

**STATE OF NEW HAMPSHIRE
SUPREME COURT**

Docket No. 2021-0376

CC 145 Main, LLC. v. Union Mutual Fire Insurance Company

**RULE 7 APPEAL FROM MOTION FOR SUMMARY JUDGMENT
ORDER OF THE ROCKINGHAM COUNTY SUPERIOR COURT
(Judge Martin P. Honigberg)**

**BRIEF OF APPELLANT
UNION MUTUAL FIRE INSURANCE COMPANY**

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QUESTIONS PRESENTED

1. Whether the trial court erred in ruling that an exclusion in the Union Mutual BusinessOwners Policy that precluded coverage for damage caused by “[w]ater that backs up or overflows or is otherwise discharged from a . . . drain . . . or related equipment” did not apply to damage caused by water that backed up or overflowed from a toilet and shower drains.
2. Whether the trial court erred in ruling that an exclusion in the Union Mutual BusinessOwners Policy that precluded coverage for damage caused by “[w]ater that backs up or overflows or is otherwise discharged from a . . . drain . . . or related equipment” was ambiguous where the trial court did not find that the term was ambiguous, but rather forced an ambiguity regarding its meaning based on other terms in the exclusion.
3. Whether the trial court erred in ruling that an exclusion in the Union Mutual BusinessOwners Policy that precluded coverage for damage caused by “[w]ater that backs up or overflows or is otherwise discharged from a . . . drain . . . or related equipment” was ambiguous where the trial court relied on an out-of-state case analyzing a policy with a provision that was not in the Union Mutual Policy.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

I. The Incident.

CC 145 Main, LLC (“145 Main”) owns a seven-unit apartment building located at 145 Main Street, Newmarket, New Hampshire (“the Property”). On November 11, 2020, the Property was allegedly damaged by water that backed up and overflowed from a toilet and shower drains in Units 6 and 7 of the Property. Units 6 and 7 are on the Property’s third floor.

The Property was insured under a BusinessOwners policy of insurance issued by Union Mutual Fire Insurance Company (“Union Mutual”), Policy Number BOP0172629-02 (“the Policy”). As the damages alleged by 145 Main fell within an exclusion to coverage contained within the Policy, Union Mutual denied coverage to 145 Main. Thereafter, 145 Main initiated a declaratory judgment action against Union Mutual claiming that the exclusion was ambiguous and thus inapplicable.

II. Union Mutual’s Policy.

The Policy provides coverage for “direct physical loss of or damage to Covered Property . . . resulting from any Covered Cause of Loss.” The Policy defines “Covered Loss” as “[r]isks of direct physical loss unless the loss is a. Excluded in Paragraph B. Exclusions in Section I; or b. Limited in Paragraph 4. Limitations in Section I.”

The Policy contains an exclusion (“the Exclusion”) that provides, in pertinent part:

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. These exclusions apply whether or not the loss or event results in widespread damage or affects a substantial area.

. . .

g. Water

(1) Flood, surface water, waves (including tidal wave and tsunami), tides, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);

(2) Mudslide or mudflow;

(3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump, or related equipment;

- (4) Water under the ground surface pressing on, or flowing or seeping through;
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings or;
- (5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph (1), (3), or (4), or material carried or otherwise moved by mudslide or mudflow.

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

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

Union Mutual's Addendum to Brief (hereinafter "Add.") at 91.

III. The Trial Court's Order.

145 Main filed a declaratory judgment action against Union Mutual, seeking a declaration that the Exclusion does not apply to the water damage incident at the Property.

Union Mutual and 145 Main each moved for summary judgment. There were no disputes of material fact and the parties' arguments centered on one issue: whether the Exclusion that precludes coverage for "[w]ater that backs up or overflows or is otherwise discharged from a . . . drain . . . or related equipment" applies to water that backed up and overflowed from a toilet and shower drains.

145 Main claimed that the Exclusion did not apply to damage caused by water that backs up or overflows due to a blockage within a plumbing system on the premises, but applies only to backups or overflows that originate off the premises. 145 Main maintained that, as its interpretation of the Exclusion was a reasonable interpretation, the Exclusion was ambiguous. Union Mutual contended that the Exclusion was

unambiguous and should be interpreted according to its plain language. The Exclusion does not distinguish between damage that results from backups or overflows arising from internal plumbing versus damage that arises from external features. The plain language of the Exclusion provides that it applies to water that backs up or overflows from a drain or related equipment. Thus, it was Union Mutual's position that the Exclusion unambiguously applies to water that backs up and/or overflows from toilets and shower drains.

On August 6, 2021, the trial court denied Union Mutual's motion for summary judgment and granted 145 Main's motion. *See* Add. 31. The court erroneously reasoned that the term drain "appears to be an outlier among sewer, sump, and sump pump as sewers, sumps, and sump pumps are typically *external features* that are intended to carry water away from the property." Add. At 30 (emphasis added). The court concluded that, as the word "drain" is contained in a list that also includes external features, interpreting the term "drain" to refer to exterior drains "would be in keeping with the rest of the provision." *Id.* The court also relied upon the example provided in the Exclusion. The court concluded that, as "[t]he example provided does not indicate that the provision is intended to exclude water damage that happens as the result of the failure of internal plumbing," the Exclusion could be interpreted as applying only to the failure of external features. *Id.*

The trial court's holding was erroneous and inconsistent with New Hampshire law. The trial court directly rejected a case relied upon by Union Mutual that dealt with the same exact policy language as the Exclusion in this case. Instead, the trial court followed the reasoning of a New York case in which the policy at issue contained a coverage provision that directly conflicted with the Exclusion, as the coverage provision affirmatively provided coverage for "loss caused by repeated or continuous discharge, or leakage of liquids or steam from within a plumbing system." The Union Mutual policy does not contain the affirmative coverage provision relied upon by the New York court, nor does it contain any other contradictory provision that would defeat the application of the Exclusion. The court engaged in no analysis of the other applicable cases relied upon

by Union Mutual, including a New York case in which the court held that the language in the Exclusion applied to a sink drain.

The court manipulated the language of the Exclusion to force an ambiguity where none exists. The terms “sewer,” “sump pump,” and “sump” do not refer exclusively to external features. A sump pump is an internal feature typically located in the basement of a property. Even if these terms were construed as external features, however, the term “drain” is not ambiguous merely because it is included in a list with external features. The example provided in the Exclusion also does not render the term “drain” ambiguous. The example, which immediately follows language stating that the Exclusion applies regardless of whether the damage results from an act of nature or otherwise, is a demonstration of acts of nature to which the Exclusion applies. In fact, the example explains that even with devastating weather events, the exclusion would apply. This language is clearly not intended to limit the scope of the Exclusion. The Exclusion is unambiguous and the trial court should have interpreted it according to its plain language.

SUMMARY OF THE ARGUMENT

This Court should reverse the trial court's order as the Exclusion bars coverage for the water damage claimed by 145 Main. The Exclusion is unambiguous and clearly applies to water that backed up and/or overflowed from a toilet and shower drains.

Interpreting the Exclusion pursuant to its plain language is consistent with New Hampshire law. This Court has time and again held that policy language is to be read according to its plain and ordinary meaning, and that trial courts are prohibited from forcing ambiguity upon the policy where it does not otherwise exist. Here, the terms of the Policy's Exclusion are unambiguous: Union Mutual will not pay for loss or damage caused by water that backs up or overflows from a drain. New Hampshire has a longstanding tradition of respecting parties' freedom of contract, and this court has repeatedly declared that an insurance company is permitted to exclude certain coverage if the exclusion is clear and unambiguous. Consistent with this tradition, the Court should analyze the Exclusion based on the ordinary meaning of the terms used therein.

Though this Court has yet to pass on the applicable exclusion, courts from our sister states have ruled that the Exclusion is unambiguous and applies to damage arising out of water overflowing from internal drains. These courts' analyses of the Exclusion are consistent with New Hampshire law. The case relied upon by the trial court, as well as other authority relied upon by 145 Main, is inapposite. Most of these cases, including the sole case the trial court relied upon, addressed policies that contained language elsewhere in the policy that was directly inconsistent with the exclusion. The Union Mutual policy contained no such contradictory provision. The trial court violated the cardinal rule of contractual interpretation by creating ambiguity to resolve this dispute against Union Mutual. Accordingly, this Court should reverse the trial court's order.

ARGUMENT

I. Pursuant To Its Plain Language, The Policy’s Exclusion That Precludes Coverage For Damage Caused By “Water That Backs Ups Or Overflows From A Drain Or Related Equipment” Applies To Damage Caused By Water That Backed Up And Overflowed From A Toilet And Shower Drains.

The Exclusion provides, in relevant part:

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. These exclusions apply whether or not the loss or event results in widespread damage or affects a substantial area.

...

g. Water

...

(3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump, or related equipment

Add. at 91. The Policy does not define the term “drain” and, importantly, the Exclusion makes no distinction between interior drains and exterior drains.

This Court has repeatedly confirmed that New Hampshire will honor and enforce the terms of an insurance policy. *See, e.g., Godbout v. Lloyd’s Ins. Syndicates*, 150 N.H. 103, 105 (2003) (“The language of an insurance policy is binding... .”); *Green Mountain Ins. Co. v. Bonney*, 131 N.H. 762, 767 (1989) (“Even oral contracts for insurance are enforceable so long as there is agreement upon the subject-matter, the parties, the risk insured, the amount, the time for the coverage to begin to run, the duration of the coverage, and the premium.” (internal citation omitted)). “An insurance policy is a contract.” *Tuttle v. N.H. Med. Malpractice Joint Underwriting Assoc.*, 159 N.H. 627, 642 (2010). The language of an insurance policy is to be interpreted in the same manner as any other contract. *See Hudson v. Farm Family Mut. Ins. Co.*, 142 N.H. 144, 146 (1997). “Policy terms are construed objectively, and ‘where the terms of a policy are clear and unambiguous, we accord the language its natural and ordinary meaning.’” *Godbout*, 150

N.H. at 105 (quoting *Concord Hosp. v. N.H. Medical Malpractice Joint Underwriting Ass'n*, 137 N.H. 680, 683 (1993)).

Overflow means “to flow or run over” or “to have the contents flowing over or spilling.” See Definition of Overflow from dictionary.com, available at <https://www.dictionary.com/browse/overflow>; see also Definition of Overflow from merriam-webster.com, available at <https://www.merriam-webster.com/dictionary/overflow?src=search-dict-hed> (defining overflow as “to flow over the brim of”). Drain, when used as a noun, means “something, as a pipe or conduit, by which a liquid drains.” See Definition of Drain from dictionary.com, available at <https://www.dictionary.com/browse/drain>; see also Definition of Drain from merriam-webster.com, available at <https://www.merriam-webster.com/dictionary/drain?src=search-dict-hed> (defining drain as “a means (such as a pipe) by which usually liquid matter is drained”). The claimed damages caused by the Incident were the result of water overflowing from drains. The shower drains that backed up and overflowed were designed to drain water from the showers in Units 6 and 7 of the Property. The toilet that backed up and overflowed was connected to a drain and was designed to drain wastewater from the bathroom. See Definition of Toilet from dictionary.com, available at <https://www.dictionary.com/browse/toilet> (defining toilet as “a bathroom fixture consisting of a bowl, usually with a detachable, hinged seat and lid, and a device for flushing with water, used for defecation and urination”). A toilet is related equipment to a drain and therefore falls within the Exclusion.

Parties to a contract “are bound by the terms of an agreement freely and openly entered into, and courts cannot make better agreements than the parties themselves have entered into... .” *Mills v. Nashua Fed. Savings and Loan Assoc.*, 121 N.H. 722, 726 (1981). “[W]hen construing an insurance policy,” this Court reads “it as a whole and from the vantage point of an ordinary person.” *Great Am. Dining, Inc. v. Philadelphia Indem. Ins. Co.*, 164 N.H. 612, 619 (2013). The terms in the Policy’s Exclusion clause are not ambiguous, and the clause does not conflict with another provision of the Policy. An ordinary person would understand that the Exclusion clause applies to water that

backs up or overflows from external and interior drains as the clause does not draw a distinction between them. Accordingly, the trial court erred in finding that the Exclusion is ambiguous.

II. The Trial Court Erred When It Rejected Decisions From Our Sister States, Where The Courts Have Unequivocally Ruled That The Exclusion Is Unambiguous.

Though this Court has never directly passed upon the enforceability of the Exclusion, courts in our sister states that interpret contracts based upon their plain language have found that the Exclusion is unambiguous and applies to backups and/or overflows stemming from interior drains. In *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch.*, the California Court of Appeals found that the language used in the Exclusion was “unambiguous on its face” and that “[a] layperson would understand it to include both water that comes up out of a sewer, drain, or sump (“backs up”) and water that spills over from a sewer, drain, or sump (“overflows”) due to a blockage.” 212 Cal. App. 4th 69, 76 (2012). Like 145 Main, the insured in *Cardio Diagnostic Imaging, Inc.* argued that the purpose of the exclusion was “to shield insurers from potentially widespread liability from single external events.” *Id.* at 75. The court rejected this argument, noting that “there is nothing in the language of [the applicable exclusion] that limits its application to those kinds of events.” *Id.* The court also rejected the insured’s claim that the damage could be covered because the water overflowed from a toilet rather than a drain, explaining that:

The toilet was attached to a drain. Ordinarily, the water (or other substances) that enter the toilet flow through the drain into pipes that lead to the sewer system. If there is a blockage in the pipes or sewer system, the pipes leading to the drain will be filled and any additional water will overflow into, and eventually out of, the toilet. That is what happened here. Therefore, Water Exclusion # 3 applies, and the loss is not covered under the policy at issue.

Id. at 76; *see also*, *Victoria Fam. Ltd. Liab. Ltd. P’ship v. Ohio Sec. Ins. Co.*, 475 F. Supp. 3d 1106, 1115 (S.D. Cal. 2020) (concluding that the analysis from *Cardio Diagnostic Imaging, Inc.* was correct with respect to an overflow of water from a toilet). Despite the fact that *Cardio Imaging Diagnostic Inc.* dealt with the precise policy language and arguments presented in this case, the trial court rejected the California court’s rationale with little to no explanation for same.

The Court of Appeals of Texas has similarly rejected 145 Main’s distinction between external and internal causes of overflowing water. In *Kelley St. Assocs., LLC v. United Fire & Cas. Co.*, the court explained:

The Water Exclusion Endorsement unambiguously states that United Fire “will not pay for loss or damage caused directly or indirectly by ... [w]ater that backs up or overflows or is otherwise discharged from a sewer, drain...” The exclusion focuses on the type of water-related loss—not on whether the water-related loss originates inside or outside the insured’s property. Nothing in the exclusion’s language supports Kelley’s assertion that the exclusion “describes an overflow of water originating outside the insured’s plumbing system” and that the “exclusion does not reach losses caused by an internal plumbing problem—as in this case.”

It would be improper to rely on Kelley’s proposed external-versus-internal distinction because doing so impermissibly would read additional language into the policy. ...

If the parties had intended to differentiate in the Water Exclusion Endorsement between water-related losses that originate outside the insured’s property and those that originate inside, then the parties could have included language in this provision reflecting this intent. The parties did not do so and reading such a distinction into this provision would be tantamount to rewriting the policy—a step we cannot undertake.

2015 WL 7740450, at *5 (Tex. App. Nov. 30, 2015). The court also analyzed the insured’s mistaken suggestion that the term “drain” as used in the applicable exclusion applied only to certain external drains:

The policy does not define the term “drain” and does not impose any limitations on that term. “Drain” is commonly defined as a “conduit for draining liquid, as a ditch or a pipe,” *Drain*, Black’s Law Dictionary (10th ed.2014), or as “a channel or pipe carrying off surplus liquid, esp. rainwater or liquid waste,” *Drain*, New Oxford American Dictionary (3rd ed.2010). We conclude that the term “drain” as commonly defined encompasses a floor drain because a floor drain is a conduit for draining liquid or carrying off surplus liquids. Nothing in these definitions would support Kelley’s proposed narrow reading of the term “drain” as being a “pipe used to remove the water from the Building to a treatment facility or a body of water.” Having determined that the term “drain” encompasses floor drains, we need not address whether the term “sewer” also encompasses a septic system; the Water Exclusion Endorsement excludes loss or damage caused by water that backs up or overflows or is otherwise discharged from a sewer *or* drain.

Id. at *9; *see also Anderson Keuscher PLLC v. U.S. Liab. Ins. Co.*, 2018 WL 11266697, at *3 (D. Nev. Aug. 7, 2018) (finding the Exclusion is unambiguous on its face and plainly applies to damages caused by water that backed up in a sewer line on the property and overflowed from a drain attached to a toilet); *Motorists Mutual Ins. Co. v. Zukoff*, 851 S.E.2d 112, 118 (W. Va 2020) (finding the Exclusion unambiguous and explaining that a policy term is not ambiguous merely because it is undefined); *Newlo Realty Co. v. U.S.F. & G. Corp.*, 213 A.D.2d 295, 295 (N.Y. App. Div. 1995) (finding the Exclusion for “water that backs up from a sewer or drain” unambiguously applies to a sink drain, despite sub-clauses that refer to events such as floods, tidal waves, mudslides, and underground water flows); *Scorpio v. Underwriters at Lloyd’s, London*, 2012 WL 2020168, at *3 (D.R.I. 2012) (finding exclusion for water that backs up or overflows from a drain is clear and unambiguous).

Several courts from our sister states have ruled that the Exclusion is unambiguous and applies to backups and/or overflows stemming from internal drains. This Court should do the same. This Court has recognized that insurers can limit their liability through the language of a policy. *See Russell v. NGM Ins. Co.*, 170 N.H. 424, 429 (2017)

(“Insurers are free to contractually limit the extent of their liability through use of a policy exclusion provided it violates no statutory provision.”). As this Court employs the same reasoning as the above-referenced jurisdictions with respect to insurance policy interpretation, it should reach the same result with respect to the plain language of the Exclusion.

III. The Trial Court Erred When It Relied On Cases From Other Jurisdictions That Involved Policy Provisions That Directly Conflicted With The Exclusion, As The Union Mutual Policy Does Not Contain A Contradictory Or Conflicting Provision.

The cases primarily relied upon by 145 Main and the sole case relied upon by the trial court involve policies with separate provisions that the court found to be inconsistent with the Exclusion. As the Policy in this case contains no such contradictory provision, these out-of-state cases are inapplicable. This Court should therefore decline to follow this line of cases. There are no provisions contained in the Policy that render the Exclusion ambiguous and the Court should interpret the Exclusion based on its plain meaning.

The trial court relied solely on *Pichel v. Dryden Mut. Ins. Co.*, 117 A.D.3d 1267 (N.Y. App. Div. 2014) to force an ambiguity in this case. As *Pichel* involved a policy provision that is not contained in the Policy in this case, *Pichel* is inapposite. In *Pichel*, the policy at issue contained a provision similar to the Exclusion that excluded coverage for “water which backs up through sewers or drains.” 117 A.D.3d at 1267. Importantly, however, the policy also contained a conflicting coverage provision that provided the insurer “does pay for loss caused by the accidental leakage, overflow or discharge of liquids or steam from a plumbing system.” *Id.* at 1268. The New York court reasoned that, if it interpreted the exclusion as applying to external drains and the coverage provision as applying to internal drains, it could afford full effect to both the exclusion and the coverage provision. *Id.* at 1269-70. If, on the other hand, the court interpreted the exclusion as applying to internal drains, the affirmative coverage provision would be rendered meaningless. *Id.* at 1269. The Policy in the instant case does not contain an affirmative coverage provision like the one in *Pichel*. In fact, there is no provision in the

Policy that conflicts with the Exclusion. Accordingly, *Pichel* is inapplicable and unpersuasive.

145 Main also relied upon several distinguishable cases that involved homeowner's insurance policies, rather than BusinessOwner's policies. As in *Pichel*, the homeowner's insurance policies in these cases contained provisions that were inconsistent with the Exclusion. In *Hallstead v. Blue Mountain Convalescent Ctr., Inc.*, the policy at issue affirmatively covered "[a]ccidental discharge, leakage or overflow of water or steam from within a plumbing, heating or air conditioning system or from within a domestic appliance but excluding loss to the appliance from which the water or steam escapes." 23 Wash. App. 349, 350 (1979). The Policy in this case contains no similar provision, nor any other language creating a distinction between water that overflows from a toilet or shower drain as a result of a clog inside the Property's plumbing as opposed to a clog outside of the Property.

Though one other court has found the reasoning of *Hallstead* persuasive, that court recognized that the *Hallstead* court "focused on the importance of the phrase 'within . . . a system,' appearing in the general coverage provision of the policy." *Haines v. United Sec. Ins. Co.*, 43 Colo. App. 276, 277 (1979). As that phrase does not appear in a similar provision in the Policy in this case, the analysis in *Hallstead* and *Haines* does not support that the Exclusion is ambiguous. The Exclusion is the Policy's only language regarding damage caused by overflowing water, and it unequivocally excludes such damage from coverage.

In *Jackson v. Am. Mut. Fire Ins. Co.*, the court also analyzed a homeowner's policy that contained a provision that was inconsistent with the applicable exclusion. See generally 299 F. Supp. 151 (M.D.N.C. 1968). The Court explained:

The insuring clause insures generally against loss caused by the accidental discharge or overflow of water from within the plumbing system. Without the 'special exclusions,' this clause would insure against any loss caused by such overflow from within the plumbing system. However, the provisions under

clause (b) of the special exclusions limits this coverage by excepting overflow caused by certain outside forces.

Id. at 156. Again, the Policy in this case does not contain an affirmative coverage provision such as the one in *Jackson* and the case is therefore inapplicable.

In *Cheetham v. Southern Oak Ins. Co.*, the homeowner’s policy at issue affirmatively covered “loss to property... resulting from an accidental discharge or overflow of water or steam from within a... [p]lumbing... system... on the ‘residence premises.’” 114 So. 3d 257, 259 (Fla. Dist. Ct. App. 2013). The court concluded that based on its review of the policy, the applicable exclusion related:

to damage caused by water originating from somewhere other than the residence premises’ plumbing system. Because the claimed loss in this case was caused by the deterioration of a pipe within the plumbing system, which caused water or water-borne material emanating from the residence premises’ plumbing system to back up into the residence premises, we find the Cheethams’ loss is a covered loss under the policy.

Id. at 263. In contrast, the Policy in this case makes no distinction regarding water overflowing as a result of an internal problem as opposed to an external problem and contains no similar provision regarding coverage for the overflow of water from the Property’s plumbing system. *Cheetham* is therefore inapposite.

In *Kozlowski v. Penn Mut. Ins. Co.*, the homeowner’s policy covered accidental discharge, leakage or overflow of water from the property’s plumbing system. 295 Pa. Super. 141, 143 (1982). In interpreting the meaning of “plumbing system,” the court explained that “the policy was meant to insure only against water damage caused by sources directly within or appurtenant to her home.” *Id.* at 144. As the Policy in this case contains no similar reference to “plumbing system,” the analysis in *Kozlowski* is irrelevant for determining whether the Policy covers the damage allegedly caused by the Incident.

Each of the above-referenced cases involve policies that contain contradictory provisions which provide coverage for water damage arising from internal plumbing

and/or drains. In an attempt to reconcile these provisions with the Exclusion, some out-of-state courts have concluded that the Exclusion applies only to external drains. This line of cases has no relevant application where, as here, the Policy at issue contains no such affirmative coverage provision.

The trial court forced an ambiguity where none exists. The fact that the word “drain” appears in a list with the terms “sewer,” “sump,” and “sump pump,” does not render “drain” ambiguous. The trial court erred when it found that these additional terms “are typically external features,” and therefore “drain” must also refer to external drains. *See* Add at 30. A sump pump is an internal feature located within the basement of a property. *See* Definition of Sump Pump from merriam-webster.com available at <https://www.merriam-webster.com/dictionary/sump%20pump> (defining “sump pump” as “a pump (as in a basement) to remove accumulations of liquid (such as water) from a sump pit.”). Thus, the list in section (g)(3) of the Exclusion references both external and internal features. Even if “sump pump” was interpreted as an external feature, however, the term “drain” is still unambiguous. There is nothing inherently contradictory or ambiguous in a list that contains three external features and one feature that could be external or internal. If the parties intended for the Exclusion to solely encompass external features or the word “drain” to refer to external drains, they could have so provided.

The trial court’s reliance on the language that provides an example of a situation to which the Exclusion applies is similarly inappropriate. The language provides that, as an example, the Exclusion would apply to the failure of a dam, levee, or seawall to contain water. This example immediately follows language providing that the exclusion applies regardless of whether the damage “is caused by an act of nature or is otherwise caused.” When this paragraph of the Exclusion is read as a whole, it is clear that the example is an illustration of acts of nature to which the Exclusion applies. The example was clearly not intended to limit the scope of the Exclusion. There is no language contained in the Exclusion limiting its application to the failure of external features. The trial court

improperly relied on other language in the Exclusion to find any ambiguity, even though that language does not conflict with the relevant portion of the Exclusion.

“While a court has the duty to construe an insurance contract in a reasonable manner, it is not free to rewrite its terms by giving them a meaning which they never had.” *Consoli v. Com. Ins. Co.*, 97 N.H. 224, 226 (1951). Courts will not “perform amazing feats of linguistic gymnastics to find a term ambiguous.” *Catholic Med. Ctr. v. Exec. Risk Indem., Inc.*, 151 N.H. 699, 701 (2005). “[W]hen a policy’s meaning and intent are clear, it is not the prerogative of the courts to create ambiguities where none exist or to rewrite the contract in attempting to avoid harsh results.’ The same prohibition applies to attempts to rewrite a policy to avoid a result claimed to be unreasonable.” *Id.* at 703 (quoting *Harbor Insurance Co. v. United Services Automobile Ass’n*, 559 P.2d 178, 181 (Ariz. 1976)).

