must, within thirty (30) days of receipt of the last of the information provided pursuant to Section 17.2 hereof, provide the Owner with an executed contract from the Association or another purchaser acceptable to the Association, which contract must provide for the purchase of the Unit on the same terms as were set forth in the original proposed contract for sale, which contract must provide for a closing date within thirty (30) days from the date it is delivered to the Owner by the Association. If the conveyance or transfer was a gift, devise or inheritance, unless good cause exists, as defined below, the purchase price shall be determined by an appraiser selected by and at the expense of the substitute purchaser. If the Unit Owner does not agree with the appraisal, the Owner may select and pay for another appraisal and the purchase price shall be the average of the two appraisals. If the Association does not respond to the application within thirty (30) days, as set forth above, or the substitute purchaser provided by the Association does not close within thirty (30) days, as

set forth above, the original transaction shall be deemed approved and the Unit Owner may proceed to closing and shall be entitled to a Certificate of Approval as described in Paragraph (a) of this Section 17.3.

If good cause exists for the Association to disapprove a proposed sale, conveyance or transfer by gift, devise or inheritance, the Association shall not be obligated to purchase or provide a substitute purchaser for the Unit. Good cause shall be defined to include the following:

- (1) The applicant fails to qualify for membership in the Association, including, but not limited to, those applicants who fail to qualify for membership because the use, occupancy and/or Ownership of the Unit and/or the Common Elements by the applicant, as disclosed in the screening process, will violate the restrictions on use, occupancy or Ownership set forth in this Declaration or the Rules and Regulations, or;
- (2) The person seeking approval (which shall include all proposed occupants) has been convicted of a felony involving violence to persons at any time or has been convicted of any other felony within the ten (10) years preceding the date of application; or
- (3) For transfers by sale, the person seeking approval intends to purchase the Unit without paying at least twenty percent (20%) of the purchase price, excluding closing costs, in cash or in some form that would result in a first mortgage secured by the Unit with a loan to value ratio (based upon the bona fide sale price) in excess of eighty percent (80%); or
- (4) Any applicant has a minimum credit score below 700 on any of the recognized major credit reporting agencies or a comparable score on a comparable credit reporting index from another country, unless the purchaser pays at least thirty-five percent (35%) of the purchase price in cash at or before closing;
- (5) The applicant takes possession of the Unit prior to approval by the Association as provided for herein; or
- (6) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as



evidenced by his conduct in this Condominium as a lessee, guest, Owner or occupant of a Unit or based upon information provided from other sources; or

- (7) The applicant fails to comply with the requirements of Section 17.2 hereof; or
- (8) No transfer of title will be approved if, at the time of the closing, the Unit is delinquent in the payment of any financial obligation to the Association under this Declaration or under any of the governing documents or the applicable Statute, or if the Unit is in violation of any provision of this Declaration or the Rules and Regulations which remains uncured at the time the Association is required to make its election hereunder.

17.4 Leasing. The Association must approve or disapprove a lease within thirty (30) days of receipt of the last of the information provided pursuant to Section 17.2 hereof. The Association may disapprove a lease on any reasonable grounds, including, but not limited to, any of the provisions defining good cause for transfers of title which might be applicable.

17.5 Mortgage Approval and Subordination. All liens against a Unit, other than a first mortgage recorded before the Association's claim of lien, shall be subordinate and inferior to the Association's lien for Assessments, regardless of the date of recordation of the Association's claim of lien, except to the extent otherwise required by law. Any first mortgage liens or other liens which become first mortgage liens which involve an outstanding balance which exceeds eighty percent (80%) of the fair market value of the Unit at the time the mortgage is recorded shall be subordinate and inferior to the Association's claim of lien to the extent the mortgage balance exceeds eighty percent (80%) of the fair market value of the Unit at the time of recordation of the mortgage.

17.6 Exceptions. The foregoing provisions of this section shall not apply to a transfer to or purchase by a bank, life insurance company or federal savings and loan association which acquires its title as the result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings; nor shall provisions apply to a transfer, sale or lease by a bank, life insurance company or federal savings and loan association which so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a Unit at a duly

advertised public sale with open bidding which is provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

- 18. COMPLIANCE AND DEFAULT.** Each Unit Owner and every occupant, lessee, guest, agent, employee or contractor of a Unit Owner and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the Rules and Regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

- 18.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement, whether to the Common Elements, Limited Common Elements, Association Property, a Unit, the Unit Owner's personal property, or to the personal property of the Association or other Unit Owners or residents or guests, including, but not limited to, repair after casualty under Section 14 hereinabove, made necessary by his or her violation of any portion of this Declaration or by his or her negligence or intentional misconduct or by that of any member of his family or his or her guests, agents, employees or contractors, but only to the extent such expense is not met by the proceeds of insurance actually collected by the Association. Any expense advanced by the Association to perform such maintenance, repair or replacement, together with interest, costs and attorneys' fees, shall be secured by a lien against the Unit enforceable in the same manner as an Assessment under Article 12 hereof.
- 18.2 Compliance. In the event a Unit Owner or occupant fails to comply with such Unit Owner's obligations under Sections 7, 9, 13 and 16 hereof or fails to observe and comply with any other provision of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable Rules and Regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to sue in a court of law for damages, and levy a special charge against the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance. Such charge, together with interest, costs and attorneys' fees, shall be secured by a lien against the Condominium Parcel, enforceable in the same manner as Assessments levied under Article 12 hereof.
- 18.3 Fines. In addition to all other remedies provided hereunder, in the event a Unit Owner or anyone for whom a Unit Owner is responsible fails to comply with a provision of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable Rules and Regulations, or any other

agreement, document or instrument affecting the Condominium Property in the manner required, the Association shall have the right to impose a fine against the Unit Owner and the Unit. The amount of any fine shall be determined by the board of directors of the Association, but in any event shall not exceed the maximum amount permitted by the Act.

- 18.4 Suspension of Use Rights. In addition to all other remedies provided hereunder, the Association shall have the right to suspend the rights of the Unit Owner, his or her tenants, guests, licensees or invitees, to use any portion of the Common Elements or Association Property or other facilities during any period of time during which the Unit Owner is delinquent in the payment of assessments or any other financial obligation to the Association or in the event a Unit Owner or anyone for whom a Unit Owner is responsible fails to comply with a provision of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable Rules and Regulations, or any other agreement, document or instrument affecting the Condominium Property in the manner required.
- 18.5 Suspension of Voting Rights. In addition to the remedies provided in Section 12 hereof and by applicable law, the Association may suspend the voting rights of any Owner who is delinquent more than ninety (90) days in the payment of any monetary obligation to the Association. Any Owner whose voting rights are suspended does not count towards a quorum and the quorum is reduced to exclude such Owner.
- 18.6 Set Off. Any funds due and payable by the Association to an Owner under this Declaration, the Articles of Incorporation or the By-Laws, or under the Act shall be subject to a right of set-off for any amounts due and owing to the Association by the Owner under this Declaration, the Articles of Incorporation, the By-Laws, or the Act.
- 18.7 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the By-Laws, the Articles of Incorporation of the Association, or the Rules and Regulations, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).
- 18.8 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the By-Laws, the Articles of Incorporation of the Association, or the Rules and Regulations, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

18.9 **Election of Remedies.** All rights, remedies and privileges granted to the Association or a Unit Owner pursuant to any terms, provisions, covenants or conditions of the Condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges as may be granted by the Condominium documents.

19. **TERMINATION.** The Condominium may be terminated in the manner provided in the Condominium Act.

20. **RESTRICTIONS AND EASEMENTS.** The real property submitted to Condominium Ownership hereby is subject to conditions, limitations, restrictions, dedications, reservations of record, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for Utility Service for the United States Post Office authorities, and any right of the United States of America, State of Florida, or any governmental agency as to any submerged lands and as to any lands lying below the natural, ordinary high water line of the surrounding bodies of water, easements for ingress and egress for pedestrian and vehicular purposes, easements for Utility Service and drainage now existing or hereafter granted by the Association for the benefit of such persons as the Association designates.

An easement, whether heretofore or hereafter created under and pursuant to this Declaration shall constitute a covenant running with the Land of the Condominium, and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with the proper and intended use and purpose and shall survive the termination of the Condominium. The Unit Owners of this Condominium do hereby designate the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purposes of creating all such easements as are contemplated by the provisions hereof.

The Covenants Declaration is incorporated herein by reference and made a part hereof.

21. **COVENANT RUNNING WITH THE LAND.** All provisions of this Declaration, the Articles, By-Laws and applicable Rules and Regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Association, the Unit Owners, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as

creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable Rules and Regulations, as they may be amended from time to time. The acceptance of a deed of conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable Rules and Regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

## **22. ADDITIONAL PROVISIONS.**

- 22.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by first class mail to the Association in care of its office at the Condominium, or to such other address or by such other means as the Association may hereafter designate from time to time by notice in writing to all Unit Owners, unless another manner of delivery is specifically required by the Condominium Act or this Declaration or the By-Laws. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.
- 22.2 Interpretation. The board of directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 22.3 Exhibits. All Exhibits annexed hereto or annexed to the Original Declaration are hereby incorporated in this Declaration and made a part hereof, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.

- 22.4 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a Vice-President may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of a Treasurer may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 22.5 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 22.6 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 22.7 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 22.8 Ratification. Each Unit Owner, by reason of having acquired Ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable Rules and Regulations, are fair and reasonable in all material respects.
- 22.9 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 22.10 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

**EXHIBIT "A"****Legal Description of Condominium Property**

Block Four (4) of SECOND AMENDED PLAT OF NORMANDY BEACH, according to the Plat thereof, as recorded in Plat Book 16, at Page 44, and recorded in the Public Records of Dade County, Florida; together with that certain parcel of land conveyed by Town of Surfside by Deed dated August 16, 1962, and recorded in Official Records Book 3565 at Page 167 of the Public Records of Dade County, Florida; and Less and Except that portion of said Block 4 conveyed to Town of Surfside for widening of Collins Avenue by Deed dated June 28, 1962 and recorded in Official Records Book 3565 at Page 165 of the Public Records of Dade County, Florida.

**EXHIBIT "B"**

**Survey**



**EXHIBIT "C"****Percentage Share**

<u>Apt. Type</u>	<u>Number of Units</u>	<u>Individual Percentage Share</u>	<u>Combined Percentage Share</u>
A	12	.010022	.120264
B	12	.007951	.095412
C	23	.007447	.171281
D	11	.007786	.085646
E	11	.007126	.078386
F	11	.007698	.084678
G	22	.005346	.117612
H	22	.006347	.139634
I	11	.007698	.084678
J	<u>1</u>	.022409	<u>.022409</u>
Totals	136		100%

**EXHIBIT "C"****Schedule of Apartment Units**

<u>Apartment Type</u>	<u>Apartment Numbers</u>	<u>Number of Units</u>
A	112, 212, 312, 412, 512, 612, 712, 812, 912, 1012, 1112, PH-12	12
B	101, 201, 301, 401, 501, 601, 701, 801, 901, 1001, 1101, PH-1	12
C	202, 302, 402, 502, 602, 702, 802, 902, 1002, 1102, PH-2, 111, 211, 311, 411, 511, 611, 711, 811, 911, 1011, 1111, PH-11	23
D	210, 310, 410, 510, 610, 710, 810, 910, 1010, 1110, PH-10	11
E	205, 305, 405, 505, 605, 705, 805, 905, 1005, 1105, PH-5	11
F	209, 309, 409, 509, 609, 709, 809, 909, 1009, 1109, PH-9	11
G	206, 306, 406, 506, 606, 706, 806, 906, 1006, 1106, PH-6, 207, 307, 407, 507, 607, 707, 807, 907, 1007, 1107, PH-7	22
H	203, 303, 403, 503, 603, 703, 803, 903, 1003, 1103, PH-3, 204, 304, 404, 504, 604, 704, 804, 904, 1004, 1104, PH-4	22
I	208, 308, 408, 508, 608, 708, 808, 908, 1008, 1108, PH-8	11
J	PH-A	<u>1</u>
	<b>TOTAL</b>	<b>136 UNITS</b>

**CERTIFICATE OF AMENDED AND RESTATED  
ARTICLES OF INCORPORATION OF  
CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC.**

The undersigned officers of **Champlain Towers South Condominium Association, Inc.** do hereby certify that the following Amended and Restated Articles of Incorporation of said corporation is a true and correct copy as amended, pursuant to Article XI thereof, by the membership at a duly called and noticed meeting of the members held **March 20, 2019, and recessed to and reconvened on April 11, 2019**. The Amended and Restated Articles were adopted by the members and the number of votes cast for the amendments was sufficient for approval.

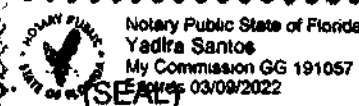
**SEE ATTACHED**

WITNESS my signature hereto this 12 day of April, 2019, at Surfside, Miami-Dade County, Florida.

**CHAMPLAIN TOWERS SOUTH  
CONDOMINIUM ASSOCIATION, INC.**

Kenneth Forge  
Witness

BY: Anette Goldstein  
Anette Goldstein, President



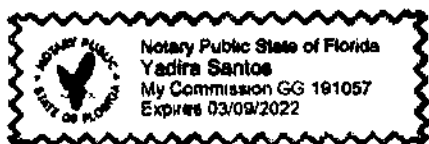
Mara Chouela  
Witness

ATTEST: Mara Chouela  
Mara Chouela, Secretary



STATE OF FLORIDA :  
COUNTY OF MIAMI-DADE :

The foregoing instrument was acknowledged before me this 12 day of April, 2019, by Anette Goldstein and Mara Chouela, as President and Secretary, respectively, of Champlain Towers South Condominium Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. They are personally known to me, or have produced W/A identification and did take an oath. If no type of identification is indicated, the above-named persons are personally known to me.



Yadiria Santos (Signature)

Yadiria Santos (Print Name)  
Notary Public, State of Florida at Large

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

**CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC.**

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**NOTE:** This document is a substantial rewording of the Articles of Incorporation attached as Exhibit 5 to the Declaration of Condominium executed by Developer on July 30, 1981, recorded on August 19, 1981, at Official Records Book 11191, Page 35, of the Public Records of Miami-Dade County, and filed with the Florida Secretary of State on August 4, 1981.