Neither the trial court nor 145 Main has cited to any authority to suggest that the terms “sewer,” “sump” and “sump pump” render the word “drain” ambiguous. No other court has taken this position. Similarly, the example provided in the Exclusion is intended to illustrate acts of nature that would not defeat the Exclusion. The example is clearly not intended to limit the scope of the Exclusion to the failure of external features. The terms of the Policy’s Exclusion are unambiguous: Union Mutual will not pay for loss or damage caused by water that backs up or overflows from a drain. The Policy makes no distinction between internal and external drains.

“[T]his court is the final authority on New Hampshire law.” *State v. Ball*, 124 N.H. 226, 232 (1983). It has repeatedly affirmed that contractual intent is “determined from the plain meaning of the language used in the contract.” *Robbins v. Salem Radiology*, 145 N.H. 415, 418 (2000); see also *Royal Oak Realty Tr. v. Mordita Realty Tr.*, 146 N.H. 578, 581 (2001) (same); *Lawyers Title Ins. Corp. v. Groff*, 148 N.H. 333, 337 (2002) (same); *Ryan James Realty, LLC v. Villages at Chester Condo. Ass’n*, 153 N.H. 194, 197 (2006) (same); *Birch Broadcasting, Inc. v. Capitol Broadcasting Corp.*, 161 N.H. 192, 197 (2010) (same). “An insurance policy is a contractual obligation between the insured and the insurer. Insurers are free to limit their liability through clear

and unambiguous policy language.” *Concord Gen. Mut. Ins. Co. v. Green & Co. Bldg. & Dev. Corp.*, 160 N.H. 690, 694 (2010). The Policy’s Exclusion is clear and unambiguous. It applies to the water damage alleged by 145 Main. Case law from outside New Hampshire that reads ambiguity into the Exclusion is inapplicable, not controlling on this Court, and contrary to New Hampshire law.

CONCLUSION

For the foregoing reasons, this Court should reverse the Order and rule that 145 Main’s claimed property damage is barred by the Exclusion in Union Mutual’s policy.

Respectfully submitted,

UNION MUTUAL FIRE
INSURANCE COMPANY,

By Its Attorneys,

PRIMMER PIPER EGGLESTON
& CRAMER PC,

Date: January 3, 2022

By: /s/ Gary M. Burt
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STATEMENT WITH RESPECT TO ORAL ARGUMENT

Union Mutual does not request oral argument. This Court can decide this matter based on the plain language of the Policy's Exclusion and New Hampshire law. In the event that this Court decides that oral argument is necessary, Union Mutual designates Gary M. Burt to represent its interests.

Date: January 3, 2022

/s/ Gary M. Burt
Gary M. Burt (N.H. Bar No. 5510)

CERTIFICATION OF WORD LIMIT

I hereby certify that the total words in this Brief do not exceed 9,500 words.

Date: January 3, 2022

/s/ Gary M. Burt
Gary M. Burt (N.H. Bar No. 5510)

CERTIFICATION

It is hereby certified that a copy of the foregoing document was served through the court's electronic filing system upon Henry Stebbins, Esquire.

Date: January 3, 2022

/s/ Gary M. Burt
Gary M. Burt (N.H. Bar No. 5510)

ADDENDUM

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The State of New Hampshire

ROCKINGHAM

SUPERIOR COURT

CC 145 MAIN, LLC

V.

UNION MUTUAL FIRE INSURANCE COMPANY

NO. 218-2021-CV-00042

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

In this action, Plaintiff CC 145 Main, LLC seeks a declaratory judgment against Defendant Union Mutual Fire Insurance company declaring that a specific exclusion to Plaintiff's insurance policy issued by Defendant does not apply. See Amended Compl. (Doc. 6) (Requesting declaratory judgment and attorneys' fees). Presently before the Court are the parties' cross motions for summary judgment on this issue. See Def.'s Mot. Summ. J. and Mem. Of Law (Docs. 12 and 13), Pl.'s Mot. Summ. J. and Mem. Of Law (Docs. 15 and 16), Def's Obj. and Mem. Of Law (Docs. 19 and 20), and Pl.'s Surreply (Doc. 23). The Court has carefully considered the parties' arguments, the evidence in the summary judgment record, and the applicable law. For the reasons that follow, Defendant's motion for summary judgment is **DENIED**, and Plaintiff's motion for summary judgment is **GRANTED**.

LEGAL STANDARD

In general, a motion for summary judgment may not be granted unless "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law." RSA 491:8-a, III. "An issue of fact is 'material' if it affects the outcome of the case under applicable substantive law." Lynn v. Wentworth by the Sea

Master Ass'n, 169 N.H. 77, 87 (2016). In deciding the motion, the Court assesses “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed by the parties.” RSA 491:8-a, III. The Court must consider the evidence, and all reasonable inferences therefrom, in the light most favorable to the non-moving party. Stewart v. Bader, 154 N.H. 75, 85 (2006). The moving party bears the burden of proving that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. See id. at 86.

FACTS

Unless otherwise noted, the following facts are derived from the evidence contained in the summary judgment record. This case arises out of significant water damages that occurred to Plaintiff’s insured property when an internal pipe clogged, causing water to overflow from several orifices—including toilet and showers drains. See Brief Statement and Response ¶ 6 (Doc. 21) (citing Doc. 6 ¶¶ 9, 14). At the time the damage occurred, Plaintiff’s property was insured by Defendant through a “BusinessOwners [sic] policy of insurance with Policy Number BOP0172629-02 (the ‘Policy’).” Id. ¶¶ 1–2. Among other things, the Policy covers “direct physical loss or damages to Covered property resulting from any Covered Cause of Loss.” Id. ¶ 3 (alterations omitted).

The Policy contains an exclusion of coverage related to water damage (the “Exclusion Provision”). Id. ¶ 5. The Exclusion Provision at issues in this case provides in pertinent part:

1. Defendant] 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. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

...

g. Water

...

(4) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump, or related equipment;

...

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

At issue in this case is whether the above-described provision excludes the water damage at Plaintiff's insured property from coverage under the Policy.

ANALYSIS

While their interpretations of the application of the Exclusion Provision differ, the parties agree that the salient question in this case is whether the Policy requires Defendant to provide insurance coverage caused by water damage stemming from a clogged internal pipe that caused water to back up through internal drains. See Docs. 13 and 16. In order to determine whether the Policy provides coverage under the circumstances, the Court must determine whether the Exclusion Provision applies. The interpretation of insurance policy language is a question of law. Santos v. Metro. Prop. & Cas. Ins. Co., 171 N.H. 682, 685 (2019). The fundamental goal of interpreting an insurance policy, as in all contracts, is to carry out the intent of the contracting parties. Id. at 685–86. To discern the parties' intent, the Court begins with an examination of

the insurance policy language. Id. at 686. In interpreting policy language, the Court looks to the plain and ordinary meaning of the policy's words in context. Id. The Court must construe the terms of the policy as would a reasonable person in the position of the insured based upon more than a casual reading of the policy as a whole. Id.

In this case, the Court must interpret the language used in an exclusion. Although "[i]nsurers are free to contractually limit the extent of their liability provided that they violate no statutory provision by doing so," "[l]imitations must be stated in such clear and unambiguous terms . . . that the insured can have no reasonable expectation that coverage exists." Id. (citation omitted). "[F]or exclusionary language to be considered clear and unambiguous, two parties cannot reasonably disagree about its meaning." Mellin v. N. Sec. Ins. Co., Inc., 167 N.H. 544, 547 (2015) (quotation omitted). "Thus, when an insurance policy's language is ambiguous and one reasonable interpretation favors coverage, we construe the policy in the insured's favor and against the insurer." Id. (quotation omitted). "In a declaratory judgment action to determine the coverage of an insurance policy, the burden of proof is always on the insurance provider, regardless of which party brings the action." Id. (quotation omitted).

In its motion, Defendant points the Court's attention to several cases that it avers support its position that the Exclusion Provision bars coverage under these circumstances, including Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch., 212 Cal. App. 4th 69 (2012). See Doc. 13 at 4–5. In Cardio Diagnostic, the court considered whether the following language in an exclusion provision of the insurance policy at issue would bar coverage when the plaintiff's toilets malfunctioned:

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

mudflow; [¶] (3) Water that backs up or overflows from a sewer, drain or sump; or [¶] (4) Water under the ground surface pressing on, or flowing or seeping through: [¶] (a) Foundations, walls, floors or paved surfaces; [¶] (b) Basements, whether paved or not; or [¶] (c) Doors, windows or other openings.

212 Cal. App. 4th at 71. Similar to the case at bar, the Cardio Diagnostic court specifically considered whether the phrase “water that backs up or overflows from a sewer, drain or sump” barred coverage. Id. at 74. After review of California case law, the court ultimately concluded the exclusion,

“ . . . is unambiguous on its face. A layperson would understand it to include both water that comes up out of a sewer, drain, or sump (“backs up”) and water that spills over from a sewer, drain, or sump (“overflows”) due to a blockage. . . . The toilet was attached to a drain. Ordinarily, the water (or other substances) that enter the toilet flow through the drain into pipes that lead to the sewer system. If there is a blockage in the pipes or sewer system, the pipes leading to the drain will be filled and any additional water will overflow into, and eventually out of, the toilet. That is what happened here. Therefore, [the exclusion provision] applies, and the loss is not covered under the policy at issue.”

Id. at 76.

In response, Plaintiff points the Court to Pichel v. Dryden Mut. Ins. Co., 117 A.D.3d 1267, 986 N.Y.S.2d 268 (N.Y. App. Div. 2014), which it argues support its position that the Exclusion Provision does not bar coverage for water damage caused by blockage in an interior pipe. See Doc. 16 at 5. In Pichel, the court considered whether an exclusion provision, which applied to loss caused by “water which backs up through sewers or drains,” barred the plaintiff from recovering. 117 A.D.3d at 1267. The insurance policy also included a provision that expressly covered loss related to “the accidental leakage, overflow or discharge of liquids or steam from a plumbing system.” Id. at 1268 (alterations omitted). The court ultimately concluded the two provisions read together created an ambiguity that must be resolved in the insured’s

favor under New York law. *Id.* at 1268–69. In addition, Plaintiff cites a series of codes and other sources that contain definitions of “drain” to support its argument that the Exclusion Provision could fairly be read to refer to systems and equipment outside of the insured property. See Doc. 16 at 6-8.

Having considered the arguments by both parties, the Court concludes that, similar to Pichel, a later provision of the water exclusion creates an ambiguity that must be resolved in favor of the insured. First, the Court notes that “drain” appears to be an outlier among sewer, sump, and sump pump as sewers, sumps, and sump pumps are typically external features that are intended to carry water away from a property. Interpreting drain to mean literally any drain within the property would set this term apart from the others in the provision, whereas interpreting drain in the manner Plaintiff suggests would be in keeping with the rest of the provision.

Furthermore, the Court must read the provision in context of the whole Exclusion provision, which states “[a]n 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. . . .” Given the express example given by the Exclusion Provision itself, a reasonable interpretation of this insurance provision could be that the Exclusion Provision is intended to exclude water damage that happens as a result of the failure of external features—like sewers and sump pumps—that are meant to carry water away from the property. The example provided does not indicate that the provision is intended to exclude water damage that happens as the result of the failure of internal plumbing. In fact, such an interpretation could lead to an absurd result. It does not logically follow that an insurance policy which would

provide coverage in the event of a frozen and ruptured internal pipe—where water might leak from the pipe itself rather than back up through a shower drain—would not also provide coverage when an internal pipe fails in a manner that causes a toilet to overflow. As a result, given the Court’s conclusion that the Exclusion Provision could reasonably be interpreted to provide coverage for water that backs up from internal plumbing as opposed to external drainage features, the Court is obligated to construe the language in favor of the insured. Mellin, 167 N.H. at 547.

CONCLUSION

For the reasons stated above, Defendant’s motion for summary judgment is **DENIED**, and Plaintiff’s cross motion for summary judgment is **GRANTED**.

SO ORDERED.

August 6, 2021
Date


Judge Martin P. Honigberg

Clerk's Notice of Decision
Document Sent to Parties
on 08/06/2021

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

Docket No. 218-2021-CV-00042

CC 145 Main LLC

v.

Union Mutual Fire Insurance Company

**MEMORANDUM OF LAW IN SUPPORT OF UNION MUTUAL FIRE
INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**

Union Mutual Fire Insurance Company (“Union Mutual”) has no obligation to cover the water damage claimed by CC 145 Main LLC (“Plaintiff”) as the applicable policy issued by Union Mutual excluded from coverage damage caused by water that backs up, overflows or is otherwise discharged from a drain or related equipment. Plaintiff’s alleged damages stem from water that backed up and overflowed from a toilet and shower drains in Units 6 and 7 of 145 Main Street, Newmarket, New Hampshire (the “Property”) on November 11, 2020 (the “Incident”). As these damages fall squarely within the exclusion, Union Mutual is entitled to summary judgment with respect to Plaintiff’s declaratory judgment claim.

BACKGROUND

I. The Incident.

At all relevant times, Plaintiff owned the Property, a seven-unit apartment building. *See* Plaintiff’s Amended Complaint for Declaratory Relief (“Amended Complaint”), ¶ 6. On November 11, 2020, the Property was allegedly damaged by water that backed up and

overflowed from a toilet and shower drains in Units 6 and 7 of the Property. *See id.*, ¶¶ 9, 14; *see also* Answer to Amended Complaint, ¶ 27. Units 6 and 7 are on the Property’s third floor. *See* Answer to Amended Complaint, ¶ 27.

II. The Policy.

At all times relevant hereto, the Property was insured through a BusinessOwners policy of insurance with Policy Number BOP0172629-02 (the “Policy”) issued by Union Mutual. *See* Amended Complaint, ¶ 6; *see generally* Policy, attached hereto as Exhibit A. The Policy provides coverage for “direct physical loss of or damage to Covered Property... resulting from any Covered Cause of Loss.” Policy, BP 00 03 01 10, p. 1. The Policy defines Covered Causes of Loss as “[r]isks of direct physical loss unless the loss is a. Excluded in Paragraph B. Exclusions in Section I; or b. Limited in Paragraph 4. Limitations in Section I.” *Id.*, BP 00 03 01 10, p. 2. The Policy contains an exclusion (the “Exclusion”) that provides:

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. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

...

g. Water

...

- (3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;

Id., BP 00 03 01 10, p. 15, 16.

LEGAL STANDARD

Summary judgment is an appropriate means of avoiding the time and expense of trial, *High Country Assocs. v. New Hampshire Ins. Co.*, 139 N.H. 39, 41 (1994), and it should be granted where “there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law.” *Guilfoy v. United Servs. Auto. Ass’n*, 153 N.H. 461, 462 (2006); *see* N.H. Rev. Stat. Ann. § 491:8-a. Insurance coverage disputes are routinely resolved by summary judgment as the “interpretation of insurance policy language is a question of law for this court to decide.” *Godbout v. Lloyd’s Ins. Syndicates*, 150 N.H. 103, 105 (2003). New Hampshire courts “construe the language of an insurance policy as would a reasonable person in the position of the insured based on a more than casual reading of the policy as a whole,” giving “the language its natural and ordinary meaning” unless it is “reasonably susceptible to more than one interpretation.” *Miller v. Amica Mut. Ins. Co.*, 156 N.H. 117, 119-20 (2007).

ARGUMENT

I. Union Mutual Has No Obligation To Cover The Property’s Alleged Damages Based On The Plain Language Of The Exclusion.

The Exclusion provides that Union Mutual “will not pay for loss or damage caused directly or indirectly by... [w]ater that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment.” Policy, BP 00 03 01 10, p.

15, 16. Plaintiff's claimed damages were caused by water that backed up and overflowed from a toilet and shower drains in Units 6 and 7 of the Property. *See* Amended Complaint, ¶¶ 9, 14; *see also* Answer to Amended Complaint, ¶ 27. Based on the plain language of the Exclusion, such damages are not covered by the Policy.

Although Plaintiff focuses its analysis on the Exclusion's use of the word "sewer," *see* Amended Complaint, ¶¶ 18-20, Plaintiff largely ignores that Exclusion also applies to the overflow or backing up of water from drains and related equipment. The Exclusion does not limit its applicability to exterior drains, as Plaintiff suggests, *see id.*, ¶ 22, nor does it require the problem causing a back up or an overflow to originate outside the Property. "[I]n reviewing policy language for ambiguity, this court reviews the language of the policy as it was actually written and does not speculate about how it might have been written." *Atty's Liab. Prot. Soc'y, Inc. v. Whittington Law Assocs., PLLC*, 961 F. Supp. 2d 367, 374 n. 5 (D.N.H. 2013); *see Consoli v. Com. Ins. Co.*, 97 N.H. 224, 226 (1951) ("While a court has the duty to construe an insurance contract in a reasonable manner, it is not free to rewrite its terms by giving them a meaning which they never had."). The backing up and overflowing of water from a toilet and shower drains in Units 6 and 7 of the Property fall squarely within the scope of the Exclusion.

In interpreting commercial policies with provisions like the Exclusion, courts from numerous jurisdictions have recognized that the Exclusion applies to the damages claimed by Plaintiff. In *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch.*, the California Court of Appeals found that the language used in the Exclusion was "unambiguous on its face. A layperson would understand it to include both water that comes up out of a sewer, drain,

or sump (“backs up”) and water that spills over from a sewer, drain, or sump (“overflows”) due to a blockage.” 212 Cal. App. 4th 69, 76 (2012). Like Plaintiff, the insured in *Cardio Diagnostic Imaging, Inc.* argued that the purpose of the exclusion was “to shield insurers from potentially widespread liability from single **external** events.” *Id.* at 75 (emphasis added). The court rejected this argument, noting that “there is nothing in the language of [the applicable exclusion] that limits its application to those kinds of events.” *Id.* The court also rejected the insured’s claim that the damage could be covered because the water overflowed from a toilet rather than a drain, explaining that:

The toilet was attached to a drain. Ordinarily, the water (or other substances) that enter the toilet flow through the drain into pipes that lead to the sewer system. If there is a blockage in the pipes or sewer system, the pipes leading to the drain will be filled and any additional water will overflow into, and eventually out of, the toilet. That is what happened here. Therefore, Water Exclusion # 3 applies, and the loss is not covered under the policy at issue.

Id. at 76. This analysis is equally applicable here where the claimed damages stem from an overflowing toilet and shower drains. *See Victoria Fam. Ltd. Liab. Ltd. P’ship v. Ohio Sec. Ins. Co.*, 475 F. Supp. 3d 1106, 1115 (S.D. Cal. 2020) (concluding that the analysis from *Cardio Diagnostic Imaging, Inc.* was correct with respect to an overflow of water from a toilet).

The Court of Appeals of Texas has similarly rejected Plaintiff’s distinction between external and internal causes of overflowing water. In *Kelley St. Assocs., LLC v. United Fire & Cas. Co.*, the court explained:

The Water Exclusion Endorsement unambiguously states that United Fire “will not pay for loss or damage caused directly or

indirectly by ... [w]ater that backs up or overflows or is otherwise discharged from a sewer, drain....” The exclusion focuses on the type of water-related loss—not on whether the water-related loss originates inside or outside the insured’s property. Nothing in the exclusion’s language supports Kelley’s assertion that the exclusion “describes an overflow of water originating outside the insured’s plumbing system” and that the “exclusion does not reach losses caused by an internal plumbing problem—as in this case.”

It would be improper to rely on Kelley’s proposed external-versus-internal distinction because doing so impermissibly would read additional language into the policy. ...

If the parties had intended to differentiate in the Water Exclusion Endorsement between water-related losses that originate outside the insured’s property and those that originate inside, then the parties could have included language in this provision reflecting this intent. The parties did not do so and reading such a distinction into this provision would be tantamount to rewriting the policy—a step we cannot undertake.

2015 WL 7740450, at *5 (Tex. App. Nov. 30, 2015). The court also analyzed the insured’s mistaken suggestion that the term “drain” as used in the applicable exclusion applied only to certain external drains:

The policy does not define the term “drain” and does not impose any limitations on that term. “Drain” is commonly defined as a “conduit for draining liquid, as a ditch or a pipe,” *Drain*, Black’s Law Dictionary (10th ed.2014), or as “a channel or pipe carrying off surplus liquid, esp. rainwater or liquid waste,” *Drain*, New Oxford American Dictionary (3rd ed.2010). We conclude that the term “drain” as commonly defined encompasses a floor drain because a floor drain is a conduit for draining liquid or carrying off surplus liquids. Nothing in these definitions would support Kelley’s proposed narrow reading of the term “drain” as being a “pipe used to remove the water from the Building to a treatment facility or a body of water.” Having determined that the term “drain” encompasses floor drains, we need not address whether the

term “sewer” also encompasses a septic system; the Water Exclusion Endorsement excludes loss or damage caused by water that backs up or overflows or is otherwise discharged from a sewer *or* drain.

Id. at *9. As the Exclusion does not differentiate between external and internal causes of overflowing water, nor limit the definition of the term “drain,” the court’s analysis in *Kelley St. Assocs., LLC* demonstrates that Union Mutual is entitled to summary judgment.

That the Policy does not specify that the Exclusion applies to overflows caused by blockages within the Property’s internal plumbing does not demonstrate that damages resulting from such overflows fall outside the Exclusion. In *Anderson Keuscher PLLC v. United States Liab. Ins. Co.*, the insured argued that “the exclusion provisions relied on by [the insurer] are ambiguous when the policy is read as a whole” because the insurer “differentiated between plumbing systems located on a property and sewers located outside of a property’s lines.” 2018 WL 11266697, at *3 (D. Nev. Aug. 7, 2018). To make this argument, the insured pointed to the use of “plumbing equipment” in an unrelated section of the policy as opposed to the use of “sewer, drain, sump, sump pump or related equipment” in the applicable exclusion. *Id.* The United States District Court for the District of Nevada rejected this argument, recognizing that the applicable exclusion “is unambiguous on its face. The provision clearly states that [the insurer] will not pay for damages caused by water that backs up or overflows from a sewer or a drain.” *Id.* The court concluded that the exclusion “plainly applies to the damages caused by the water that was backed up in a sewer line on the property and overflowed from a drain attached to a toilet on the property.” *Id.*

The Exclusion is not ambiguous, and it applies to the damages claimed by Plaintiff. Overflow means “to flow or run over” or “to have the contents flowing over or spilling.” See Definition of Overflow from dictionary.com, available at <https://www.dictionary.com/browse/overflow>; see also Definition of Overflow from merriam-webster.com, available at <https://www.merriam-webster.com/dictionary/overflow?src=search-dict-hed> (defining overflow as “to flow over the brim of”). Drain, when used as a noun, means “something, as a pipe or conduit, by which a liquid drains.” See Definition of Drain from dictionary.com, available at <https://www.dictionary.com/browse/drain>; see also Definition of Drain from merriam-webster.com, available at <https://www.merriam-webster.com/dictionary/drain?src=search-dict-hed> (defining drain as “a means (such as a pipe) by which usually liquid matter is drained”). The claimed damages caused by the Incident were the result of water overflowing from drains. The shower drains that backed up and overflowed were designed to drain water from the showers in Units 6 and 7 of the Property. The toilet that backed up and overflowed was connected to a drain and was designed to drain wastewater from the bathroom. See Definition of Toilet from dictionary.com, available at <https://www.dictionary.com/browse/toilet> (defining toilet as “a bathroom fixture consisting of a bowl, usually with a detachable, hinged seat and lid, and a device for flushing with water, used for defecation and urination”). A toilet is related equipment to a drain and therefore falls within the Exclusion. See *193 Hooper Street Condo v. Wesco Ins. Co.*, 2020 WL 228355, at *1 (N.Y. Sup. Ct. Jan. 10, 2020) (“Plaintiff has acknowledged through documentation by its retained public adjuster, through its verified interrogatory

responses and in sworn deposition testimony by its building manager that the source of the water damage for which it seeks recovery was a toilet that malfunctioned and overflowed while the unit resident was out of town. Under such circumstances, the policy exclusion applies – as the admitted cause of the occurrence, i.e., the malfunctioning toilet, constitutes at least “related equipment” within the meaning of said policy exclusion.”). As the Exclusion is not ambiguous and Plaintiff’s claimed damages fall squarely within it, those damages are not covered by the Policy.

II. The Exclusion Is Not Ambiguous As The Policy Does Not Contain Any Contradictory Provision.

In the Amended Complaint, Plaintiff cites a number of cases from outside New Hampshire that allegedly support that the Exclusion is ambiguous. In each of these cases, however, the policy that contained a provision like the Exclusion had other language that the court found to be inconsistent with the Exclusion or the facts were distinguishable from this matter. As the Policy does not contain an inconsistent provision, the Exclusion is not ambiguous. The Court should interpret it based on the meaning of the plain language used therein.

Plaintiff relies primarily on *Hix Brix LLC v. Amguard Insurance Company* for its contention that the Exclusion is ambiguous. See *Hix Brix LLC v. Amguard Insurance Company*, Index # 600249/18, (N.Y. Sup. Ct. June 5, 2018), slip opinion attached hereto as Exhibit B. In *Hix Brix LLC*, the plaintiff “reported a claim to AmGuard for water that backed up and overflowed into the basement at the insured property. The basement flooded when a clogged pipe **broke**.” *Hix Brix LLC*, slip op. at p. 1 (emphasis added). The policy

at issue contained an exclusion that used the same language as the Exclusion. *See id.*, slip op. at p. 2. The court concluded that an ambiguity existed with respect to the exclusion as it was “not specific and clear with respect to internal plumbing.” *Id.*, slip op. at p. 4. The court further noted that “the leak may have been caused from an internal building pipe in which case it is not backup from a sewer, drain, sump pump or related equipment.” *Id.*

Unlike in *Hix Brix LLC*, an internal plumbing pipe did not break at the Property, and no leak was caused by a broken internal plumbing pipe. The Property was damaged by water that backed up and overflowed from a toilet and shower drains on the Property’s third floor. *See* Amended Complaint, ¶¶ 9, 14; *see also* Answer to Amended Complaint, ¶ 27. Such damage falls squarely within the Exclusion and is distinguishable from the damage in *Hix Brix LLC* that was the result of broken or leaking plumbing at the insured property.