The Incorporator, by these Articles, does so for the purpose of forming a not-for-profit corporation pursuant to the laws of the State of Florida (Chapter 617, Florida Statutes), and hereby adopts the following Articles of Incorporation:

**ARTICLE I**

**NAME**

The name of the Corporation shall be **CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC.** For convenience, the Corporation shall be referred to in this instrument as the "Association" or the "Corporation," these Articles of Incorporation as the "Articles," and the By-Laws of the Association as the "By-Laws."

**ARTICLE II**

**PURPOSE**

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act, Chapter 718, Florida Statutes (the "Act") for the operation of that certain condominium to be known as Champlain Towers South Condominium.

**ARTICLE III**

**DEFINITIONS**

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of Condominium ("Declaration") for the Condominium, and the By-Laws of the Association, unless herein provided to the contrary, or unless the context otherwise requires.

## ARTICLE IV

### POWERS

The powers of the Association shall include and be governed by the following:

4.1 General. The Association shall have all of the common law and statutory powers of a not-for-profit corporation under the laws of Florida that are not in conflict with the provisions of these Articles or of the Act.

4.2 Enumeration. The Association shall have all the powers and duties set forth in the Act (except as to variances in these Articles and the Declaration which are permitted by the Act), and all of the powers and duties reasonably necessary to operate the Condominium pursuant to its Declaration, and as they may be amended from time to time, including, but not limited to, the following:

A. To make and collect regular and Special Assessments and other charges against Members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties

B. To buy, own, operate, lease, sell and trade both real and personal property as may be necessary or convenient in the administration of the Condominium and Association Property.

C. To maintain, repair, replace, reconstruct, add to, and operate the Condominium and Association Property other property acquired or leased by the Association for use by Unit Owners.

D. To purchase insurance upon the Condominium and Association Property and insurance for the protection of the Association, its officers, directors, and Members as Unit Owners, and such other parties as the Association may determine in the best interest of the Association.

E. To make and amend reasonable rules and regulations for the maintenance, operation and use of the Condominium and Association Property and for all other lawful purposes.

F. To approve or disapprove the transfer, mortgaging, ownership and possession of Units as may be provided by the Declaration.

G. To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the rules and regulations for the use of the Condominium and Association Property.

H. To contract for the management of the Condominium and Association Property, and to delegate to the party with whom such contract has been entered into all of the powers and duties of the Association, except (1) those which require specific approval of the Board of Directors or the membership of the Association; (2) those which are incapable of being delegated as same may be contrary to the Declaration or the By-Laws; (3) those which are contrary to the Statutes of the State of Florida; and (4) wherein a delegation is a power and duty which by its very nature is a decision or fiduciary responsibility to be made by the Board of Directors and is therefore not susceptible of delegation.

I. To employ personnel to perform the services required for proper operation of the Condominium and Association Property.

J. To enter into agreements with other parties for easements or sharing arrangements or recreational facilities as the Board of Directors may deem in the best interests of the Condominium.

K. To make contracts and incur liabilities, borrow money at such rates of interest as the Board may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises, Assessments, Special Assessments, income or rights.

4.3 Assets of the Association. All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit and use of the Members in accordance with the provisions of the Declaration, these Articles, and the By-Laws.

4.4 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration and the By-Laws.

4.5 Distribution of Income. The Association shall make no distribution of income to its Members, Directors or Officers. This provision shall not apply to the distribution of insurance proceeds as provided in the Declaration, nor the distribution of proceeds affiliated with termination or condemnation, as provided in the Declaration and the Act, nor reimbursement for expenses as may be authorized by the Board.

## **ARTICLE V**

### **MEMBERS**

5.1 Membership. The Members of the Association shall consist of all of the record Owners of Units in the Condominium; and, after termination of the Condominium, if same shall occur, the Members of the Association shall consist of those who are Members at the time of the termination, and their successors and assigns. Membership shall be established by the acquisition of ownership of fee title to, or fee interest in, a Condominium Parcel in the Condominium, whether by conveyance, devise, judicial decree, or otherwise subject to the provisions of the Declaration, and by the recordation amongst the Public

Records of Miami-Dade County, Florida, of the deed or other instrument establishing the acquisition and designating the parcel affected thereby, and by the delivery to the Association of a true copy of such deed or other instrument. The new Owner designated in such deed or other instrument shall thereupon become a Member of the Association, and the membership of the prior owner as to the parcel designated shall be terminated.

5.2 Assignment. The share of a Member in the funds and assets of the Association, in its Common Elements and its Common Surplus, and membership in this Association, cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.

5.3 Voting. On all matters upon which the membership shall be entitled to vote, the vote for each Residential Unit shall be as specified in the Declaration. Said votes shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one (1) Unit shall be entitled to the cumulative total of votes allocated to Units owned.

5.4 Meetings. The By-Laws shall provide for an annual meeting of Members, and may make provision for regular and special meetings of Members other than the annual meeting.

## **ARTICLE VI**

### **TERM OF EXISTENCE**

The Association shall have perpetual existence.

## **ARTICLE VII**

### **INCORPORATOR**

The names and addresses of the subscribers to these Articles of Incorporation are as follows:

Nathan Goldlist	100 Bayview Drive North Miami Beach, FL 33160
R.A. Blankenstein	100 Bayview Drive North Miami Beach, FL 33160
Nathan Reiber	1800 N.E. 114 Street North Miami, FL 33161

## **ARTICLE VIII**

## **OFFICERS**

The affairs of the Association shall be administered by the officers designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association, and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers.

## **ARTICLE IX**

### **DIRECTORS**

9.1 **Number and Qualification.** The affairs of the Association shall be managed by a Board consisting of the number of Directors determined by the By-Laws. Only the record title holder of a Unit may hold the office of Director of the Association.

9.2 **Duties and Powers.** All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when that is specifically required.

9.3 **Election; Removal.** Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

## **ARTICLE X**

### **INDEMNIFICATION**

10.1 **Indemnity.** To the fullest extent permitted by Florida law:

(A) The Association shall indemnify any person who is or was a party to any proceeding by reason of the fact that he or she is or was a Director, officer, committee member or employee of the Association against liability incurred in connection with such proceeding.

(B) The Association shall indemnify any person who is a party to any proceeding brought by or in the right of the corporation, by reason of the fact that he or she is or was a Director, officer, committee member or employee of the Association against liability incurred in connection with such proceeding.

(C) The foregoing indemnity shall include, without limitation, costs and attorney's fees incurred and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the actual and reasonable expenses incurred in connection



with the defense or settlement of such proceeding, including appeal thereof.

10.2 Limitations. The foregoing indemnity obligations shall be subject to such limitations and restrictions as are now or hereafter set forth in the applicable Statutes.

10.3 Inclusions. The indemnification provided for herein shall include any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, whether formal or informal, any appeal in any such action, suit or proceeding, and any inquiry or investigation that might lead to such an action, suit or proceeding.

10.4 Recovery of Expenses. Expenses incurred by any person entitled to indemnification hereby shall be paid in advance of the final disposition of the proceeding upon receipt of any undertaking acceptable to the Association, by on or behalf of such person to repay such amount if he or she is ultimately found not to be entitled to indemnification pursuant to law.

10.5. Non-exclusive. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and, to the extent permitted by law, the Association may make any other or further indemnification or advancement of expenses if approved by a majority of the disinterested Directors or vote of the Members, or as permitted under any By-Law or agreement, to the extent permitted by law.

10.6. Application for Indemnity. Nothing herein is intended to restrict a party's authority, as provided by law, to apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction.