Hix Brix LLC also does not control this matter as it is a slip opinion from a trial court that was not published in New York Official Reports, nor given a WestLaw citation. *See Yellow Book of NY L.P. v. Dimilia*, 729 N.Y.S.2d 286, 287 (Dist. Ct. 2001) (noting that “generally, unpublished decisions or opinions have no precedential value other than the persuasiveness of their reasoning” (internal citation omitted)). Such an opinion cannot overcome the multiple New York courts, including the Appellate Division of the First Department, that have recognized that the Exclusion bars coverage for damages like those claimed in this matter. *See, e.g., Newlo Realty Co. v. U.S.F. & G. Corp.*, 213 A.D.2d 295, 295 (N.Y. Sup. Ct., App. Div., 1st Dep’t 1995) (“Assuming in plaintiff’s favor that the water damage it sustained as a result of overflow from a blocked-up bathroom sink drain

falls within the coverage provisions of the policy, summary judgment in favor of defendant would still be warranted since the loss falls within the exclusion for ‘water that backs up from a sewer or drain’”); *180 Lafayette Corp. v. Wesco Ins. Co.*, 2021 WL 256631, at *3 (N.Y. Sup. Ct. Jan. 26, 2021) (“Plaintiff’s attempt to create an ambiguity where none exists is unavailing. In arguing that summary judgment should be denied because the cause of the flooding remains unanswered, plaintiff ignores the plain meaning of the policy’s exclusion written to exclude ‘water that backs up or overflows or is otherwise discharged from a drain ... or related equipment’ from coverage ‘regardless of any other cause or event that contributes to the loss’. Indeed, the exclusion only requires that the water backs up or overflows or is otherwise discharged from a drain or related equipment. That is exactly what happened in this case as conceded by the plaintiff in his affidavit and the contractor who inspected the toilet right after the loss who determined that the toilet had in fact overflowed.”); *193 Hooper Street Condo*, 2020 WL 228355, at *1 (concluding that a provision like the Exclusion applied to damage caused by an overflowing toilet).

Many of the other cases cited by Plaintiff involved homeowner’s policies, not a BusinessOwners policy like the Policy at issue. The homeowner’s policies contained provisions that were inconsistent with the applicable exclusion. In *Hallsted v. Blue Mountain Convalescent Ctr., Inc.*, the policy at issue specifically covered “[a]ccidental discharge, leakage or overflow of water or steam from within a plumbing, heating or air conditioning system or from within a domestic appliance but excluding loss to the appliance from which the water or steam escapes.” 23 Wash. App. 349, 350 (1979). The Policy contains no similar provision, nor any other language creating a distinction between

water that overflows from a toilet or shower drain as a result of a clog inside the Property's plumbing as opposed to a clog outside of the Property.

At least one other court has found the reasoning of *Hallstead* persuasive, but that court recognized that the *Hallstead* court "focused on the importance of the phrase 'within . . . a system,' appearing in the general coverage provision of the policy." *Haines v. United Sec. Ins. Co.*, 43 Colo. App. 276, 277 (1979). As that phrase does not appear in a similar provision in the Policy, the analysis in *Hallstead* and *Haines* does not support that the Exclusion is ambiguous. The Exclusion is the Policy's only language regarding damage caused by overflowing water, and it unequivocally excludes such damage from coverage.

In *Jackson v. Am. Mut. Fire Ins. Co.*, the court again analyzed a homeowner's policy that contained a provision that had to be reconciled with the applicable exclusion. *See generally* 299 F. Supp. 151 (M.D.N.C. 1968). The Court explained:

The insuring clause insures generally against loss caused by the accidental discharge or overflow of water from within the plumbing system. Without the 'special exclusions,' this clause would insure against any loss caused by such overflow from within the plumbing system. However, the provisions under clause (b) of the special exclusions limits this coverage by excepting overflow caused by certain outside forces.

Id. at 156. As the Policy does not have a similar provision that could cover the damage caused by the Incident, the court's analysis in *Jackson* is inapplicable in this case where the Policy excludes from coverage any "[w]ater that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment." Policy, BP 00 03 01 10, p. 15, 16.

In *Cheetham v. Southern Oak Ins. Co.*, the homeowner’s policy at issue covered “loss to property... resulting from an accidental discharge or overflow of water or steam from within a... [p]lumbing... system... on the ‘residence premises.’” 114 So. 3d 257, 259 (Fla. Dist. Ct. App. 2013). The court concluded that based on its review of the policy, the applicable exclusion related:

to damage caused by water originating from somewhere other than the residence premises’ plumbing system. Because the claimed loss in this case was caused by the deterioration of a pipe within the plumbing system, which caused water or water-borne material emanating from the residence premises’ plumbing system to back up into the residence premises, we find the Cheethams’ loss is a covered loss under the policy.

Id. at 263. As the Policy makes no distinction regarding water overflowing as a result of an internal problem as opposed to an external problem and contains no similar provision regarding coverage for the overflow of water from the Property’s plumbing system, the holding in *Cheetham* does not support that the Exclusion is ambiguous.

In *Kozlowski v. Penn Mut. Ins. Co.*, the homeowner’s policy covered accidental discharge, leakage or overflow of water from the property’s plumbing system. 295 Pa. Super. 141, 143 (1982). In interpreting the meaning of “plumbing system,” the court explained that “the policy was meant to insure only against water damage caused by sources directly within or appurtenant to her home.” *Id.* at 144. As the Policy contains no similar reference to “plumbing system,” the analysis in *Kozlowski* is irrelevant for determining whether the Policy covers the damage allegedly caused by the Incident.

The case law cited by Plaintiff is irrelevant for determining whether the Exclusion is ambiguous or Plaintiff’s claimed damages fall within it. Each of Plaintiff’s cases

involves facts distinguishable from those in this matter and/or policies with language that is not in the Policy. In cases with similar facts and analyzing provisions like the Exclusion, courts have consistently recognized that the Exclusion is not ambiguous and the insured's claimed damages fell squarely within it. The same result is necessary here.

CONCLUSION

As Plaintiff's claimed damages were the result of water backing up and overflowing from drains and/or related equipment, those damages are not covered by the Policy based on the plain language of the Exclusion. Accordingly, Union Mutual has no coverage obligations with respect to Plaintiff's alleged damages, and Union Mutual is entitled to summary judgment.

Respectfully submitted,

UNION MUTUAL FIRE INSURANCE
COMPANY

By Its Attorneys:

PRIMMER PIPER EGGLESTON &
CRAMER, PC

Dated: April 26, 2021

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Certificate of Service

It is hereby certified that a copy of the foregoing document was served through the court's electronic filing system upon Henry Stebbins, Esquire.

/s/ Gary M. Burt
Gary M. Burt

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

Docket No. 218-2021-CV-00042

CC 145 Main LLC

v.

Union Mutual Fire Insurance Company

**MEMORANDUM OF LAW IN SUPPORT OF CC 145 MAIN'S OBJECTION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT AND CROSS MOTION
FOR SUMMARY JUDGESMENT**

INTRODUCTION

The crux of this case is the interpretation of two words 'sewer' and 'drain'. Defendant Union Mutual Fire Insurance Company's Motion for Summary Judgment (the "Motion") focuses almost exclusively on small excerpts containing those words. Small excerpts from a rather lengthy document - - a policy of BusinessOwners insurance purchased from Union Mutual by the Plaintiff which is 105 pages long (the "Policy").¹ Without fail, Union Mutual reduces its discussion to small phrases and individual words, abstracting them from the context in which

¹ The Policy in question is written on ISO Form 03 01 10 10, a form published by Insurance Services Office ("ISO") which prepares and makes available to insurance companies standardized forms of insurance policies. ISO forms are commonly used by insurance companies across America. Mr. Anderson testified that he believed they were industry standard and confirmed that he was familiar with Form 03 01 10 10 as he had adjusted claims under this form.

they lie.

For example, in the Motion Union Mutual reduces its recitation of the exclusion to coverage it relied on in denying Plaintiff's claim to ten lines of text. Just ten lines, when the exclusion section of the Policy fills six full double columned single spaced 8 point font pages of exclusions. They don't even recite the full text of the exclusion subsection in question, that being Section 1 B (g), which reads as follows:

B. "Exclusions

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. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

g. Water

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

This exclusion applies regardless of whether any of the above, in Paragraphs (1) through (5), is caused by and act of nature or 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 Paragraph (1) through (5) results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage."

Such is typical of Union Mutual's handling of the Plaintiff's claim. Within a few short days of the incident which led to the claim, Mutual Union's adjuster was at the insured property making his inspection of the damage and interviewing persons with knowledge thereof. Shortly

thereafter the adjuster delivered his, “*First Report To Union Mutual Fire Insurance Company ATTN: Mr. Jim Able*” dated November 19, 2020 (the “First Report”) in which the adjuster recommended that: “*We feel that no coverage can be provided to repair the main sewer [sic] drain pipe: however, the ensuing water damage can be covered under this policy of insurance.*”

Thereafter, the adjuster made no further physical investigation of the incident.

Notwithstanding the adjuster’s determination that the “ensuing water damage can be covered under this policy”, on November 25, 2020, in a letter to the Plaintiff (the “Denial Letter”), the Defendant’s adjuster wrote: “*Our investigation into the interior water damage to your seven (7) unit apartment building on November 13, 2020 revealed that the water damage was caused by the overflow of a main sewer pipe that was clogged with debris. We understand that your plumber, Mr. Harry Goldberg of HS Goldberg Plumbing & Mechanical, cleared a blockage in the sewer line between the second and third floors that caused the overflow. Based on the fact that water damage that is the result of water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment is specifically excluded under this policy of insurance, the Union Mutual Fire Insurance Company has determined that no coverage can be provided for this loss.” (emphasis added).*

Plaintiff was completely surprised by the Denial Letter and its reliance on an exception based on a blockage of a “sewer line”. The Plaintiff knew that the blockage was not in a sewer line, but in an internal plumbing within the Premises. No reasonable definition of ‘sewer line’ would ever include a pipe running from the third floor down through the insured building to the basement, a pipe that was fully internal to the insured building and no part of which was located underground. The distinction between a ‘sewer line’ and the internal plumbing pipe in question was made clear to Union Mutual in numerous communications from the insurance agent who had sold the policy to Plaintiff and from Plaintiff’s counsel; communications which repeatedly disputed and challenged the denial of coverage as set forth in the Denial Letter, all to no avail. Plaintiff’s only remaining recourse was to file the Complaint by which the present action was initiated.

Upon receipt of the Union Mutual’s Answer, dated January 29, 2021, the Plaintiff

learned for the first time that Union Mutual had changed its basis for denial of the Plaintiff's claim, and now stated that the claim was denied because "*Water ... backed up and overflowed from the toilet and shower drains on the third floor.*"

It should be noted that nowhere in the 105-page Policy are the terms 'sewer' or 'drain' defined. Further, as will be described below, Union Mutual and its adjuster did not initially agree on the meaning of the verbiage set forth in Section 1 B 1 (g) of the policy.

The record shows that substantial issues of fact exist regarding the appropriate definition of the undefined terms used in the policy.

I. APPLICABLE LEGAL STANDARD

In New Hampshire the Supreme Court has ruled that "Where disputed terms are not defined in the policy, **we construe them in context**, and in light of what a more than casual reading of the policy would reveal to an ordinary intelligent person." *Mellin v. N. Sec. Ins. Co., Inc.*, 167 N.H. 544, 547 (2015). When construing insurance policy terms, New Hampshire courts consider the reasonable policyholder's expectation of coverage. *Barking Dog v. Citizens Ins. Co. of Am.*, 164 N.H. 80, 83 (2012).

NH RSA 491:22-a reads as follows:

"491:22-a Liability Coverage; Burden of Proof. – In any petition under RSA 491:22 to determine the coverage of a liability insurance policy, the burden of proof concerning the coverage shall be upon the insurer whether he institutes the petition or whether the claimant asserting the coverage institutes the petition."

Thus, the burden of proof as to the meaning of the terms contained in the policy lies with Union Mutual. **"If more than one reasonable interpretation is possible, and an interpretation provides coverage, the policy contains an ambiguity and will be construed against the insurer."** *Great Am. Dining, Inc. v. Philadelphia Indem. Ins. Co.*, 164 N.H. 612, 616013). (See also *Brickly v. Progressive N. Ins. Co.*, 160 N.H. 625, 627 (2010)).

II. LEGAL ARGUMENT

Courts across the nation have recognized the ambiguity of the terms set forth in the applicable exclusion. Many U.S jurisdictions have recognized the distinction between damaged caused by a blockage within a ‘plumbing system’ and damage resulting from a backup in a sewer or drain i.e. emanating from off the premises and forced up into the plumbing system.² If the damage is caused by a blockage on the premises within the ‘plumbing system’ it is a covered loss. The sewer and drain exclusion at issue in this matter only applies to backups or overflows that emanate from off the insured’s premises that force water and water-borne materials up into the insured’s plumbing system.

In *Pichel v. Dryden Mutual Insurance Company* 117 AD 3rd 1267 (N.Y. App. 3rd Dept. 2014) the court ruled that an insurance policy containing a similar exclusion to that in question in this case was not reason to deny coverage and stated: **[T]hat water damage caused by a backup/overflow that originates from a pipe or clogged drain located within the insured’s property line come from the insured’s plumbing system and is covered by the policy; conversely, if the cause of the backup/overflow is from outside the insured’s property boundaries – such as a clogged municipal sewer that forces water from outside the insured’s plumbing system to overflow – the sewer or drain exclusion is applicable.”**

In *Old Dominion Ins. Co. v. Elysee, Inc.*, 601 So. 2nd 1243 (Fla. 1st DCA), the Supreme Court of Florida clearly articulated the common understanding of the terms in question in the present case:

“The common understanding of the words "sewer" and "drain" is that they describe devices which carry water and sewage away from property. It is also understood that a plumbing

² Please see those cases cited in Paragraphs 14 and 15 of PLAINTIFF’S AMENDED COMPLAINT FOR DECLARATORY RELIEF. Notwithstanding Defendant’s attempt to distinguish some of such precedents for various reasons the fact remains that numerous courts have held the subject exclusion to be ambiguous. Cases cited by Union Mutual can likewise be distinguished as to specific facts and circumstance. For example in *Kelly St. Associates LLC v. United Fire & Casualty Company*, heavily relied on by Union Mutual, involved a backup from an external “septic system” not the building’s interior plumbing system.

blockage which contains waste from another premises must be a backup from a "sewer" or "drain." Webster's New World Dictionary, Third College Edition (1988) defines the words as follows:

Sewer — a pipe or drain usually underground, used to carry off water and waste matter.

Drain — channel or pipe for carrying off water, sewage, etc.

The cases cited by appellant indicate that the general understanding in the case law is that a sewer or drain begins at the appellant's property line. Hallsted v. Blue Mountain Convalescent Center, Inc., 23 Wn. App. 349, 595 P.2d 574 (1979); Jackson v. American Mut. Fire Ins. Co., 299 F. Supp. 151 (M.D.N.C. 1968), affirmed 410 F.2d 395 (4th Cir. 1969); Haines v. United Security Ins. Co., 43 Colo. App. 276, 602 P.2d 901 (1979).”

See also CHEETHAM v. SOUTHERN OAK INSURANCE COMPANY 114 So. 3rd 257 (Fla. Dist. App. 2013), and Cameron v. Scottsdale Ins. Co 726 Fed. Appx. 757 (11th Cir. 2018).

Union Mutual appears to have accepted the fact that the pipe which backed up and caused the overflow was not a sewer. Union Mutual now claims that the toilet and shower drains on the third floor of the insured property are the undefined ‘drains’ referenced in Section 1 B 1 (g) of the policy.

When seeking the applicable legal definition of the terms ‘sewer’ and ‘drain’ in a building, the obvious place to look is the building code applicable to the insured property. The insured property in question lies in the Town of Newmarket NH which has adopted as its Building Code the State Building Code: the 2015 editions of the International Codes published by the International Code Council, specifically International Building Code 2015 (IPC) (the “Building Code”). Thus, the building code applicable to the property which is the subject of this case is both the municipal code

and State code.

The Building Code contains definitions for the terms ‘sewer’ and ‘drain’. Specifically, the Building Code defines the “Building Sewer” as follows: **“That part of the drainage system that extends from the end of the building drain and conveys its discharge to a public sewer disposal system or other point of disposal.”**

The Building Code also defines the “Building Drain”. The definition reads as follows: **“The lowest piping that collects the discharge from all other drainage piping inside the house and extends 30 inches in developed length beyond the exterior walls and conveys the drainage to the building sewer.”**

Another obvious place to look for the applicable definition of ‘sewer’ or ‘drain’ would be other laws, ordinances and regulations applicable to the property in question. The Town of Newmarket Ordinance Governing Water and Wastewater into the Public Sewer System, was adopted by the Town in 2017, well before the policy in question was purchased. We refer the Court to a copy of the applicable portion of that Ordinance which is attached to the Statement of Material Facts, at Exhibit 3 and specifically to Section 1.4 A, Definitions, Subsections 6 and 7 which define ‘Building Sewer’ and ‘Building Drain’.

Similarly, the United States Environmental Protection Agency and States, in regulations promulgated under the Clean Water Act, and similar statutes and town ordinances, have established definitions of sewers and drains. NH is one such state.

“NH RSA 147:8

147:8 Toilets; Drains. – No person shall occupy, lease to any other person, or permit any other person to occupy, a building or any part of a building as a dwelling house, office, store, shop, theater, public hall, sleeping apartment or tourist cabin, unless such building shall have readily accessible adequate toilet and lavatory facilities, properly ventilated and constructed, and

kept in proper sanitary condition; and *unless said building shall be provided with suitable drains or sewers for conveying waste water and sewage away from the premises into some public sewer, if there be one within 100 feet thereof*, and if not, for conveying it away underground or in some other manner that will not be offensive. The phrase "public sewer", as used in this chapter, shall be understood to mean any sewer constructed and maintained by taxation, or any sewer which is open for general use upon the payment of a rental, license or other fee.”

The United States Environmental Agency has, in widely read press releases announcing the settlement of claims brought against New Hampshire municipalities, described how “drains”, although different from sewers, are public property which are used to separate stormwater runoff from sewage. The following is a quote from one such press release:

“BOSTON – July 13, 2020: In a settlement with the U.S. Environmental Protection Agency (EPA) and the State of New Hampshire, the City of Manchester, N.H., has agreed to implement a comprehensive set of corrective measures and improvements to the city’s sewer system that will result in significant reductions of sewage.

The proposed settlement includes a 20.5-year plan to control and significantly reduce overflows of its sewer system, which will improve water quality of the Merrimack River. The plan is estimated to cost \$231 million to implement. The settlement addresses problems with Manchester’s combined sewer system, which when overwhelmed by rain and stormwater, frequently discharges raw sewage, industrial waste, nitrogen, phosphorus and polluted stormwater into the Merrimack River and its tributaries.

The two major CSO abatement controls will disconnect Cemetery Brook in Manchester, the largest of the local five significant connected brooks, from the city’s combined sewer system.

Manchester will design and construct a new 2.5 mile drain for Cemetery Brook from Mammoth Road to the Merrimack River to convey both the brook’s and storm drainage flows, ranging in size conceptually from 6-foot-wide by 5-foot-tall box culvert to 12-foot-wide by 10-

foot-tall at the downstream terminus. The city will also design and construct projects to separate the combined sewers for areas adjacent to the Cemetery Brook drain. These drainage and sewer separation projects will together address the largest drainage basin in the city and produce the greatest volume of CSO reduction.

The work under the proposed consent decree also includes the construction of a new drain and sewer separation in the Christian Brook drainage basin, which will remove the third largest brook from the wastewater collection system.” See the News Release which is attached to the Statement of Material Facts as Exhibit 4.

With all of these definitions of ‘drains’ being so commonly and widely used, what should be a “reasonable policyholder’s expectation of coverage” believe is the correct definition of ‘drain’, particularly when the term “drain” is contained in an insurance policy exception which deals exclusively with potential major external events such as:

Flood, surface water, waves (including tidal and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driving by wind (including storm surge);

Mudslide or mudflow;

Water under the ground surface pressing on, or flowing or seeping through:

- (a) Foundations, walls, floors or paved surfaces;*
- (b) Basements, whether paved or not; or*
- (c) Doors windows or other openings; or*

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

The exclusions contained in this section of the policy all have one thing in common, they reflect that there is no coverage for water damage to an insured property which are caused by

certain outside forces unrelated to the property's plumbing system. Further, this specific exclusion follows a listing of six other exclusions; exclusions which are clearly described by the captions they bear:

1. **Ordinance or Law,**
2. **Earth Movement,**
3. **Government Action,**
4. **Nuclear Hazard,**
5. **Power Failure.**
6. **War and Military Action.**

Each and every one of these exclusions of these exclusions relate to actions or causes occurring unrelated to the insured property itself. Reading the exclusion in the context of so many similar exclusions, all excluding off premised causes or actions, create a strong context for the interpretation of the terms 'sewer' and 'drain' – a context that leads to only one logical conclusion. The sewers and drains referenced in the exclusion must be off of the premises.

The law is clear. "If more than one reasonable interpretation is possible, and an interpretation provides coverage, the policy contains an ambiguity and will be construed against the insurer." *Great Am. Dining, Inc. v. Philadelphia Indem. Ins. Co.*, 164 N.H. 612, 616 (2013).

II. SUBSTANTIAL ISSUES OF FACT EXIST

While on their face the legal issues before the Court could well be decided without reference to the facts of this case, there are factual matters which are likely to materially aid the Court in determining the just outcome of this litigation.

Anderson Adjustment Company, Inc., which served as insurance adjuster for Union Mutual (the "Adjuster"), in its First Report to Union Mutual regarding the Claim recommended that: "*We feel that no coverage can be provided to repair the main sewer [sic] drain pipe: however, the ensuing water damage can be covered under this policy of insurance.*"ⁱ

Notwithstanding the Adjuster's recommendation, Union Mutual instructed the Adjuster

that coverage could not be provided for the Claim as water that backs, overflows, or is discharged from a sewer, drain, sump pump or related equipment is excluded under the Policy.

In response to Union Mutual's instructions, the President and Lead Adjuster of Adjuster, Wade Anderson sent an e-mail to Mr. Jim Able of Union Mutual which read, in pertinent part, as follows: **"I don't believe this is a covered loss, but I have been told by both Andover Companies and Vermont Mutual that if the loss originates on premises they cover the resultant overflow."** Mr. Anderson went on to say. **"I was going based on past experience that I disagree with. I assume the other two companies ... maybe see it as vague?"**

Mr. Anderson, who founded Adjuster, has 30 year of experience as an claims adjuster, a position that requires that he hold an 'adjuster of property and casualty' license in New Hampshire. To obtain such license he was required to pass a State examination and to retain such license is required to achieve continuing education credits relating to the insurance business acceptable to the State and report them to the State every other year for renewal thereof. His company, the Adjuster, provides claim adjuster services for a number of insurance companies, including Union Mutual, the Andover Companies, Vermont Mutual, Norfolk and Dedham Group, MMG, and CAU. Mr. Anderson' company's revenue for adjustment services is earned only from the service he provides for insurance companies, as he is not licensed to provide adjustment services for people or companies other than insurance companies, most of which use standard ISO forms of insurance.

Yet, the two sentences contained in Mr. Anderson's e-mail to Mr. Jim Able of Union Mutual after being instructed to deny the Plaintiff's claim clearly confirm the two the key propositions which are the basis of the Plaintiff's claim.

1. That two of Adjuster's important insurance company clients took the position that (notwithstanding the specific exclusion which Union Mutual now relies on as being applicable to water damage caused by blockage of an interior plumbing pipe within the insured Property)

"if the loss originates on premises they cover the resultant overflow."

2. That 'sewer' and 'drains', two undefined terms used in a particular exclusion of

the industry standard insurance policy in question, a form policy used by many insurance companies (including two of his clients) were **vague** - - a synonym for ambiguous.

Plaintiff, a business which relies on the use of its property for its revenue, to avoid the risk that damage to the Property would cause purchased an insurance policy which provided all risk coverage including damage to property, debris removal, and business interruption. That policy contained an exclusion for damage caused by backups and overflows from ‘sewers’ and ‘drains’, two undefined terms that are carefully and clearly defined in laws, ordinances and regulations applicable to the Property as meaning **off premises pipes or lines for conveying waste water and sewage away from the premises**; an exclusion surrounded by other exclusions for potentially major external events such as “flood, earth movement, governmental actions, nuclear hazard, power failure and war or military action.”

The law is clear in situations such as this. The burden of proof as to the meaning of the undefined terms contained in the policy lies with Union Mutual. **“If more than one reasonable interpretation is possible, and an interpretation provides coverage, the policy contains an ambiguity and will be construed against the insurer.”**

III. CONCLUSION

Based on the foregoing the Court should rule that the terms ‘sewer’ and ‘drain’, neither of which is defined in the Union Mutual policy, are vague and ambiguous and should be defined for the purpose of Plaintiff’s claim as they are clearly defined in applicable Statutes, Ordinances and Regulations: as **off premises pipes or lines for conveying waste water and sewage away from the premises**. The appropriate order would do justice and allow the Court to (a) deny Union Mutual’s Motion for Summary Judgement , and (b) grant Plaintiff’s cross motion for Summary Judgement: outcomes to which the Plaintiff is clearly entitled.

Respectively submitted,

CC 145 MAIN LLC

By Its Attorneys:

STEBBINS, LAZOS & VANDERBEKEN PLLC

Dated: May 15, 2021

/s/ Henry B. Stebbins

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Certificate of Service

It is certified that a copy of the foregoing document was served through the court's electronic filing system on defendant's counsel Gar Burt.

/s/ Henry B. Stebbins

Henry B. Stebbins

ⁱ In the First Report, the Adjuster also recommend that Union Mutual reserve a total of \$25,000 for the Claim.

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

Docket No. 218-2021-CV-00042

CC 145 Main LLC

v.

Union Mutual Fire Insurance Company

**MEMORANDUM OF LAW IN SUPPORT OF
UNION MUTUAL FIRE INSURANCE COMPANY’S REPLY IN FURTHER
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND OBJECTION
TO PLAINTIFF’S CROSS-MOTION FOR SUMMARY JUDGMENT**

Union Mutual Fire Insurance Company (“Union Mutual”) has no obligation to cover the water damage claimed by CC 145 Main LLC (“Plaintiff”) as Policy Number BOP0172629-02 (the “Policy”) excluded from coverage damage caused by water that backs up, overflows or is otherwise discharged from a drain or related equipment (the “Exclusion”). Plaintiff’s alleged damages stem from water that backed up and overflowed from a toilet and shower drains in Units 6 and 7 of 145 Main Street, Newmarket, New Hampshire (the “Property”) on November 11, 2020 (the “Incident”). As these damages fall squarely within the Exclusion, Union Mutual is entitled to summary judgment with respect to Plaintiff’s declaratory judgment claim, and Plaintiff’s cross-motion for summary judgment must be denied.

BACKGROUND

Union Mutual incorporates by reference the background section from its memorandum of law in support of its motion for summary judgment. That background

section describes the information necessary for the Court to determine Union Mutual's coverage obligations: Plaintiff's allegations with respect to the Incident and the applicable language from the Policy.

ARGUMENT

I. The Cases Cited By Plaintiff Do Not Support That The Exclusion Is Ambiguous.

The Exclusion provides that Union Mutual “will not pay for loss or damage caused directly or indirectly by... [w]ater that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment.” Policy, attached to Union Mutual's Statement of Material Facts as Exhibit A, BP 00 03 01 10, p. 15, 16. Plaintiff's claimed damages were caused by water that backed up and overflowed from a toilet and shower drains in Units 6 and 7 of the Property. *See* Amended Complaint, ¶¶ 9, 14; *see also* Answer to Amended Complaint, ¶ 27. Based on the plain language of the Exclusion, such damages are not covered by the Policy.

Although Plaintiff suggests that courts have found the Exclusion to be ambiguous, the cases cited by Plaintiff do not address policy language and/or facts similar to those at issue in this matter. In *Pichel v. Dryden Mut. Ins. Co.*, the court found that the Exclusion was ambiguous because a separate policy provision stated that the insurer “*does* pay for loss caused by the accidental leakage, overflow or discharge of liquids or steam from a plumbing... system.” 117 A.D.3d 1267, 1268 (N.Y. Sup. Ct. App. Div. 2014). The court concluded this provision and the Exclusion “are ambiguous and should be reconciled so that the exclusion provision applies to a backup that originates off an insured's property

(i.e., in a municipal sewer or drain), while the coverage provision applies to an occurrence originating within the insured's property (i.e., in a property owner's plumbing system).”

Id. The Policy contains no provision that contradicts the Exclusion. The only reference to “plumbing” in the Policy specifically refers to frozen plumbing, which is not at issue in this matter. As the Policy does not contain a provision that is inconsistent with the Exclusion, the Exclusion is not ambiguous and should be interpreted based on its plain language. The court's reasoning in *Pichel* does not control this matter as multiple New York courts have found that the Exclusion is not ambiguous when a policy contains no contradictory provision. *See, e.g., Newlo Realty Co. v. U.S.F. & G. Corp.*, 213 A.D.2d 295, 295 (N.Y. Sup. Ct., App. Div., 1st Dep't 1995) (“Assuming in plaintiff's favor that the water damage it sustained as a result of overflow from a blocked-up bathroom sink drain falls within the coverage provisions of the policy, summary judgment in favor of defendant would still be warranted since the loss falls within the exclusion for ‘water that backs up from a sewer or drain’”); *180 Lafayette Corp. v. Wesco Ins. Co.*, 2021 WL 256631, at *3 (N.Y. Sup. Ct. Jan. 26, 2021) (“Plaintiff's attempt to create an ambiguity where none exists is unavailing. In arguing that summary judgment should be denied because the cause of the flooding remains unanswered, plaintiff ignores the plain meaning of the policy's exclusion written to exclude ‘water that backs up or overflows or is otherwise discharged from a drain ... or related equipment’ from coverage ‘regardless of any other cause or event that contributes to the loss’. Indeed, the exclusion only requires that the water backs up or overflows or is otherwise discharged from a drain or related equipment. That is exactly what happened in this case as conceded by the plaintiff

in his affidavit and the contractor who inspected the toilet right after the loss who determined that the toilet had in fact overflowed.”); *193 Hooper Street Condo v. Wesco Ins. Co.*, 2020 WL 228355, at *1 (N.Y. Sup. Ct. Jan. 10, 2020) (concluding that a provision like the Exclusion applied to damage caused by an overflowing toilet).

Old Dominion Ins. Co. v. Elysee, Inc. similarly does not support that the Exclusion is ambiguous. As an initial matter, the court recognized in *Elysee, Inc.* that “[w]hile the terms ‘sewer’ and ‘drain’ are not defined in the insurance policy, the mere failure to provide a definition for a term does not render the term ambiguous.” *Old Dominion Ins. Co. v. Elysee, Inc.*, 601 So. 2d 1243, 1245 (Fla. Dist. Ct. App. 1992). Although the court indicated that “the general understanding in the case law is that a sewer or drain begins at [the insured’s] property line,” the court also recognized that the case law supporting this position involved insurance policies containing “language which provides coverage for leakage or failures of the internal plumbing system.” *Id.* The Policy contains no provision making a distinction between the Property’s internal plumbing and drains. Accordingly, the Exclusion is not ambiguous as neither it, nor any other language in the Policy limits its applicability to external drains.

Plaintiff cannot cite a provision of the Policy that contradicts the Exclusion because no such provision exists. The backing up and overflowing of water from a toilet and shower drains in Units 6 and 7 of the Property fall squarely within the scope of the Exclusion. As the Exclusion is not ambiguous and Plaintiff’s claimed damages fall within it, those damages are not covered by the Policy.

II. The Term “Drain” Is Not Ambiguous.

Likely recognizing that no language in the Policy supports that the Exclusion’s use of “drain” applies only to external drains, Plaintiff cites the definitions of “building drain” and “building sewer” from the Newmarket Building Code and the Newmarket Ordinance Governing Water And Wastewater to suggest that “drain” is ambiguous. As an initial matter, “in reviewing policy language for ambiguity, this court reviews the language of the policy as it was actually written and does not speculate about how it might have been written.” *Atty’s Liab. Prot. Soc’y, Inc. v. Whittington Law Assocs., PLLC*, 961 F. Supp. 2d 367, 374 n. 5 (D.N.H. 2013); *see Consoli v. Com. Ins. Co.*, 97 N.H. 224, 226 (1951) (“While a court has the duty to construe an insurance contract in a reasonable manner, it is not free to rewrite its terms by giving them a meaning which they never had.”). The Policy does not use the terms “building drain” or “building sewer,” and the use of those terms in an ordinance and building code does not change the meaning of “drain,” nor render its use in the Policy ambiguous. “Policy terms are construed objectively, and ‘where the terms of a policy are clear and unambiguous, we accord the language its natural and ordinary meaning.’” *Godbout v. Lloyd’s Ins. Syndicates*, 150 N.H. 103, 105 (2003) (quoting *Concord Hosp. v. N.H. Medical Malpractice Joint Underwriting Assoc.*, 137 N.H. 680, 683 (1993)). When a court interprets an insurance policy, it will not “perform amazing feats of linguistic gymnastics to find a purported ambiguity.” *Colony Ins. Co. v. Dover Indoor Climbing Gym*, 158 N.H. 628, 631 (2009). A New Hampshire court will also not force an ambiguity simply to resolve it against an insurance company. *See Whitcomb v. Peerless Ins. Co.*, 141 N.H. 149, 151 (1996).

Plaintiff also cites N.H. Rev. Stat. Ann. § 147:8, which references “suitable drains” and a United States Environmental Protection Agency news release, which references an outdoor drainage system in Manchester, New Hampshire. Although not entirely clear, it appears that Plaintiff is suggesting that because the term “drain” can refer to different types of drains, the term is inherently ambiguous. Such an argument cannot succeed. The fact that documents unrelated to the Policy use the term “drain” to mean different types of drains does not change the meaning of the term. Drain, when used as a noun, means “something, as a pipe or conduit, by which a liquid drains.” *See* Definition of Drain from dictionary.com, available at <https://www.dictionary.com/browse/drain>; *see also* Definition of Drain from merriam-webster.com, available at <https://www.merriam-webster.com/dictionary/drain?src=search-dict-hed> (defining drain as “a means (such as a pipe) by which usually liquid matter is drained”). A “building drain” is a type of drain. The drain referenced by the EPA in its news release is another type of drain. The damages caused by the Incident were the result of water overflowing from shower drains. These drains were designed to drain water from the showers in Units 6 and 7 of the Property, and damage caused by water overflowing from them is not covered by the Policy.

III. The Exclusion Applies To Water Overflowing From Shower Drains And A Toilet.

Plaintiff also argues that other language from the Exclusion supports that the term “drain” applies only to external drains. According to Plaintiff, because this other language addresses external forces such as floods, mudslides, and tsunamis, the Exclusion’s applicability should be limited to damage caused by the overflow of external drains.

Plaintiff cites no authority to support that such an interpretation of the Exclusion is reasonable and ignores that the California Court of Appeals rejected this argument in *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch.* As that court explained, the Exclusion is “unambiguous on its face. A layperson would understand it to include both water that comes up out of a sewer, drain, or sump (“backs up”) and water that spills over from a sewer, drain, or sump (“overflows”) due to a blockage.” *Cardio Diagnostic Imaging, Inc. v. Farmers Ins. Exch.*, 212 Cal. App. 4th 69, 76 (2012). Like Plaintiff, the insured in *Cardio Diagnostic Imaging, Inc.* argued that the purpose of the exclusion was “to shield insurers from potentially widespread liability from single **external** events.” *Id.* at 75 (emphasis added). The court disagreed, noting that “there is nothing in the language of [the applicable exclusion] that limits its application to those kinds of events.” *Id.*

That other language from the Exclusion excludes from coverage damage caused by external events does not change the language of the Exclusion or the meaning of the terms used in the Exclusion. In pertinent part, the Exclusion provides that Union Mutual “will not pay for loss or damage caused directly or indirectly by... [w]ater that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment.” Policy, BP 00 03 01 10, p. 15, 16. As Plaintiff’s claimed damages were caused by water that backed up and overflowed from a toilet and shower drains in Units 6 and 7 of the Property, they are not covered by the Policy.

IV. No Disputes Of Material Fact Exist That Would Prevent The Court From Granting Union Mutual's Motion For Summary Judgment.

Although Plaintiff has cross moved for summary judgment, it also claims that disputes of material fact exist. These contradictory positions should undermine Plaintiff's cross-motion as summary judgment can be granted only when "there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law." *Guilfooy v. United Servs. Auto. Ass'n*, 153 N.H. 461, 462 (2006). In support of its contention that disputes of material fact exist, Plaintiff references correspondence between Union Mutual's adjuster and the independent adjuster that Union Mutual retained to adjust this loss, Wade Anderson ("Mr. Anderson"). In this correspondence, Mr. Anderson suggests that the damage caused by the Incident may be covered under the Policy.

The correspondence referenced by Plaintiff does not create a dispute of material fact regarding the scope of the Exclusion. Mr. Anderson's comments and recommendations regarding the Policy's coverage are not relevant to the Court's analysis. The "interpretation of insurance policy language is a question of law for this court to decide." *Godbout*, 150 N.H. at 105. That Mr. Anderson may have mistakenly assumed that the damage caused by the Incident would be covered by the Policy is not determinative regarding the Policy's coverage. Further, Mr. Anderson's experiences with other insurance policies, other insurance carriers, and other losses are not relevant to the Court's analysis. The terms of other insurance policies and how other insurance carriers have interpreted those terms have no bearing on the Court's interpretation of the Policy or the Policy's application to the alleged damages resulting from the Incident. The policies that Mr. Anderson referenced

may have been homeowner's policies with provisions that were inconsistent with the applicable exclusion and/or the facts of the losses may have been different than the facts at issue in this matter.

The language of the Exclusion is clear: Union Mutual "will not pay for loss or damage caused directly or indirectly by... [w]ater that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment." Policy, BP 00 03 01 10, p. 15, 16. Mr. Anderson's correspondence does not create a dispute of material fact regarding the scope of the Exclusion. The backing up and overflowing of water from a toilet and shower drains in Units 6 and 7 of the Property falls squarely within its scope. Accordingly, Union Mutual has no obligation to cover the damages claimed by Plaintiff.

CONCLUSION

As Plaintiff's claimed damages were the result of water backing up and overflowing from drains and/or related equipment, those damages are not covered by the Policy based on the plain language of the Exclusion. Accordingly, Union Mutual has no coverage obligations with respect to Plaintiff's alleged damages, and Union Mutual is entitled to summary judgment.

Respectfully submitted,

UNION MUTUAL FIRE INSURANCE
COMPANY

By Its Attorneys:

PRIMMER PIPER EGGLESTON &
CRAMER, PC

Dated: June 3, 2021

/s/ Gary M. Burt

Gary M. Burt, Esq. #5510
900 Elm Street, 19th Floor
PO Box 3600
Manchester, NH 03105
(603) 626-3300
gburt@primmer.com

Certificate of Service

It is hereby certified that a copy of the foregoing document was served through the court's electronic filing system upon Henry Stebbins, Esquire.

/s/ Gary M. Burt

Gary M. Burt



Union Mutual Fire Insurance Company

BUSINESSOWNERS Renewal Extension Declaration

Visit our website at
www.unionmutual.com

Direct Bill Full Pay Renewal NH

POLICY NUMBER	FROM	POLICY PERIOD	TO	EFFECTIVE
BOP0172696-02	06/14/2020	06/14/2021	12:01 AM STANDARD TIME AT MAILING ADDRESS	06/14/2020
NAMED INSURED AND ADDRESS		AGENT NAME AND ADDRESS		
CC 145 MAIN LLC 47 PARK AVE C/O BEN STEBBINS GREENLAND, NH 03840-2311		RENAISSANCE ALLIANCE INSURANCE SERVICES, LLC 981 WORCESTER ST. WELLESLEY, MA 02482 Phone: (800) 931-8759		
		NH 08483-1		

FORM OF BUSINESS: Limited Liability Company

In return for the payment of premium, and subject to all of the terms of this policy, we agree to provide the insurance as stated in this policy.

PREMIUM SUMMARY

PREMIUM FOR THIS TRANSACTION	COVERAGES	\$3,003.00
	FEDERAL TERRORISM COVERAGE	Included
	CUSTOMER LOYALTY DISCOUNT	-\$210.00
	NEW POLICY PREMIUM	\$2,793.00

PAYMENT SCHEDULE FOR THE CURRENT TERM

BASED ON 06/14/2020 EFF DATE

Payment Schedule

Due 06/14/2020	\$2,793.00
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This is not a bill. You will receive a bill in a separate mailing (with the exception of EFT billing).

POLICY LEVEL COVERAGES DEDUCTIBLE

Each paid claim for the following coverages reduces the amount of insurance we provide during the applicable annual period. Please refer to Section II - Liability in the Businessowners Coverage Form and any attached endorsements.

Business Liability	\$2,000,000 Per Occurrence
Medical Expenses	\$5,000 Per Person
Personal and Advertising Injury	\$2,000,000
Other Than Products / Completed Operations Aggregate	\$4,000,000
Products / Completed Operations Aggregate	\$4,000,000
Damage To Premises Rented To You	\$50,000 Any One Premises



Union Mutual Fire Insurance Company

POLICY NUMBER BOP0172696-02
NAMED INSURED CC 145 MAIN LLC

EFFECTIVE 06/14/2020

PRINTED ON 04/10/2020

POLICY PERIOD FROM 06/14/2020 TO 06/14/2021
12:01 AM STANDARD TIME AT MAILING ADDRESS

BUSINESSOWNERS

RENEWAL EXTENSION DECLARATION

DESCRIBED PREMISES

Prm 1 Bld 1

OCCUPANCY: 7 UNIT APARTMENT BUILDING

LOCATION: 145 MAIN ST
NEWMARKET, NH 03857-2027

COVERAGE LIMITS

DEDUCTIBLE

Building - Replacement Cost	\$545,000	\$5,000
Automatic Increase in Insurance 2%		
Business Income and Extra Expense	Actual Loss Sustained	Waiting Period
Period of Indemnity - 12 Months		None
Ordinary Payroll - 60 Days		
Extended Business Income		
Number of Consecutive Days - 30 Days		
Equipment Breakdown Endorsement		

INSURABLE INTERESTS

MORTGAGEE NAME	ADDRESS	LOAN NUMBER	INTEREST TYPE	APPLICABLE LOCATIONS
PEOPLE'S UNITED BANK	PO BOX 820, Burlington, VT 05402-0820		FIRST MORTGAGEE	Prm 1 Bld 1

POLICY FORMS

Forms and endorsements referenced here are for identification only. Consult the documents themselves to learn of the coverage provided by this policy. Forms shown apply to ALL premise(prm)/building(bld) items listed on the declarations unless specifically noted below.

NUMBER	EDITION DATE	DESCRIPTION
POLJAC		Policy Jacket
BP0003	01-10	Businessowners Coverage Form
BP0113	01-19	New Hampshire Changes
BP0122	10-10	NH Businessowners Std Fire Policy Prov
BP0417	01-10	Employment Related Practices Exclusion
BP0419	01-06	Amendment - Liquor Liability Exclusion
BP0439	07-02	Abuse Or Molestation Exclusion
BP0441	01-10	Business Income Changes - Time Period
BP0483	01-10	Removal Of Insurance-To-Value Provision
BP0492	07-02	Total Pollution Exclusion
BP0501	07-02	Calculation Of Premium
BP0517	01-06	Exclusion - Silica And Silica-Related Dust
BP0524	01-08	Exclusion Of Certified Acts Of Terrorism



Union Mutual Fire Insurance Company

POLICY NUMBER BOP0172696-02

EFFECTIVE 06/14/2020

PRINTED ON 04/10/2020

NAMED INSURED CC 145 MAIN LLC

POLICY PERIOD FROM 06/14/2020 TO 06/14/2021
12:01 AM STANDARD TIME AT MAILING ADDRESS

BUSINESSOWNERS

RENEWAL EXTENSION DECLARATION

NUMBER	EDITION DATE	DESCRIPTION
BP0542	01-08	Exclusion Of Punitive Damages Related To A Certifi
BP0564	01-07	Conditional Exclusion Of Terrorism (Relating To Di
BP0565	01-07	Conditional Exclusion Of Terrorism Involving Nucle
BP0567	01-06	Exclusion Of Terrorism
BP0568	01-06	Exclusion Of Terrorism Involving Nuclear, Biologic
BP0577	01-06	Fungi Or Bacteria Exclusion (Liability)
BP1224	10-10	NH Effec Time Changes - Replacement Of 12 Noon
BP1505	05-14	Exclusion - Access or Disclosure of Confidential o
BP7006	03-16	Equipment Breakdown Endorsement - HSB
BP7105	01-12	Coverage Amendments
BP9014	01-12	NH Equip Breakdown Endorsement
BPIN01	01-10	Businessowners Coverage Form Index
ILN070	09-03	New Hampshire Fraud Statement
ILP001	01-04	U.S. Treasury Department's Office Of Foreign Asset

AGENCY AT WELLESLEY, MA

DATE 04/10/2020

Insured Copy
DEC-BOPUR 02 12

AUTHORIZED COUNTERSIGNATURE

Addendum07 **PAGE 3**



Dear CC 145 Main LLC:

Thank you for renewing your policy with us!

For more than 140 years the Union Mutual Companies have prided themselves on delivering quality personal and commercial lines insurance coverage through local Independent Insurance Agents. Beginning modestly in the state of Vermont, our service now extends throughout all six New England states as well as the State of New York. We pride ourselves on providing not only service that is “second to none” to all of our more than 100,000 policyholders, but also the peace of mind of being insured with a company focused on long-term financial security.

Because you are now part of the Union Mutual family we thought it would be helpful to share our corporate values with you:

- We are committed to sound judgment and personal initiative through standards that promote, achieve and reward high performance.
- We pursue and develop long-term relationships with our employees, policyholders, agents and other business partners.
- We act with a high level of integrity and are committed to an atmosphere of respect, loyalty and mutual support.
- We maintain a friendly, courteous and professional environment where every member matters and which fosters a work-life balance.

These are not just words on paper, but working principles which we believe distinguish us from other insurance companies. If you ever find that not to be the case, please let me know.

For more information about our company, our products, and insurance in general, we invite you to visit our website at www.unionmutual.com. While there be sure to check out the Policyholder Resources page and set up a UMV4ME account. Feel free to contact your independent insurance agent should you have any questions about your policy. Thank you for your business.

Sincerely,

Michael W. Nobles
President and Chief Executive

To review our Privacy Policy—Please see reverse



Union Mutual Fire Insurance Company
Community Mutual Insurance Company
New England Guaranty Insurance Company, Inc.

139 State Street, P.O. Box 158
Montpelier, VT 05601
800-300-5261
www.unionmutual.com

Addendum074

Union Mutual Companies Privacy Policy

To provide you with insurance, we collect nonpublic personal information about you from the following sources: your application and other forms and information you provide to us or to our agents; transactions you have had in the past with us, our agents or our insurance affiliates; information received from non-affiliated third party service providers with whom we contract to provide underwriting or claims service functions and, if necessary, consumer reporting agencies.

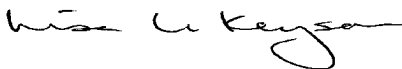
We restrict access to nonpublic personal information about you or your family to those who need that information to provide the services you request or to whom we are obligated to provide the information. We maintain physical, electronic and procedural safeguards that comply with federal and state regulations regarding privacy of such information.

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

MUTUAL MEMBERSHIP AND VOTING NOTICE: The insured is notified that by virtue of this policy, the insured is a member of the Union Mutual Fire Insurance Company of Montpelier, Vermont, and is entitled to vote either in person or by proxy at any and all meetings of said Company. The Annual Meeting is held in the company's Home Office, on the last Wednesday of February each year.

MUTUAL PARTICIPATION CLAUSE WITHOUT CONTINGENT LIABILITY: This policy is non-assessable. The policyholder is a member of the company and shall participate, to the extent and upon the conditions fixed and determined by the Board of Directors in accordance with the provisions of law, in the distribution of dividends as fixed and determined.

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.



Corporate Secretary



President

"This policy letter with the policy forms, declarations page and endorsements, if any, issued to form a part thereof, completes this policy."

BUSINESSOWNERS 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 Coverage Form 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.

In Section II – Liability, the word "insured" means any person or organization qualifying as such under Paragraph C. Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Paragraph H. Property Definitions in Section I – Property and Paragraph F. Liability And Medical Expenses Definitions in Section II – Liability.

SECTION I - PROPERTY

A. Coverage

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

1. Covered Property

Covered Property includes Buildings as described under Paragraph a. below, Business Personal Property as described under Paragraph b. below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property. Regardless of whether coverage is shown in the Declarations for Buildings, Business Personal Property, or both, there is no coverage for property described under Paragraph 2. Property Not Covered.

a. Buildings, meaning the buildings and structures at the premises described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery; and
 - (b) Equipment;
- (4) Your personal property in apartments, rooms or common areas furnished by you as landlord;

(5) Personal property owned by you that is used to maintain or service the buildings or structures or the premises, including:

- (a) Fire extinguishing equipment;
- (b) Outdoor furniture;
- (c) Floor coverings; and
- (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(6) If not covered by other insurance:

- (a) Additions under construction, alterations and repairs to the buildings or structures;
- (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the buildings or structures.

b. Business Personal Property located in or on the buildings at the described premises or in the open (or in a vehicle) within 100 feet of the described premises, including:

- (1) Property you own that is used in your business;
- (2) Property of others that is in your care, custody or control, except as otherwise provided in Loss Payment Property Loss Condition Paragraph E.5.d.(3)(b);
- (3) Tenant's 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;
- (4) Leased personal property which you have a contractual responsibility to insure, unless otherwise provided for under Paragraph 1.b.(2); and
- (5) Exterior building glass, if you are a tenant and no Limit of Insurance is shown in the Declarations for Building property. The glass must be owned by you or in your care, custody or control.

2. Property Not Covered

Covered Property does not include:

- a. Aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration;
- b. "Money" or "securities" except as provided in the:
 - (1) Money and Securities Optional Coverage; or
 - (2) Employee Dishonesty Optional Coverage;
- c. Contraband, or property in the course of illegal transportation or trade;
- d. Land (including land on which the property is located), water, growing crops or lawns;
- e. Outdoor fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants, all except as provided in the:
 - (1) Outdoor Property Coverage Extension; or
 - (2) Outdoor Signs Optional Coverage;
- f. Watercraft (including motors, equipment and accessories) while afloat;
- g. Accounts, bills, food stamps, other evidences of debt, accounts receivable or "valuable papers and records"; except as otherwise provided in this policy;
- h. "Computer(s)" which are permanently installed or designed to be permanently installed in any aircraft, watercraft, motortruck or other vehicle subject to motor vehicle registration. This paragraph does not apply to "computer(s)" while held as "stock";
- i. "Electronic Data", except as provided under Additional Coverages – Electronic Data. This Paragraph i. does not apply to your "stock" of prepackaged software.
- j. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings.

3. Covered Causes Of Loss

Risks of direct physical loss unless the loss is:

- a. Excluded in Paragraph **B**. Exclusions in Section **I**; or
- b. Limited in Paragraph **4**. Limitations in Section **I**.