## **ARTICLE XI**

### **AMENDMENTS**

Amendments to these Articles shall be proposed and adopted in the following manner:

11.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

11.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by written petition executed by not less than one-fourth (1/4) of the Members of the Association. A proposed amendment must be approved by not less than seventy-five percent (75%) of the participating members, but no less than a majority of the voting interests of the entire membership, present and voting, in person, by proxy or by any other lawful means, at a members meeting at which a quorum is present or by written agreement, provided a quorum

participates in the vote by written agreement.

11.3 Limitation. No amendment shall make any changes in the qualifications for membership nor in the voting rights or property rights of Members.

11.4 Recording. A copy of each amendment shall be filed with and certified by the Secretary of State pursuant to the provisions of the applicable Florida Statutes, and a copy shall be recorded in the Public Records of Miami-Dade County, Florida.

## **ARTICLE XII** **ADDRESS**

The principal place of business of the Corporation shall be located at 8777 Collins Avenue, Surfside, FL 33154, but the Corporation may maintain offices and transact business in such other places within or without the State of Florida as may from time to time be designated by the Board of Directors.

## **ARTICLE XIII**

### **INITIAL REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT**

The registered agent of this Corporation shall be Becker & Poliakoff, P.A., 1 East Broward Boulevard, Suite 1800, Fort Lauderdale, Florida 33301.

### **ACCEPTANCE BY REGISTERED AGENT**

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED NON-PROFIT CORPORATION, AT THE PLACE DESIGNATED IN ARTICLE XIII OF THESE ARTICLES OF INCORPORATION, THE UNDERSIGNED HEREBY AGREES TO ACT IN THIS CAPACITY, AND FURTHER AGREES TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE DISCHARGE OF HIS DUTIES.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.

**BECKER & POLIAKOFF, P.A.**  
(Registered Agent)



By: \_\_\_\_\_  
KENNETH S. DIREKTOR, ESQ.  
For the Firm

**AMENDED AND RESTATED  
BY-LAWS  
OF  
CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC.  
A FLORIDA NOT-FOR-PROFIT CORPORATION**

---

**NOTE:** This document is a substantial rewording of the original text of the By-Laws attached as Exhibit 4 to the Declaration of Condominium executed by Developer on July 30, 1981, recorded on August 19, 1981, at Official Records Book 11191, Page 35, of the Public Records of Miami-Dade County.

**ARTICLE 1**

**GENERAL**

1.1 **The Name.** The name of the Corporation shall be CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC., hereinafter referred to as the "Association."

1.2 **Principal Office.** The principal office of the Corporation shall be at 8777 Collins Avenue, Surfside, FL 33154 or at such other place as may be subsequently designated by the Board of Directors.

1.3 **Identity.** In addition to the within By-Laws being the By-Laws of the Association, these By-Laws are established pursuant to the Florida Condominium Act, Chapter 718, Florida Statutes ("Act") for the purpose of administering, operating and managing Champlain Towers South Condominium (the "Condominium").

1.4 **Definition.** As used herein, the term "Corporation" shall be the equivalent of "Association," and all other words as used herein shall have the same definitions as attributed to them in the Declaration of Condominium of Champlain Towers South Condominium (the "Declaration"). Any terms not defined in the Declaration shall have those definitions established by the Condominium Act.

**ARTICLE 2**

**MEMBERSHIP AND VOTING PROVISIONS**

2.1 **Membership.** Membership in this Association shall be limited to record owners of Units in the Condominium. Transfer of Unit ownership, either voluntarily or by operation of law, shall automatically terminate membership, and the transferee shall

automatically become a Member of this Association. If Unit ownership is vested in more than one person, all of the persons owning a Unit shall be authorized to attend meetings. If Unit ownership is vested in a trust or, to the extent permitted by the Declaration, any other entity, the entity shall designate a representative or an individual officer or employee to exercise its rights as a Member.

**2.2 Voting Rights.** On all matters upon which the membership shall be entitled to vote, the vote for each Unit shall be as specified in the Declaration and the Articles of Incorporation. Said votes shall be exercised or cast in the manner provided by the Declaration and these By-Laws. Any person or entity owning more than one (1) Unit shall be entitled to the cumulative total of votes allocated to Units owned. The vote of a Unit shall not be divisible. Unless otherwise set forth in the Declaration of Condominium, the Articles of Incorporation, herein or in the Act, matters shall be voted on by the membership of the Association and shall be determined by a vote of a majority of the voting interests ("Voting Interests") present and voting, in person or by proxy, at any meeting at which a quorum is established, or by written agreement. Voting rights for Units owned by the Association shall be subject to such restrictions as may be set forth in the Act.

**2.3 Quorum.** Unless otherwise provided in these By-Laws, the presence in person or by proxy of forty percent (40%) of the Voting Interests of the Association shall constitute a quorum. A quorum is not required for elections pursuant to Section 4.2 hereof.

**2.4 Voting Procedure.** Votes may be cast in person, by written agreement, by proxy, or by any other means permitted by applicable law. All proxies shall be in writing, signed by the person entitled to vote, shall be filed with the Secretary of the Association prior to or at the meeting at which they are to be used, or prior to or at any lawful adjournment thereof, and shall be effective only for the specific meeting for which originally given and any lawful adjournment thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the Unit Owner executing it. Only Members or the spouse or domestic partner of a Member may hold a Member's proxy. The Board of Directors may, but is not required to, allow Members to attend membership meetings by speakerphone or other forms of remote participation permitted by applicable law.

**2.5 Designation of Voting Member.** If a Unit is owned by one or more persons, their right to vote shall be established by the record title to the Unit and any one of them may cast the vote for the Unit. If a Unit is owned by a trust or, to the extent permitted by the Declaration, another entity, it shall designate the representative, officer, employee or agent entitled to cast the Unit's vote by executing a certificate to be filed with the Secretary of the Association, signed by its authorized representative. The person designated in any such certificate shall be known as the Voting Member. If, for a Unit owned by a trust or other permitted entity, such certificate is not on file with the Secretary of the Association, the vote of the Unit shall not be counted in determining the presence of a quorum, or for any purpose requiring the approval of the person entitled to cast the vote

for the Unit. Such certificate shall be valid until revoked or superseded by a subsequent certificate, or until a change occurs in the ownership of the Unit.

## **ARTICLE 3**

### **MEMBERSHIP MEETINGS**

3.1 **Place.** All meetings of Members shall be held at the principal office of the Association or at such other place and at such time as shall be designated by the Board and stated in the notice of meeting.

3.2 **Notices.** It shall be the duty of the Secretary to send by regular mail, hand delivery or electronic transmission a notice of each annual or special meeting to each Unit Owner and to post a copy of said notice in a conspicuous place on the Condominium Property at least fourteen (14) continuous days but not more than sixty (60) days prior to such meeting. The Board may adopt a rule to provide that, in lieu of posting notice of a members' meeting on the Condominium Property, the notice and agenda may be conspicuously posted and repeatedly broadcast on a closed-circuit cable television system serving the Association in the manner required by the Act. Notice of any meeting shall list the time, place and purpose thereof and shall incorporate an identification of agenda items. All notices shall be mailed, hand delivered or sent by electronic transmission to the address last furnished to the Association by the Unit Owner as it appears on the books of the Association to each Unit Owner. Proof of posting, delivery or mailing of the notice (if required) shall be given by the affidavit of the person serving the notice, or a United States Postal Service Certificate of mailing, shall be included in the official records of the Association affirming that the notice was mailed or hand delivered in accordance with Florida law. Notice of specific meetings may be waived in writing before or after the meeting.