4. Limitations

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

- (1) 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.
 - (2) 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.
 - (3) 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. This limitation does not apply to the Optional Coverage for Money and Securities.
 - (4) Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
 - (5) 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.
- b. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
- (1) Animals, and then only if they are killed or their destruction is made necessary.
 - (2) Fragile articles such as glassware, statuary, marble, chinaware and porcelain, if broken. This restriction does not apply to:
 - (a) Glass that is part of the exterior or interior of a building or structure;

- (b) Containers of property held for sale; or
 - (c) Photographic or scientific instrument lenses.
- c. For loss or damage by theft, the following types of property are covered only up to the limits shown:
- (1) \$2,500 for furs, fur garments and garments trimmed with fur.
 - (2) \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - (3) \$2,500 for patterns, dies, molds and forms.

5. Additional Coverages

a. Debris Removal

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

- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

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

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

(5) Examples

Example #1

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

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

Example #2

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

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

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

b. Preservation Of Property

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

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

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$2,500, unless a different limit is shown in the Declarations, for your liability for fire department service charges:

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

d. Collapse

The coverage provided under this Additional Coverage – Collapse applies only to an abrupt collapse as described and limited in Paragraphs d.(1) through d.(7).

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

- (iv) Weight of people or personal property; or
 - (v) Weight of rain that collects on a roof;
- (3) This Additional Coverage – Collapse does **not** apply to:
- (a) A building or any part of a building that is in danger of falling down or caving in;
 - (b) A part of a building that is standing, even if it has separated from another part of the building; or
 - (c) A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- (4) With respect to the following property:
- (a) Awnings;
 - (b) Gutters and downspouts;
 - (c) Yard fixtures;
 - (d) Outdoor swimming pools;
 - (e) Piers, wharves and docks;
 - (f) Beach or diving platforms or appurtenances;
 - (g) Retaining walls; and
 - (h) Walks, roadways and other paved surfaces;
- if an abrupt collapse is caused by a cause of loss listed in Paragraphs (2)(a) through (2)(d), we will pay for loss or damage to that property only if such loss or damage is a direct result of the abrupt collapse of a building insured under this policy and the property is Covered Property under this policy.
- (5) If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- (a) The collapse of personal property was caused by a cause of loss listed in Paragraphs (2)(a) through (2)(d) of this Additional Coverage;
 - (b) The personal property which collapses is inside a building; and
 - (c) The property which collapses is not of a kind listed in Paragraph (4), regardless of whether that kind of property is considered to be personal property or real property.

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

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

e. 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 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.

We will not pay the cost to repair any defect that caused the loss or damage; but we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

- (1) Results in discharge of any substance from an automatic fire protection system; or
- (2) Is directly caused by freezing.

f. Business Income

(1) Business Income

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

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

- (i) The portion of the building which you rent, lease or occupy; and
 - (ii) 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.
- (b) We will only pay for loss of Business Income that you sustain during the "period of restoration" and that occurs within 12 consecutive months after the date of direct physical loss or damage. We will only pay for ordinary payroll expenses for 60 days following the date of direct physical loss or damage, unless a greater number of days is shown in the Declarations.
- (c) Business Income means the:
- (i) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and
 - (ii) Continuing normal operating expenses incurred, including payroll.
- (d) Ordinary payroll expenses:
- (i) Means payroll expenses for all your employees except:
 - i. Officers;
 - ii. Executives;
 - iii. Department Managers;
 - iv. Employees under contract; and
 - v. Additional Exemptions shown in the Declarations as:
 - Job Classifications; or
 - Employees.
 - (ii) Include:
 - i. Payroll;

- ii. Employee benefits, if directly related to payroll;
- iii. FICA payments you pay;
- iv. Union dues you pay; and
- v. Workers' compensation premiums.

(2) Extended Business Income

- (a) If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:
- (i) Begins on the date property except finished stock is actually repaired, rebuilt or replaced and "operations" are resumed; and
 - (ii) Ends on the earlier of:
 - i. The date you could restore your "operations", with reasonable speed, to the level which would generate the Business Income amount that would have existed if no direct physical loss or damage had occurred; or
 - ii. 30 consecutive days after the date determined in Paragraph (a)(i) above, unless a greater number of consecutive days is shown in the Declarations.

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

- (b) Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.
- (3) With respect to the coverage provided in this Additional Coverage, suspension means:
- (a) The partial slowdown or complete cessation of your business activities; or
 - (b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

- (4) This Additional Coverage is not subject to the Limits of Insurance of Section I – Property.

g. Extra Expense

- (1) We will pay necessary Extra Expense 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 at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

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

- (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.
- (2) Extra Expense means expense incurred:
- (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".
 - (c) To:
 - (i) Repair or replace any property; or
 - (ii) Research, replace or restore the lost information on damaged "valuable papers and records";to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or Additional Coverage f. Business Income.

- (3) With respect to the coverage provided in this Additional Coverage, suspension means:

- (a) The partial slowdown or complete cessation of your business activities; or
- (b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

- (4) We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage. This Additional Coverage is not subject to the Limits of Insurance of Section I – Property.

h. Pollutant Clean-up And Removal

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

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

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

i. Civil Authority

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

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

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

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

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

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

whichever is later.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance of Section I – Property.

j. Money Orders And "Counterfeit Money"

We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:

- (1) Money orders issued by any post office, express company or bank that are not paid upon presentation; or
- (2) "Counterfeit money" that is acquired during the regular course of business.

The most we will pay for any loss under this Additional Coverage is \$1,000.

k. Forgery Or Alteration

- (1) We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in "money", that you or your agent has issued, or that was issued by someone who impersonates you or your agent.

- (2) If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in "money", on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.

- (3) For the purpose of this coverage, check includes a substitute check as defined in the Check Clearing for the 21st Century Act, and will be treated the same as the original it replaced.

- (4) The most we will pay for any loss, including legal expenses, under this Additional Coverage is \$2,500, unless a higher Limit of Insurance is shown in the Declarations.

I. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings insured on a replacement cost basis.

- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in Paragraphs (3) through (9) of this Additional Coverage.

- (3) The ordinance or law referred to in Paragraph (2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.

- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:

- (a) You were required to comply with before the loss, even when the building was undamaged; and

- (b) You failed to comply with.

- (5) Under this Additional Coverage, we will not pay for:
- (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungi", wet rot or dry rot; or
 - (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants", "fungi", wet rot or dry rot.
- (6) The most we will pay under this Additional Coverage, for each described building insured under Section I – Property, is \$10,000. If a damaged building(s) is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for each damaged building, is \$10,000.
- The amount payable under this Additional Coverage is additional insurance.
- (7) With respect to this Additional Coverage:
- (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced, at the same or another premises; and
 - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
 - (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction is the increased cost of construction at the same premises.
 - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction is the increased cost of construction at the new premises.

- (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- (9) The costs addressed in the Loss Payment Property Loss Condition in Section I – Property do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in Paragraph (6) of this Additional Coverage, is not subject to such limitation.

m. Business Income From Dependent Properties

- (1) We will pay for the actual loss of Business Income you sustain due to physical loss or damage at the premises of a dependent property caused by or resulting from any Covered Cause of Loss.

However, this Additional Coverage does not apply when the only loss to dependent property is loss or damage to "electronic data", including destruction or corruption of "electronic data". If the dependent property sustains loss or damage to "electronic data" and other property, coverage under this Additional Coverage will not continue once the other property is repaired, rebuilt or replaced.

The most we will pay under this Additional Coverage is \$5,000 unless a higher Limit of Insurance is indicated in the Declarations.

- (2) We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:
 - (a) Source of materials; or
 - (b) Outlet for your products.
- (3) If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

(4) Dependent property means property owned by others whom you depend on to:

- (a) Deliver materials or services to you, or to others for your account. But services does not mean water, communication or power supply services;
- (b) Accept your products or services;
- (c) Manufacture your products for delivery to your customers under contract for sale; or
- (d) Attract customers to your business.

The dependent property must be located in the coverage territory of this policy.

(5) The coverage period for Business Income under this Additional Coverage:

- (a) Begins 72 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the dependent property; and
- (b) Ends on the date when the property at the premises of the dependent property should be repaired, rebuilt or replaced with reasonable speed and similar quality.

(6) The Business Income coverage period, as stated in Paragraph (5), 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".

The expiration date of this policy will not reduce the Business Income coverage period.

(7) The definition of Business Income contained in the Business Income Additional Coverage also applies to this Business Income From Dependent Properties Additional Coverage.

n. Glass Expenses

(1) We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.

(2) 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.

o. Fire Extinguisher Systems Recharge Expense

(1) We will pay:

(a) The cost of recharging or replacing, whichever is less, your fire extinguishers and fire extinguishing systems (including hydrostatic testing if needed) if they are discharged on or within 100 feet of the described premises; and

(b) For loss or damage to Covered Property if such loss or damage is the result of an accidental discharge of chemicals from a fire extinguisher or a fire extinguishing system.

(2) No coverage will apply if the fire extinguishing system is discharged during installation or testing.

(3) The most we will pay under this Additional Coverage is \$5,000 in any one occurrence.

p. Electronic Data

(1) 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.

(2) The Covered Causes of Loss applicable to Business Personal Property include a computer 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.

- (3) The most we will pay under this Additional Coverage – Electronic Data 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, is \$10,000, unless a higher Limit of Insurance is shown in the Declarations. 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.

q. Interruption Of Computer Operations

- (1) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a suspension of "operations" caused by an interruption in computer operations due to destruction or corruption of "electronic data" due to a Covered Cause of Loss.
- (2) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
- (a) Coverage under this Additional Coverage – Interruption Of Computer Operations is limited to the "specified causes of loss" and Collapse.
 - (b) If the Businessowners 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.
- (c) The Covered Causes of Loss include a computer 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, modify, maintain, repair or replace that system.
- (3) The most we will pay under this Additional Coverage – Interruption Of Computer Operations for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved, is \$10,000 unless a higher Limit of Insurance is shown in the Declarations. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (4) This Additional Coverage – Interruption Of Computer Operations does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (3) above has not been exhausted.
- (5) Coverage for Business Income does not apply when a suspension of "operations" is caused by destruction or corruption of "electronic data", or any loss or damage to "electronic data", except as provided under Paragraphs (1) through (4) of this Additional Coverage.

- (6) 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 Paragraphs (1) through (4) of this Additional Coverage.

r. Limited Coverage For "Fungi", Wet Rot Or Dry Rot

- (1) The coverage described in Paragraphs r.(2) and r.(6) only applies when the "fungi", wet rot or dry rot are the result of a "specified cause of loss" other than fire or lightning 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.
- (2) We will pay for loss or damage by "fungi", wet rot or dry rot. As used in this Limited Coverage, the term loss or damage means:
 - (a) Direct physical loss or damage to Covered Property caused by "fungi", wet rot or dry rot, including the cost of removal of the "fungi", wet rot or dry rot;
 - (b) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet rot or dry rot; and
 - (c) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungi", wet rot or dry rot are present.
- (3) The coverage described under 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) 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 "fungi", wet rot or dry rot, we will not pay more than the total of \$15,000 even if the "fungi", wet rot or dry rot continues to be present or active, or recurs, in a later policy period.

- (4) The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungi", wet rot or dry rot, 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 "fungi", wet rot or dry rot, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungi", wet rot or dry rot causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

- (5) The terms of this Limited Coverage do not increase or reduce the coverage provided under the Water Damage, Other Liquids, Powder Or Molten Material Damage or Collapse Additional Coverages.
- (6) The following applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the suspension of "operations" satisfies all the terms and conditions of the applicable Business Income and/or Extra Expense Additional Coverage.
 - (a) If the loss which resulted in "fungi", wet rot or dry rot does not in itself necessitate a suspension of "operations", but such suspension is necessary due to loss or damage to property caused by "fungi", wet rot or dry rot, then our payment under the Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
 - (b) If a covered suspension of "operations" was caused by loss or damage other than "fungi", wet rot or dry rot, but remediation of "fungi", wet rot or dry rot prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

6. Coverage Extensions

In addition to the Limits of Insurance of Section I – Property, you may extend the insurance provided by this policy as provided below.

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

a. Newly Acquired Or Constructed Property

(1) Buildings

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

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

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

(2) Business Personal Property

If this policy covers 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;
- (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.

This Extension does not apply to personal property that you temporarily acquire in the course of installing or performing work on such property or your wholesale activities.

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

(3) Period Of Coverage

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

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

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

b. Personal Property Off-Premises

You may extend the insurance provided by this policy to apply to your Covered Property, other than "money" and "securities", "valuable papers and records" or accounts receivable, while it is in the course of transit or at a premises you do not own, lease or operate. The most we will pay for loss or damage under this Extension is \$10,000.

c. Outdoor Property

You may extend the insurance provided by this policy to apply to your outdoor fences, radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants, including debris removal expense. Loss or damage must be caused by or result from any of the following causes of loss:

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

The most we will pay for loss or damage under this Extension is \$2,500, unless a higher Limit of Insurance for Outdoor Property is shown in the Declarations, but not more than \$1,000 for any one tree, shrub or plant.

d. Personal Effects

You may extend the insurance that applies to 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:

- (1) Tools or equipment used in your business; or
- (2) Loss or damage by theft.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises.

e. Valuable Papers And Records

(1) You may extend the insurance that applies to Business Personal Property to apply to direct physical loss or damage to "valuable papers and records" that you own, or that are in your care, custody or control caused by or resulting from a Covered Cause of Loss. This Coverage Extension includes the cost to research, replace or restore the lost information on "valuable papers and records" for which duplicates do not exist.

(2) This Coverage Extension does not apply to:

- (a) Property held as samples or for delivery after sale; and
- (b) Property in storage away from the premises shown in the Declarations.

(3) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence at the described premises is \$10,000, unless a higher Limit of Insurance for "valuable papers and records" is shown in the Declarations.

For "valuable papers and records" not at the described premises, the most we will pay is \$5,000.

(4) Loss or damage to "valuable papers and records" will be valued at the cost of restoration or replacement of the lost or damaged information. To the extent that the contents of the "valuable papers and records" are not restored, the "valuable papers and records" will be valued at the cost of replacement with blank materials of substantially identical type.

(5) Paragraph B. Exclusions in Section I – Property does not apply to this Coverage Extension except for:

- (a) Paragraph B.1.c., Governmental Action;

- (b) Paragraph B.1.d., Nuclear Hazard;
- (c) Paragraph B.1.f., War And Military Action;
- (d) Paragraph B.2.f., Dishonesty;
- (e) Paragraph B.2.g., False Pretense;
- (f) Paragraph B.2.m.(2), Errors Or Omissions; and
- (g) Paragraph B.3.

f. Accounts Receivable

(1) You may extend the insurance that applies to Business Personal Property to apply to accounts receivable. 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 loss or damage; and
- (d) Other reasonable expenses that you incur to reestablish your records of accounts receivable;

that result from direct physical loss or damage by any Covered Cause of Loss to your records of accounts receivable.

(2) The most we will pay under this Coverage Extension for loss or damage in any one occurrence at the described premises is \$10,000, unless a higher Limit of Insurance for accounts receivable is shown in the Declarations.

For accounts receivable not at the described premises, the most we will pay is \$5,000.

(3) Paragraph B. Exclusions in Section I – Property does not apply to this Coverage Extension except for:

- (a) Paragraph B.1.c., Governmental Action;
- (b) Paragraph B.1.d., Nuclear Hazard;
- (c) Paragraph B.1.f., War And Military Action;
- (d) Paragraph B.2.f., Dishonesty;
- (e) Paragraph B.2.g., False Pretense;
- (f) Paragraph B.3.; and
- (g) Paragraph B.6., Accounts Receivable Exclusion.

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. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

a. Ordinance Or Law

- (1) The enforcement of any ordinance or law:
 - (a) Regulating the construction, use or repair of any property; or
 - (b) Requiring the tearing down of any property, including the cost of removing its debris.
- (2) This exclusion, Ordinance Or Law, applies whether the loss results from:
 - (a) An ordinance or law that is enforced even if the property has not been damaged; or
 - (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

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

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

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

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

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

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

c. Government 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 policy.

d. Nuclear Hazard

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

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

e. Utility Services

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

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

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

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

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

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

This exclusion does not apply to loss or damage to "computer(s)" and "electronic data".

f. War And Military Action

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

g. Water

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

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

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

h. Certain Computer-related Losses

- (1) The failure, malfunction or inadequacy of:
 - (a) Any of the following, whether belonging to any insured or to others:
 - (i) "Computer" hardware, including microprocessors or other electronic data processing equipment as may be described elsewhere in this policy;
 - (ii) "Computer" application software or other "electronic data" as may be described elsewhere in this policy;
 - (iii) "Computer" operating systems and related software;
 - (iv) "Computer" networks;
 - (v) Microprocessors ("computer" chips) not part of any "computer" system; or
 - (vi) 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) above;

due to the inability to correctly recognize, 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 (1) above.

However, if excluded loss or damage, as described in Paragraph (1) above results in a "specified cause of loss" under Section I – Property, we will pay only for the loss or damage caused by such "specified cause of loss".

We will not pay for repair, replacement or modification of any items in Paragraph (1)(a) or (1)(b) to correct any deficiencies or change any features.

i. "Fungi", Wet Rot Or Dry Rot

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

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

This exclusion does not apply:

- (1) When "fungi", wet rot or dry rot result from fire or lightning; or
- (2) To the extent that coverage is provided in the Limited Coverage For "Fungi", Wet Rot Or Dry Rot Additional Coverage, with respect to loss or damage by a cause of loss other than fire or lightning.

j. Virus Or Bacteria

- (1) Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- (2) However, the exclusion in Paragraph (1) does not apply to loss or damage caused by or resulting from "fungi", wet rot or dry rot. Such loss or damage is addressed in Exclusion i.;
- (3) With respect to any loss or damage subject to the exclusion in Paragraph (1), such exclusion supersedes any exclusion relating to "pollutants".

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

a. Electrical Apparatus

Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:

- (1) Electrical or electronic wire, device, appliance, system or network; or
- (2) Device, appliance, system or network utilizing cellular or satellite technology.

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

- (1) Electrical current, including arcing;
- (2) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (3) Pulse of electromagnetic energy; or
- (4) Electromagnetic waves or microwaves.

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

We will pay for loss or damage to "computer(s)" due to artificially generated electrical, magnetic or electromagnetic energy if such loss or damage is caused by or results from:

- (1) An occurrence that took place within 100 feet of the described premises; or
- (2) Interruption of electric power supply, power surge, blackout or brownout if the cause of such occurrence took place within 100 feet of the described premises.

b. Consequential Losses

Delay, loss of use or loss of market.

c. Smoke, Vapor, Gas

Smoke, vapor or gas from agricultural smudging or industrial operations.

d. Steam Apparatus

Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

e. Frozen Plumbing

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.

f. Dishonesty

Dishonest or criminal acts by you, anyone else with an interest in the property, or any of your or their partners, "members", officers, "managers", 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; but theft by employees is not covered.

With respect to accounts receivable and "valuable papers and records", this exclusion does not apply to carriers for hire.

This exclusion does not apply to coverage that is provided under the Employee Dishonesty Optional Coverage.

g. False Pretense

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.

h. Exposed Property

Rain, snow, ice or sleet to personal property in the open.

i. Collapse

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

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.

- (2) This Exclusion i., does not apply:
 - (a) To the extent that coverage is provided under the Additional Coverage – Collapse; or

- (b) To collapse caused by one or more of the following:

- (i) The "specified causes of loss";
- (ii) Breakage of building glass;
- (iii) Weight of rain that collects on a roof; or
- (iv) Weight of people or personal property.

j. Pollution

We will not pay for loss or damage caused by or resulting from the 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".

k. Neglect

Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

l. Other Types Of Loss

- (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force.

This exclusion does not apply with respect to the breakdown of "computer(s)";
- (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 Paragraphs (1) through (7) above 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.

m. Errors Or Omissions

Errors or omissions in:

- (1) Programming, processing or storing data, as described under "electronic data" or in any "computer" operations; or
- (2) Processing or copying "valuable papers and records".

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.

n. Installation, Testing, Repair

Errors or deficiency in design, installation, testing, maintenance, modification or repair of your "computer" system including "electronic data".

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.

o. Electrical Disturbance

Electrical or magnetic injury, disturbance or erasure of "electronic data", except as provided for under the Additional Coverages of Section I – Property.

However, we will pay for direct loss or damage caused by lightning.

p. Continuous Or Repeated Seepage Or Leakage Of Water

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.

- 3. We will not pay for loss or damage caused by or resulting from any of the following Paragraphs a. through c. But if an excluded cause of loss that is listed in Paragraphs a. through 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

Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph B.1. above to produce the loss or damage.

b. Acts Or Decisions

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Negligent Work

Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

4. Additional Exclusion

The following applies only to the property specified in this Additional Exclusion.

Loss Or Damage To Products

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

5. Business Income And Extra Expense Exclusions

a. We will not pay for:

- (1) Any Extra Expense, or increase of Business Income loss, caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

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

(2) Any other consequential loss.

b. With respect to this exclusion, suspension means:

(1) The partial slowdown or complete cessation of your business activities; and

(2) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

6. Accounts Receivable Exclusion

The following additional exclusion applies to the Accounts Receivable Coverage Extension:

We will not pay for:

a. Loss or damage caused by or resulting from alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or other property.

This exclusion applies only to the extent of the wrongful giving, taking or withholding.

b. Loss or damage caused by or resulting from bookkeeping, accounting or billing errors or omissions.

c. Any loss or damage that requires any audit of records or any inventory computation to prove its factual existence.

C. Limits Of Insurance

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

2. The most we will pay for loss of or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

3. The amounts of insurance applicable to the Coverage Extensions and the following Additional Coverages apply in accordance with the terms of such coverages and are in addition to the Limits of Insurance of Section I – Property:

a. Fire Department Service Charge;

b. Pollutant Clean-up And Removal;

c. Increased Cost Of Construction;

d. Business Income From Dependent Properties;

e. Electronic Data; and

f. Interruption Of Computer Operations.

4. Building Limit – Automatic Increase

a. In accordance with Paragraph C.4.b., the Limit of Insurance for Buildings will automatically increase by 8%, unless a different percentage of annual increase is shown in the Declarations.

b. The amount of increase is calculated as follows:

(1) Multiply the Building limit that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Building limit by:

(a) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 7% is .07); or

(b) .08, if no percentage of annual increase is shown in the Declarations; and

(2) Multiply the number calculated in accordance with b.(1) by the number of days since the beginning of the current policy year, or the effective date of the most recent policy change amending the Building limit, divided by 365.

Example:

If:

The applicable Building limit is \$100,000. The annual percentage increase is 8%. The number of days since the beginning of the policy year (or last policy change) is 146.

The amount of increase is

$$\$100,000 \times .08 \times 146 \div 365 = \$3,200.$$

5. Business Personal Property Limit – Seasonal Increase

a. Subject to Paragraph 5.b., the Limit of Insurance for Business Personal Property is automatically increased by:

(1) The Business Personal Property – Seasonal Increase percentage shown in the Declarations; or

(2) 25% if no Business Personal Property – Seasonal Increase percentage is shown in the Declarations;

to provide for seasonal variances.

b. The increase described in Paragraph 5.a will apply only if the Limit of Insurance shown for Business Personal Property in the Declarations is at least 100% of your average monthly values during the lesser of:

- (1) The 12 months immediately preceding the date the loss or damage occurs; or
- (2) The period of time you have been in business as of the date the loss or damage occurs.

D. Deductibles

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance of Section I – Property.
2. Regardless of the amount of the Deductible, the most we will deduct from any loss or damage under all of the following Optional Coverages in any one occurrence is the Optional Coverage Deductible shown in the Declarations:
 - a. Money and Securities;
 - b. Employee Dishonesty;
 - c. Outdoor Signs; and
 - d. Forgery or Alteration.

But this Optional Coverage Deductible will not increase the Deductible shown in the Declarations. This Deductible will be used to satisfy the requirements of the Deductible in the Declarations.

3. No deductible applies to the following Additional Coverages:
 - a. Fire Department Service Charge;
 - b. Business Income;
 - c. Extra Expense;
 - d. Civil Authority; and
 - e. Fire Extinguisher Systems Recharge Expense.

E. Property Loss Conditions

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

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

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

3. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:
 - (1) Notify the police if a law may have been broken.
 - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
 - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limits of Insurance of Section I – Property. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
 - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
 - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

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

(7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

(8) Cooperate with us in the investigation or settlement of the claim.

(9) Resume all or part of your "operations" as quickly as possible.

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

4. Legal Action Against Us

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

a. There has been full compliance with all of the terms of this insurance; and

b. The action is brought within two years after the date on which the direct physical loss or damage occurred.

5. Loss Payment

In the event of loss or damage covered by this policy:

a. At our option, we will either:

(1) Pay the value of lost or damaged property;

(2) Pay the cost of repairing or replacing the lost or damaged property;

(3) Take all or any part of the property at an agreed or appraised value; or

(4) Repair, rebuild or replace the property with other property of like kind and quality, subject to Paragraph d.(1)(e) below.

b. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.

c. We will not pay you more than your financial interest in the Covered Property.

d. Except as provided in Paragraphs (2) through (7) below, we will determine the value of Covered Property as follows:

(1) At replacement cost without deduction for depreciation, subject to the following:

(a) If, at the time of loss, the Limit of Insurance on the lost or damaged property is 80% or more of the full replacement cost of the property immediately before the loss, we will pay the cost to repair or replace, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(i) The Limit of Insurance under Section I – Property that applies to the lost or damaged property;

(ii) The cost to replace, on the same premises, the lost or damaged property with other property:

i. Of comparable material and quality; and

ii. Used for the same purpose; or

(iii) The amount that you actually spend that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost is limited to the cost which would have been incurred had the building been built at the original premises.

(b) If, at the time of loss, the Limit of Insurance applicable to the lost or damaged property is less than 80% of the full replacement cost of the property immediately before the loss, we will pay the greater of the following amounts, but not more than the Limit of Insurance that applies to the property:

(i) The actual cash value of the lost or damaged property; or

(ii) A proportion of the cost to repair or replace the lost or damaged property, after application of the deductible and without deduction for depreciation. This proportion will equal the ratio of the applicable Limit of Insurance to 80% of the cost of repair or replacement.

(c) You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.

(d) We will not pay on a replacement cost basis for any loss or damage:

(i) Until the lost or damaged property is actually repaired or replaced; and

(ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

However, if the cost to repair or replace the damaged building property is \$2,500 or less, we will settle the loss according to the provisions of Paragraphs **d.(1)(a)** and **d.(1)(b)** above whether or not the actual repair or replacement is complete.

(e) 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.

(2) If the Actual Cash Value – Buildings option applies, as shown in the Declarations, Paragraph (1) above does not apply to Buildings. Instead, we will determine the value of Buildings at actual cash value.

(3) The following property at actual cash value:

(a) Used or secondhand merchandise held in storage or for sale;

(b) Property of others. However, 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;

(c) Household contents, except personal property in apartments or rooms furnished by you as landlord;

(d) Manuscripts; and

(e) Works of art, antiques or rare articles, including etchings, pictures, statuary, marble, bronzes, porcelain and bric-a-brac.

(4) Glass at the cost of replacement with safety glazing material if required by law.

(5) Tenants' Improvements and Betterments at:

(a) Replacement cost if you make repairs promptly.

(b) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:

(i) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and

(ii) Divide the amount determined in (i) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

(c) Nothing if others pay for repairs or replacement.

(6) Applicable only to the Optional Coverages:

(a) "Money" at its face value; and

(b) "Securities" at their value at the close of business on the day the loss is discovered.

(7) Applicable only to Accounts Receivable:

(a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage:

(i) We will determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and

- (ii) We will 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:
 - (i) The amount of the accounts for which there is no loss or damage;
 - (ii) The amount of the accounts that you are able to reestablish or collect;
 - (iii) An amount to allow for probable bad debts that you are normally unable to collect; and
 - (iv) All unearned interest and service charges.
- e. Our payment for loss of or damage to personal property of others will only be for the account of the owners of the property. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, provided you have complied with all of the terms of this policy, and
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.

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

6. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, you may retain the property. But then you must 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 Limits of Insurance of Section I – Property.

7. Resumption Of Operations

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.

8. Vacancy

a. Description Of Terms

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

b. Vacancy Provisions

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

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
 - (a) Vandalism;
 - (b) Sprinkler leakage, unless you have protected the system against freezing;
 - (c) Building glass breakage;
 - (d) Water damage;
 - (e) Theft; or
 - (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in Paragraphs (1)(a) through (1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

F. Property General Conditions

1. 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 Form 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.

2. Mortgageholders

- a. The term "mortgageholder" includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this policy at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.All of the terms of this policy will then apply directly to the mortgageholder.
- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:
 - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

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

f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

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

3. No Benefit To Bailee

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

4. Policy Period, Coverage Territory

Under Section I – Property:

a. We cover loss or damage commencing:

- (1) During the policy period shown in the Declarations; and
- (2) Within the coverage territory or, with respect to property in transit, while it is between points in the coverage territory.

b. The coverage territory is:

- (1) The United States of America (including its territories and possessions);
- (2) Puerto Rico; and
- (3) Canada

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages also apply. These coverages are subject to the terms and conditions applicable to property coverage in this policy, except as provided below.

1. Outdoor Signs

a. We will pay for direct physical loss of or damage to all outdoor signs at the described premises:

- (1) Owned by you; or
- (2) Owned by others but in your care, custody or control.

b. Paragraph **A.3.**, Covered Causes Of Loss, and Paragraph **B.**, Exclusions in Section I – Property, do not apply to this Optional Coverage, except for:

- (1) Paragraph **B.1.c.**, Governmental Action;
- (2) Paragraph **B.1.d.**, Nuclear Hazard; and
- (3) Paragraph **B.1.f.**, War And Military Action.

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

- (1) Wear and tear;
- (2) Hidden or latent defect;
- (3) Rust;
- (4) Corrosion; or
- (5) Mechanical breakdown.

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

e. The provisions of this Optional Coverage supersede all other references to outdoor signs in this policy.

2. Money And Securities

a. We will pay for loss of "money" and "securities" used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and custody of the property, at the described premises, or in transit between any of these places, resulting directly from:

- (1) Theft, meaning any act of stealing;
- (2) Disappearance; or
- (3) Destruction.

b. In addition to the Limitations and Exclusions applicable to Section I – Property, we will not pay for loss:

- (1) Resulting from accounting or arithmetical errors or omissions;
- (2) Due to the giving or surrendering of property in any exchange or purchase; or
- (3) Of property contained in any "money"-operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

- c. The most we will pay for loss in any one occurrence is:
 - (1) The limit shown in the Declarations for Inside the Premises for "money" and "securities" while:
 - (a) In or on the described premises; or
 - (b) Within a bank or savings institution; and
 - (2) The limit shown in the Declarations for Outside the Premises for "money" and "securities" while anywhere else.
- d. All loss:
 - (1) Caused by one or more persons; or
 - (2) Involving a single act or series of related acts;

is considered one occurrence.
- e. You must keep records of all "money" and "securities" so we can verify the amount of any loss or damage.

3. Employee Dishonesty

- a. We will pay for direct loss of or damage to Business Personal Property and "money" and "securities" resulting from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you or your partner) with the manifest intent to:
 - (1) Cause you to sustain loss or damage; and also
 - (2) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:
 - (a) Any employee; or
 - (b) Any other person or organization.
- b. We will not pay for loss or damage:
 - (1) Resulting from any dishonest or criminal act that you or any of your partners or "members" commit whether acting alone or in collusion with other persons.
 - (2) Resulting from any dishonest act committed by any of your employees (except as provided in Paragraph a.), "managers" or directors:
 - (a) Whether acting alone or in collusion with other persons; or
 - (b) While performing services for you or otherwise.

- (3) The only proof of which as to its existence or amount is:
 - (a) An inventory computation; or
 - (b) A profit and loss computation.
- c. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Employee Dishonesty shown in the Declarations.
- d. All loss or damage:
 - (1) Caused by one or more persons; or
 - (2) Involving a single act or series of acts;

is considered one occurrence.
- e. If any loss is covered:
 - (1) Partly by this insurance; and
 - (2) Partly by any prior cancelled or terminated insurance that we or any affiliate had issued to you or any predecessor in interest;

the most we will pay is the larger of the amount recoverable under this insurance or the prior insurance.

We will pay only for loss or damage you sustain through acts committed or events occurring during the Policy Period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.

- f. This Optional Coverage is cancelled as to any employee immediately upon discovery by:
 - (1) You; or
 - (2) Any of your partners, "members", "managers", officers or directors not in collusion with the employee;

of any dishonest act committed by that employee before or after being hired by you.
- g. We will pay only for covered loss or damage sustained during the policy period and discovered no later than one year from the end of the policy period.
- h. If you (or any predecessor in interest) sustained loss or damage during the policy period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Optional Coverage, provided:
 - (1) This Optional Coverage became effective at the time of cancellation or termination of the prior insurance; and

- (2) The loss or damage would have been covered by this Optional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.
- i. The insurance under Paragraph **h.** above is part of, not in addition to, the Limit of Insurance applying to this Optional Coverage and is limited to the lesser of the amount recoverable under:
 - (1) This Optional Coverage as of its effective date; or
 - (2) The prior insurance had it remained in effect.
- j. With respect to the Employee Dishonesty Optional Coverage in Paragraph **G.3.**, employee means:
 - (1) Any natural person:
 - (a) While in your service or for 30 days after termination of service;
 - (b) Who you compensate directly by salary, wages or commissions; and
 - (c) Who you have the right to direct and control while performing services for you:
 - (2) Any natural person who is furnished temporarily to you:
 - (a) To substitute for a permanent employee as defined in Paragraph (1) above, who is on leave; or
 - (b) To meet seasonal or short-term workload conditions:
 - (3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in Paragraph (2) above;
 - (4) Any natural person who is a former employee, director, partner, member, manager, representative or trustee retained as a consultant while performing services for you; or
 - (5) Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside any building you occupy in conducting your business.

But employee does not mean:

- (1) Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
- (2) Any "manager", director or trustee except while performing acts coming within the usual duties of an employee.

4. Equipment Breakdown Protection Coverage

- a. We will pay for direct loss of or damage to Covered Property caused by or resulting from a mechanical breakdown or electrical failure to pressure, mechanical or electrical machinery and equipment.

Mechanical breakdown or electrical failure to pressure, mechanical or electrical machinery and equipment does not mean any:

- (1) Malfunction including but not limited to adjustment, alignment, calibration, cleaning or modification;
- (2) Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
- (3) Damage to any vacuum tube, gas tube, or brush; or
- (4) The functioning of any safety or protective device.

- b. Paragraphs **A.4.a.(1)** and **A.4.a.(2)**, **Limitations**, do not apply to this Optional Coverage.

- c. With respect to the coverage provided by this Optional Coverage, the following exclusions in Paragraph **B. Exclusions** do not apply:

- (1) Paragraph **B.2.a. Electrical Apparatus**;
- (2) Paragraph **B.2.d. Steam Apparatus**; and
- (3) Paragraph **B.2.I.(6) Mechanical Breakdown**.

- d. With respect to the coverage provided by this Optional Coverage, Paragraph **G.1.c.(5)** of the **Outdoor Sign Optional Coverage** does not apply.

- e. If a dollar deductible is shown in the Declarations for this Optional Coverage, we will first subtract the applicable deductible amount from any loss we would otherwise pay. We will then pay the amount of loss in excess of the applicable deductible up to the applicable limit for this coverage.

If no optional deductible is chosen for this Optional Coverage, the Property Deductible shown in the Declarations applies.

- f. With respect to **Additional Coverages 5.f. Business Income** and **5.g. Extra Expense**, if the 72-hour time period in the definition of "period of restoration" (hereinafter referred to as time deductible) is amended for this Optional Coverage as shown in the Declarations, we will not pay for any Business Income loss that occurs during the consecutive number of hours shown as the time deductible in the Declarations immediately following a mechanical breakdown or electrical failure. If a time deductible is shown in days, each day shall mean 24 consecutive hours.

As respects the coverage provided by this Optional Coverage, any time deductible shown in the Declarations for Equipment Breakdown Protection Coverage supersedes any time deductible otherwise applicable to the Business Income coverage provided by this policy.

- g. With respect to the coverage provided by this Optional Coverage, Paragraph **H. Property Definitions** is amended as follows:

1. "Computer" means:
 - a. Programmable electronic equipment that is used to store, retrieve and process data; and
 - b. Associated peripheral equipment that provides communication, including input and output functions such as printing and auxiliary functions such as data transmission.

"Computer" includes those used to operate production type machinery or equipment.

- h. Whenever any covered pressure, mechanical or electrical machinery and equipment is found to be in, or exposed to, a dangerous condition, any of our representatives may suspend coverage provided by this Optional Coverage for loss from a mechanical breakdown or electrical failure to that pressure, mechanical or electrical machinery and equipment.

However, coverage provided by this Optional Coverage may be reinstated for loss from a mechanical breakdown or electrical failure to that pressure, mechanical or electrical machinery and equipment if the reasons for the suspension are found by any of our representatives to no longer exist.

We may suspend or reinstate this Optional coverage by mailing or delivering a written notification regarding the suspension or reinstatement to:

- (1) Your last known address; or
- (2) The address where the pressure, mechanical or electrical machinery and equipment is located.

This notification will indicate the effective date of the suspension or reinstatement.

If the coverage provided by this Optional Coverage is not reinstated, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

H. Property Definitions

1. "Computer" means:
 - a. Programmable electronic equipment that is used to store, retrieve and process data; and
 - b. Associated peripheral equipment that provides communication, including input and output functions such as printing and auxiliary functions such as data transmission.

"Computer" does not include those used to operate production type machinery or equipment.

2. "Counterfeit money" means an imitation of "money" that is intended to deceive and to be taken as genuine.
3. "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.
4. "Fungi" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
5. "Manager" means a person serving in a directorial capacity for a limited liability company.
6. "Member" means an owner of a limited liability company represented by its membership interest, who also may serve as a "manager".

7. "Money" means:
- a. Currency, coins and bank notes in current use and having a face value; and
 - b. Travelers checks, register checks and money orders held for sale to the public.
8. "Operations" means your business activities occurring at the described premises.
9. "Period of restoration":
- a. Means the period of time that:
 - (1) Begins:
 - (a) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
 - (b) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and
 - (2) Ends on the earlier of:
 - (a) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (b) The date when business is resumed at a new permanent location.
 - b. Does not include any increased period required due to the enforcement of any ordinance or law that:
 - (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
 - (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".

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

10. "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.
11. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:
- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and

- b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;

but does not include "money".

12. "Specified causes of loss" means the following:
- Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
- a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - (1) The cost of filling sinkholes; or
 - (2) Sinking or collapse of land into man-made underground cavities.
 - b. Falling objects does not include loss of 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.
13. "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.
14. "Valuable papers and records" means inscribed, printed or written:
- a. Documents;
 - b. Manuscripts; and
 - c. Records;

including abstracts, books, deeds, drawings, films, maps or mortgages.
- But "valuable papers and records" does not mean "money" or "securities".

SECTION II – LIABILITY

A. Coverages

1. Business Liability

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" or any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Paragraph **D. – Liability And Medical Expenses Limits Of Insurance** in Section II – Liability; and
- (2) Our right and duty to defend end when we have used up the applicable Limit of Insurance in the payment of judgments or settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Paragraph **f. Coverage Extension – Supplementary Payments**.

b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:
 - (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph **C.1. Who Is An 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 a listed 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 before the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "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 listed under Paragraph **C.1. Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **C.1. Who Is An Insured** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. 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".

f. Coverage Extension – Supplementary Payments

- (1) We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- (a) All expenses we incur.
- (b) Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
- (c) The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.
- (d) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- (e) All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- (f) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- (g) 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 Limit of Insurance.

These payments will not reduce the limit of liability.

- (2) If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (a) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (b) This insurance applies to such liability assumed by the insured;
- (c) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (d) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- (e) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (f) The indemnitee:
 - (i) Agrees in writing to:
 - i. Cooperate with us in the investigation, settlement or defense of the "suit";
 - ii. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - iii. Notify any other insurer whose coverage is available to the indemnitee; and
 - iv. Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (ii) Provides us with written authorization to:
 - i. Obtain records and other information related to the "suit"; and
 - ii. Conduct and control the defense of the indemnitee in such "suit".

- (3) So long as the conditions in Paragraph (2) are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **B.1.b.(2)** Exclusions in Section II – Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (a) We have used up the applicable Limit of Insurance in the payment of judgments or settlements; or
- (b) The conditions set forth above, or the terms of the agreement described in Paragraph (2)(f) above are no longer met.

2. Medical Expenses

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;
- provided that:
- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the Limits of Insurance of Section II – Liability. We will pay reasonable expenses for:
- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

- (3) Necessary ambulance, hospital, professional nursing and funeral services.

B. Exclusions

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason 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; or

- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the 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.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

- (i) "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;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) 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 if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "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 the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, 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; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
 - (e) 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 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".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any 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"; or
 - (b) 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".
- However, this paragraph 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.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged; or
 - (b) The operation of any of the following machinery or equipment:
 - (i) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (ii) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared 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 government authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" caused by the rendering or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- (3) Supervisory, inspection or engineering services;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (8) Body piercing services; and
- (9) Services in the practice of pharmacy.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering or failure to render of any professional service.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, 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;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Paragraph D. Liability And Medical Expenses Limit Of Insurance in Section II – Liability.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "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.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your 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.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) 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";

- (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;
- (5) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- (6) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (7) Arising out of the wrong description of the price of goods, products or services stated in your "advertisement";
- (8) Committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;
 - (b) Designing or determining content of websites for others; or
 - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a.**, **b.** and **c.** of "personal and advertising injury" under Paragraph **F. Liability And Medical Expenses Definitions**.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting.

- (9) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time;

- (10) With respect to any loss, cost or expense arising out of any:
 - (a) Request, demand or order that any 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"; or
 - (b) 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".
- (11) Arising out of an electronic chatroom or bulletin board the insured hosts, owns or over which the insured exercises control;
- (12) 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.
- (13) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers.

q. Electronic Data

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 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.

r. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

s. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) 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.

Exclusions **c., d., e., f., g., h., i., k., l., m., n.** and **o.** in Section II – Liability do not apply to damage by fire to premises while rented to you, or temporarily occupied by you with permission of the owner. A separate Damage To Premises Rented To You Limit of Insurance applies to this coverage as described in Paragraph D. Liability And Medical Expenses Limits of Insurance in Section II – Liability.

2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

- a. To any insured, except "volunteer workers".
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

- e. To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Business Liability Coverage.

3. Applicable To Both Business Liability Coverage And Medical Expenses Coverage – Nuclear Energy Liability Exclusion

This insurance does not apply:

- a. Under Business Liability Coverage, to "bodily injury" or "property damage":
 - (1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:
 - (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - (b) The 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.
- b. Under Medical Expenses Coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.
- c. Under Business Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of the "nuclear material"; if:
 - (1) The "nuclear material":
 - (a) Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or

- (b) Has been discharged or dispersed therefrom;
 - (2) 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 an insured; or
 - (3) The "bodily injury" or "property damage" arises out of the furnishing by an 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, this Exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.
- d. As used in this exclusion:
- (1) "By-product material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;
 - (2) "Hazardous properties" include radioactive, toxic or explosive properties;
 - (3) "Nuclear facility" means:
 - (a) Any "nuclear reactor";
 - (b) Any equipment or device designed or used for:
 - (i) Separating the isotopes of uranium or plutonium;
 - (ii) Processing or utilizing "spent fuel"; or
 - (iii) Handling, processing or packaging "waste";
 - (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or 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 the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

- (4) "Nuclear material" means "source material", "special nuclear material" or "by-product material";
- (5) "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (6) "Property damage" includes all forms of radioactive contamination of property;
- (7) "Source material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- (8) "Special nuclear material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- (9) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";
- (10) "Waste" means any waste material:
 - (a) Containing "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) Resulting from the operation by any person or organization of any "nuclear facility" included under Paragraphs (a) and (b) of the definition of "nuclear facility".

C. Who Is An Insured

- 1. If you are designated in the Declarations as:
 - a. 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.
 - b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also 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.

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), 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:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (a) or (b); or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
 - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. 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.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
- No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. Liability And Medical Expenses Limits Of Insurance

1. The Limits of Insurance of Section II – Liability shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The most we will pay for the sum of all damages because of all:
 - a. "Bodily injury", "property damage" and medical expenses arising out of any one "occurrence"; and
 - b. "Personal and advertising injury" sustained by any one person or organization;

is the Liability and Medical Expenses limit shown in the Declarations. But the most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses limit shown in the Declarations.

3. The most we will pay under Business Liability Coverage for damages because of "property damage" to a premises while rented to you or in the case of fire while rented to you or temporarily occupied by you with permission of the owner is the applicable Damage To Premises Rented To You limit shown for that premises in the Declarations. For a premises temporarily occupied by you, the applicable limit will be the highest Damage To Premises Rented To You limit shown in the Declarations.

4. Aggregate Limits

The most we will pay for:

- a. All "bodily injury" and "property damage" that is included in the "products-completed operations hazard" is twice the Liability and Medical Expenses limit.
- b. All:
- (1) "Bodily injury" and "property damage" except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
 - (2) Plus medical expenses;
 - (3) Plus all "personal and advertising injury" caused by offenses committed;
- is twice the Liability and Medical Expenses limit.

Subject to Paragraph a. or b. above, whichever applies, the Damage To Premises Rented To You Limit is the most we will pay for damages because of "property damage" to any one premises, while rented to you, or in the case of fire, while rented to you or temporarily occupied by you with permission of the owner.

The Limits of Insurance of Section II – Liability apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. Liability And Medical Expenses General Conditions

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
- (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
- (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.
- You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation, or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against 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 release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Separation Of Insureds

Except with respect to the Limits of Insurance of Section II – Liability, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

F. Liability And Medical Expenses Definitions

1. "Advertisement" 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 or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged.However, "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a "suit" on the merits in the territory described in Paragraph a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. 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.
9. "Insured contract" means:
 - a. 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";

- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other 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 party to pay for "bodily 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.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) 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 Paragraph (2) above and supervisory, inspection or engineering services.

10. "Leased worker" 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".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, on which are permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. 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":

- (1) Equipment designed primarily for:
 - (a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where they are licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law or motor vehicle registration law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean 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.

16. "Products-completed operations hazard":

a. 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. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at the job site has been put to its intended use by any other 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.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

17. "Property damage" means:

a. 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

b. 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, 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.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
19. "Temporary worker" 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.
20. "Volunteer worker" 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.
21. "Your product":
- a. 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.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

- a. 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.

- b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

- (2) The providing of or failure to provide warnings or instructions.

SECTION III – COMMON POLICY CONDITIONS (APPLICABLE TO SECTION I – PROPERTY AND SECTION II – LIABILITY)

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. Five days before the effective date of cancellation if any one of the following conditions exists at any building that is Covered Property in this policy:
 - (1) The building has been vacant or unoccupied 60 or more consecutive days. This does not apply to:
 - (a) Seasonal unoccupancy; or
 - (b) Buildings in the course of construction, renovation or addition.
Buildings with 65% or more of the rental units or floor area vacant or unoccupied are considered unoccupied under this provision.
 - (2) After damage by a Covered Cause of Loss, permanent repairs to the building:
 - (a) Have not started, and
 - (b) Have not been contracted for, within 30 days of initial payment of loss.
 - (3) The building has:
 - (a) An outstanding order to vacate;

- (b) An outstanding demolition order; or
 - (c) Been declared unsafe by governmental authority.
- (4) Fixed and salvageable items have been or are being removed from the building and are not being replaced. This does not apply to such removal that is necessary or incidental to any renovation or remodeling.
- (5) Failure to:
- (a) Furnish necessary heat, water, sewer service or electricity for 30 consecutive days or more, except during a period of seasonal unoccupancy; or
 - (b) Pay property taxes that are owing and have been outstanding for more than one year following the date due, except that this provision will not apply where you are in a bona fide dispute with the taxing authority regarding payment of such taxes.

- b. 10 days before the effective date of cancellation if we cancel for nonpayment of premium.
 - c. 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. Concealment, Misrepresentation Or Fraud

This policy is void in any case of fraud by you as it relates to this policy 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 policy;
- 2. The Covered Property;
- 3. Your interest in the Covered Property; or
- 4. A claim under this policy.

D. 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.

E. 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 and 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.

F. 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.

G. Liberalization

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

H. Other Insurance

1. If there is other insurance covering the same loss or damage, 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 of Section I – Property.
2. Business Liability Coverage is excess over:
 - a. Any other insurance that insures for direct physical loss or damage; or
 - b. Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.
3. When this insurance is excess, we will have no duty under Business Liability Coverage to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

I. Premiums

1. 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.
2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.
3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:
 - a. Paid to us prior to the anniversary date; and
 - b. Determined in accordance with Paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.

4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that are not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

J. Premium Audit

1. This policy is subject to audit if a premium designated as an advance premium is shown in the Declarations. We will compute the final premium due when we determine your actual exposures.
2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
3. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

K. Transfer Of Rights Of Recovery Against Others To Us

1. Applicable to Businessowners Property Coverage:

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

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

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

2. Applicable to Businessowners Liability Coverage:

If the insured has rights to recover all or part of any payment we have made 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. This condition does not apply to Medical Expenses Coverage.

L. 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW HAMPSHIRE CHANGES

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM
INFORMATION SECURITY PROTECTION ENDORSEMENT

SCHEDULE

Premises Number	Building Number	Total Limit Of Insurance Permitted On The Building

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

A. The following are added to Section I – Property:

1. Other Insurance On Buildings

a. You are permitted to have other insurance that covers buildings at the premises described in the Declarations. The total Limit of Insurance on any building, including the Property Limit of Insurance for this Policy, is limited to the amount shown in the Schedule or in the Declarations as applicable to this endorsement.

b. Buildings Insured For A Specified Amount

If there is other insurance that covers buildings insured for a specified amount at the premises described in the Declarations, the following applies with respect to loss or damage to buildings and supersedes any provision to the contrary:

If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, subject to the following:

(1) If a covered building insured for a specified amount is totally destroyed by fire or lightning, we will not pay more than the least of the following:

(a) The Limit of Insurance shown in the Declarations applicable to such building; or

(b) The difference between the Total Limit of Insurance Permitted On The Building shown in the Schedule and the amount due from that other insurance; and

(2) If a covered building insured for a specified amount is:

(a) Partially destroyed by fire or lightning; or

(b) Totally or partially destroyed by any covered cause of loss other than fire or lightning;

then we will not pay more than the least of the following:

(i) The Limit of Insurance shown in the Declarations applicable to such building;

(ii) The difference between the actual loss sustained and the amount due from that other insurance; or

(iii) The difference between the Total Limit of Insurance Permitted On The Building shown in the Schedule and the amount due from that other insurance.

2. Policy Value

New Hampshire law states as follows:

- a. If a building insured for a specified amount, whether under a separate policy or under a policy also covering other buildings, is totally destroyed by fire or lightning without criminal fault on the part of the insured or his assignee, the sum for which such building is insured shall be taken to be the value of the insured's interest therein unless overinsurance thereon was fraudulently obtained.
- b. If an insured building is only partially destroyed by fire or lightning, the insured shall be entitled to the actual loss sustained, not exceeding the sum insured.
- c. Nothing contained in Paragraph 2.a. or 2.b. of this section shall be construed as prohibiting the use of coinsurance, or agreed amount.
- d. When a building is insured not for a specified amount but under a blanket form with one amount covering two or more buildings or one or more buildings and personal property, the provisions of Paragraph 2.a. of this section shall not apply.