3.3 **Annual Meeting.** The annual meeting for the purpose of electing directors and transacting any other authorized business shall be held on the third Tuesday in February each year at a time and place to be determined by the Board. At the annual meeting, the Members shall elect a Board by plurality vote (cumulative voting prohibited), and shall transact such other business as may be properly brought before the meeting.

3.4 **Special Meeting.** Special meetings of the Members for any purpose, unless otherwise prescribed by statute, may be called by the President, or shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors or at the request, in writing, of Members representing one-fourth (1/4) of the total voting interests in the Association. Such requests shall state the purpose of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of meeting.

3.5 **Action by Members Without a Meeting.** Notwithstanding anything herein to the contrary, any action required or permitted to be taken at any annual or special

meeting of Members may be taken by written agreement without a meeting, signed by the Members (or persons authorized to cast the vote of any such Members as elsewhere herein set forth), so long as at least a quorum of the members participates and so long as the number of votes required to authorize or approve such action is obtained. Voting by written agreement shall be done in accordance with the provisions of the applicable Statute, as same may be amended from time to time.

3.6 **Adjourned Meeting.** If any meeting of Members cannot be organized because a quorum is not present, either in person or by proxy, the meeting shall be adjourned from time to time until a quorum is present. If any agenda item at a meeting of the members cannot be approved because approval of more than a quorum of the members is required but such required percentage is not present or is not achieved, the meeting may be adjourned from time to time until the requisite vote is achieved.

3.7 **Order of Business.** The order of business at annual Members' meetings and as far as practical at other Members' meetings, shall be:

- A. Calling to order by President;
- B. Appointment of inspectors of election;
- C. Election of directors;
- D. Calling of the roll and certifying of proxies;
- E. Proof of notice of the meeting or waiver of notice;
- F. Reading and disposal of any unapproved minutes;
- G. Reports of officers;
- H. Reports of committees;
- I. Unfinished business;
- J. New business;
- K. Adjournment.

## ARTICLE 4

### DIRECTORS

4.1 **Membership.** The affairs of the Association shall be managed by a Board of Directors of seven (7) Directors. Only the record title holder of a Unit may hold the office of Director of the Association.

4.2 **Election of Directors.** Election of directors shall be conducted in the following manner:

A. Election of directors shall be held at the annual Members' meeting.

B. The Board of Directors shall be elected by written ballot or voting machine. Proxies shall not be used in the election of the Board of Directors, either in general elections or elections to fill vacancies, except for vacancies caused by the recall of a majority of the Board. No Unit Owner shall permit any other person to vote his or her ballot, and any such ballots improperly cast shall be deemed invalid. Elections shall be decided by a plurality of those ballots cast. Cumulative voting is prohibited. There shall be no quorum requirement; provided, however, at least twenty percent (20%) of the eligible votes must cast a ballot in order to have a valid election.

C. Written notice of the scheduled election shall be mailed, hand delivered or electronically transmitted to each Member at his last known address as it appears on the books of the Association. The first notice of the date of the election shall be mailed, hand delivered or electronically transmitted to each Member not less than sixty (60) days before the scheduled election. The first notice must contain the name and correct mailing address of the Association.

D. Any Unit Owner or other eligible person desiring to be a candidate for the Board shall give written notice to the Association not less than forty (40) days before the scheduled election. Written notice shall be effective when received by the Association.

E. Upon the timely request of the candidate as set forth in this subparagraph, the Association shall include, with the second notice of election described in Paragraph F below, a copy of an information sheet which may describe the candidate's background, education and qualifications as well as any other factors deemed relevant by the candidate. The information sheet shall not exceed one side of a sheet which shall be no larger than eight and one-half (8-1/2) by eleven (11) inches. Any candidate desiring the Association to mail or personally deliver copies of an information sheet to the eligible voters must furnish the information sheet to the Association not less than thirty-five (35) days before the election. The Association is not liable for the contents of the information sheets prepared by the candidates. The Association shall not edit, alter or otherwise modify the content of the information sheet. The original copy provided by the candidate shall become part of the official records of the Association.

F. Not less than fourteen (14) days before the scheduled election, the Association shall mail, deliver or electronically transmit to the eligible voters at the addresses listed in the official records of the Association a second notice of the election, together with a ballot and any information sheets timely submitted by the candidates. Each Unit shall receive one (1) ballot. The second notice and accompanying documents shall not contain any communication by the Board which endorses, disapproves or otherwise comments on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter and the Unit or Unit numbers being voted and shall contain a signature space for the voter. Once the ballot is completed, the voter shall place the completed ballot in the inner smaller envelope and seal that envelope. The inner envelope shall then be placed within the larger outer envelope and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person owns more than one Unit and is, therefore, entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The voter shall sign the exterior of the outer envelope in the space provided for his or her signature. The outer envelope shall either be mailed or hand delivered to the Association. Upon receipt by the Association, no ballot may be rescinded or changed. Notwithstanding the foregoing, votes may also be cast by any other means permitted by applicable law.

G. The written ballot shall indicate in alphabetical order by surname, each and every Unit Owner or other eligible person who desires to be a candidate for the Board and who gave written notice to the Association not less than forty (40) days before a scheduled election, unless such person has, prior to the mailing of the ballot, withdrawn his candidacy in writing. No ballot shall indicate which candidates are incumbents on the Board. No write-in candidates shall be permitted. No ballot shall contain a section providing for the signature of a voter. Envelopes containing ballots received by the Association shall be retained and collected by the Association and shall not be opened except in the manner hereinafter provided and in accordance with the Florida Condominium Act.

H. Any envelopes containing ballots not prevalidated as provided in subsection 4.2(l) below shall be collected by the Association and shall be transported to the location of the election. An impartial committee of persons appointed by the Board shall validate and process the ballots. The Association shall have available additional blank ballots at the meeting for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope as provided in subsection 4.2(F) hereof. At the meeting, as the first order of business, ballots not yet cast shall be collected. Next, the signatures and Residential Unit identifications on the outer envelopes shall be checked against the list of qualified voters, unless previously verified as set forth in subsection 4.2(l) below. Any exterior envelope not signed by the eligible voter shall be marked "disregarded" and any ballots contained therein shall not be counted. The voters shall be checked off on the list as having voted. Then, in the presence of any Unit Owners in attendance, and regardless of whether a quorum is present, all inner envelopes shall be first removed from the outer envelopes and



shall be placed in a receptacle. Upon the commencement of the opening of the outer envelopes, the polls shall be closed, and no more ballots shall be accepted. Inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of any Unit Owners. Any inner envelopes containing more than one ballot shall be marked "disregarded" and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not, shall be retained as part of the official records of the Association for such time period as may be required by the Act. Board members whose terms expire and who are not reelected shall relinquish their Board positions, and those positions shall be assumed by the duly elected Board members.

I. The Association may verify outer envelope information in advance of the meeting by following the procedure set forth in Section 718.112(2)(d)(3), Florida Statutes, and Section 61B-23.0021(10), Florida Administrative Code.

J. The Board shall not create or appoint any committee for the purpose of nominating a candidate or candidates for election to the Board. However, the Board may create or appoint a search committee which shall not have the authority to nominate any candidate, but may encourage eligible and qualified persons to become candidates for the Board.

K. The provisions of Paragraphs (B) through (J) of this Section 4.2, are in accordance with Section 718.112(2)(d)(3), Florida Statutes, and Section 61B-23.0021, Florida Administrative Code. In the event such Statute or Code is repealed, the Board shall determine the procedure for elections of directors. In the event said Statute or Code is amended, these By-Laws shall be deemed automatically amended to comply with any such changes.

L. Notwithstanding anything contained herein to the contrary, an election is not necessary unless there are more eligible candidates than vacancies. In such case, not later than the date of the scheduled election, the Association shall call and hold a meeting of the membership to announce the names of the new Board members, or shall notify the Unit Owners that one or more Board member positions remain unfilled, as appropriate under the circumstances. In the alternative, the announcement may be made at the annual meeting.

M. If the office of any director becomes vacant by reason of death, resignation, retirement, disqualification, or otherwise, a majority of the remaining directors, though less than a quorum, shall choose a successor who shall hold office for the balance of the unexpired term of office. The appointment for the purpose of filling said vacancy may be done at any regular or special meeting of the Board.

**4.3 Organizational Meeting.** The organizational meeting of a newly elected Board shall be held after their selection within ten (10) days of their election, at such place and time as shall be fixed by the directors at the meeting at which they were elected. Notice of such organizational meeting; which notice specifically incorporates an

identification of agenda items, shall be posted conspicuously on the Condominium property at least 48 continuous hours preceding the meeting, except in an emergency.

4.4 **Term.** The Directors shall serve two (2) year staggered terms. At the first election after the effective date of this provision, the three (3) or four (4) Board Members, depending upon whether it is an even or odd numbered year, receiving the most votes will serve a two (2) year term and the remaining persons elected to the Board will serve a one (1) year term. If there is no election at the first annual meeting after the effective date of this provision, the Board Members shall decide among themselves which shall serve a two (2) year term and which shall serve a one (1) term and, if the Board Members cannot agree, the implementation of staggered terms shall be delayed until the next election.

4.5 **Recall.** Any member of the Board may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all Unit Owners. A special meeting of the Unit Owners to recall a member or members of the Board may be called by ten percent (10%) of the Unit Owners giving notice of the meeting as required for a meeting of Unit Owners, and the notice shall state the purpose of the meeting. The recall of a director shall be further governed by the applicable provisions of the Act and the Florida Administrative Code, as same may be amended from time to time.

4.6 **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone, facsimile, or electronic mail, and shall be transmitted at least forty-eight (48) hours prior to the meeting. Regular meetings of the Board and only those committee meetings which committees have the authority to take final action on behalf of the Board or make recommendations to the Board regarding the Association budget, shall be open to all Unit Owners, and notice of such meetings shall be posted conspicuously at the Condominium forty-eight (48) continuous hours preceding the meeting for the attention of the Members of the Association except in the event of an emergency. However, written notice of any meeting at which non-emergency special assessments, or at which amendments to rules regarding Unit use will be proposed, discussed or approved, shall be mailed, hand delivered or electronically transmitted to the Unit Owners and posted conspicuously on the Condominium property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice requirement shall be made by an affidavit executed by the person providing the notice and filed among the official records of the Association. The Board may adopt a rule to provide that, in lieu of posting notice of a regular Board meeting on the Condominium Property, the notice and agenda may be conspicuously posted and repeatedly broadcast on a closed-circuit cable television system serving the Association in the manner required by the Act. Notice of any meeting where assessments against Unit Owners are to be considered for any reason shall contain a statement that assessments will be considered and the purpose and estimated amount of any such assessments. The right of a Member to attend regular Board meetings includes the right to speak at such meetings with reference to all designated agenda items. A Member does not have the right to speak with reference to items not specifically designated on the agenda, but the Board, in its discretion, may permit a Member to speak on such items. The Board may adopt reasonable rules governing the frequency, duration, and manner of Unit Owner statements. Any Member may tape record or videotape meetings of the Board, committee or Members; provided, however, that the equipment utilized does not produce distracting sound or light emissions and subject to any rules which may be adopted by the Board regarding placement,

assemblage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

**4.7 Special Meetings.** Special meetings of the directors may be called by the President or, in his absence, by the Vice President, and must be called by the President or Secretary at the written request of three (3) of the directors. Notice of the meeting shall be given personally or by mail, telephone, facsimile, or electronic mail, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than forty-eight (48) hours prior to the meeting. Special meetings of the Board shall be open to all Unit Owners, and notice of a special meeting shall be posted conspicuously at each Condominium forty-eight (48) continuous hours in advance for the attention of the Members of the Association except in the event of an emergency. However, written notice of any special meeting at which non-emergency special assessments, or at which amendments to rules regarding Unit use will be proposed, discussed or approved, shall be mailed, hand delivered or electronically transmitted to the Unit Owners and posted conspicuously on the Condominium property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice requirement shall be made by an affidavit executed by the person providing the notice and filed among the official records of the Association. The Board may adopt a rule to provide that, in lieu of posting notice of a special Board meeting on the Condominium Property, the notice and agenda may be conspicuously posted and repeatedly broadcast on a closed-circuit cable television system serving the Association in the manner required by the Act. Notice of any meeting where assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the purpose and estimated amount of any such assessments. The right of a Member to attend special Board meetings includes the right to speak at such meetings with reference to all designated agenda items. The provisions set forth in Section 4.6 hereof with respect to speaking at meetings and recording of meetings shall also apply to special meetings.

**4.8 Waiver of Notice.** Any director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the giving of notice. Attendance by any director at a meeting shall constitute a waiver of notice of such meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

**4.9 Quorum and Voting.** A quorum at directors meetings shall consist of a majority of the entire Board. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of directors is required by the Declaration, the Articles or these By-Laws. Directors may not vote by proxy or secret ballot at Board meetings, except, if allowed by statute, for election of officers. A vote or abstention for each director present shall be recorded in the minutes. A director of the Association who is present at a meeting of its board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he or she votes against such action or abstains from voting. A director of the association who abstains from voting on any action taken on

any corporate matter shall be presumed to have taken no position with regard to the action. Directors may meet by telephone conference and those attending by telephone conference may be counted toward a quorum and may vote by telephone, provided the telephone conference is conducted on a speaker so that the conversation of those Board members attending by telephone may be heard by the Board and any other person attending the meeting.

4.10 **Adjourned Meetings.** If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted without further notice.

4.11 **Presiding Officer.** The presiding officer of the directors' meetings shall be the President, his or her designee or, in the absence of the President, the Vice-President or his or her designee. In the absence of the President or Vice-President, the directors present shall designate one of their number to preside or designate the attorney of the Association or a representative of the Association's management company to act as chairman.

4.12 **Order of Business.** The order of business at directors' meetings shall, to the extent practical, be:

- A. Calling of roll;
- B. Proof of due notice of meeting;
- C. Reading and disposal of any unapproved minutes;
- D. Reports of officers and committees;
- E. Unfinished business;
- F. New business;
- G. Adjournment.

4.13 **Compensation.** Directors shall not be entitled to compensation for their services. No director, officer or manager required to be licensed under Florida Statutes Section 486.432 shall solicit, offer to accept, or accept any thing or service of a value for which consideration has not been provided for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or services to the Association. Any such individual who knowingly so solicits, offers to accept, or accepts any thing or service of value is subject to a civil penalty pursuant to Florida Statutes Section 718.501(1)(d).