B. Section II – Liability is amended as follows:

1. Paragraph B.1.g. Exclusions is replaced by the following:

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and

(b) Not being used to carry persons or property for a charge;

- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the following equipment:
 - (a) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (b) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

2. The following paragraph is added to Paragraph C. Who Is An Insured:

3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

3. The definition of "auto" in Paragraph F.2. Liability And Medical Expenses Definitions is replaced by the following:

2. "Auto" 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".

4. The definition of "mobile equipment" in Paragraph **F.12. Liability And Medical Expenses Definitions** is replaced by the following:

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, on which are permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraphs **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraphs **a.**, **b.**, **c.** or **d.** 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":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

C. Paragraph **C. Concealment, Misrepresentation Or Fraud** in **Section III – Common Policy Conditions** is replaced by the following:

C. Concealment, Misrepresentation Or Fraud

We do not provide coverage to one or more insureds who, at any time:

- 1. Intentionally concealed or misrepresented a material fact;
- 2. Engaged in fraudulent conduct; or
- 3. Made a false statement; relating to this insurance.

D. The following provisions apply except when Paragraph **G.** of this Endorsement applies:

Paragraphs **A.2.** and **A.3. Cancellation** in **Section III – Common Policy Conditions** are replaced by the following:

2.a. We may cancel this Policy by mailing or physically delivering to you written notice of cancellation, stating the reasons for cancellation, at least:

- (1) 10 days before the effective date of the cancellation if:
 - (a) We cancel for nonpayment of premium;
 - (b) We cancel for substantial increase in hazard; or
 - (c) This is a new policy and its cancellation notice is mailed within the first 60 days of the effective date.
- (2) 60 days before the effective date of cancellation if Paragraph **2.a.(1)** of this endorsement does not apply.

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

- (1) Nonpayment of premium;
- (2) Fraud or material misrepresentation affecting the Policy or in the presentation of a claim hereunder, or violation of any of the terms or conditions of the Policy; or
- (3) Substantial increase in hazard; provided that cancellation for this reason shall be effective only after prior approval of the commissioner.

3. We will mail or physically deliver our notice to your last mailing address known to us. If notice is mailed, it will be by:
 - a. Certified mail or certificate of mailing if cancellation is for nonpayment of premium.
 - b. Certified mail if cancellation is for any other reason.

Proof that the notice was mailed in accordance with Paragraph 3.a. or 3.b. will be sufficient proof of notice.

- E. Paragraph **A.6. Cancellation of Section III – Common Policy Conditions** is deleted.
- F. The following paragraph is added to **Section III – Common Policy Conditions** and supersedes any provision to the contrary, except as provided in Paragraph **G.**:

M. Nonrenewal

1. If we elect not to renew this Policy, we will mail or physically deliver written notice of nonrenewal, stating the reasons for nonrenewal, to your last mailing address known to us at least 60 days prior to the expiration of the Policy, or its anniversary date if it is a policy written for a term of more than one year.
2. However, we need not mail or physically deliver this notice if:
 - a. We manifest our willingness to renew;
 - b. We refuse to renew due to nonpayment of premium;
 - c. You do not pay any advance premium required by us for renewal; or
 - d. Any property covered in this Policy is insured under any other insurance policy.
3. If notice is mailed, proof of mailing will be sufficient proof of notice.

- G. If this Policy covers buildings or structures located in New Hampshire that:

1. Are used only for residential purposes;
2. Are owner-occupied; and
3. Contain one- to four-dwelling units;

the following provisions apply:

1. Paragraphs **A.2.** and **A.3. Cancellation in Section III – Common Policy Conditions** are replaced by the following:
 2. We may cancel this Policy by mailing or physically delivering to you written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 45 days before the effective date of cancellation if we cancel for any other reason.
 3. We will mail or physically deliver our notice to your last mailing address known to us.
2. The following is added to Paragraph **A. Cancellation:**
 1. If this Policy:
 - a. Has been in effect for 90 days or more; or
 - b. Is a renewal of a policy we issued:
We will cancel this Policy only for one or more of the following reasons:
 - (1) Nonpayment of premium;
 - (2) Your conviction of a crime having as one of its necessary elements an act increasing the risk of loss;
 - (3) Discovery of fraud or material misrepresentation by you in making a claim under this Policy;
 - (4) Discovery of grossly negligent acts or omissions by you substantially increasing the risk of loss; or
 - (5) Physical changes in the Covered Property that make that property uninsurable.

Notice of cancellation will state the reasons for cancellation. Unless cancellation is for nonpayment of premium, we may cancel this Policy only by mailing or physically delivering to you written notice of cancellation at least 45 days before the effective date of cancellation.

3. The following is added to **Section III – Common Policy Conditions:**

M. Nonrenewal

We may elect not to renew this Policy by mailing or physically delivering written notice of nonrenewal to your last mailing address known to us at least:

1. 10 days before the expiration date of the Policy if we refuse to renew for nonpayment of premium; or
2. 45 days before the expiration date of the Policy if we refuse to renew for any other reason.

If notice is mailed, proof of mailing will be sufficient proof of notice.

H. The following changes apply only to Information Security Protection Endorsement **BP 15 07** if it is attached to this Policy:

Paragraph **N. Extended Reporting Periods** is replaced by the following:

N. Extended Reporting Periods

For the purposes of the coverage provided by this Endorsement under Insuring Agreements **d. Security Breach Liability** and **g. Web Site Publishing Liability**, the following are added to Paragraph **E. Liability And Medical Expenses General Conditions** of **Section II – Liability:**

1. Basic Extended Reporting Period

a. A Basic Extended Reporting Period is automatically provided without additional charge if:

- (1) This Endorsement is cancelled or not renewed by either us or you for any reason; or
- (2) We renew or replace this Endorsement with insurance that:

- (a) Has a Retroactive Date later than the date shown in the Schedule of this Endorsement for either Insuring Agreement **d. Security Breach Liability** or **g. Web Site Publishing Liability**. However, the Basic Extended Reporting Period will only be provided for the insuring agreement for which our renewal or replacement endorsement has a Retroactive Date later than the date shown in the Schedule of this Endorsement; or

(b) Does not apply to "wrongful acts" on a claims-made basis for either Insuring Agreement **d. Security Breach Liability** or **g. Web Site Publishing Liability**. However, the Basic Extended Reporting Period will only be provided for the insuring agreement for which our renewal or replacement endorsement does not apply to "wrongful acts" on a claims-made basis.

b. The Basic Extended Reporting Period starts with the end of the "policy period" and lasts for 60 days. A "claim" received and reported by the insured during this 60-day period will be considered to have been received within the "policy period". However, the 60-day Basic Extended Reporting Period does not apply to "claims" that are covered under any subsequent insurance purchased by the insured, or that would be covered but for exhaustion of the Aggregate Limit of Insurance applicable to such "claims".

c. The Basic Extended Reporting Period does not extend the "policy period" or change the scope of coverage provided. It applies only to "claims" to which the following applies:

- (1) The "claim" is first made and reported to us during the Basic Extended Reporting Period; and
- (2) The "claim" arose out of either a "wrongful act" or the first of a series of "interrelated wrongful acts" which occurred on or after the Retroactive Date, if any, shown in the Schedule and before the end of the "policy period".

2. Supplemental Extended Reporting Period

a. You will have the right to purchase a Supplemental Extended Reporting Period from us if:

- (1) This Endorsement is cancelled or not renewed for any reason; or

- (2) We renew or replace this Endorsement with insurance that:
- (a) Has a Retroactive Date later than the date shown in the Schedule of this Endorsement for either Insuring Agreement **d. Security Breach Liability** or **g. Web Site Publishing Liability**. However, the Supplemental Extended Reporting Period will only be provided for the insuring agreement for which our renewal or replacement endorsement has a Retroactive Date later than the date shown in the Schedule of this Endorsement; or
 - (b) Does not apply to "wrongful acts" on a claims-made basis for either Insuring Agreement **d. Security Breach Liability** or **g. Web Site Publishing Liability**. However, the Supplemental Extended Reporting Period will only be provided for the insuring agreement for which our renewal or replacement endorsement does not apply to "wrongful acts" on a claims-made basis.
- b. A Supplemental Extended Reporting Period, as specified in Paragraph **a.**, lasts one year and is available only for an additional premium.
- c. The Supplemental Extended Reporting Period starts with the end of the Basic Extended Reporting Period set forth in Paragraph **1**. It does not extend the policy period or change the scope of the coverage provided. It applies only to "claims" to which the following applies:
- (1) The "claim" is first made and reported to us during the Supplemental Extended Reporting Period; and
 - (2) The "claim" arose out of either a "wrongful act" or the first of a series of "interrelated wrongful acts" which occurred on or after the Retroactive Date, if any, shown in the Schedule and before the end of the "policy period".
- d. You must give us a written request for the Supplemental Extended Reporting Period within 30 days after the end of the "policy period" or the effective date of cancellation, whichever comes first.
- e. The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium in full along with any premium or deductible you owe us for coverage provided under this Endorsement within 30 days after the end of the "policy period" or the effective date of cancellation, whichever comes first. Once in effect, the Supplemental Extended Reporting Period may not be cancelled.
- f. We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:
- (1) The exposures insured;
 - (2) Previous types and amounts of insurance;
 - (3) Limit of Insurance available under this Endorsement for future payment of damages; and
 - (4) Other related factors.
- The additional premium may not exceed 200% of the annual premium for this Endorsement. The premium for the Supplemental Extended Reporting Period will be deemed fully earned as of the date it is purchased.
- 3. Basic And Supplemental Extended Reporting Period Limits**
- a. Basic Extended Reporting Period Limit**
- There is no separate or additional Aggregate Limit of Insurance for the Basic Extended Reporting Period. The Limit of Insurance available during the Basic Extended Reporting Period shall be the remaining amount, if any, of the Information Security Protection Aggregate Limit of Insurance available at the end of the "policy period".
- b. Supplemental Extended Reporting Period Limit**
- There is no separate or additional Aggregate Limit of Insurance for the Supplemental Extended Reporting Period. The Limit of Insurance available during the Supplemental Extended Reporting Period, if purchased, shall be the remaining amount, if any, of the Information Security Protection Aggregate Limit of Insurance available at the end of the Basic Extended Reporting Period.

I. Paragraph 2. of Condition J. **Premium Audit** of **Section III – Common Policy Conditions** is replaced by the following:

2. Premium shown in this Policy as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. An audit to determine the final premium due or to be refunded will be completed within 120 days after the expiration or cancellation of the Policy, provided that there is no bona fide dispute.

If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

Except as provided in this Paragraph 2., Paragraph **D. Examination Of Your Books And Records** in **Section III – Common Policy Conditions** continues to apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW HAMPSHIRE BUSINESSOWNERS STANDARD FIRE POLICY PROVISIONS

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The provisions of the Standard Fire Policy are stated below. **State law still requires that they be attached to all policies.** If any conditions of this form are construed to be more liberal than any other policy conditions relating to the perils of fire, lightning or removal, the conditions of this form will apply.

IN CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO, AND OF THE PREMIUM SPECIFIED in the Declarations or in endorsements made a part hereof, this Company, for the term of years specified in the Declarations from inception date shown in the Declarations At 12:01 A.M. (Midnight, Standard Time) to expiration date shown in the Declarations At 12:01 A.M. (Midnight, Standard Time) at location of property involved, to an amount not exceeding the limit of liability specified in the Declarations, does insure the Insured named in the Declarations and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND OTHER PERILS INSURED AGAINST IN THIS POLICY INCLUDING REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described in the Declarations while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

- 1 Concealment,** Coverage under this policy shall be void for the insured who,
- 2 fraud.** whether before or after a loss, has intentionally concealed or
- 3** misrepresented any material fact or circumstance; engaged
- 4** in fraudulent conduct; or made false statements relating to this insurance.
- 5 Notice Requirements.** In the event this Company eliminates or reduces coverages,
- 6** conditions or definitions in this policy, other than at the request of
- 7** the insured, this Company must attach to the policy a printed notice explaining clearly what
- 8** coverages, conditions or definitions have been eliminated or reduced. If explanations of
- 9** such reduced or eliminated coverages are not contained in the printed notice attached to its
- 10** policies, then such coverages, conditions or definitions shall remain in full force and effect
- 11** without such reductions or eliminations. These notice requirements apply only when this
- 12** policy is renewed or endorsed with the same Company.
- 13 Uninsurable** This policy shall not cover accounts, bills,
- 14 and** currency, deeds, evidences of debt,
- 15 excepted property.** money or securities; nor, unless specific-
- 16** ally named hereon in writing, bullion or
- 17** manuscripts.
- 18 Perils not** This Company shall not be liable for loss
- 19 included.** by fire or other perils insured against in
- 20** this policy caused, directly or indirectly,
- 21** by: (a) enemy attack by armed forces, including action taken by

22 military, naval or air forces in resisting an actual or an immediately
23 impending enemy attack; (b) invasion; (c) insurrection; (d) rebel-
24 lion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any
25 civil authority except acts of destruction at the time of and for the
26 purpose of preventing the spread of fire, provided that such fire did
27 not originate from any of the perils excluded by this policy; (i)
28 neglect of the insured to use all reasonable means to save and
29 preserve the property at and after a loss, or when the property is
30 endangered by fire in neighboring premises; (j) nor shall this Com-
31 **Other Insurance.** Other insurance may be prohibited or the
32 amount of insurance may be limited by
33 endorsement attached hereto.
34 **Conditions suspending or restricting insurance. Unless**
35 **otherwise provided in writing added hereto this Com-**
36 **pany shall not be liable for loss occurring**
37 (a) while the hazard is increased by any means within
38 the control or knowledge of the insured; or
39 (b) while a described building, whether intended for occupancy by
40 owner or tenant, is vacant or unoccupied beyond a period of sixty
41 consecutive days; or
42 (c) as a result of explosion or riot, unless fire ensue, and in that
43 event for loss by fire only.
44 **Other perils** Any other peril to be insured against or
45 **or subjects.** subject of insurance to be covered in this
46 policy shall be by endorsement in writing
47 hereon or added hereto.
48 **Added provisions.** The extent of the application of insurance
49 under this policy and of the contribution
50 to be made by this Company in case of loss, and any other provi-
51 sion or agreement not inconsistent with the provisions of this
52 policy, may be provided for in writing added hereto, but no provi-
53 sion may be waived except such as by the terms of this policy is
54 subject to change.
55 **Waiver** No permission affecting this insurance
56 **provisions.** shall exist, or waiver of any provision be
57 valid, unless granted herein or expressed
58 in writing added hereto. No provision, stipulation or forfeiture shall
59 be held to be waived by any requirement or proceeding on the part
60 of this Company relating to appraisal or to any examination pro-
61 vided for herein.
62 **Cancellation** This policy shall be cancelled at any time
63 **of policy.** at the request of the insured, in which
64 case this Company shall, upon demand
65 and surrender of this policy, refund the excess of paid premium
66 above the customary short rates for the expired time. This policy
67 may be cancelled at any time by this Company by giving to the
68 insured a five days' written notice of cancellation with or without
69 tender of the excess of paid premium above the pro rata premium
70 for the expired time, which excess, if not tendered, shall be re-
71 funded on demand. Notice of cancellation shall state that excess
72 premium (if not tendered) will be refunded on demand.
73 **Mortgagee** If loss hereunder is made payable, in
74 **interests and** whole or in part, to a designated mortga-
75 **obligations.** gee not named herein as the insured,
76 such interest in this policy may be can-
77 celled by giving to such mortgagee a ten days' written notice of
78 cancellation.
79 If the insured fails to render proof of loss such mortgagee, upon

80 notice, shall render proof of loss in the form herein specified within
81 sixty (60) days thereafter and shall be subject to the provisions
82 hereof relating to appraisal and time of payment and of bringing
83 suit. If this Company shall claim that no liability existed as to the
84 mortgagor or owner, it shall, to the extent of payment of loss to the
85 mortgagee, be subrogated to all the mortgagee's rights of recovery,
86 but without impairing mortgagee's right to sue; or it may pay off the
87 mortgage debt and require an assignment thereof and of the mort-
88 gage. Other provisions relating to the interests and obligations of
89 such mortgagee may be added hereto by agreement in writing.

90 **Pro rata liability.** This Company shall not be liable for a
91 greater proportion of any loss than the
92 amount hereby insured shall bear to the whole insurance covering
93 the property against the peril involved, whether collectible or not.

94 **Requirements** The insured shall give immediate written
95 **in case loss occurs.** notice to this Company of any loss, pro-
96 tect the property from further damage,
97 forthwith separate the damaged and undamaged personal prop-
98 erty, put it in the best possible order, furnish a complete inventory
99 of the destroyed, damaged and undamaged property, showing in
100 detail quantities, costs, actual cash value and amount of loss
101 claimed; **and within sixty days after the loss, unless such**
102 **time is extended in writing by this Company, the insured**
103 **shall render to this Company a proof of loss,** signed and
104 sworn to by the insured, stating the knowledge and be-
105 lief of the insured as to the the following: the time and origin
106 of the loss, the interest of the insured and of all others in
107 the property, the actual cash value of each item thereof
108 and the amount of loss thereto, all encumbrances
109 thereon, all other contracts of insurance, whether valid
110 or not, covering any of said property, any changes in the
111 title, use, occupation, location, possession or exposures
112 of said property since the issuing of this policy, by whom
113 and for what purpose any building herein described and
114 the several parts thereof were occupied at the time of
115 loss and whether or not it then stood on leased ground,
116 and shall furnish a copy of all the descriptions and
117 schedules in all policies and, if required, verified plans
118 and specifications of any building, fixtures or machinery
119 destroyed or damaged. The insured, as often as may be
120 reasonably required, shall exhibit to any person design-
121 ated by the Company all that remains of any property
122 herein described, and submit to examinations under oath by any
123 person named by this Company, and subscribe the same; and, as
124 often as may be reasonably required, shall produce for examination
125 all books of account, bills, invoices and other vouchers, or certified
126 copies thereof if originals be lost, at such reasonable time and
127 place as may be designated by this Company or its representative,
128 and shall permit extracts and copies thereof to be made.

129 **Appraisal.** In case the insured and this Company
130 shall fail to agree as to the actual cash
131 value or the amount of loss, then, on the written demand of either,
132 each shall select a competent and disinterested appraiser and no-
133 tify the other of the appraiser selected within twenty days of such
134 demand. The appraisers shall first select a competent and disinter-
135 ested umpire; and failing for fifteen days to agree upon such um-
136 pire, then, on request of the insured or this Company, such umpire
137 shall be selected by a judge of a court of record in the state in which
138 the property covered is located. The appraisers shall then appraise

139 the loss, stating separately actual cash value and loss to each item;
140 and, failing to agree, shall submit their differences, only, to the
141 umpire. An award in writing, so itemized, of any two when filed
142 with this Company shall determine the amount of actual cash value
143 and loss. Each appraiser shall be paid by the party selecting him
144 and the expenses of appraisal and umpire shall be paid by the
145 parties equally.

146 **Company's** It shall be optional with this Company to
147 **options.** take all, or any part, of the property at the
148 agreed or appraised value, and also to
149 repair, rebuild or replace the property destroyed or damaged with
150 other of like kind and quality within a reasonable time, on giving
151 notice of its intention so to do within thirty days after the receipt of
152 the proof of loss herein required.

153 **Abandonment.** There can be no abandonment to this
154 Company of any property.

155 **When loss** The amount of loss for which this Com-
156 **payable.** pany may be liable shall be payable sixty
157 days after proof of loss, as herein pro-
158 vided, is received by this Company and ascertainment of the loss is
159 made either by agreement between the insured and this Company
160 expressed in writing or by the filing with this Company of an award
161 as herein provided.

162 **Suit.** No suit or action on this policy for the
163 recovery of any claim shall be sustainable
164 in any court of law or equity unless all the requirements of this
165 policy shall have been complied with, and unless commenced
166 within twelve months next after inception of the loss.

167 **Subrogation.** This Company may require from the in-
168 surer an assignment of all right of recov-
169 ery against any party for loss to the extent that payment therefor is
170 made by this Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The following exclusion is added to Paragraph **B.1. Exclusions – Applicable To Business Liability Coverage** in **Section II – Liability**:

This insurance does not apply to "bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraph (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraph (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT – LIQUOR LIABILITY EXCLUSION – EXCEPTION FOR SCHEDULED ACTIVITIES

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Description Of Activity(ies):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Paragraph **B.1.c. Exclusions** in **Section II – Liability** is replaced by the following exclusion:

This insurance does not apply to "bodily injury" or "property damage" for which any insured may be held liable by reason of:

- a. Causing or contributing to the intoxication of any person;
- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you:

- (1) Manufacture, sell or distribute alcoholic beverages;
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:
 - (a) Requires a license;
 - (b) Is for the purpose of financial gain or livelihood; or
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

However, this exclusion does not apply to "bodily injury" or "property damage" arising out of the selling, serving or furnishing of alcoholic beverages at the specific activity(ies) described above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ABUSE OR MOLESTATION EXCLUSION

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The following applies to Section II – Liability and supersedes any provision to the contrary:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- (a)** The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured, or
- (b)** The negligent:
 - (i)** Employment;
 - (ii)** Investigation;
 - (iii)** Supervision;
 - (iv)** Reporting to the proper authorities, or failure to so report; or
 - (v)** Retention;
of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by **(a)** above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS INCOME CHANGES – TIME PERIOD

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

Section I – Property is amended as follows:

A. Paragraph A.5.i. Civil Authority Additional Coverage is amended by deleting the second and third paragraphs and replacing them with the following:

This coverage will apply for a period of up to four consecutive weeks from the date of that action.

B. Paragraph A.5.m.(5)(a) Business Income From Dependent Properties Additional Coverage is replaced by the following:

(5) The coverage period for Business Income under this Additional Coverage:

(a) Begins immediately after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises of the dependent property; and

C. Paragraph H.9.a.(1)(a) of the "Period of restoration" definition is replaced by the following:

(a) Immediately after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; or

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

REMOVAL OF INSURANCE-TO-VALUE PROVISION

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

Paragraph **E.5.d. Loss Payment** Property Loss Condition in **Section I – Property** is amended as follows:

A. Paragraph **d.(1)(a)** is replaced by the following:

(1) At replacement cost without deduction for depreciation, subject to the following:

(a) We will pay the cost to repair or replace, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(i) The Limit of Insurance under Section I – Property that applies to the lost or damaged property;

(ii) The cost to replace, on the same premises, the lost or damaged property with other property:

i. Of comparable material and quality; and

ii. Used for the same purpose; or

(iii) The amount that you actually spend that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost is limited to the cost which would have been incurred had the building been built at the original premises.

B. Paragraph **d.(1)(b)** does not apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

Exclusion **B.1.f. Pollution** in **Section II – Liability** is replaced by the following:

This insurance does not apply to:

f. Pollution

- (1)** "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
- (2)** Any loss, cost or expense arising out of any:
 - (a)** Request, demand, order or statutory or regulatory requirement that any 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"; or
 - (b)** 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".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALCULATION OF PREMIUM

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – SILICA OR SILICA-RELATED DUST

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

A. The following exclusion is added to Paragraph **B. Exclusions** in **Section II – Liability**:

B. Exclusions

This insurance does not apply to:

SILICA OR SILICA-RELATED DUST

1. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silica-related dust".
2. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".
3. "Personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".

4. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

B. The following definitions are added to Paragraph **F. Liability And Medical Expenses Definitions** in **Section II – Liability**:

1. "Silica" means silicon dioxide, (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

The Exception Covering Certain Fire Losses (Paragraph B.2.) applies to property located in the following state(s):
CT, MA, ME and RI
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A.** The following provisions are added to the Businessowners Policy and apply to Property and Liability Coverages:

The following definition is added with respect to the provisions of this endorsement:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

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

- B.** The following provisions are added to Businessowners Standard Property Coverage Form **BP 00 01**, Businessowners Special Property Coverage Form **BP 00 02** or **Section I – Property** of Businessowners Coverage Form **BP 00 03**:

1. The following exclusion is added:

CERTIFIED ACT OF TERRORISM EXCLUSION

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

2. **Exception Covering Certain Fire Losses**

The following exception to the exclusion in Paragraph **B.1.** applies only if indicated and as indicated in the Schedule of this endorsement.

If a "certified act of terrorism" results in fire, we will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense Additional Coverages.

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

3. Application Of Other Exclusions

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

C. The following provision is added to the Businessowners Liability Coverage Form **BP 00 06** and **Section II – Liability** of the Businessowners Coverage Form **BP 00 03**:

1. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

2. The following definition is added:

For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Form to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage" or "personal and advertising injury" as may be defined in any applicable Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF PUNITIVE DAMAGES RELATED TO A CERTIFIED ACT OF TERRORISM

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The following provisions are added to the Businessowners Liability Coverage Form **BP 00 06** and **Section II – Liability** of the Businessowners Coverage Form **BP 00 03**:

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM PUNITIVE DAMAGES

Damages arising, directly or indirectly, out of a "certified act of terrorism" that are awarded as punitive damages.

B. The following definition is added:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONDITIONAL EXCLUSION OF TERRORISM (RELATING TO DISPOSITION OF FEDERAL TERRORISM RISK INSURANCE ACT)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

<p>The Exception Covering Certain Fire Losses (Paragraph B.2.) applies to property located in the following state(s):</p> <p>CT, MA, ME and RI</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

A. Section I – Property and Section II – Liability are amended as follows:

1. Applicability Of The Provisions Of This Endorsement

a. The provisions of this endorsement become applicable commencing on the date when any one or more of the following first occurs. But if your policy (meaning the policy period in which this endorsement applies) begins after such date, then the provisions of this endorsement become applicable on the date your policy begins.