4.14 **Resignation.** Any Board member may resign at any time at a Board or members' meeting or by written resignation, delivered to the Association, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date. The acceptance of a resignation shall not be required to make it effective.

4.15 **Committees.** Any committee formed for the purpose of assisting in the promulgation of a budget or any committee that is delegated the authority to take final action on behalf of the Association shall conduct its meetings in accordance with the procedural requirements applicable to Board of Directors' meetings, set forth in Section 4.6 hereof. All other committee meetings shall be exempt from those requirements.

## **ARTICLE 5**

### **POWERS AND DUTIES**

The Board exercise all powers and duties of the Association under Chapters 617 and 718, Florida Statutes, the Declaration of Condominium, Articles of Incorporation and By-Laws, except where a vote of the members is specifically required. Such powers and duties of the Board shall include, without limitation (except as limited elsewhere herein and to the extent that same is in accordance with Chapter 718, Florida Statutes) the following:

A. Operation, care, upkeep and maintenance of the Common Elements and facilities and Association Property.

B. Determination and adoption of the annual budget of Common Expenses and Association Property required for the operation of the Condominium and the Association.

C. Levying and collection of regular and special Assessments for Common Expenses from Unit Owners required to pay same.

D. Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Elements and facilities and Association Property.

E. Adoption and amendment of the rules and regulations covering the details of the operation and use of Condominium Property and facilities and Association Property.

F. Maintaining of bank accounts on behalf of the Association and the designation of the signatories required therefor.

G. Leasing of Units owned by the Association.

H. Purchase of Units at foreclosure or other judicial sales, in the name of the Association or its designee.

I. Selling, mortgaging or otherwise dealing with Units acquired by the Association or its designee.

J. Organization of Corporations to act as designees of the Association in acquiring title to Units or leasing Units by the Association.

K. Obtaining and reviewing insurance for the Condominium Property and Association Property.

L. Making repairs, additions and improvements to, or alterations of, the Condominium and Association Property, and repairs to and restoration of the Condominium and Association Property, in accordance with the provisions of the Declaration.

M. Enforcement of the obligations of the Unit Owners, the allocation of profits and expenses, and the performance of anything and everything else necessary and proper for the sound management of the Condominium and Association Property.

N. Borrowing money on behalf of the Association when required in the discretion of the Board of Directors in connection with the discharge of any of the Association's rights and obligations under the Declaration, the Articles of Incorporation, these By-Laws or the Act. If any sum borrowed by the Board on behalf of the Association pursuant to authority contained in this subparagraph N is not repaid by the Association, a Unit Owner, who pays to the creditor such proportion thereof as his interest in the Common Elements bears to the interest of all the Unit Owners in the Common Elements, shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against the Unit Owner's Unit.

O. Contracting for the management of the Condominium and Association Property and the delegation to such manager such powers and duties of the Board as the Board may deem appropriate in the circumstances, and contracting for the management or operation of portions of the Condominium and Association Property susceptible to separate management or operation thereof, and the granting of concessions for the purpose of providing services to the Unit Owners. As an exception to the foregoing, there shall be no delegation of powers and duties wherein (1) same are contrary to the Statutes of the State of Florida and are accordingly not susceptible of being delegated; (2) those delegations and duties which may be required by the Declaration and these By-Laws to have approval of the Board or of the Unit Owners; (3) the delegation is a power and duty which by its very nature is a decision or fiduciary responsibility to be made by the Board and is therefore not susceptible of delegation; and (4) same may be contrary to the Declaration or the By-Laws.

P. The Directors may appoint Committees and delegate to such Committees those powers and duties of the Association as the Board deems advisable. All Committees and Committee Members shall serve at the pleasure of the Board. Committees of the Association shall conduct their affairs in the same manner as provided in these Bylaws for Board of Director meeting, but only as required by the Act. All other Committees may meet and conduct their affairs in private without prior notice or Owner participation, unless otherwise directed by the Board of Directors.

Q. In the event of any emergency, as defined in Section j below, the Board of Directors may exercise the emergency powers described in this Article, and any other emergency powers authorized by Chapter 617, Florida Statutes, and the Act.

## **ARTICLE 6**

### **OFFICERS**

6.1 **Executive Officers.** The executive officers of the Association shall be a President, one or more Vice Presidents, Secretary, and Treasurer, all of whom shall be members of the Board and shall be elected by and serve at the pleasure of the Board. Any two of said offices may be united in one person, except that the President shall not also be the Secretary or an assistant Secretary of the Association.

6.2 **Appointive Officers.** The Board may appoint such other officers from among the members as they may deem necessary, who shall hold office at the pleasure of the Board and have such authority and perform such duties as from time to time may be prescribed by said Board.

6.3 **Election.** The Board, at its first meeting after each annual meeting of general members, shall elect all officers.

6.4 **Term.** The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the whole Board.

6.5 **The President.** The President shall be the chief executive officer of the Association. Subject to the provisions of 4.11 hereinabove, the President shall preside at all meetings of Members and of the Board, shall exercise the executive powers of the Association and have general supervision over its affairs and other officers, and shall perform all of the duties incident to the office and such other duties as may be delegated to the President from time to time by the Board.

6.6 **The Vice President.** The Vice President shall perform all of the duties of the President in the absence of the President, and such other duties as may be required by the Board. If the Board elects more than one Vice President, the order of succession shall be determined by the Board.

6.7 **The Secretary.** The Secretary or assistant Secretary shall issue notices of all Board meetings and all meetings of Members, shall attend and keep the minutes of same, and shall have charge of all of the books of the Association as well as its records and papers, except those kept by the Treasurer. All minutes shall be kept in a businesslike manner and shall be available for inspection by Unit Owners as set forth in the Act.

6.8 **The Treasurer.**

A. The Treasurer shall have custody of the Association's funds and securities, shall keep full and accurate accounts of the Association's receipts and disbursements, and shall deposit all monies and other valuable effects in the name of, and to the credit of, the Association in such depositories as may be designated by the Board. The books shall reflect an account for each Unit in the manner required by the Act.

B. The Treasurer shall disburse the funds of the Association as may be ordered by the Board, making proper vouchers for such disbursements, and shall render an account of all his or her transactions as the Treasurer, and of the financial condition of the Association to the Board whenever it may require it.

C. The Treasurer shall collect all assessments and shall report promptly to the Board the status of collections.

D. The Treasurer shall maintain accounting records according to good accounting practices and shall render to Unit Owners or their authorized representatives, at least annually, a written summary of the Association's fiscal activities.

6.9 **Compensation.** Officers shall not receive compensation for their services.

6.10 **Resignations.** Any officer may resign at any time at a Board or members' meeting or by written resignation, delivered to the Association, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date. The acceptance of a resignation shall not be required to make it effective.

## **ARTICLE 7**

### **FINANCES AND ASSESSMENTS**

7.1 **Depositories.** The funds of the Association shall be deposited in such banks and depositories as may be determined and approved by appropriate resolutions of the Board. Funds shall be withdrawn only upon checks and demands for money signed by such officer(s) or agent(s) as may be designated by the Board.