(1) The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act, has terminated with respect to the type of insurance provided under this Coverage Form; or

(2) A renewal, extension or replacement of the Program has become effective without a requirement to make terrorism coverage available to you and with revisions that:

(a) Increase our statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all certified terrorism losses we must pay in a calendar year, before the federal government shares in subsequent payment of certified terrorism losses.); or

(b) Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or



- (c) **Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.**
- b. **If the provisions of this endorsement become applicable, such provisions:**
 - (1) **Supersede any terrorism endorsement already endorsed to this policy that addresses "certified acts of terrorism" and/or "other acts of terrorism", but only with respect to loss or injury or damage from an incident(s) of terrorism (however defined) that occurs on or after the date when the provisions of this endorsement become applicable; and**
 - (2) **Remain applicable unless we notify you of changes in these provisions, in response to federal law.**
- c. **If the provisions of this endorsement do NOT become applicable, any terrorism endorsement already endorsed to this policy, that addresses "certified acts of terrorism" and/or "other acts of terrorism", will continue in effect unless we notify you of changes to that endorsement in response to federal law.**

- 2. The following definition is added and applies under this endorsement wherever the term terrorism is enclosed in quotation marks.

"Terrorism" means activities against persons, organizations or property of any nature:

- a. That involve the following or preparation for the following:
 - (1) Use or threat of force or violence; or
 - (2) Commission or threat of a dangerous act; or
 - (3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
- b. When one or both of the following applies:
 - (1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - (2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

B. Section I – Property is amended as follows:

- 1. The following exclusion is added:

EXCLUSION OF TERRORISM

We will not pay for loss or damage caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":

- a. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
- c. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
- e. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold is exceeded.

With respect to this Item **1.e.**, the immediately preceding paragraph describes the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form.

2. Exception Covering Certain Fire Losses

The following exception to the Exclusion Of Terrorism applies only if indicated and as indicated in the Schedule of this endorsement.

If "terrorism" results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverages or endorsements that apply to those coverages.

3. Application Of Other Exclusions

- a. When the Exclusion Of Terrorism applies in accordance with the terms of Paragraph **1.a.** or **1.b.**, such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form.
- b. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss or damage which would otherwise be excluded under this Coverage Form as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

C. Section II – Liability is amended as follows:

1. The following definition is added and applies under this endorsement wherever the phrase any injury or damage, is enclosed in quotation marks:

"Any injury or damage" means any injury or damage covered under this Coverage Form or any applicable endorsement, and includes but is not limited to "bodily injury", "property damage" or "personal and advertising injury", as may be defined under this Coverage Form or any applicable endorsement.

2. The following exclusion is added:

EXCLUSION OF TERRORISM

We will not pay for "any injury or damage" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". "Any injury or damage" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

- a. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
- c. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
- e. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
- f. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - (1) Physical injury that involves a substantial risk of death; or
 - (2) Protracted and obvious physical disfigurement; or

(3) Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraph **2.e.** or **2.f.** are exceeded.

With respect to this Exclusion, Paragraphs **2.e.** and **2.f.** describe the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form.

In the event of any incident of "terrorism" that is not subject to this Exclusion, coverage does not apply to "any injury or damage" that is otherwise excluded under this Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CONDITIONAL EXCLUSION OF TERRORISM INVOLVING
NUCLEAR, BIOLOGICAL OR CHEMICAL TERRORISM
(RELATING TO DISPOSITION OF FEDERAL TERRORISM
RISK INSURANCE ACT)**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

The Exception Covering Certain Fire Losses (Paragraph B.2.) applies to property located in the following state(s):
CT, MA, ME and RI
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section I – Property and Section II – Liability are amended as follows:

1. Applicability Of The Provisions Of This Endorsement

a. The provisions of this endorsement become applicable commencing on the date when any one or more of the following first occurs. But if your policy (meaning the policy period in which this endorsement applies) begins after such date, then the provisions of this endorsement become applicable on the date your policy begins.

(1) The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act, has terminated with respect to the type of insurance provided under this Coverage Form; or

(2) A renewal, extension or replacement of the Program has become effective without a requirement to make terrorism coverage available to you and with revisions that:

(a) Increase our statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all certified terrorism losses we must pay in a calendar year, before the federal government shares in subsequent payment of certified terrorism losses.); or

(b) Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or

(c) Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.



b. If the provisions of this endorsement become applicable, such provisions:

(1) Supersede any terrorism endorsement already endorsed to this policy that addresses "certified acts of terrorism" and/or "other acts of terrorism", but only with respect to loss or injury or damage from an incident(s) of terrorism (however defined) that occurs on or after the date when the provisions of this endorsement become applicable; and

(2) Remain applicable unless we notify you of changes in these provisions, in response to federal law.

c. If the provisions of this endorsement do NOT become applicable, any terrorism endorsement already endorsed to this policy, that addresses "certified acts of terrorism" and/or "other acts of terrorism", will continue in effect unless we notify you of changes to that endorsement in response to federal law.

2. The following definition is added and applies under this endorsement wherever the term terrorism is enclosed in quotation marks.

"Terrorism" means activities against persons, organizations or property of any nature:

a. That involve the following or preparation for the following:

(1) Use or threat of force or violence; or

(2) Commission or threat of a dangerous act; or

(3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

b. When one or both of the following applies:

(1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or

(2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

B. Section I – Property is amended as follows:

1. The following exclusion is added:

EXCLUSION OF TERRORISM

We will not pay for loss or damage caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

a. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or

b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or

c. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials.

2. Exception Covering Certain Fire Losses

The following exception to the Exclusion Of Terrorism applies only if indicated and as indicated in the Schedule of this endorsement.

If "terrorism" results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverages or endorsements that apply to those coverages.

3. Application Of Other Exclusions

- a. When the Exclusion Of Terrorism applies in accordance with the terms of Paragraph 1.a. or 1.b., such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form.
- b. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss or damage which would otherwise be excluded under this Coverage Form, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

C. Section II – Liability is amended as follows:

1. The following definition is added and applies under this endorsement wherever the phrase any injury or damage is enclosed in quotation marks:
"Any injury or damage" means any injury or damage covered under this Coverage Form or any applicable endorsement, and includes but is not limited to "bodily injury", "property damage" or "personal and advertising injury" as may be defined under this Coverage Form.

2. The following exclusion is added:

EXCLUSION OF TERRORISM

We will not pay for "any injury or damage" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". "Any injury or damage" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

- a. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
- c. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials.

In the event of any incident of "terrorism" that is not subject to this Exclusion, coverage does not apply to "any injury or damage" that is otherwise excluded under this Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF TERRORISM

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

The Exception Covering Certain Fire Losses (Paragraph B.2.) applies to property located in the following state(s):				
State(s)				
CT	MA	ME	RI	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.				

A. Section I – Property and Section II – Liability are amended as follows:

The following definition is added and applies under this endorsement wherever the term terrorism is enclosed in quotation marks.

"Terrorism" means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

B. Section I – Property is amended as follows:

1. The following exclusion is added:

EXCLUSION OF TERRORISM

We will not pay for loss or damage caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". Such loss or injury or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss or injury or damage. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

- a. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
- c. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
- e. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident for the purpose of determining whether the threshold is exceeded.

With respect to this item **1.e.**, the immediately preceding paragraph describes the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form.

2. Exception Covering Certain Fire Losses

The following exception to the Exclusion Of Terrorism applies only if indicated and as indicated in the Schedule of this endorsement.

If "terrorism" results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverages or endorsements that apply to those coverages.

3. Application Of Other Exclusions

- a. When the Exclusion Of Terrorism applies in accordance with the terms of **1.a.** or **1.b.**, such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form.

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

C. Section II – Liability is amended as follows:

1. The following definition is added and applies under this endorsement wherever the phrase any injury or damage is enclosed in quotation marks:

"Any injury or damage" means any injury or damage covered under this Coverage Form or any applicable endorsement and includes but is not limited to "bodily injury", "property damage", or "personal and advertising injury" as may be defined under this Coverage Form.

2. The following exclusion is added:

EXCLUSION OF TERRORISM

We will not pay for "any injury or damage" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism." Any injury or damage" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

- a. The "terrorism" is carried out by means of dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
- c. The "terrorism" is carried out by means of dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or

- e. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
- f. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - (1) Physical injury that involves a substantial risk of death; or
 - (2) Protracted and obvious physical disfigurement; or
 - (3) Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraphs **2.e.** or **2.f.** are exceeded.

With respect to this Exclusion, Paragraphs **2.e.** and **2.f.** describe the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form.

In the event of any incident of "terrorism" that is not subject to this Exclusion, coverage does not apply to "any injury or damage" that is otherwise excluded under this Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION OF TERRORISM INVOLVING NUCLEAR,
BIOLOGICAL OR CHEMICAL TERRORISM**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

The Exception Covering Certain Fire Losses (Paragraph B.2.) applies to property located in the following state(s):				
State(s)				
CT	MA	ME	RI	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.				

A. Section I – Property and Section II – Liability are amended as follows:

The following definition is added and applies under this endorsement wherever the term terrorism is enclosed in quotation marks.

"Terrorism" means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

B. Section I – Property is amended as follows:

1. The following exclusion is added:

EXCLUSION OF TERRORISM

We will not pay for loss or damage caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

- a. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
- c. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials.

2. Exception Covering Certain Fire Losses

The following exception to the Exclusion Of Terrorism applies only if indicated and as indicated in the Schedule of this endorsement.

If "terrorism" results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverages or endorsements that apply to those coverages.

3. Application Of Other Exclusions

- a. When the Exclusion Of Terrorism applies in accordance with the terms of **1.a.** or **1.b.**, such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form.
- b. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss or damage which would otherwise be excluded under this Coverage Form, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

C. Section II – Liability is amended as follows:

- 1. The following definition is added and applies under this endorsement wherever the phrase any injury or damage is enclosed in quotation marks:

"Any injury or damage" means any injury or damage covered under this Coverage Form or any applicable endorsement and includes but is not limited to "bodily injury", "property damage", or "personal and advertising injury" as may be defined under this Coverage Form.

- 2. The following exclusion is added:

EXCLUSION OF TERRORISM

We will not pay for "any injury or damage" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". "Any injury or damage" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

- a. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
- c. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials.

In the event of any incident of "terrorism" that is not subject to this Exclusion, coverage does not apply to "any injury or damage" that is otherwise excluded under this Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION (LIABILITY)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The following provisions are added to **Section II – Liability**:

A. The following exclusion is added to Paragraph **B.1., Exclusions – Applicable To Business Liability Coverage**:

t. Fungi Or Bacteria

- (1) "Bodily injury", "property damage" or "personal and advertising injury" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

- (2) Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following definition is added Paragraph **F. Liability And Medical Expenses Definitions**:

1. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NEW HAMPSHIRE EFFECTIVE TIME CHANGES –
REPLACEMENT OF 12 NOON**

This endorsement modifies the BUSINESSOWNERS COVERAGE FORM.

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY – LIMITED BODILY INJURY EXCEPTION NOT INCLUDED

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

- A. Exclusion **B.1.q.** of **Section II – Liability** is replaced by the following:

This insurance does not apply to:

q. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

- (1) Damages, other than damages because of "personal and advertising injury", arising out of any 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
- (2) Damages arising out of 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 in Paragraph (1) or (2) above.

As used in this exclusion, 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.

B. The following is added to Paragraph **B.1.p. Personal And Advertising Injury** Exclusion of **Section II – Liability:**

This insurance does not apply to:

p. Personal And Advertising Injury

"Personal and advertising injury":

Arising out of any 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.

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 any access to or disclosure of any person's or organization's confidential or personal information.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EQUIPMENT BREAKDOWN COVERAGE
(Including Electronic Circuitry Impairment)**

This endorsement modifies insurance provided under the following:
BUSINESSOWNERS COVERAGE FORM

- A. The following is added to Paragraph **A.3. Covered Causes of Loss** in Section I – Property:

Additional Coverage-- Equipment Breakdown

The term Covered Cause of Loss includes the Additional Coverage Equipment Breakdown as described and limited below. Without an “accident” or “electronic circuitry impairment”, there is no Equipment Breakdown Coverage.

1. We will pay for direct physical damage to Covered Property that is the direct result of an “accident” or “electronic circuitry impairment”. We will consider “electronic circuitry impairment” to be physical damage to “covered equipment”.
2. The following coverages also apply to the direct result of an “accident” or “electronic circuitry impairment”. However, with respect to coverage 2.g. Service Interruption below and any Dependent Properties coverage provided by this policy, coverage will apply only to the direct result of an “accident” and will not apply to the direct result of an “electronic circuitry impairment”. These coverages do not provide additional amounts of insurance.
 - a. Business Income and Extra Expense
 - (1) Any insurance provided under the policy for Business Income or Extra Expense is extended to the coverage provided by this endorsement.
 - (2) The most we will pay for loss or expense under this coverage is the applicable limit for Business Income and Extra Expense.
 - b. Data Restoration
 - (1) We will pay for your reasonable and necessary cost to research, replace and restore lost “electronic data”.
 - (2) The most we will pay for loss or expense under this coverage, including actual loss of Business Income you sustain and necessary Extra Expense you incur, is \$25,000.
 - c. Expediting Expenses
 - (1) With respect to your damaged Covered Property, we will pay the reasonable extra cost to:
 - (a) Make temporary repairs; and
 - (b) Expedite permanent repairs or permanent replacement.
 - (2) The most we will pay for loss or expense under this coverage is \$25,000.
 - d. Hazardous Substances
 - (1) We will pay your 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.

- (2) This does not include contamination of “perishable goods” by refrigerant, including but not limited to ammonia, which is addressed in 2.h.(1)(b) below. 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) The most we will pay for loss, damage or expense under this coverage, including actual loss of Business Income you sustain and necessary Extra Expense you incur is \$25,000.
- e. Off Premises Equipment Breakdown
- (1) We will pay for physical damage to transportable “covered equipment” that, at the time of the “accident” or “electronic circuitry impairment”, is not at a covered location. As respects this Off Premises Equipment Breakdown coverage only, the “accident” or “electronic circuitry impairment” may occur in any country except one in which the United States has imposed sanctions, embargoes or similar restrictions on the provision of insurance.
 - (2) We will also pay for your reasonable and necessary cost to research, replace and restore lost “electronic data” contained within “covered equipment” as described under (1) above. This amount may not exceed the limit applicable to Data Restoration coverage.
 - (3) The most we will pay for loss, damage or expense under this coverage, including actual loss of Business Income you sustain and necessary Extra Expense you incur and Data Restoration as described in (2) above is \$10,000.
- f. Public Relations
- (1) This coverage only applies if you have sustained an actual loss of Business Income covered under this endorsement.
 - (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.
 - (4) The most we will pay for loss or expense under this coverage is \$5,000.
- g. Service Interruption
- (1) Any insurance provided for Business Income, Extra Expense, Data Restoration or Spoilage is extended to apply to your loss, damage or expense caused by a failure or disruption of service. The failure or disruption of service must be caused by an “accident” to equipment, including overhead transmission lines, that is owned by a utility, landlord, a landlord’s utility or other supplier who provides you with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, Internet access, telecommunications services, “cloud computing services”, wide area networks or data transmission. The equipment must

meet the definition of “covered equipment” except that it is not Covered Property.

- (2) “Cloud computing services” must be provided by a professional provider with whom you have a contract.
- (3) With respect to the Data Restoration portion of this Service Interruption coverage, coverage will also apply to “electronic data” stored in the equipment of a provider of “cloud computing services”.
- (4) Any insurance provided for Business Income or Data Restoration will not apply under this Service Interruption coverage unless the failure or disruption of service exceeds 24 hours immediately following the “accident”. If the interruption exceeds 24 hours, coverage will begin at the time of the disruption, and the applicable deductible will apply.
- (5) The most we will pay in any “one equipment breakdown” for loss, damage or expense under this coverage is the applicable limit for Business Income, Extra Expense, Data Restoration or Spoilage.

h. Spoilage

- (1) We will pay for:
 - (a) Physical damage to “perishable goods” due to spoilage;
 - (b) Physical damage to “perishable goods” due to contamination from the release of refrigerant, including but not limited to ammonia;
 - (c) Any necessary expenses you incur to reduce the amount of loss under this coverage to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.
- (2) If you are unable to replace the “perishable goods” before its anticipated sale, the amount of our payment will be determined on the basis of the sales price of the “perishable goods” at the time of the “accident” or “electronic circuitry impairment”, less discounts and expenses you otherwise would have had. Otherwise our payment will be determined in accordance with the Loss Payment condition.
- (3) The most we will pay for loss, damage or expense under this coverage is \$25,000.

B. The following is added to Paragraph B. Exclusions:

All exclusions in the BUSINESSOWNERS COVERAGE FORM apply except as modified below and to the extent that coverage is specifically provided by this endorsement.

1. The following exclusions are modified:
 - a. As respects this endorsement only, the next to the last paragraph in Exclusion **B.1.h.** is deleted and replaced with the following:
However, if excluded loss or damage, as described in Paragraph (1) above results in an “accident” or “electronic circuitry impairment”, we will pay only for the loss, damage or expense caused by such “accident” or “electronic circuitry impairment”.
 - b. As respects this endorsement only, the last paragraph of Exclusion **B.2.i.** is deleted and replaced with the following: But if an excluded cause of loss that is listed in **2.i.(1)** through **(7)** results in an “accident” or “electronic circuitry impairment”, we will pay for the loss, damage or expense caused by that “accident” or “electronic circuitry impairment”.

- c. The following is added to Exclusions **B.2.m.** and **B.2.n.**:
We will also pay for direct physical loss or damage caused by an “accident” or “electronic circuitry impairment”.
2. The following exclusions are added:
- a. We will not pay for loss, damage or expense caused by or resulting from a hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel, or an electrical insulation breakdown test of any type of electrical equipment.
 - b. Coverage under this endorsement does not apply to an “accident” or “electronic circuitry impairment” caused by or resulting from:
 - (1) Fire (including fire resulting from an “accident” or “electronic circuitry impairment”), or water or other means used to extinguish a fire;
 - (2) Explosion of gas or unconsumed fuel within the furnace of any boiler or fired vessel or within the passages from that furnace to the atmosphere;
 - (3) Any other explosion, except as specifically covered under this endorsement;
 - (4) Vandalism;
 - (5) Lightning; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; sprinkler leakage; elevator collision;
 - (6) Breakage of glass; falling objects; weight of snow, ice or sleet; freezing (caused by cold weather); collapse; or molten material;
 - (7) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not; mudslide or mudflow; or 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 direct expenses of such drying out subject to the applicable Limit of Insurance and deductible for Building or Business Personal Property, whichever applies;
 - (8) Any earth movement, including but not limited to earthquake, subsidence, sinkhole collapse, landslide, earth sinking, tsunami or volcanic action.
 - c. With respect to Business Income, Extra Expense and Service Interruption coverages, we will also not pay for any increase in loss resulting from an agreement between you and your customer or supplier.
 - d. We will not pay for loss, damage or expense caused directly or indirectly by the following, whether or not caused by or resulting from an “accident” or “electronic circuitry impairment”: Any “fungi”, wet rot or dry rot, including any presence, growth, proliferation, spread or any activity of “fungi”, wet rot or dry rot. This includes, but is not limited to, costs arising from clean up, removal, or abatement of such “fungi”, wet rot or dry rot. However, this exclusion does not apply to spoilage of personal property that is “perishable goods”, to the extent that such spoilage is covered under Spoilage coverage.
 - e. We will not pay for any loss or damage to animals.
 - f. Exclusions 2.b.(5) and 2.b.(6) above shall not apply if:
 - (1) The excluded cause of loss occurs away from any covered location and causes an electrical surge or other electrical disturbance;
 - (2) Such surge or disturbance is transmitted through utility service transmission lines to the covered location and results in an “accident” or “electronic circuitry impairment”; and

- (3) The loss, damage or expense caused by such surge or disturbance is not covered elsewhere under the policy.

C. CONDITIONS

1. The following conditions are in addition to the Conditions in the BUSINESSOWNERS COVERAGE FORM.

- a. 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 an “accident” or “electronic circuitry impairment” to that “covered equipment”. This can be done by mailing or delivering a written notice of suspension to:

- (1) Your last known address; or
- (2) 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.

- b. Jurisdictional Inspections

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

2. As respects this endorsement only, Loss Payment Condition **5.d.** in the BUSINESSOWNER COVERAGE FORM is deleted and replaced with the following:

- d. We will determine the value of Covered Property as follows:

- (1) Except as specified otherwise, our payment for damaged Covered Property will be the smallest of:
 - (a) The cost to repair the damaged property;
 - (b) The cost to replace the damaged property on the same site; or
 - (c) The amount you actually spend that is necessary to repair or replace the damaged property.
- (2) 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.
- (3) Except as described in (4) 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.
- (4) Environmental, Safety and Efficiency Improvements
If “covered equipment” requires replacement due to an “accident” or “electronic circuitry impairment”, we will pay your additional cost to replace with equipment that is better for the environment, safer for people or more energy or water efficient than the equipment being replaced. However, we will not pay to increase the size or capacity of the equipment and we will not pay more than 150% of what the cost would

have been to replace with like kind and quality. This provision does not apply to the replacement of component parts or to any property to which Actual Cash Value applies and does not increase any of the applicable limits.

- (5) The following property will be valued on an Actual Cash Value basis:
 - (a) Any property that does not currently serve a useful or necessary function for you; and
 - (b) Any Covered Property that you do not repair or replace within 24 months after the date of the “accident” or “electronic circuitry impairment”.

Actual Cash Value includes deductions for depreciation.

- (6) 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:
 - (a) The property was manufactured by you;
 - (b) The sales price of the property is less than the replacement cost of the property; or
 - (c) You are unable to replace the property before its anticipated sale.
- (7) Except as specifically provided for under Data Restoration coverage, “electronic data” and “media” will be valued on the following basis:
 - (a) For mass produced and commercially available software, at the replacement cost.
 - (b) For all other “electronic data” and “media”, at the cost of blank “media” for reproducing the records. We will not pay for “electronic data” representing financial records based on the face value of such records.

D. DEFINITIONS

The following definitions are added with respect to this endorsement only:

- 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 electric arcing, that disturbs electrical devices, appliances or wires;
 - (3) Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
 - (4) Loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
 - (5) Loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.
 - b. None of the following is an “accident”:
 - (1) Defect, programming error, programming limitation, computer virus, malicious code, loss of “electronic data”, loss of access, loss of use, loss

of functionality or other condition within or involving “electronic data” or “media” of any kind; or

- (2) Misalignment, miscalibration, tripping off-line, or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance.

However, if an “accident” results, we will pay for the resulting loss, damage or expense caused by that “accident”.

2. “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.
3. “Covered equipment”
 - a. “Covered equipment” means Covered Property:
 - (1) That generates, transmits or utilizes energy; or
 - (2) 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.
 - b. None of the following is “covered equipment”:
 - (1) Structure, foundation, cabinet or compartment;
 - (2) Insulating or refractory material;
 - (3) Sewer piping, buried vessels or piping, or piping forming a part of a sprinkler or fire suppression system;
 - (4) Water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;
 - (5) “Vehicle” or any equipment mounted on a “vehicle”;
 - (6) Satellite, spacecraft or any equipment mounted on a satellite or spacecraft;
 - (7) Dragline, excavation or construction equipment; or
 - (8) Equipment manufactured by you for sale.
4. “Electronic circuitry” means microelectronic components, including but not limited to circuit boards, integrated circuits, computer chips and disk drives.
5. “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.
6. “Hazardous substance” means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.
 7. “Media” means material on which “electronic data” is recorded, such as solid state drives, hard disks, optical disks, flash drives, magnetic tapes or floppy disks.
 8. “One equipment breakdown” means: If an initial “accident” or “electronic circuitry impairment” causes other “accidents” or “electronic circuitry impairments”, all will be considered “one equipment breakdown”. All “accidents” or “electronic circuitry impairments” that are the result of the same “accident” or “electronic circuitry impairment” will be considered “one equipment breakdown”.
 9. “Perishable goods” means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.
 10. “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”.

The most we will pay for loss, damage or expense under this endorsement arising from any “one equipment breakdown” is the applicable Limit of Insurance in the Declarations. Coverage provided under this endorsement does not provide an additional amount of insurance.

COVERAGE AMENDMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided by the following:

BUSINESSOWNERS COVERAGE FORM

SECTION I – PROPERTY is amended as follows:

A. Coverage

Paragraph **1.a.** is deleted and replaced by the following:

- a.** Buildings, meaning the buildings and structures described in the Declarations. Buildings and structures which are on the premises described on the Declarations, but which are not specifically described on the Declarations, are not Covered Property. The buildings and structures described in the Declarations include:

Paragraphs **a. (1), (2), (3), (4), (5)** and **(6)** remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NEW HAMPSHIRE AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

EQUIPMENT BREAKDOWN COVERAGE

Condition **C.2.** Jurisdictional Inspections is replaced by the following:

Jurisdictional Inspections

If any property that is "covered equipment" under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf.

BUSINESSOWNERS COVERAGE FORM INDEX

This index is provided only as a convenience. It should not be assumed to provide a reference to every provision that can affect a question, claim or coverage. To determine the full scope of coverage and pertinent restrictions and exclusions, the policy (including endorsements) must be read in its entirety. The features may also be affected by related provisions not referenced at all in the index, or noted elsewhere in it. For instance, an **Exclusion** feature addresses a specific policy exclusion; but restrictions of coverage and exclusions also appear within the areas where coverage, covered causes of loss, etc., are described.

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NEW HAMPSHIRE FRAUD STATEMENT

Any person who, with a purpose to injure, defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA 638:20.

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

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

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

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

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

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

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



February 3, 2021

Re: CC 145 Main LLC

Policy #: BOP0172696

To Whom It May Concern:

Please accept this as a certified copy of the policy in force for cc 145 Main LLC for the loss date November 11th 2020.

Regards,

Sarah Jarvis
Vice President and General Counsel



Before me, 
Notary Public

My Commission Expires Jan 31st 2023



Union Mutual Fire Insurance Company
Community Mutual Insurance Company
New England Guaranty Insurance Company, Inc.

139 State Street, P.O. Box 158
Montpelier, VT 05601
800-300-5261
www.unionmutual.com