**7.2 Fiscal Year.** The fiscal year of the Association shall begin on the first day of January of each year; provided, however, that the Board, whenever it deems it advisable, is expressly authorized to change to a different fiscal year in accordance with the applicable provisions of the Internal Revenue Code.

**7.3 Determination of Assessments.**

A. The Board of Directors shall fix and determine the sum or sums necessary and adequate to assess Unit Owners for their share of the Common Expenses set forth in the budget for the Association and the Condominium. Funds for the payment of Common Expenses shall be assessed against Unit Owners as provided in the Declaration of Condominium. Assessments shall be payable not less frequently than quarterly and shall be due on the first day of each quarter or month unless otherwise ordered by the Board. Assessments shall be made against Unit Owners in an amount not less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all Common Expenses. Special Assessments, if necessary, shall be levied in the manner provided in the Act and shall be payable in the manner determined by the Board. The Board of Directors has the authority to refund to the owners, apply as a credit to future assessments or otherwise repurpose any surplus funds collected as a special assessment. All funds due under these By-Laws and the Declaration are Common Expenses.

B. Any meeting at which a proposed annual budget of the Association or an amendment thereto will be considered by the Board (or Unit Owners as provided in subsection C of this Section 7.3) shall be open to all Unit Owners. At least fourteen (14) days prior to such a meeting, the Board shall mail, hand deliver or electronically transmit to each Unit Owner at the address last furnished to the Association by the Unit Owner, a notice of such meeting and a copy of the proposed annual budget. An officer or manager of the Association or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement and such affidavit shall be filed among the official records of the Association.

C. If the Board adopts in any fiscal year an annual budget which requires assessments against Unit Owners which exceed one hundred fifteen percent (115%) of assessments for the preceding fiscal year, the Board shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board receives, within twenty-one (21) days after adoption of the annual budget, a written request for a special meeting from at least ten (10%) percent of all voting interests. The special meeting shall be conducted within sixty (60) days after adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board shall hand deliver or mail to each Unit Owner at the address last furnished to the Association, a notice of the meeting. An officer or manager of the Association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement and such affidavit shall be filed among the official records of the Association. Unit Owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests. If there is not a quorum at the special

meeting or a substitute budget is not adopted, the annual budget previously adopted by the Board shall take effect as scheduled.

Any determination of whether assessments exceed one hundred fifteen (115%) percent of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the Condominium Property, anticipated expenses of the Association which the Board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the Condominium Property.

D. The proposed annual budgets of Common Expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to those expenses listed in Section 718.504(21), Florida Statutes. In addition to annual operating expenses and to the extent applicable, the budgets shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds the amount set forth in the Act. The amount to be reserved shall be computed by means of such formula as is set forth in the Act or the Florida Administrative Code, as both may be amended from time to time. The Association may adjust replacement reserve assessments annually to take into account any extension of the useful life of a reserve item caused by deferred maintenance. The foregoing reserve account requirements shall not apply to an adopted budget in which the Members of the Association have determined by a majority vote of those present, in person or by proxy, at a duly called meeting of the Association at which a quorum is established, to provide no reserves or less reserves than those described in this subparagraph. The foregoing shall not prevent the Board from creating such other reserves as may be permitted by the Act or the Florida Administrative Code, as both may be amended from time to time.

E. When the Board determines the amount of any Assessment, the Treasurer shall mail or present to each Unit Owner a statement of Assessment specifying the amount of same and to whom and where same should be payable and sent. Upon request, the Treasurer shall give a receipt for each payment received.

**7.4 Application of Payments and Commingling of Funds.** All funds collected by the Association shall be maintained separately in the Association's name. For investment purposes only, reserve funds may be commingled with operating funds of the Association. Commingled operating and reserve funds shall be accounted for separately and a commingled account shall not, at any time, be less than the amount identified as reserve funds.

**7.5 Fidelity Bonds.** The Association shall obtain and maintain fidelity bonding of all persons who control or disburse funds of the Association in the principal sum not less than that required by the Act.

7.6 **Financial Statements.** The Board shall cause to be prepared financial statements either compiled, reviewed or audited, financial statement or a report of cash receipts and expenditures in lieu of financial statements, in accordance with the Act. The financial statement or a notice that the financial statement is available shall be provided to each Unit Owner on or before July 31<sup>st</sup> each year.

## **ARTICLE 8**

### **OFFICIAL RECORDS**

The Association shall maintain official records as defined in the Act, which shall be subject to inspection as provided in the Act.

## **ARTICLE 9**

### **PARLIAMENTARY RULES**

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws.

## **ARTICLE 10**

### **AMENDMENTS**

Except as otherwise provided, these By-Laws may be amended in the following manner:

10.1 **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

10.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or by written petition signed by not less than one-fourth (1/4) of the Voting Interests of the Association. A proposed amendment must be approved by at least seventy-five percent (75%) of the participating Members, but not less than a majority of the voting interests of the entire membership, present and voting, at a meeting at which a quorum is established, but in no event less than a majority of the entire membership, or by written agreement provided a quorum participates, or by any other means authorized by Chapters 617 or 718, Florida Statutes, as the same may be amended from time to time.

No By-Law shall be revised or amended by reference to its title or number only. Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words

added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of By-Laws. See By-Law . . . for present text." Nonmaterial errors or omissions in the By-Law process shall not invalidate any otherwise properly promulgated amendment.

10.3 **Execution and Recording**. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Miami-Dade County.

## **ARTICLE 11**

### **LIABILITY SURVIVES TERMINATION OF MEMBERSHIP**

The termination of membership in the Association shall not relieve or release any former Unit Owner or Member from any liability or obligation incurred under or in any way connected with the Condominium during the period of ownership and membership, or impair any rights or remedies which the Association may have against such former Unit Owner and Member, arising out of, or which is in any way connected with, such ownership and membership.

## **ARTICLE 12**

### **LIMITATION OF LIABILITY**

Notwithstanding the duty of the Association to maintain and repair parts of the property, the Association shall not be liable for injury or damage caused by a latent condition in the property, nor for injury or damage caused by the elements, or other Unit Owners or persons.

## **ARTICLE 13**

### **LIENS**

13.1 **Protection of Property**. All liens against a Unit, other than for permitted mortgages, taxes or special assessments, shall be satisfied or otherwise removed within thirty (30) days of the date the lien attaches. All taxes and special assessments shall be paid before becoming delinquent as provided in the Condominium documents or by law, whichever is sooner.

13.2 **Notice of Lien**. A Unit Owner shall give notice to the Association of every lien upon his Unit, other than for permitted mortgages, taxes and special assessments, within five (5) days after the attaching of the lien.

13.3 **Notice of Suit.** A Unit Owner shall give notice to the Association of every suit or other proceeding which will or may affect title to his Unit or any part of the property, such notice to be given within five (5) days after the Unit Owner receives notice thereof.

13.4 **Effect on Judicial Sale.** Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

## **ARTICLE 14**

### **CONFLICT**

If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these By-Laws and of any of the Declaration, the provisions of the Declaration shall prevail.

## **ARTICLE 15**

### **CAPTIONS**

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws or the intent of any provisions hereof.

## **ARTICLE 16**

### **ELECTRONIC TRANSMISSION AND ELECTRONIC SIGNATURE**

All transmissions from the Association to the Unit Owners and from the Unit Owners to the Association which, by law, may be done by electronic transmission and/or with the use of an electronic signature, may be sent in that manner.